

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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November 5, 2013

The Honorable Selim Noujaim, Co-Chairperson
The Honorable Andres Ayala, Co-Chairperson
Honorable Members of the Legislative Regulations Review Committee
Room 011, Capitol Building
Hartford, CT 06106

RE: **2012-054B - CSC WIND REGULATIONS** – Adoption of Regulations pursuant to Public Act 11-245, An Act Requiring the Adoption of Regulations for the Siting of Wind Projects, Sections 16-50j-2a, 16-50j-18 and 16-50j-92 to 16-50j-96, inclusive, of the Regulations of Connecticut State Agencies.

Dear Representative Noujaim, Senator Ayala and Honorable Members of the Legislative Regulation Review Committee:

Pursuant to Section 4-170 of the Connecticut General Statutes, the Connecticut Siting Council (Council) hereby re-submits the above-referenced proposed regulations for the Legislative Regulation Review Committee's (Committee) consideration and approval regarding the adoption of regulations for the siting of wind projects. These regulations were previously rejected without prejudice by the Committee at its' December 18, 2012, May 28, 2013 and September 24, 2013 meetings.

In response to a recommendation from Senator Doyle during the September 24, 2013 Committee meeting, Council Chairman Robert Stein and Staff Attorney Melanie Bachman met with Michael Muszynski, a representative from the Connecticut Conference of Municipalities (CCM), immediately following the Committee meeting to discuss CCM's concerns with the proposed wind regulations. Mr. Muszynski followed up with a telephone call on September 30, 2013; however, no recommendations for changes have been submitted by CCM to date.

The first matter discussed was CCM's concern for inclusion of a requirement for a Commissioning Plan to address technical, environmental and viability issues. Section 16-50j-96 entitled, "Requirement for a Development and Management Plan" addresses this concern as a Development and Management Plan (D&M Plan) is synonymous with a Commissioning Plan. Pursuant to that section, applicants and petitioners are required to prepare a D&M Plan in accordance with the final decision rendered by the Council and in accordance with Sections 16-50j-60 to 16-50j-62, inclusive, of the Regulations of Connecticut State Agencies, which sections cover D&M Plans for jurisdictional energy facilities. These sections address specific technical, environmental and viability issues.



The second matter discussed was CCM's concern for a decommissioning process and funding for completion of decommissioning. The proposed wind regulations contain a requirement for a decommissioning plan under Section 16-50j-94(i), entitled, "Decommissioning Plan." Mr. Muszynski inquired whether subdivision (2) would cover circumstances where the wind facility ceased to operate prior to the end of its useful life or where the wind facility was partially constructed, but not operational. He was informed that subdivision (2) covers such circumstances and additionally, there is established Council precedent for such circumstances in the decision rendered on the Meriden Gas Turbines matter in Council Docket No. 190B. Mr. Muszynski understands that the Council does not have bonding authority, as described in the Summary of the Proceeding dated September 13, 2012, the April 8, 2013 Council/Fairwind/CCM/COST meeting memo (a copy of which is attached) and the minutes of the September 24, 2013 Committee meeting. He indicated that this issue should be pursued through legislative change rather than regulations.

If you have any questions, or require additional information or clarification concerning the resubmission of the above-referenced proposed wind regulations, please feel free to contact Melanie Bachman, Staff Attorney at 860-827-2951.

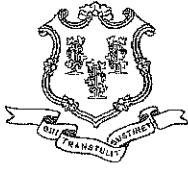
Thank you for your consideration.

Sincerely,



Robert Stein
Chairman

cc: Service List



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DATE: April 9, 2013
TO: Interested Persons
FROM: Melanie A. Bachman, Staff Attorney *AMB*
RE: **CSC WIND REGULATIONS** – Adoption of Regulations pursuant to Public Act 11-245, An Act Requiring the Adoption of Regulations for the Siting of Wind Projects, Sections 16-50j-2a, 16-50j-18 and 16-50j-92 to 16-50j-96, inclusive, of the Regulations of Connecticut State Agencies.

In response to a second request from FairwindCT, Inc. (Fairwind) dated March 19, 2013, a copy of which is attached hereto, the Connecticut Siting Council (Council) held a meeting at its office on April 8, 2013 from 2 PM to 3 PM with Andrew E. Markowski, Principal of Statehouse Associates, LLC; Joyce Hemingson, President of Fairwind; Elizabeth Gara, Executive Director of the Council of Small Towns (COST); and Mike Muszynski, Legislative Associate of the Connecticut Conference of Municipalities (CCM). Chairman Robin Stein, Executive Director Linda Roberts and Staff Attorney Melanie Bachman attended the meeting on behalf of the Council.

The agenda for the meeting was limited to consideration of any changed conditions since the original draft of the wind regulations was submitted to the Legislative Regulation Review Committee (LRRRC) on October 25, 2012 and to consideration of the Legislative Commissioner's Office Report (LCO Report) dated December 18, 2012 regarding different requirements for projects of different sizes.

Ms. Hemingson commenced the discussion with a summary of the Vermont Blue Ribbon Commission four-tiered approach based on generating capacity in the draft energy facility siting recommendations released on April 3, 2013. Although a tiered approach might work for Vermont, this Council cannot create regulations that would conflict with the plain language of Conn. Gen. Stat. §16-50k(a) that requires the Council to "approve by declaratory ruling... any grid-side distributed resources project or facility with a capacity of not more than 65 megawatts as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection (DEEP)." Adoption of a different approach would require a legislative change.

Ms. Hemingson also referred to the National Association of Regulatory Utility Commissioners (NARUC), "Wind Energy and Wind Park Siting and Zoning Best Management Practices and Guidance for States," which is already part of the wind regulations record, and indicated that setbacks should be based on noise. She discussed pending House Bill 1019 that proposes to make changes to the DEEP Noise Control statutes. The draft wind regulations refer to the Noise Control Regulations that are presently in existence and could be changed if and when the bill passes.



Ms. Hemingson then discussed the shadow flicker section in the proposed wind regulations as not clearly describing that cumulative shadow flicker impacts should not exceed 30 total annual hours at any off-site occupied structure. This could be clarified. Finally, Ms. Hemingson briefly discussed the status of the Falmouth, MA wind turbines.

Ms. Gara and Mr. Muszynski discussed requirements for a bond or other financial surety as part of a decommissioning plan or commissioning plan to ensure that a project would not be abandoned. The Council is an administrative agency of specific and limited jurisdiction. Its charge is to balance the public need for a facility with the environmental effects and its jurisdiction extends over a proposed facility site and access roads only. As indicated in the Summary of the Proceeding, the provisions in the draft wind regulations relative to the submission and approval of a decommissioning plan, and the submission and approval of a development and management plan, which is synonymous with a commissioning plan, represent the extent of the Council's jurisdiction and authority in this regard.

Ms. Gara and Mr. Muszynski also discussed more notice of project proposals for municipalities. Pursuant to Conn. Gen. Stat. §16-50i and Section 16-50j-40 of the Regulations of Connecticut State Agencies, which are referenced in the draft wind regulations, applicants and petitioners are required to consult with the host municipality for at least 60 days prior to submitting an application or petition with the Council and to submit proof of notice of the project proposal to the host municipality, as well as to abutting property owners, with the application or petition.

Mr. Markowski discussed the LCO Report substantive concern relative to clearly identified U.S. Fish and Wildlife Service Guidelines and DEEP standards. As indicated in the Summary of the Proceeding, environmental guidelines and standards are site-specific. He also discussed deletion of the phrase "if available" in portions of the regulations regarding the requirement for applicants and petitioners to submit the wind turbine manufacturer's technical documentation relative to noise, ice throw, blade shear and shadow flicker. This could be clarified.

Fairwind, COST and CCM were requested to submit further suggestions in writing by the close of business on or before April 12, 2013.

If any other interested person would like to submit further comments on the draft wind regulations limited to the considerations described above, the Council respectfully requests that the suggestions be submitted in writing by the close of business on or before April 12, 2013.