

April 17, 2002

Honorable Kevin Sullivan
Senate President Pro Tem
Legislative Office Building
Hartford, CT 06106

Dear Senator Sullivan:

You have asked for an evaluation of the constitutionality of the Governor's Executive Order No. 26, issued April 12, 2002 ("Executive Order"), with respect to large-scale gas and electric transmission facilities.

In the Executive Order, the Governor directed that "[t]o provide the necessary time for a fair and thorough evaluation, agencies of the executive branch are directed to not make a final determination under their authorities with respect to construction of large-scale gas or electric transmission expansion projects **insofar as permitted by law** until January 15, 2003" (emphasis added). In the press release accompanying the Order, the Governor described the effect of the Executive Order as "essentially a moratorium on any previously proposed or new project in the state."

As a fundamental principle of law, an Executive Order may not contradict or supersede a statute or constitutional provision, and may not suspend, modify or revoke any statutory provision enacted by the General Assembly. See *Bridgeport v. Agostinelli*, 163 Conn. 537, 543, 546-47, 316 A.2d 371 (1972). "In the field of legislation, the legislature is supreme." *Id.* at 543-44, quoting *State v. Malm*, 143 Conn. 462, 467 (1956). If the Executive Order required that agencies disregard statutory requirements in order to defer final determinations on gas or electric transmission projects until January 15, 2003, it would be unconstitutional. The Connecticut Siting Council ("Council"), for example, has statutorily imposed deadlines to issue its decisions on an application for such transmission facilities. Conn. Gen. Stat. § 16-50p(a) (decisions on transmission projects must be issued within one year of the filing of an application, with an extension of six months available on consent of the applicant). The Governor cannot by executive order suspend those statutory deadlines or otherwise alter the criteria and procedures mandated by the governing statutes. Therefore, if the Executive Order directed state agencies to withhold actions required by statute, the Order would be invalid.

While the Executive Order has been publicly described as imposing a moratorium, and depicted as stopping or delaying all pending projects, its actual terms accomplish no such effect. Indeed, it may be deemed constitutional precisely because its provisions are narrowly framed and

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While the Executive Order has been publicly described as imposing a moratorium, and depicted as stopping or delaying all pending projects, its actual terms accomplish no such effect. Indeed, it may be deemed constitutional precisely because its provisions are narrowly framed and

consistent with ongoing activities under existing law. The actual language of the Executive Order, as opposed to public characterizations of it, does not purport to suspend, alter, or otherwise contradict any statutory provisions. The Executive Order only directs that final determinations be held in abeyance "insofar as permitted by law." Thus, the plain language of the Executive Order does not purport to alter any existing statutorily mandated deadline for decision on any pending or new application. In other words, if a determination must by statute be made prior to January 15, 2003, the agency must comply with the statutory deadline, and the Order has no effect on it. A contrary interpretation would expose any agency that failed to comply with statutory deadlines or requirements to a court action by an applicant. As long as the language of the Order limiting its application as "required by law" is respected, these concerns do not arise.

In sum, the Order does not and cannot lawfully create a moratorium on any statutory deadlines or requirements. Only the legislature has the power to do so. The Executive Order does not, by its own language, purport to create a moratorium by suspending any statutory deadline or requirement for any agency action. Thus, under the terms of the Executive Order, hearings may continue to be held and decisions may be made as required by law prior to completion of the study mandated by the Executive Order.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

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