

Connecticut Siting Council Amendment of Regulations

REGULATORY FLEXIBILITY ANALYSIS

Connecticut General Statutes (C.G.S.) §4-168a(b) requires each agency to prepare a regulatory flexibility analysis in which the agency shall, where consistent with public health, safety and welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency is required to consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses;
- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- (5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The Connecticut Siting Council (Council) has jurisdiction over the siting of energy and telecommunications infrastructure, as well as over the siting of hazardous waste facilities. Pursuant to C.G.S. §4-168a, the Council considered the impact of the proposed regulations on small businesses. Many of the entities proposing to build facilities over which the Council has jurisdiction are public utility companies that have gross annual sales of more than five million dollars and cellular carriers that employ more than 75 full-time employees; however, small business entities, such as energy companies that have gross annual sales of less than five million dollars and telecommunications tower builders that employ fewer than 75 full-time employees, also submit proposals to build facilities. Any entity subject to Council jurisdiction may file a petition for a declaratory ruling that a regulation does not apply to a specific project pursuant to C.G.S. §4-176, or may file a request for a waiver of a regulation that does apply to a specific project under §16-50j-3 of the Regulations of Connecticut State Agencies (R.C.S.A.).

In consideration of the establishment of less stringent compliance or reporting requirements for small businesses, under R.C.S.A. §16-50j-12, the amendments to that section remove the requirement that applicants and petitioners file documents that are one-sided and double-spaced and amend the section to allow applicants and petitioners to file documents that are two-sided and one-and-a-half-spaced. Amendments to that section also encourage document delivery by e-mail. Under R.C.S.A. §16-50j-16a, project proponents may file application or petition documents with the Council jointly, and proceeding participants may seek to be grouped together to present a case, which would defray costs and expenses associated with an application or petition, or costs and expenses associated with participation in a proceeding. Under R.C.S.A. §16-50j-58, entities

requesting minor modifications to existing energy facilities may request approval of an exempt modification. At present, R.C.S.A. §16-50j-72 provides a process for entities to request exempt modifications to telecommunications facilities, but there is no section that provides a process for exempt modifications to energy facilities, which require project proponents to file a petition for a declaratory ruling. Under the exempt modification process, although there is a filing fee, which is identical to the petition filing fee, costs associated with organizing a site review, Council member per diem payment and mileage reimbursement, and delay in awaiting Council approval at a regular meeting are eliminated. The Council delegates to staff review and approval of exempt modifications.

There are also sections of the proposed amended regulations where establishment of less stringent compliance or reporting requirements for small businesses were not feasible. For example, C.G.S. §4-189j requires fees set by regulations to be increased in accordance with a specific schedule. Under R.C.S.A. §16-50j-21, applicants and petitioners are required to post a sign that is visible to the general public announcing the date and time for a public hearing, and under R.C.S.A. §16-50j-40, petitioners are required to give notice to abutting property owners of a request submitted to the Council for approval to construct a new facility or modify an existing facility. These requirements are proposed to ensure that affected persons are afforded proper notice and an opportunity to be heard consistent with due process and the protection of the public health, safety and welfare. There are similar notice requirements under R.C.S.A. §§16-50j-61 and 16-50j-76, where applicants and petitioners are required to submit a copy of a development and management (D&M) plan to the project service list and property owner of record, if different than the applicant or petitioner, as well as to the Council for review.

In consideration of the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses, under R.C.S.A. §§16-50j-14 and 16-50j-15, the Council may waive the deadline for party and intervenor requests. Under R.C.S.A. §§16-50j-60 to 16-50j-62, inclusive, for energy facility D&M plans, as well as under R.C.S.A. §§16-50j-75 to 16-50j-77, inclusive, for telecommunications D&M plans, entities may file full or partial plans in one or more sections, provide verbal notice of changes to the approved plan prior to written notice, provide progress reports at intervals determined by the Council and are granted 180 days after completion of facility construction to file a final report.

In consideration of the consolidation or simplification of compliance or reporting requirements for small businesses, under R.C.S.A. §16-50j-12, the Council amended that section from requiring applicants and petitioners to file documents that are one-sided and double-spaced to allowing applicants and petitioners to file documents that are two-sided and one-and-a-half-spaced. Amendments to that section also encourage document delivery by e-mail. Under R.C.S.A. §16-50j-16a, project proponents may file application and petition documents with the Council jointly, and proceeding participants may seek to be grouped together to present a case, to defray costs and expenses associated with an application or petition, or costs and expenses associated with participation in a proceeding.

In consideration of the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation, the Council could not feasibly incorporate any method to reduce the impact of the proposed regulations without compromising the public health, safety and welfare. Given the nature of the Council's jurisdiction over the siting of facilities and facility construction, compliance and reporting requirements are essential to ensure due process and to protect the public health, safety and welfare.

In consideration of the exemption of small businesses from all or any part of the requirements contained in the proposed regulations, the applicable statutes provide for such exemptions. Small business entities, defined as "private power producers" under C.G.S. §16-50i(a)(3), are exempt from Council jurisdiction. Private power producers are persons who own and operate small power production facilities that utilize renewable energy sources primarily for the producer's own use that have a generating capacity of one megawatt of electricity or less. These small business entities would be exempt from the Council's proposed regulations.

The proposed regulations are promulgated to implement the notice, compliance and reporting requirements prescribed in the Uniform Administrative Procedure Act and the Public Utility Environmental Standards Act, C.G.S. §16-50g, *et seq.* The compliance and reporting requirements under these proposed regulations are not unduly burdensome on small businesses and would have minimal impact on project proponents' costs and expenses. The proposed regulations would impact approximately 5 energy companies that have gross annual sales of less than five million dollars and approximately 3 telecommunications tower building companies that employ less than 75 full-time employees.¹ The costs would consist of a maximum \$250 fee increase for certificate applications, and engineering and consulting fees that would be incurred despite the proposed regulations related to construction of facilities. Furthermore, the compliance and reporting requirements under these regulations are necessary to afford affected persons due process and to safeguard the public health, safety and welfare.

¹ These calculations are based on the Annual Retail Gross Revenue amounts reported for energy companies engaged in energy sales in the state in the Council's Fiscal Year 2012 Assessments by Industry pursuant to C.G.S. §16-50v.