



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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VIA ELECTRONIC MAIL

May 23, 2024

His Excellency, Honorable Ned Lamont
Governor, State of Connecticut
Executive Chambers, State Capitol
210 Capitol Avenue
Hartford, CT 06106

Re: Public Act 24-144, An Act Concerning Certain Proceedings Relating to Electric Transmission Lines and the Membership and Processes of the Connecticut Siting Council

Dear Governor Lamont:

Please be advised that during a regular meeting of the Connecticut Siting Council (Council) held on May 23, 2024, the Council passed a resolution respectfully requesting a veto of Public Act 24-144, An Act Concerning Certain Proceedings Related to Electric Transmission Lines and the Membership and Processes of the Connecticut Siting Council (Act). Attached please find the Resolution for your convenience and consideration.

The Council operates under the Uniform Administrative Procedure Act (UAPA) and Public Utility Environmental Standards Act (PUESA). A central purpose of the UAPA is to prevent piecemeal appeals. The central purpose of PUESA is to balance the need for a facility at the lowest reasonable cost to consumers with the need to protect the environment of the state.

Section 4 of the Act adds language that requires the Council to grant any person status as an *intervenor* in a proceeding if such person is the owner of property that abuts a new or modified electric transmission line facility. This conflicts with existing language in PUESA that requires the Council to grant any person status as a *party* in a proceeding if such person is the owner of property that abuts a new or modified electric transmission line facility. The additional language in Section 4 of the Act violates the due process rights of such persons entitled to status in the proceeding as a party.

Section 5 of the Act adds language that requires the Council to re-evaluate the costs of a new or modified transmission line facility during the construction phase and allows intervenors to request additional information after a final decision has been rendered on an application. This ignores existing language that allows for an amendment proceeding to be held after a final decision is rendered prior to the approval of a construction plan based on conditions or events that could not reasonably have been known when the final decision was rendered. The additional language in Section 6 of the Act would generate infinite re-litigation of the application and substantially increase costs that are passed onto Connecticut electric ratepayers.

Section 5 of the Act also adds language that requires the Council to provide extra-record written responses to state agency comments and the positions of each intervenor in a proceeding. This ignores state agency rights to request party or intervenor status in a proceeding, grants more rights to intervenors than parties, and duplicates existing statutory requirements for a final decision. The additional language in Section 5 of the Act is superfluous, violates the due process rights of persons named to the proceeding, and increases costs that are passed onto Connecticut electric ratepayers.

Section 12 of the Act adds language that requires the Department of Energy and Environmental Protection (DEEP) to prepare a study of the Council's ability to administer its charge. This conflicts with the Office of Policy and Management authority to examine state agencies and DEEP's charge to select energy facilities subject to Council jurisdiction in state-issued requests-for-proposals. DEEP also has a seat on the Council.¹ The additional language in Section 12 of the Act would create inter-agency conflict, thwart policy goals, and compromise the public interest.

The Council's budget is funded by energy and telecommunications industry assessments and invoices. Under the Act, the fiscal note and electric ratepayer impact statement are vague and fail to acknowledge the correlation between increased costs associated with the requirements of the Act and the cost of electricity to Connecticut electric ratepayers.

In conclusion, the Act invites higher Connecticut electric ratepayer costs, additional proceedings, and litigation. Its enactment would paralyze the siting of energy facilities in the state and the attainment of our clean energy goals.

If you should have any questions or concerns, please do not hesitate to contact me at 860-827-2951 or by email at Melanie.Bachman@ct.gov.

Thank you for your consideration of this very important matter.

Sincerely,



Melanie A. Bachman

Enclosure

cc: Tom Scanlon, Director of Appointments, Office of the Governor (tom.scanlon@ct.gov)
Natalie Braswell, Esq., Legal Counsel, Office of the Governor (natalie.braswell@ct.gov)
Patrick Hulin, Deputy Policy Director, Office of the Governor (patrick.hulin@ct.gov)
Abhishek Mukund, Esq., Office of the Governor (abhishek.mukund@ct.gov)
Connecticut Siting Council Members

¹ **DEEP has two seats on the Council:** Commissioner of DEEP and Chairperson of PURA.



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Be it resolved by the Connecticut Siting Council:

WHEREAS, Public Act 24-144, An Act Concerning Certain Proceedings Relating to Electric Transmission Lines and the Membership and Processes of the Connecticut Siting Council (“the Act”), was passed during the February 2024 legislative session.

WHEREAS, **Section 4** of the Act adds language under Connecticut General Statutes (C.G.S.) §16-50n(b) that requires the Connecticut Siting Council (CSC) to grant any person status as an *intervenor* in a proceeding if such person submits a written petition to CSC and is the owner of property that abuts a new or modified electric transmission line facility.

WHEREAS, the added language in Section 4 of the Act conflicts with existing language under C.G.S. §16-50n(a) that requires CSC to grant any person status as a *party* in a proceeding if such person submits a written petition to CSC and is the owner of property that abuts a new or modified electric transmission line facility.¹

WHEREAS, under the Connecticut Uniform Administrative Procedure Act (UAPA), an *intervenor* in an agency proceeding is defined as a person whose participation is in the interests of justice and will not impair the orderly conduct of the proceedings and a *party* in an agency proceeding is defined as a person whose legal rights, duties or privileges are specifically affected by an agency decision in a proceeding.²

WHEREAS, the added language in Section 4 of the Act violates the due process rights of owners of property that abuts a new or modified electric transmission line facility who are legally entitled to status as a *party* in an agency proceeding under C.G.S. §16-50n(a) by limiting owners of property that abuts a new or modified electric transmission line facility to status as an *intervenor*.

WHEREAS, **Section 5** of the Act adds language under C.G.S. §16-50p(c) that requires CSC to re-evaluate the costs of a new or modified electric transmission line facility as part of the Development and Management (D&M) Plan³ after a final decision is rendered on an application and allows intervenors⁴ to request additional information related to the new or modified electric transmission line facility after a final decision is rendered on an application.

¹ The Act would usurp CSC’s discretion to name as parties such other persons as CSC deems appropriate.

² Conn. Gen. Stat. §4-177a (2023).

³ Regs. Conn. State Agencies §16-50j-60 to §16-50j-62 (2023).

⁴ A D&M Plan is a condition of a final decision. It does not create a new proceeding and its approval is not a final decision under the UAPA. Under the Act, it is unclear if requests for additional information are limited to intervenors to the original application proceeding or create an undefined, additional proceeding after the final decision is rendered for which new intervenor requests could be submitted.

WHEREAS, the added language in Section 5 of the Act ignores existing language under C.G.S. §16-50(d) that allows for an amendment proceeding⁵ to be held after a final decision is rendered on an application for a new or modified electric transmission line facility prior to the approval of a D&M Plan on the basis of stated conditions or events which could not reasonably have been known or foreseen when the final decision was rendered on an application.

WHEREAS, this added language in Section 5 of the Act would spark re-litigation of the application after a final decision is rendered despite the existing provisions for an amendment proceeding under C.G.S. §16-50(d) and substantially increase costs associated with CSC's budget, as administered under C.G.S. §16-50v, including, but not limited to, costs associated with additional proceedings and litigation, that are passed onto Connecticut electric ratepayers.⁶

WHEREAS, **Section 5** of the Act also adds language under C.G.S. §16-50p(c) that requires CSC to provide extra-record summaries and written responses specific to state agency comments and the positions of each intervenor that participated in a proceeding in addition to documenting the state agency comments and intervenor positions in the final decision for the proceeding.⁷

WHEREAS, the added language in Section 5 of the Act ignores the state agencies' right to request party or intervenor status in a proceeding, grants intervenors more rights in the proceeding than parties, and duplicates existing requirements under C.G.S. §4-180 and §16-50p(f) for a final decision in a proceeding to be in writing, include the agency's findings of fact based exclusively on the evidence in the record, and served upon each person named to the proceeding.⁸

WHEREAS, this added language in Section 5 of the Act is superfluous, violates the due process rights of persons named to the proceeding by requiring CSC to create extra-record substantive documents in addition to a final decision without notice and an opportunity for comment, and substantially increases costs associated with CSC's budget, as administered under C.G.S. §16-50v, that are passed onto Connecticut electric ratepayers.

WHEREAS, **Section 12** of the Act adds new language that requires the Department of Energy and Environmental Protection (DEEP) to prepare a report regarding CSC's ability to administer its charge, as well as the effectiveness of its policies, management, internal organization and operating procedure and the character, amount, quality and cost of the service rendered.⁹

WHEREAS, the added language in Section 12 conflicts with the Office of Policy and Management (OPM) authority to require reports and examinations of state agencies pursuant to C.G.S. §4-67, DEEP's charge to select energy facilities subject to CSC jurisdiction in state-issued requests-for-proposals pursuant to C.G.S. §16a-1, *et seq.*¹⁰ and CSC's position under DEEP for administrative purposes only pursuant to C.G.S. §4-38f and §16-50j.

⁵ Conn. Gen. Stat. §1-200(2) (2023). Under the Freedom of Information Act, a "proceeding" includes any meeting or hearing of a public agency.

⁶ A central purpose of the UAPA is to prevent piecemeal appeals.
Town of Killingly v. Conn. Siting Council, 220 Conn. 516, 523 (1991).

⁷ Conn. Gen. Stat. §4-177a (2023). "Final decision" means (A) the agency determination in a contested case, (B) a declaratory ruling issued by an agency pursuant to section 4-176, or (C) an agency decision made after reconsideration.

⁸ This includes intervenors.

⁹ OPM Secretary may require reports. Examination of agencies. (C.G.S. §4-67 (2023)).

¹⁰ Conn. Gen. Stat. §16-50j(b) (2023). DEEP Commissioner has a seat on CSC.

WHEREAS, this added language in Section 12 would create inter-agency conflict, usurp OPM's statutory authority, thwart state energy policy goals, and compromise the public interest.

WHEREAS, the Act jeopardizes the integrity of CSC decision-making and usurps CSC's discretion to render a final decision upon such terms, conditions, limitations or modifications of construction or operation of a facility as CSC deems appropriate.¹¹

WHEREAS, the Fiscal Note and Ratepayer Impact Statement for the Act fail to acknowledge any correlation between increased costs associated with the requirements of the Act, including, but not limited to, additional staff, proceedings and litigation, and the cost of electricity to Connecticut electric ratepayers, including, but not limited to, the state and municipalities.¹²

WHEREAS, the Act will have a significant direct financial impact on the cost of electricity to Connecticut electric ratepayers.

WHEREAS, the Act will freeze siting of all energy facilities and associated electrical interconnections, including, but not limited to, solar photovoltaic facilities and offshore wind facilities, and adversely affect the reliability of the electric power supply of the state, the competitive market for electricity, and the balanced implementation of the state's policies.

NOW, THEREFORE, BE IT RESOLVED, that the Connecticut Siting Council respectfully requests his Excellency, Governor Ned Lamont, to veto Public Act 24-144.

¹¹ Conn. Gen. Stat. §16-50p(a)(1) (2023).

¹² Vague characterizations emphasize minimal potential revenue gains and summarily dismiss potential costs associated with the creation of a "variety" of requirements, including an unsubstantiated salary cost of a *civil* engineer. What is the state salary cost plus fringe benefits of an *electric* engineer?