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## Siting Council Practices Solomon's Skills

PANEL WEIGHS PUBLIC IMPACT WHEN LOCATING TOWERS, ELECTRIC PLANTS

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**L**ocation, location, location: a key component of an orderly system of land use. When it comes to the siting of telecommunications towers, electric substations, electric generating plants, electric transmission lines and waste-to-energy facilities, who ultimately decides where these facilities will be located?

Since the early 1970s, the Connecticut General Assembly has empowered one commission to approve the location of such facilities on behalf of all the state's residents: the Connecticut Siting Council (CSC). Using King Solomon's skills to make its decisions, the CSC carefully balances the need for energy and communications facilities with public concerns about impact on the environment and nearby residents.

### History And Background

In 1972, legislation known as the Public Utility Environmental Standards Act was enacted that established the Power Facility Evaluation Council (the PFEC) to address the growing public concern over the environmental impact caused by electric generating stations and power transmission lines. In 1981, legislation was introduced that expanded the PFEC's jurisdiction and changed its name to the CSC.

Originally, the PFEC had jurisdiction over power facilities and transmission lines. Today, the CSC has jurisdiction over the construction and modification of

energy and telecommunications facilities, hazardous waste and low-level radioactive waste facilities, and ash residue disposal areas. By statute, the CSC has *exclusive* authority over the location and type of facilities under its jurisdiction. Certain state agencies acting pursuant to federal delegations of regulatory power maintain their authority.

The CSC has three panels for each area over which it has jurisdiction. Panel members are appointed by parties designated in the statutes and serve alongside certain state commissioners or their designees. The CSC is assisted by an experienced staff with technical expertise.

### Certification Process

The CSC's authority is governed by Connecticut General Statutes §16-50g et. seq. These statutes authorize the CSC to determine whether an applicant (a person or entity) may construct or modify a facility subject to its jurisdiction in a given location. For new construction or a modification of a facility that may have a substantial adverse effect on environmental resources, a person or entity must apply for a Certificate of Environmental Compatibility and Public Need.

Before the CSC can approve an application, however, it must determine that the



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facility satisfies a public need, and the nature and extent of any likely environmental impact. This impact assessment includes a determination "of every significant adverse effect...on, and [that] conflict[s] with the policies of the state concerning, the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife." The CSC carefully balances these impacts against the need for the new or modified facility.

At least 60 days before filing any application for a certificate, the applicant must consult with the municipality where the proposed facility is to be located. This consultation must include good faith efforts to meet with the chief elected officer of the municipality and to provide the officer with technical reports and projected environmental effects of the proposed facility.

Upon filing the application to the CSC, the applicant must also provide the application to the municipality where the facility is proposed, to any municipality within 2,500

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feet and to certain other interested persons, such as the attorney general, local legislators, the Department of Environmental Protection, and the Department of Public Utility Control. Finally, the public must be notified through notices in local newspapers.

Furthermore, the location of certain facilities subject to the CSC's jurisdiction, such as electric substations or generating plants, must also be reviewed by designated local land use agencies. Those agencies must conduct that review in the framework of the CSC's process, as a special agency of the state, and in a manner that weighs the broader public welfare of the entire state. Their rulings are subject to appeal to the CSC.

### Hearing And Decision

Once the CSC determines that an applicant meets the required application criteria, the CSC will establish a contested case proceeding in accordance with the Uniform Administrative Procedure Act. A public hearing is then held in which parties, intervenors, and the public may participate.

The hearing typically consists of cross-examination of witnesses based on their pre-filed testimony, public statements, and rebuttal. Briefs, memoranda of law, and public statements are permitted within 30 days of the close of the hearing. Finally, the CSC deliberates. The public may attend these deliberations.

When it issues decisions approving applications, the CSC often attaches conditions, such as the filing of a development and management plan that serves as a blueprint for the facilities to be built. Once the CSC certifies the new or modified facility, the certification preempts all certifications, approvals and other requirements of state and municipal agencies as to any questions of public need, convenience and necessity for such facility.

### Effective Participation

So what does it take to effectively participate in the Connecticut Siting Council process? Here are some tips for those appearing before the council:

**Refer to the web site.** The CSC's site, at [www.ct.gov/csc](http://www.ct.gov/csc), contains valuable information. For example, it has application guidelines, pending proceedings and current literature on important siting topics.

**Read the documents in the CSC's file carefully.** Generally, the filings by applicants are very detailed and comprehensive. Before asking any questions, read the file materials to see if the questions have already been addressed.

**Determine whether to apply for party or intervenor status.** Information and forms are available on the CSC's web site. Parties and intervenors are entitled to present oral and documentary evidence and to

conduct cross-examination. They are also subject to cross-examination from the CSC, the applicant, and other parties.

**Avoid ex parte communications.** If party or intervenor status is granted, you may not discuss the merits of the application with any CSC members or staff. The CSC is ethically obligated to avoid participating in such communications.

**Take advantage of opportunities to participate.** There are multiple occasions to participate in the CSC process; however, do not merely keep re-stating your position. Constructive comments are always well received by the CSC. Non-constructive comments may diminish the effectiveness of your participation; for example, a request to move the proposed facility to someone else's neighborhood is not constructive.

### Conclusion

For the officials and residents of the municipality where a facility subject to the CSC's jurisdiction is proposed, location is of vital importance. The CSC, in a delicate balancing of interests, is entrusted with ensuring that the location of certain necessary facilities occurs in a manner that minimizes adverse environmental impacts to the greatest extent possible. Through effective participation, interested parties can play a meaningful role in the CSC's ultimate decision. ■