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December 6, 2011

VIA HAND DELIVERY

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Mr. Robert Stein
Chairman, Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

CONNECTICUT
SITING COUNCIL

Re: **CSC REGULATIONS REVISIONS** – Amendments to regulations relating to the Rules of Practice of the Council, Sections 16-50j-1 to 15-50z-4, inclusive, and Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies

Dear Chairman Stein:

Enclosed, please find an original plus fifteen (15) copies of the comments of NRG Energy, Inc. in connection with the above-reference matter.

Very truly yours,



David J. Monz

DJM/dla

Enclosure

cc: Melanie A. Bachman, Esq.
Elizabeth Quirk-Hendry, Esq.

Updike, Kelly & Spellacy, P.C.

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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

CSC REGULATIONS REVISIONS – Amendments to Regulations Relating to the Rules of Practice of the Council, Sections 16-50j-1 to 16-50z-4, inclusive, and Sections 22a-116-B1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies	December 6, 2011
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Comments of NRG Energy, Inc. on Proposed Amendments to the Rules of Practice of the Council, Sections 16-50j-1 to 16-50-z-4 of the Regulations of Connecticut State Agencies

Pursuant to the Notice of Intent to Amend Regulations published in the Connecticut Law Journal on October 25, 2011, NRG Energy, Inc. (“NRG”) respectfully provides the following comments on the proposed amended regulations related to the Connecticut Siting Council’s (the “Council”) Rules of Practice.

A. General Comments

NRG applauds the Council’s efforts to update its regulations, which were last revised in 1989, and is pleased to provide the following comments on the proposed amendments. As set forth in greater detail below, NRG appreciates the desire of the Council to streamline the process by which certain proposed energy projects may be deemed not to have a substantial adverse environmental effect, but, in light of the complex interdependency of energy facilities, NRG feels that the process must provide adequate notice and a reasonable opportunity for potentially interested parties to comment on exemption requests related to energy components and associated equipment. Accordingly, our comments are an effort to strike an appropriate balance between these two important and mutually compatible goals.

B. Specific Comments. NRG hereby requests that the Council revise its proposed amendments as follows:

Section 16-50-j-57. Exemptions.

Section 16-50j-57(a). Section (a) empowers the Council, “or its designee,” to determine whether a facility or facility modification satisfies the criteria for exemption from the certification process and empowers the Council, “or its designee,” to issue an acknowledgement

that a facility or facility modification qualifies for such exemption. NRG requests that the Council remove the language “or its designee” from section 16-50j-57(a).

Rationale: As set forth in greater detail below in connection with section 16-50j-58, NRG believes that it is important that the industries subject to Siting Council jurisdiction and other potentially interested parties receive notice of any proposed exemption and that the Council, rather than its designee, evaluate whether such request qualifies for exemption.

Section 16-50j-57(a)(1)(B), (C). Collectively, sections (a)(1)(B) and (C), which cover the installation of an energy component and associated equipment adjacent to a damaged or inoperable component or associated equipment, require that the owner or operator of such energy component and associated equipment provide written notice of the installation to the property owner of record (if the property owner is different from the owner or operator of such component and associated equipment), the chief elected official of the municipality in which the energy component and associated equipment is located, and any adjoining municipality(ies) having a boundary not more than 2,500 feet from the facility “at the earliest practicable time but not later than 48 hours after the installation of such energy component and associated equipment.” This notice provision, however, is inconsistent with the more global notice provision of section 16-50j-58, pursuant to which the owner or operator of any energy component and associated equipment claiming that such component and associated equipment are exempt under section 16-50j-57 must provide written notice to the Council, the property owner of record (if the property owner is different from the owner or operator of such component and associated equipment), the chief elected official of the municipality in which the energy component and associated equipment is located, and any adjoining municipality(ies) having a boundary not more than 2,500 feet from the facility “prior to construction of its intent to install such energy component and associated equipment.” Accordingly, NRG requests that there be a “carve-out” in section 16-50j-58 to reconcile these notice provisions.¹

Section (a)(1)(B) also requires that the owner or operator of such energy component and associated equipment provide the Council with written proof of service of the required written notice. There is, however, no set period of time within which such written proof of service must be provided to the Council. Accordingly, NRG requests that the Council revise section 16-50j-57(a)(1)(B) to establish a timeframe within which such proof of service must be provided; for example “within 72 hours of written notice to the property owner of record”²

Rationale: NRG makes this request so that the notice provisions of sections 16-50j-57(a)(1)(B) and 16-50j-58 are reconciled, and a specific timeframe is established within which written proof of service of notice must be provided to the Council.

¹ A similar inconsistency exists between sections 16-50j-72(a)(1)(B) and (C) and 16-50j-73. This inconsistency should also be reconciled.

² There is also no timeframe specified in section 16-50j-72(a)(1)(B) within which written proof of service of notice must be provided to the Council.

Section 16-50j-57(d)(3). Section (d)(3), which covers the provision of temporary energy service at an area of a local disaster, requires that the provider of such service provide written notice of the deployment of temporary energy components and associated equipment to the chief elected official of the affected municipality, any adjoining municipality(ies) having a boundary not more than 2,500 feet from such temporary components and associated equipment, and to the Council “within 48 hours of the deployment.” This notice provision, however, is inconsistent with the more global notice provision of section 16-50j-58, pursuant to which the owner or operator of any energy component and associated equipment claiming that such component and associated equipment are exempt under section 16-50j-57 must provide written notice to the Council, the property owner of record (if the property owner is different from the owner or operator of such component and associated equipment), the chief elected official of the municipality in which the energy component and associated equipment is located, and any adjoining municipality(ies) having a boundary not more than 2,500 feet from the facility “prior to construction of its intent to install such energy component and associated equipment.” Accordingly, NRG requests that section 16-50j-58 be revised to include be a “carve-out” to reconcile these notice provisions.³

Rationale: NRG makes this request to reconcile the notice provisions of sections 16-50j-57(d)(3) and 16-50j-58.

Section 16-50-j-58. Notice of intent to install an exempt energy component and associated equipment.

Section 58 prescribes the notice process associated with the intent to install exempt energy components and associated equipment pursuant to section 16-50j-57; however, as noted above, the internal notice provisions of sections 16-50-j-57(a)(1)(C) and 16-50j-57(d)(3) are inconsistent with the global notice provisions of section 16-50-58. In addition, section 58 is devoid of any process by which notice of a potential exemption would be provided to the industries subject to Siting Council jurisdiction and to other potentially interested parties. Accordingly, NRG requests that the Council redesignate proposed section 16-50-j-58 as 16-50j-58(a), revise the redesignated section 58(a) to reconcile the notice provisions of 16-50-j-57(a)(1)(C) and 16-50j-57(d)(3), and add a new subsection 16-50-j-58(b) as follows:

(NEW) Sec. 16-50j-58(a). Except as otherwise provided by sections 16-50-j-57(a)(1)(C) and 16-50j-57(d)(3), [T]he owner or operator of any energy component and associated equipment claiming such component and associated equipment are exempt pursuant to Section 16-50j-57 of the Regulations of Connecticut State Agencies shall give the Council, the property owner of record, if the property owner of record is different from the owner or operator of the energy component and associated equipment, and the chief elected official of the municipality and any adjoining municipalities having a boundary not more than 2500 feet from which the energy component and associated equipment is located notice in writing prior to construction of its intent to install such energy component and associated equipment, detailing its reasons for claiming exemption under Section 16-50j-57 of the Regulations of Connecticut State Agencies.

³ A similar inconsistency exists between sections 16-50j-72(d)(3) and 16-50j-73. This inconsistency should also be reconciled.

(b) Following receipt of notice under subsection (a) of this section or of written proof of service under section 16-50j-57(a)(1)(B), the Council shall publish such notice on the meeting agenda for the next Council meeting, provided that such meeting is at least seven (7) days after publication, and shall consider any comments of interested parties prior to issuing an acknowledgement that the claimed exemption qualifies under section 16-50j-57 of the Regulations of Connecticut State Agencies.

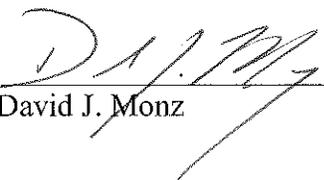
Rationale: This language NRG is requesting will ensure that any interested parties will be given notice of and a reasonable opportunity to comment on any exemption request with respect to energy components and associated equipments. Such notice is of critical importance given the complex interdependency of energy facilities owned and/or operated by disparate companies in the region's energy industry. Notably, this condition does not exist to the same degree and extent within the commercial telecommunications industry, where facilities within a given network interact with other facilities and infrastructure within the same network.

Respectfully Submitted,

NRG ENERGY, INC.

By: /s/ Elizabeth Quirk-Hendry
Elizabeth Quirk-Hendry*
General Counsel – Northeast Region
*Not admitted in CT

UPDIKE, KELLY & SPELLACY, P.C.
Counsel for NRG

By: 
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