



**TESTIMONY OF COLIN C. TAIT
VICE-CHAIRMAN
CONNECTICUT SITING COUNCIL**

**SUBMITTED TO THE ENERGY AND TECHNOLOGY COMMITTEE,
IN OPPOSITION OF
RAISED H.B. 5213, AAC THE SITING COUNCIL**

FEBRUARY 23, 2010

Good morning Senator Fonfara, Representative Nardello, ranking members, and distinguished members of the Energy and Technology Committee. My name is Colin Tait; I am Vice- Chairman of the Connecticut Siting Council.

Thank you for this opportunity to provide this testimony in connection with R.H.B. No. 5213, AN ACT CONCERNING THE SITING COUNCIL. This bill seeks to authorize the Connecticut Siting Council to impose civil fines and award attorney fees and costs to opposing parties when it determines that the applicant (petitioner) has misrepresented or omitted material facts.

While perhaps well-intended, we believe that this proposed legislation should not become law.

The problems that would arise from this proposal are numerous. First, the proposed language applies only to applicants. This means that, taken at face value, this proposal would assign these new standards for completeness and accuracy to only one participant in contested cases before the Siting Council. Given that cases before our agency often involve numerous participants, often with competing interests, this standard is more than just inherently unfair; it has the very real potential of inviting mischief.

Second, the proposed language, if enacted, will provide persons opposing projects a ready tool for disrupting our proceedings which, incidentally, operate under a statutory time limit. Under the proposed provision, opponents to projects will be permitted to file motion, after motion, seeking to have the Siting Council hold

extraneous hearings as to their claims about material omissions or misrepresentations. Such a scenario will cause our proceedings to quickly deteriorate into chaos.

The Siting Council is an adjudicatory, fact-finding agency. We operate much like a planning and zoning commission positioned at the state government level. Much like any other adjudicatory agency, we often ask questions about applications that we receive. That is because it is virtually impossible for applicants to fully anticipate every single element of information that we might wish to inquire about when we begin our review and consideration of a proposal.

To the extent that we wish to ask questions of an applicant, or any other participant in our proceedings, we do so through written “interrogatories.” Such interrogatories, when issued, are not always – or even most of the time – an indication of negligence or sloppiness on the part of the applicant. However, under this new statutory language opponents may easily point to each issuance of an interrogatory, including interrogatories that they might issue, as sufficient cause to ask the Siting Council to award attorney’s fees.

There are a host of other concerns that spring to mind with respect to this proposal. Are our determinations final, or can they be appealed?

Finally, I wish to offer for your consideration that this proposal as written may well be unconstitutional. To the extent that it is written to apply unilaterally to only the applicants, it is rife with due process problems – and as such may contravene the fifth and fourteenth amendments of the U.S. Constitution involving due process of law.

I would be pleased to take your questions.