



General Assembly

February Session, 2010

Raised Bill No. 461

LCO No. 2329

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Referred to Committee on Energy and Technology

Introduced by:
(ET)

AN ACT CONCERNING SITING COUNCIL PROCEEDINGS AND DECISIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-50p of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2010*):

3 (a) (1) In a certification proceeding, the council shall render a
4 decision upon the record either granting or denying the application as
5 filed, or granting it upon such terms, conditions, limitations or
6 modifications of the construction or operation of the facility as the
7 council may deem appropriate.

8 (2) The council's decision shall be rendered in accordance with the
9 following:

10 (A) Not later than twelve months after the deadline for filing an
11 application following the request for proposal process for a facility
12 described in subdivision (1) or (2) of subsection (a) of section 16-50i or
13 subdivision (4) of said subsection (a) if the application was
14 incorporated in an application concerning a facility described in

15 subdivision (1) of said subsection (a);

16 (B) Not later than one hundred eighty days after the deadline for
17 filing an application following the request for proposal process for a
18 facility described in subdivision (4) of said subsection (a) [,] and an
19 application concerning a facility described in subdivision (3) of said
20 subsection (a), provided the council may extend such [time] periods
21 [may be extended by the council] by not more than one hundred
22 eighty days with the consent of the applicant; and

23 (C) Not later than one hundred eighty days after the filing of an
24 application for a facility described in subdivision (5) or (6) of said
25 subsection (a), provided the council may extend such [time] period
26 [may be extended by the council] by not more than one hundred
27 eighty days with the consent of the applicant.

28 (3) The council shall file, with its order, an opinion stating in full its
29 reasons for the decision. The council shall not grant a certificate, either
30 as proposed or as modified by the council, unless it shall find and
31 determine:

32 (A) Except as provided in subsection (c) of this section, a public
33 need for the facility and the basis of the need;

34 (B) The nature of the probable environmental impact of the facility
35 alone and cumulatively with other existing facilities, including a
36 specification of every significant adverse effect, including, but not
37 limited to, electromagnetic fields that, whether alone or cumulatively
38 with other effects, impact on, and conflict with the policies of the state
39 concerning [,] the natural environment, ecological balance, public
40 health and safety, scenic, historic and recreational values, forests and
41 parks, air and water purity and fish, aquaculture and wildlife;

42 (C) Why the adverse effects or conflicts referred to in subparagraph
43 (B) of this subdivision are not sufficient reason to deny the application;

44 (D) In the case of an electric transmission line, (i) what part, if any,

45 of the facility shall be located overhead, (ii) that the facility conforms to
46 a long-range plan for expansion of the electric power grid of the
47 electric systems serving the state and interconnected utility systems
48 and will serve the interests of electric system economy and reliability,
49 and (iii) that the overhead portions, if any, of the facility are cost
50 effective and the most appropriate alternative based on a life-cycle cost
51 analysis of the facility and underground alternatives to such facility,
52 are consistent with the purposes of this chapter, with such regulations
53 or standards as the council may adopt pursuant to section 16-50t,
54 including, but not limited to, the council's best management practices
55 for electric and magnetic fields for electric transmission lines and with
56 the Federal Power Commission "Guidelines for the Protection of
57 Natural Historic Scenic and Recreational Values in the Design and
58 Location of Rights-of-Way and Transmission Facilities" or any
59 successor guidelines and any other applicable federal guidelines and
60 are to be contained within an area that provides a buffer zone that
61 protects the public health and safety, as determined by the council. In
62 establishing such buffer zone, the council shall [take into
63 consideration] consider, among other things, residential areas, private
64 or public schools, licensed child day care facilities, licensed youth
65 camps or public playgrounds adjacent to the proposed route of the
66 overhead portions and the level of the voltage of the overhead portions
67 and any existing overhead transmission lines on the proposed route.
68 At a minimum, the existing right-of-way shall serve as the buffer zone;

69 (E) In the case of an electric or fuel transmission line, that the
70 location of the line will not pose an undue hazard to persons or
71 property along the area traversed by the line;

72 (F) In the case of an application that was heard under a consolidated
73 hearing process with other applications that were common to a request
74 for proposal, that the facility proposed in the subject application
75 represents the most appropriate alternative among such applications
76 based on the findings and determinations pursuant to this subsection;
77 [and]

78 (G) In the case of a facility described in subdivision (6) of subsection
79 (a) of section 16-50i that is proposed to be installed on land under
80 agricultural restriction, as provided in section 22-26cc, that the facility
81 will not result in a material decrease of acreage and productivity of the
82 arable land; and

83 (H) That it has considered the manufacturer's recommended safety
84 standards for any equipment, machinery or technology.

85 (b) (1) Prior to granting an applicant's certificate for a facility
86 described in subdivision (5) or (6) of section 16-50i, the council shall
87 examine, in addition to its consideration of subdivisions (1) to [(5)] (3),
88 inclusive, of subsection (a) of this section: (A) The feasibility of
89 requiring an applicant to share an existing facility, as defined in
90 subsection (b) of section 16-50aa, within a technically derived search
91 area of the site of the proposed facility, provided such shared use is
92 technically, legally, environmentally and economically feasible and
93 meets public safety concerns, (B) whether such facility, if constructed,
94 may be shared with any public or private entity [which] that provides
95 telecommunications or community antenna television service to the
96 public, provided such shared use is technically, legally,
97 environmentally and economically feasible at fair market rates, meets
98 public safety concerns, and the parties' interests have been considered,
99 and (C) whether the proposed facility would be located in an area of
100 the state which the council, in consultation with the Department of
101 Environmental Protection and any affected municipalities, finds to be a
102 relatively undisturbed area that possesses scenic quality of local,
103 regional or state-wide significance. The council may deny an
104 application for a certificate if it determines that (i) shared use under the
105 provisions of subparagraph (A) of this subdivision is feasible, (ii) the
106 applicant would not cooperate relative to the future shared use of the
107 proposed facility, or (iii) the proposed facility would substantially
108 affect the scenic quality of its location and no public safety concerns
109 require that the proposed facility be constructed in such a location.

110 (2) When issuing a certificate for a facility described in subdivision
111 (5) or (6) of subsection (a) of section 16-50i, the council may impose
112 such reasonable conditions as it deems necessary to promote
113 immediate and future shared use of such facilities and avoid the
114 unnecessary proliferation of such facilities in the state. The council
115 shall, prior to issuing a certificate, provide notice of the proposed
116 facility to the municipality in which the facility is to be located. Upon
117 motion of the council, written request by a public or private entity
118 [which] that provides telecommunications or community antenna
119 television service to the public or upon written request by an interested
120 party, the council may conduct a preliminary investigation to
121 determine whether the holder of a certificate for such a facility is in
122 compliance with the certificate. Following its investigation, the council
123 may initiate a certificate review proceeding, which shall include a
124 hearing, to determine whether the holder of a certificate for such a
125 facility is in compliance with the certificate. In such proceeding, the
126 council shall render a decision and may issue orders [which] it deems
127 necessary to compel compliance with the certificate, which [orders]
128 may include, but not be limited to, revocation of the certificate. Such
129 orders may be enforced in accordance with the provisions of section
130 16-50u.

131 (3) When issuing a certificate for a facility described in subdivision
132 (5) or (6) of subsection (a) of section 16-50i, the council shall, prior to
133 issuing a certificate, consider the latest technological options designed
134 to minimize aesthetic and environmental impacts.

135 (c) (1) The council shall not grant a certificate for a facility described
136 in subdivision (3) of subsection (a) of section 16-50i, either as proposed
137 or as modified by the council, unless it finds and determines a public
138 benefit for the facility.

139 (2) The council shall not grant a certificate for a facility described in
140 subdivision (1) of subsection (a) of section 16-50i [which] that is
141 substantially underground or underwater except where such [facilities

142 interconnect] facility interconnects with existing overhead facilities,
143 either as proposed or as modified by the council, unless it finds and
144 determines a public benefit for [the facility, in the case of such facility
145 that is] a facility substantially underground [, and] or a public need for
146 [such facility, in the case of such facility that is] a facility substantially
147 underwater.

148 (3) For purposes of [subparagraph (A) of] this [subdivision] section,
149 a public benefit exists [if such] when a facility is necessary for the
150 reliability of the electric power supply of the state or for the
151 development of a competitive market for electricity and a public need
152 exists [if such] when a facility is necessary for the reliability of the
153 electric power supply of the state.

154 (4) Any application for an electric transmission line with a capacity
155 of three hundred forty-five kilovolts or more that is filed on or after
156 May 1, 2003, [and] that proposes the underground burial of such line
157 in all residential areas and overhead installation of such line in
158 industrial and open space areas [affected by such proposal] shall have
159 a rebuttable presumption of meeting a public benefit for such facility if
160 the facility is substantially underground [,] and meeting a public need
161 for such facility if the facility is substantially above ground. Such
162 presumption may be overcome by evidence submitted by a party or
163 intervenor to the satisfaction of the council.

164 (d) If the council determines that the location of all or a part of the
165 proposed facility should be modified, it may condition the certificate
166 upon such modification, provided the municipalities [, and persons
167 residing or located in such municipalities,] affected by the modification
168 and the residents of such municipalities shall have had notice of the
169 application [as provided in] pursuant to subsection (b) of section 16-
170 50l.

171 (e) In an amendment proceeding, the council shall render a decision
172 [within] not later than ninety days of the filing of the application or
173 adoption of the resolution initiating the proceeding. The council shall

174 file an opinion with its order stating its reasons for the decision. The
175 council's decision shall include the findings and determinations
176 enumerated in subsection (a) of this section which are relevant to the
177 proposed amendment.

178 (f) [A] The council shall serve a copy of the order and opinion issued
179 therewith [shall be served] upon each party and publish a notice of the
180 issuance of the order and opinion [shall be published] in such
181 newspapers as will serve substantially to inform the public of the
182 issuance of such order and opinion. The name and address of each
183 party shall be set forth in the order.

184 (g) In [making its decision as to] deciding whether [or not] to issue a
185 certificate, the council shall in no way be limited by [the fact that] the
186 applicant [may] already [have] having acquired land or an interest
187 therein for the purpose of constructing the facility [which] that is the
188 subject of its application.

189 [(h) For purposes of this section, a public need exists for an energy
190 facility if such facility is necessary for the reliability of the electric
191 power supply of the state.]

192 [(i)] (h) For a facility described in subdivision (1) of subsection (a) of
193 section 16-50i [,] with a capacity of not less than three hundred forty-
194 five kilovolts, [or greater, there] the presumption shall be [a
195 presumption] that a proposal to place the overhead portions, if any, of
196 such facility adjacent to residential areas, private or public schools,
197 licensed child day care facilities, licensed youth camps or public
198 playgrounds is inconsistent with the purposes of this chapter. An
199 applicant may rebut this presumption by demonstrating to the council
200 that [it] burying the facility will be technologically infeasible. [to bury
201 the facility.] In determining such infeasibility, the council shall
202 consider the effect of burying the facility on the reliability of the
203 electric transmission system of the state and whether the cost of any
204 contemplated technology or design configuration may result in an
205 unreasonable economic burden on the ratepayers of the state.

206 (i) Prior to issuing a certificate for a facility described in subdivision
207 (3) of subsection (a) of section 16-50i, the council shall consider public
208 safety issues.

209 Sec. 2. Section 16-50gg of the general statutes is repealed and the
210 following is substituted in lieu thereof (*Effective July 1, 2010*):

211 When notifying a municipality pursuant to section 16-50l of an
212 application for a telecommunications tower in said municipality, the
213 Connecticut Siting Council shall request that the municipality provide
214 to said council, within thirty days, any location preferences or criteria
215 for the siting of said telecommunications tower. The council may
216 consider regional location preferences from neighboring
217 municipalities.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	16-50p
Sec. 2	<i>July 1, 2010</i>	16-50gg

Statement of Purpose:

To add to the considerations the siting council must make before issuing a certificate of public need.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]