

**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-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies.

### SUMMARY OF PROCEEDING AND WRITTEN COMMENTS

Section I provides the summary of this regulation-making proceeding. Section II provides a statement of the principal reasons in support of the Council's intended action to amend the regulations. Section III provides a statement of the principal considerations in opposition to the Council's intended action to amend the regulations as described in written comments on the proposed amended regulations and the Council's reasons for acceptance or rejection of such considerations.

#### I. SUMMARY OF THE REGULATION-MAKING PROCEEDING

During a regular meeting held on October 7, 2011, the Council voted to approve publication of notice in the Connecticut Law Journal of its intention to amend the Rules of Practice of the Council, Sections 16-50j-1 to 16-50z-4, inclusive, and Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies. A copy of the Council's notice of intent to amend the regulations was electronically mailed to the Council's regular meeting agenda service list on October 11, 2011. Also, a copy of the notice of intent to amend, proposed amended regulations, small business impact statement, agency fiscal estimates and Regulatory Flexibility Analysis were posted on the Council's website on October 11, 2011. On October 25, 2011, the notice of intent to amend regulations was published in the Connecticut Law Journal.

The Council received a total of four requests for a public hearing: the Berkshire-Litchfield Environmental Council (BLEC) submitted a request on October 13, 2011; the Housatonic Valley Association (HVA) submitted a request on October 13, 2011; the Town of Canaan Inland Wetlands and Conservation Commission (IW/CC) submitted a request on October 18, 2011 and NRG Energy, Inc. (NRG) submitted a request on November 8, 2011. The Council granted interested persons an opportunity to present oral argument pursuant to the Uniform Administrative Procedure Act (UAPA), C.G.S. §4-168(a)(7) and provided notice of the public hearing on November 10, 2011. The Council held the public hearing on December 13, 2011.

Prior to the public hearing, the Council received six written comments concerning the proposed amended regulations. The comments were submitted by: Attorney Keith Ainsworth; Covanta Energy Corporation; NRG; PCIA – the Wireless Infrastructure Association; the Connecticut Light and Power Company (CL&P); and the Easton Conservancy Trust. During the public hearing, the Council heard oral argument concerning the proposed amended regulations from seven interested persons. Oral argument was presented by: Karyl Lee Hall of the Branford Conservation Commission; June Lee of the Easton Conservancy Trust; Blake Levitt of the BLEC; Attorney David Monz representing NRG; John Morissette of CL&P; Senator Andrew Roraback; and Ellery Sinclair of the Town of Canaan IW/CC.

After the public hearing, the Council received three written comments concerning the proposed amended regulations. The comments were submitted by: CL&P; NRG; and United Illuminating Holdings Corporation (UIL).

Pursuant to C.G.S. §4-168(a)(8), the Council fully considered all oral and written submissions concerning the proposed amended regulations and made revisions to the proposed regulations to incorporate some of the suggestions made by the interested persons.

## II. STATEMENT OF PRINCIPAL REASONS IN SUPPORT OF THE COUNCIL'S INTENT TO AMEND REGULATIONS

The principal reasons in support of the Council's intent to amend the Rules of Practice are to adopt, amend and rescind regulations to carry out the provisions of the Public Utility Environmental Standards Act (PUESA), C.G.S. §16-50g, et seq., and policies and practices of the Council in connection therewith; and to prescribe and establish reasonable regulations and standards as necessary and in the public interest with respect to filing fees, siting of facilities and environmental standards applicable to facilities. The Council's Rules of Practice have not been revised since 1989. The Council's regulations currently do not include a description of the organization pursuant to C.G.S. §4-167(a) and do not have the correct address for the office of the Council. Furthermore, changes in law and technology, including, but not limited to, federal law concerning deadlines for decisions on the siting of telecommunications infrastructure, state policy concerning the sharing of telecommunications towers and technological advancements concerning energy and telecommunications associated equipment necessitate amendments to the regulations.

## III. STATEMENT OF PRINCIPAL CONSIDERATIONS IN OPPOSITION TO THE PROPOSED AMENDED REGULATIONS AS URGED IN WRITTEN COMMENTS AND THE COUNCIL'S REASONS FOR REJECTING SUCH CONSIDERATIONS

The principal considerations in opposition to the proposed amended regulations as urged in written comments and oral argument presented at the hearing, and the Council's reasons for rejecting such considerations are as follows:

### 1. **Section 16-50j-2a. Definitions**

CL&P recommends that the definition of "associated equipment" be revised to include "network equipment" to encompass upgrades to communications equipment at sites other than the project site.

Rather than specify an exhaustive list of installations that comprise "associated equipment" for both energy and telecommunications facilities, the Council utilized the phrase, "including, but not limited to..." which would clearly encompass the communications equipment CL&P references. Therefore, the Council rejects this recommendation.

### 2. **Section 16-50j-15b. Limited Appearance**

Attorney Ainsworth, the Town of Canaan IW/CC, Senator Roraback, the Town of Branford Conservation Commission, and the BLEC assert that under this section, parties and intervenors are not being given a true and fair opportunity to participate because they are prohibited from providing public comments.

However, Section 16-50j-15b has been worded in accordance with the UAPA and the PUESA, both of which make clear distinctions between party status, intervenor status and limited appearance status. Party or intervenor status allow for active participation in proceedings that may entail submitting pre-filed testimony, presenting witnesses, cross-examining the applicant, parties and intervenors and, most importantly, a right to appeal the final decision of the Council. Limited appearance status allows interested persons who choose not to become active participants through party or intervenor status in a proceeding to provide oral or written comments to the Council

before, during or after the public hearing held on a matter. Persons providing limited appearance statements may not submit pre-filed testimony, present witnesses, cross-examine the applicant, parties and intervenors, exercise appeal rights or be subject to cross-examination by the Council, applicant, parties or intervenors.

In response to opposing concerns, the Council deleted the following bracketed language and added the following underlined language to proposed Section 16-50j-15b:

**Sec. 16-50j-15b. Limited Appearance.**

**(a) Status of Limited Appearance.** Pursuant to Section 4-177c and Section 16-50n of the Connecticut General Statutes, prior to, during or within 30 days after the close of a hearing, at the Council's discretion, any person may make a limited appearance. All oral and written limited appearance statements shall become part of the record. No person making a limited appearance shall be a party or intervenor, or shall have the right to cross-examine witnesses, parties or intervenors. No party or intervenor shall have a right to cross-examine a person making a limited appearance. The Council may require a limited appearance statement to be given under oath. [Persons making limited appearance statements may not question the Council. No person who is a party or intervenor, including those who are members of non-profit organizations and those who are witnesses for a party or intervenor, may also make an oral limited appearance statement during the public comment session of the hearing or submit a written limited appearance statement to the Council.]

3. **Section 16-50j-21(a). Notice of Hearings**

CL&P requests that the Council revise this section to exempt transmission line facilities from the requirement of notice to abutting property owners for a petition for a declaratory ruling because the regulation is unduly burdensome. CL&P refers to C.G.S. §16-50l(b) for applications for transmission line facilities that require notice be provided to each electric company customer in the municipality where the facility is proposed to be located on a separate enclosure with each customer's monthly bill. Also, CL&P requests that the Council allow petitioners to send notice to abutting property owners on the date of filing the petition for declaratory ruling and to provide clarification that an affidavit is sufficient proof of notice.

Electric companies sometimes submit petitions for declaratory rulings with the Council for activities related to transmission line facilities such as re-conductoring. These activities may span several miles of transmission line. However, on some occasions in the past, the Council has received calls from electric company customers seeking information related to certain construction activities that were occurring in their neighborhoods. This required Council staff to describe the activities related to the declaratory ruling after it was approved by the Council. The notice requirements in this section are intended to ensure the affected residents are notified of potential construction activities prior to construction and to ensure the affected residents have an opportunity to comment prior to the Council's ruling on the petition. The Council prefers to have the petitioner submit a copy of the letter of notice that was sent to affected residents for the file describing the construction activities related to the petition rather than submit an affidavit. The alternative would be for the electric company to file an application for a certificate to conduct the construction activities that are the subject of the petition for declaratory ruling to accomplish the intent of public notice in this section. Therefore, the Council rejects the considerations in opposition to this proposed amended regulation.

CL&P also comments on the change in language as to when the Council provides notice of a hearing, particularly the statement, “not less than 30 days prior to a hearing date.” This language was added to ensure all parties and the public are afforded an opportunity for hearing after reasonable notice as specified under C.G.S. §4-177. It is well settled by the courts that 30 days constitutes reasonable notice. Therefore, the Council rejects the consideration in opposition to this proposed regulation.

4. **Section 16-50j-22a (c). Conduct of Proceedings**

Under subsection (c) entitled, “Discovery,” CL&P requests that the Council delete language that requires responses to interrogatories be separately and fully answered by the witness “that shall testify during the hearing as to the content of the response.”

The proposed section on “Conduct of Proceedings” was drafted with the intent to guide participants in the proceeding process. CL&P indicates that responses are authenticated by a member of the witness panel prior to admission as an exhibit at the hearing. However, in the existing regulations, this is not stated or apparent, particularly to a member of the public who does not regularly appear before the Council. The new subsection clearly describes the Council’s pre-hearing procedure and the requirements for the admission of evidence at the hearing. CL&P’s concern may be addressed at any hearing, as it regularly is addressed, by having a different witness available to adopt the pre-filed testimony and interrogatory responses of an absentee witness. Therefore, the Council rejects the considerations in opposition to this proposed regulation.

5. **Section 16-50j-22a (d). Protective Orders:** Attorney Ainsworth, BLEC and Senator Roraback assert that this section deprives the public of valuable information. They argue that “critical infrastructure” could encompass any utility structure.

However, the term “critical energy infrastructure” is clearly defined in the regulation in accordance with the Federal Energy Regulatory Commission’s (FERC) definition of “critical energy infrastructure.” In its comments on the amended regulation during the public hearing, CL&P reiterated this fact. Furthermore, “proprietary information” is clearly defined in the Freedom of Information Act (FOIA), C.G.S. §1-200 *et seq.* In December 2009, President Obama issued Proclamation 8460 pertaining to Critical Infrastructure Protection and defined “critical infrastructure” as “... assets, systems and networks, whether physical or virtual, so vital to the U.S. that their incapacitation or destruction would have a debilitating effect on security, national economic security, public health or safety.” Cellular phone towers and power grids are specifically identified as “critical infrastructure” in the Proclamation. Pursuant to C.G.S. §§16-50o and 16-50r, the Council shall not require the public disclosure of confidential, proprietary or trade secret information and shall allow such information to be submitted under a protective order during a hearing. The Council has established procedures for filing a motion to submit critical infrastructure information under protective order. Parties and intervenors to a proceeding may file an objection to a motion for a protective order and may access the information submitted under the protective order. Therefore, the Council rejects the considerations in opposition to this proposed regulation.

6. **Section 16-50j-44. Transferability of Certificates**

CL&P asserts that neither C.G.S. §16-50k(b) nor §16-50v authorize withholding approval of a transfer of certificate based on non-payment of annual assessments and invoices.

However, neither C.G.S. §16-50k(b) nor §16-50v prohibit withholding approval of a transfer of certificate based on non-payment of annual assessments and invoices. On several occasions in the past, the Council has encountered issues of non-payment related to transfer of certificate approvals where the transferor and transferee indicate that assessments and invoices prior to or after the date of transfer are the responsibility of the other party to the transfer. The result is that the invoices and assessments do not get paid and accrue considerable late fees, but still do not get paid. In July of 2010, the Council conditioned the transfer of six separate certificates upon the payment of assessments and invoices. The intent of this section is to put certificate holders and transferees on notice that a transfer of certificate will not be approved unless assessments and invoices are paid current. Also, the Council has added two standard conditions to all certificates that arrangements must be made among the transferor and transferee for the payment of invoices and assessments and that the certificate holder shall make timely payments in accordance with C.G.S. §16-50v. Therefore, the Council rejects the considerations in opposition to this proposed regulation.

7. **Section 16-50j-57. Exemptions**

Covanta Energy requests that facilities that have been approved by the Council be completely exempt from this section of the regulations and indicates that waste-to-energy facilities are different from conventional energy facilities. Furthermore, Covanta indicates that the proposed regulation for energy exempt modifications is duplicative of measures that are currently in place for waste-to-energy facilities.

However, under the PUESA, the Council has exclusive jurisdiction over any electric generating facility and its associated equipment. This jurisdiction applies to any modification of an existing facility, including waste to energy facilities. Therefore, the Council rejects this consideration in opposition to this proposed regulation.

Covanta Energy also requests that upgrades to air pollution control equipment and use of temporary energy components for outages be added to this section as energy exempt modifications under “routine maintenance,” and that “routine maintenance” modifications be exempt from reporting requirements. Additionally, CL&P requests that certain equipment that may result in a “minimal increase in height,” which they define as height increases of up to ten feet for transmission line equipment and up to six feet for substation equipment, should qualify as exempt modifications.

Rather than create an exhaustive list of modifications that would qualify as exempt modifications and add an exception to the criterion for no increase in height, the criteria to be met under the section determines whether the proposed modification is exempt. CL&P’s suggestion as to what constitutes a “minimal increase in height” is subjective and site-specific. The burden is on the person requesting acknowledgement of the exemption that the proposed modification qualifies for the exemption. This section is structured in the same format as the existing telecommunications exempt modifications section of the regulations under Section 16-50j-72. Therefore, the Council rejects these considerations in opposition to this section of the amended regulations.

NRG requests that the Council revise this section to ensure that the Council, rather than its designee, evaluate whether the modification is exempt under this section, and that the request for exempt modification be placed on the Council’s regular meeting agenda so interested parties can have an opportunity to comment on the proposed exempt modification. NRG is concerned that

modifications such as the installation or change-out of circuit breakers, disconnects or transformers may temporarily impact services to a generating station. CL&P and UIL disagree with NRG in that any operational or system-wide impact resulting from the installation or change-out of circuit breakers, disconnects or transformers is more properly within the realm of issues in the expertise and jurisdiction of ISO-New England. The Council's expertise and jurisdiction relates to the evaluation of potential adverse environmental effects of proposed energy component installations.

The Council has an established process for evaluating requests for exempt modifications. For telecommunications exempt modifications, the Council's designee creates a summary for each request received that is submitted to the Council for review. If Council members have questions or concerns, the request is placed on a regular meeting agenda for Council consideration. If Council members do not have questions or concerns, the Council's designee acknowledges the exempt modification in writing. The intent of this section is to provide a framework similar to the existing framework for telecommunications exempt modifications under Section 16-50j-72 for minor modifications to energy facilities that will not have a substantial adverse environmental effect and meet certain criteria for an exemption. Notice requirements for exempt modifications are established under Section 16-50j-58. At present, minor modifications, such as changing out a circuit breaker, are required to be filed as a petition for a declaratory ruling, which requires a field review, full staff report and review during a regular meeting, in addition to compliance with the provisions for petitions for declaratory ruling under the UAPA. This type of heightened scrutiny for such a minor modification is unnecessary, burdensome and expensive.

Rather than place requests for exempt modifications on the Council's regular meeting agenda, the Council proposes to post energy exempt modifications on its website to ensure that NRG and other interested parties have notice and an opportunity to comment.

- a. **Section 16-50j-57(c)(6)**: CL&P requests that the reference to receipt of municipal zoning approvals and building permits be deleted because the Council has jurisdiction over energy components that are subject to PUESA.

However, subsection (c) of Section 16-50j-57 relates specifically to existing non-facility energy sites that are owned or operated by the state or a public service company. In order to reconcile CL&P's request with the non-facility component, the Council modified Section 16-50j-57(c)(6) by adding the following underlined language:

(6) Have received all municipal zoning approvals and building permits, where applicable.

As a result of this consideration, the Council also modified the telecommunications exempt modifications Section 16-50j-72(c)(5) with new language underlined as follows:

(5) Have received all municipal zoning approvals and building permits, where applicable.

- b. **Section 16-50j-57(b)(2)(F)**: CL&P requests that this subparagraph be modified to address certain installations that would be exempt from certification of structural integrity by a Connecticut-licensed professional engineer under C.G.S. §20-309.

As a result, the Council modified Section 16-50j-57(b)(2)(F) by adding the following underlined language:

(F) impair the structural integrity of the facility, as determined in a certification provided by a professional engineer licensed in Connecticut, where applicable.

- c. **Sections 16-50j-57(d)(2)(D) and 16-50j-57(d)(3)(D)**: CL&P requests these subparagraphs requiring the notice regarding temporary facilities to state that the EMF fields will be managed in a manner consistent with the Council’s EMF Best Management Practices based on the fact that future EMF levels cannot be measured.

As a result, the Council modified Sections 16-50j-57(d)(2)(D) and 16-50j-57(d)(3)(D) by deleting the bracketed language and adding the underlined language as follows:

(D) the electric and magnetic field levels at the site boundary of the temporary energy components and associated equipment [measured at the site boundary] will be managed in a manner that is consistent with the Council’s Best Management Practices for Electric and Magnetic Fields.

8. **Section 16-50j-58. Notice of Intent to Install an Exempt Energy Component and Associated Equipment**

Covanta Energy requests that this section be deleted because it is “duplicative of current practice” since facilities obtain permits from local building authorities and notify abutters according to zoning statutes.

However, under the PUESA, the Council has exclusive jurisdiction over electric generating facilities. The intent of this section is to ensure affected municipalities and property owners are notified of a proposed exempt modification to a facility. Therefore, the Council rejects this consideration in opposition to this proposed regulation.

UIL requests that the Council consider adding a provision to the end of this section as follows: “The exemption request shall be automatically deemed acknowledged by the Council or its staff designee unless specifically rejected within thirty days of the Council’s receipt of the request.”

As described above, the Council has an established process for evaluating telecommunications exempt modifications that it intends to follow for consideration and approval of energy exempt modifications. If an exempt modification request is approved, the Council issues a decision letter that includes a one-year expiration date for the approval and that may include conditions of approval. Therefore, the Council rejects this recommendation.

NRG requests that this section be reconciled with the notice requirements in Section 16-50j-57, which allow for facility owners and operators to provide notice of installation of an emergency energy component after the installation is complete.

Therefore, the Council modified this section with new language underlined and deleted language bracketed as follows:

**Sec. 16-50j-58. Notice of intent to install an exempt energy component and associated equipment.** Except as otherwise provided under Sections 16-50j-57(a) and 16-50j-57(d), the 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] in which the energy component and associated equipment is to be 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.

As a result of this consideration, the Council also modified the telecommunications exempt modifications Section 16-50j-73 with new language underlined and deleted language bracketed as follows:

**Sec. 16-50j-73. Notice of intent to erect an exempt tower and associated equipment.** Except as otherwise provided under Sections 16-50j-72(a) and Sections 16-50j-72(d), the owner or operator of any tower and associated equipment claiming such tower and associated equipment is exempt pursuant to section 16-50j-72 of the Regulations of Connecticut State Agencies shall give the council, property owner of record, if the property owner of record is different from the owner or operator of the tower and associated equipment, and the chief elected official of the municipality [and any adjoining municipalities having a boundary not more than 2500 feet from] in which the temporary facility is to be located, notice in writing prior to construction of its intent to construct such tower and associated equipment, detailing its reasons for claiming exemption under these regulations.

The Council acknowledges the inconsequential impact of energy and telecommunications exempt modifications, as these types of modifications typically involve equipment replacement and maintenance, and therefore deleted the requirements in the proposed regulations that municipalities within 2500 feet of the proposed installation be notified.

9. **Section 16-50j-59. Information Required:**

CL&P requests that the requirement for “a list of all energy facilities and associated equipment” under subsection (o) within a specified radius of the proposed facility may be of limited usefulness for energy sites and is more appropriate to telecommunications facilities.

However, cumulative impacts and proximity of energy facilities within a short distance of each other, such as the Kleen Energy facility and the NRG facility on River Road in Middletown, is a matter of public safety and energy security. The Council’s charge includes considerations of public safety and energy security. Therefore, the Council rejects this consideration in opposition to this proposed amended regulation.

CL&P further requests that reference to the Council’s Best Management Practices for EMF be added to Section 16-50j-59(r). In response, the Council modified Section 16-50j-59(r) by adding the underlined language as follows:

(r) A statement describing hazards to human health, if any, with such supporting data or references to authoritative sources of information as will be helpful to the understanding of all aspects of the issue, including electric and magnetic field levels at the property boundaries of the proposed site and compliance with the Council’s Best Management Practices for Electric and Magnetic Fields;

10. **Section 16-50j-61. Elements of a Development and Management Plan:**

- a. **Section 16-50j-61(b)(1):** CL&P requests that the Council require identification of property owners only for areas where the company does not own the land in fee or possess easement rights. The proposed regulation requires, "... identification of the edges of the proposed site and of any existing site contiguous to or crossing it, the portion of those sites owned by the company in fee and the identity of the property owner(s) of record of the portions of those sites not owned by the company in fee."

This regulation directly correlates to the requirement under Section 16-50j-59 for a map of the site that includes the names of abutting property owners and the portions of their lands abutting the site. The regulation requires identification of land owned by CL&P, as well as lands not owned by CL&P over which they may have easement rights, and lands not owned by CL&P over which they may not have easement rights. The intent of the regulation is to ensure the Council has an accurate abutters' map of the site once the final decision is rendered in the event that the dimensions of the site are modified during the hearing process. The map also assists staff in responding to questions from abutting property owners during the construction phase. Therefore, the Council rejects the considerations in opposition to this proposed amended regulation.

- b. **Section 16-50j-61(b)(7)(E):** CL&P requests that the Council clarify the type of disruption to residences and businesses within and adjoining the site that may be disrupted during the construction process. CL&P is concerned that "disrupted" could be interpreted broadly to include a general increase in construction truck traffic in the vicinity.

This is the intent of the regulation: a general increase in construction truck traffic in the vicinity constitutes a disruption. The Council often receives calls from concerned residents related to construction activities. The submission of information related to increased construction truck traffic and other potential disruptive activities would assist the Council staff in responding to concerns of residents. Therefore, the Council rejects the consideration in opposition to this proposed regulation.

- c. **Section 16-50j-61(b)(7)(F):** CL&P encourages the Council to clarify the phrase, "significantly large or old trees" by specifying a diameter at breast height and approximate age, as well as to exclude danger, decayed or diseased trees and tall-growing trees.

The intent of the regulation is to preserve trees with environmental significance, as well as trees that provide natural screening of a facility. For instance, in Docket 386, the Council specifically requested the applicant to work with the property owner to preserve an oak tree adjacent to the access road for a cell tower facility. This would obviously not include trees that pose a hazard to transmission lines. Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

- d. **Section 16-50j-61(c)(8):** CL&P suggests the Council delete the language that requires the certificate holder to provide the contact information for the contractor assigned to the project. Although the certificate holder is ultimately accountable for the project, staff may conduct periodic construction reviews at the facility site. For safety purposes and for questions, the staff should have information on the identity of the contractor working at the site and a contact person. Contrary to the statement of CL&P that there is no similar provision in the D&M plan regulation for telecommunications sites, there is an existing provision under

Section 16-50j-77(a). Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

- e. **Section 16-50j-61(e):** CL&P requests revision of this subsection to require that copies of a D&M plan be provided only to town officials who became parties in the proceeding, while other persons named on the Council's service list would receive simply a notice of the D&M plan filing with contact information for requesting a copy.

It is a standard practice for the Council to request an applicant or petitioner to submit a copy of a D&M plan to the service list for a proceeding. What CL&P suggests would be inequitable. All parties and intervenors on the service list, including the towns, are entitled to be provided a copy of the D&M plan and to provide comments thereon.

However, given the size of most D&M plans, the Council proposes that a notice of the filing of a D&M plan or any changes to a D&M plan with the Council be submitted to the service list. As a result of this consideration, the Council modified this subsection and corrected the order by properly designating it subsection (d) with new language underlined as follows:

**(d) Notice.** A copy, or notice of the filing, of the D&M plan, or any section thereof, or a copy, or notice of the filing of any changes to the D&M plan, or any section thereof, shall be provided to the service list and property owner of record, if applicable, at the same time the plan, or any section thereof, or at the same time any changes to the D&M plan, or any section thereof, is submitted to the Council.

As a result of this consideration, the Council also modified the telecommunications Development and Management Plan Section 16-50j-75 with new language underlined as follows:

**(e) Notice.** A copy, or notice of the filing, of the D&M plan, or any section thereof, or a copy, or notice of the filing of any changes to the D&M plan, or any section thereof, shall be provided to the service list and the property owner of record, if applicable, at the same time the plan, or any section thereof, or at the same time any changes to the D&M plan, or any section thereof, is submitted to the Council.

CL&P also requests that this subsection be revised to delete the requirement that copies of the D&M plan to be submitted to the property owner of record, if applicable. CL&P suggests that the section be changed to require copies of the D&M plan to be provided to property owners only for areas where the company does not own the land in fee or possess easement rights. Presumably, the concern is for transmission line facilities rather than substations and generating facilities.

However, the intent of this section, particularly the addition of "if applicable" was to ensure that the owner of a leased property be provided with a copy of the D&M plan in the event a certificate holder does not own but leases the property. Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

- f. **Section 16-50j-61(f):** CL&P requests revision of this subsection to require any proposed change to a D&M plan be sent only to town officials who became parties in the proceeding

while other persons named on the Council’s service list would receive simply a notice of the D&M plan filing with contact information for requesting a copy.

This subsection relates specifically to changes to the D&M plan proposed by the Council. The changes to subsection (d) above directly respond to CL&P’s concern. Therefore, the Council rejects the considerations in opposition to the proposed amended regulation.

**11. Section 16-50j-61 and 16-50j-76. Elements of a Development and Management Plan:**

Attorney Ainsworth, the Town of Canaan IW/CC, Senator Roraback and the BLEC assert that the reference to the Department of Energy and Environmental Protection (DEEP) Natural Diversity Database (NDDDB) should not be codified in the regulation because the NDDDB is inadequate and incomplete for determining the presence of endangered, threatened and special concern species and critical habitats at a particular site location.

In response to these concerns, the Council modified proposed amended Sections 16-50j-61(b)(7)(C) and 16-50j-76(b)(7)(C) by deleting the following bracketed language:

(C) Any known critical habitats [identified by a Department of Energy and Environmental Protection (DEEP) Natural Diversity Database (NDDDB) Review] or areas identified as having rare, endangered, threatened, or special concern plant or animal species listed by federal and state governmental agencies;

Also in response to these concerns, the Council modified proposed amended Sections 16-50j-61(c)(2)(C) and 16-50j-76(c)(3)(C) by deleting the following bracketed language and adding the following underlined language:

(C) Precautions and all reasonable mitigation measures to be taken in areas within or adjoining the site to minimize any adverse modifications or impacts of such actions on endangered, threatened or special concern plant or animal species listed by federal and state governmental agencies and critical habitats [as identified by a Department of Energy and Environmental Protection (DEEP) Natural Diversity Database (NDDDB) Review] that are in compliance with federal and state recommended standards and guidelines, as amended;

**12. Section 16-50j-62. Reporting Requirements:**

CL&P suggests the Council add a materiality standard to what constitutes “significant changes” to a D&M plan and indicates that changes to structure locations and increased or decreased mitigation measures would create an obligation that is unduly burdensome and may require CL&P to hire a field monitor to verify structure locations and mitigation measures.

It is standard practice for the Council to require the certificate holder to hire an independent third party environmental inspector to ensure best practices are followed with respect to erosion and sedimentation controls in environmentally sensitive areas, including mitigation. Furthermore, the locations of structures are required to be clearly identified as part of the D&M plan. Considering the location of structures may have an impact on environmental resources, including, but not limited to, wetlands and visibility, a change in the location of a structure is clearly a “significant change” to an approved D&M plan that warrants Council consideration and review. The intent of the regulation is to ensure the Council has notice of any significant change to the D&M plan that

was approved by the Council. The materiality standard CL&P suggests for a “significant change” is a phrase such as “significantly reduces the amount of protection to the environment” or “significantly increases potential public concerns.” Such a materiality standard is ambiguous and subjective. The Council shall make the determination as to whether a change in the D&M plan will reduce the amount of protection to the environment or will increase potential public concerns, and the parties and intervenors to a proceeding should have an opportunity to comment. Therefore, the Council rejects this consideration in opposition to the proposed amended regulation.

13. **Section 16-50j-88. Tower Sharing:**

Attorney Ainsworth and the Town of Canaan IW/CC assert that this section exempts antenna collocations on existing telecommunications towers from public scrutiny and that collocation on an existing telecommunications tower is not in all instances the best solution for minimizing impact.

However, C.G.S. §16-50aa, entitled “Tower Sharing,” contains the state policy that tower sharing, when technically, legally, environmentally and economically feasible, and when such sharing meets public safety concerns, will avoid the unnecessary proliferation of towers and is in the public interest. Furthermore, the statute states, “if the Council finds that the proposed shared use of the facility is technically, legally, environmentally and economically feasible, the Council **shall** issue an order approving such shared use” (emphasis added). Once the Council receives a request for tower sharing, the Council sends notice to the Chief Elected Official of the municipality where the existing tower is located and requests that comments from the municipality and/or concerned residents be submitted to the Council by a certain date prior to the date of the regular meeting at which the request shall be taken up as an agenda item by the Council. Any comments received from the municipality and/or concerned residents are taken into consideration during the regular meeting. In addition to the state policy on tower sharing, the Federal Communications Commission (FCC) issued a declaratory ruling in October 2009 that all tower sharing requests be considered and decided by a state or local siting agency within 90 days of the date of receipt of the request. Any extension of this federal deadline must be consented to by the person requesting the tower share and be submitted to the Council in writing. If any comments are received from the municipality and/or concerned residents that the Council decides to address, the Council may request an extension of time from the person requesting the tower share. Therefore, the Council rejects the considerations in opposition to the proposed regulation.

14. **Section 16-50v-3. Non-payment:**

CL&P asserts that C.G.S. §16-50v only provides for a monetary penalty for non-payment. C.G.S. §16-50v states, “the Council shall charge late fees or penalties at the rate of one and one-half percent per month against invoiced amounts not received by the Council within thirty days after the due date shown on the Council’s invoice.”

Similar to the rationale related to CL&P’s argument pertaining to Section 16-50j-44 for transferability of certificates, there is no provision under C.G.S. §16-50v that prohibits the Council from refraining from considering pending or future matters based on non-payment of annual assessments and invoices. In December 2003, two telecommunications service providers had not paid annual assessments and invoices totaling in excess of \$200,000. The Chairman wrote letters to the service providers indicating that failure to make payment for past due items by a date certain would result in the cessation of current applications pending before the Council. In

July 2010, another telecommunications service provider had not paid invoices totaling in excess of \$55,000. The Chairman wrote a letter to the service provider indicating that should the sum remain unpaid by a date certain, the Council shall refrain from considering any and all pending and future matters sought by the service provider. Ultimately, the Council denied a certificate for a pending project proposed by the service provider on the basis of non-payment supported by records of the Council kept in the ordinary course of business that the sum remained unpaid, as well as the service provider's failure to grant an extension of the deadline for a decision on the certificate application. The intent of this section is to put applicants and petitioners on notice that a pending application or petition will not be approved unless assessments and invoices are paid current. Also, the Council added a standard condition to all certificates that the certificate holder shall make timely payments in accordance with C.G.S. §16-50v. Therefore, the Council rejects the considerations in opposition to this proposed amended regulation.