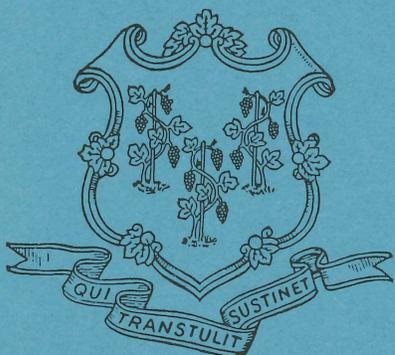


CONNECTICUT SITING COUNCIL

Connecticut
General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

December 2000

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

The program review committee is composed of 12 members. The president pro tempore of the senate, the senate minority leader, the speaker of the house, and the house minority leader each appoint three members.

1999-2000 Committee Members

Senate

John W. Fonfara
Co-chairman
Eileen M. Daily
Anthony Guglielmo
Gary D. LeBeau
William H. Nickerson
Win Smith, Jr.

House

Julia B. Wasserman
Co-Chairman
Kevin M. Delgobbo
Paul R. Doyle
Robert Heagney
Michael J. Jarjura
Robert A. Landino

Committee Staff

Michael L. Nauer, Director
George W. McKee, Chief Analyst
Catherine M. Conlin, Chief Analyst
Carrie E. Vibert, Chief Attorney
Maryellen Duffy, Principal Analyst
Jill E. Jensen, Principal Analyst
Anne E. McAloon, Principal Analyst
Brian R. Beisel, Principal Analyst
Michelle Castillo, Principal Analyst
Renee La Mark Muir, Principal Analyst
Scott M. Simoneau, Associate Analyst
Bonnine T. Klare, Executive Secretary

Staff for this Project

Michelle Castillo
Cordelia Simmons, *intern*

LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE

Connecticut Siting Council

DECEMBER 2000

Table of Contents

Connecticut Siting Council

KEY POINTS

Digest	i
--------------	---

INTRODUCTION	1
---------------------------	---

I. BACKGROUND OVERVIEW	3
-------------------------------------	---

Legislative History	3
---------------------------	---

Current CSC Roles and Responsibilities	6
--	---

Organizational Structure and Staff Resources	7
--	---

II. ENERGY FACILITIES	13
------------------------------------	----

Jurisdiction.....	13
-------------------	----

Federal and Local Roles.....	14
------------------------------	----

Certification Process	15
-----------------------------	----

Petitions for Declaratory Rulings.....	21
--	----

Forecasts of Loads and Resources	23
--	----

Investigation of Life-cycle Costs	25
---	----

Property Condemnation Proceedings.....	25
--	----

III. TELECOMMUNICATIONS	27
--------------------------------------	----

Jurisdiction.....	27
-------------------	----

Federal and Local Roles.....	28
------------------------------	----

Certification Process	29
-----------------------------	----

Tower Facility Sharing.....	34
-----------------------------	----

IV. HAZARDOUS WASTE, LOW LEVEL RADIOACTIVE WASTE, ASH RESIDUE	35
--	----

Hazardous Waste Facilities.....	35
---------------------------------	----

Low Level Radioactive Waste	39
-----------------------------------	----

Ash Residue Disposal Facility	40
-------------------------------------	----

V. CSC PROCESS AND OUTCOMES	43
--	----

Adherence to Statutory Mandates and Timeframes	43
--	----

CSC Decisions Outcomes, Format, and Content	44
---	----

VI. CSC INTERACTION WITH MUNICIPALITIES AND OTHER INTERESTED GROUPS	53
--	----

Municipalities	53
----------------------	----

Public Participation.....	57
---------------------------	----

Other Government Entities	59
---------------------------------	----

Table of Contents

VII. CSC JURISDICTION	63
Scope of CSC Regulated Community.....	63
Industry Changes Affecting CSC Jurisdiction	64
Siting Authority and Processes in Other States	69

APPENDICES

- A. Contents of Certification Applications*
- B. Low Level Radioactive Waste Facility Siting Process*
- C. Municipal Survey*
- D. Siting Authority in Selected Other States*
- E. Agency Response*

CONNECTICUT SITING COUNCIL

- The Connecticut Siting Council's (CSC) primary purpose is to balance the need for adequate and reliable public services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state.
 - The council has siting jurisdiction in a number of areas including: energy, telecommunications, hazardous waste disposal, low level radioactive waste management, and ash residue management facilities.
 - Developers of new or modified facilities regulated by the council must obtain a certificate from the council prior to beginning construction.
 - Administratively located within the Department of Public Utility Control, the council operates as an autonomous body with its own administrative staff. Council membership is statutorily dictated and varies depending on the type of proceeding being conducted.
 - Pursuant to state law, all of the council's operating costs are financed by the facilities under its jurisdiction.
 - Although several federal laws govern the facilities under the council's jurisdiction, the federal government has little to no role in the actual siting of CSC facilities. Siting decisions are left to the state's discretion with some restrictions.
 - Local municipal agencies also have limited authority in siting decisions.
 - The council is authorized to exempt certain facilities from the certification process.
 - The council is statutorily required to review annual electric load and resource forecasts to assess future needs and reliability.
 - In Connecticut, jurisdiction over the siting of telecommunication towers is split between the Connecticut Siting Council and local land use agencies.
 - One of the council's telecommunications responsibilities is to promote tower sharing.
 - To date, the council has never sited a new hazardous waste or ash residue facility.
 - As a result of the Atlantic Interstate Low Level Radioactive Management Compact, Connecticut will not need to site a low level radioactive waste disposal facility for approximately fifty years.
-

Digest

Connecticut Siting Council

CSC PROCESS AND OUTCOMES

FINDINGS

- *The Connecticut Siting Council adheres to its statutory mandates and timeframes.*
- *Improvements can be made in the publishing of hearing notices to promote public participation.*
- *CSC decisions mention the statutorily mandated elements in varying degrees.*
- *Evidence of independent staff analysis is not always clear.*
- *The written opinions tend to focus on discussion and rationale on the viability of the chosen site with little discussion given to why the alternative sites or designs would not work.*
- *The council relies upon institutional memory and does not periodically analyze and track outcomes.*

RECOMMENDATIONS

- 1. The council must advertise its public hearing notice at least once within the two week period prior to the actual hearing date.**
- 2. Written council decisions should be structured in a format that clearly outlines the criteria used and provides evidence of independent analysis. Council decisions should state with particularity the basis for each decision as to each disputed issue, and the manner in which the statutory criteria were considered in arriving at such decision, including where applicable, the specific evidence relied upon, and the reasons for the reliance.**

The decisions should also contain more discussion as to the council position on opposing party claims and more explanation as to why alternatives are not chosen.

- 3. A summary digest of council decisions must be developed and maintained by October 1, 2001.**

CSC INTERACTION WITH MUNICIPALITIES & OTHER INTERESTED GROUPS

FINDINGS

- *The municipal role is statutorily dictated by the point in the siting process and changes depending on the type of facility involved.*
- *CSC files indicate the statutorily mandated applicant and municipal consultations at the pre-application phase are taking place. However, the level of discussion in the written CSC decisions varies.*
- *The council has rarely exercised its statutory authority to override a local regulatory decision in siting energy facilities.*
- *The council has exclusive siting jurisdiction of cellular telecommunication towers. Municipalities do not have a regulatory role in these decisions.*
- *The council routinely grants municipal requests for measures to diminish the visual impact of telecommunication towers.*
- *The program review survey results of 121 municipalities gave the Connecticut Siting Council generally positive ratings.*
- *The council's primary charge is to remain neutral and objective in siting facilities whose effects have statewide significance and transcend municipal boundaries.*
- *Given the contested case nature of the siting process, there will always be inherent tension in the proceedings.*
- *Current opportunities for municipal and public participation during the siting process are, in general, sufficient.*
- *The council allows public participation at its discretion. This discretion may sometimes be perceived as bias or have an otherwise negative impact.*
- *The current CSC system of compliance provides limited follow-up and monitoring of sited facilities.*

RECOMMENDATIONS

- 4. CSC must include in each decision a summary of any municipal consultation and recommendations.**

-
5. **CSC should establish a more structured schedule for follow-up and monitoring inspections and as much as possible incorporate other interested government agencies such as local municipal planning and zoning authorities or the state Department of Environmental Protection.**

CSC JURISDICTION

FINDINGS

- *It is not known whether the council's ability to adhere to statutory mandates and timeframes would be compromised if the present regulatory status or industry climate in any of the CSC facility jurisdictions changed.*
- *Current state law grants exclusive jurisdiction over cellular telecommunication towers to CSC and by default grants municipalities control over the siting of other telecommunications facilities.*
- *Legislative efforts to change the current telecommunication siting structure have failed in recent years.*
- *The bifurcation of jurisdiction in the siting of telecommunications facilities has caused controversy and has been the subject of a pending federal lawsuit.*
- *Comprehensive information gathering is essential to properly promote tower sharing and reduce proliferation.*
- *Compared to other states, Connecticut is unique in its siting authority. However, no one model or organizational structure appears to offer more or less benefits than the Connecticut Siting Council.*

RECOMMENDATIONS

6. **The program review committee recommended municipal planning and zoning boards have siting jurisdiction over PCS telecommunications facilities. The Connecticut Siting Council may participate as an intervenor in any such planning and zoning board proceedings. Municipal planning and zoning boards shall establish timeframes for these proceedings.**
7. **CSC must develop a method of collecting information on all telecommunications towers in Connecticut, and establish and maintain a statewide inventory of these telecommunications towers.**

Connecticut Siting Council

Established in 1971, the Connecticut Siting Council's primary purpose is to balance the need for adequate and reliable public services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state. The council has siting jurisdiction in a number of areas including: energy, telecommunications, hazardous waste disposal, low level radioactive waste management, and ash residue management facilities.

Developers of a new or modified facility regulated by the council must obtain a council certificate prior to beginning construction. The council reviews applications and conducts public hearings on proposed projects. The specific steps in the certification process and timeframes for completing them are established in statute and council regulations.

Administratively located within the Department of Public Utility Control, the council operates as an autonomous body with its own staff. Council membership is statutorily dictated and varies depending on the type of proceeding being conducted.

In April 2000, the Legislative Program Review and Investigations Committee authorized a study of the council. The study focus, as approved by the committee, was an examination and assessment of the policies, procedures, and overall operation of the Connecticut Siting Council. In particular, the study focused on the council's ability to balance the need for the facilities it oversees with the need to protect the environment, public health, and safety. Specifically, the scope of the study included:

- Range of jurisdiction, powers, duties, role, and responsibilities of the council;
- Major council activities including certification process and overseeing completed projects;
- Development and implementation of criteria used in evaluating applications;
- Adherence to statutory timeframes and overall efficacy of process; and
- The council's relationship with municipalities and other governmental bodies.

In conducting its review, the program review committee staff used a variety of sources and research methods. Connecticut statutes and literature pertinent to siting were reviewed, as well as information compiled on other states. Quantitative data related to outcomes of the siting process over several years, with an emphasis on results, were collected and analyzed.

A survey to elicit data and opinions on a wide range of siting issues was designed and mailed to chief elected officials for each Connecticut municipality. Committee staff also sent a questionnaire to council members, and interviewed council siting analysts and individuals from various government entities associated or having contact with the agency. In addition, the program review committee also held a public hearing in September 2000 to gather information and comments on the siting process.

This report is divided into seven chapters. Chapter I provides the historical background and development of the Connecticut Siting Council. It also sets out the council's current roles and responsibilities as well as organization and resources. Chapter II outlines the council's siting jurisdiction, responsibilities, and procedures related to the energy industry. The council's involvement in the siting of telecommunications facilities is described in Chapter III. The council's other major statutory functions regarding hazardous waste, low level radioactive waste, and ash residue are discussed in Chapter IV. Finally, the last three chapters contain the committee findings and recommendations in the following three areas: CSC process and outcomes; council interaction with municipalities and other interested groups; and CSC jurisdiction.

Agency Response

It is the policy of the Legislative Program Review and Investigations Committee to provide state agencies subject to a study with an opportunity to review and comment on the recommendations prior to the publication of the final report. A response from the Connecticut Siting Council is contained in Appendix E.

BACKGROUND OVERVIEW

Legislative History

Established in 1971, the Connecticut Siting Council was first created as the Power Facility Evaluation Council. The council's creation was in part to address growing public concern over the impact electric generating stations and power transmission lines were having on the environment. Prior to 1971, no regulatory proceedings were required concerning the placement of power lines and generating facilities other than the standardized approval of the technical manner of construction by the Department of Public Utility Control (DPUC). Until that time, most public utilities were granted the right of eminent domain, without restriction.

Historically, transmission lines were placed out of public view and routes were usually determined by the availability of undeveloped land. However, if necessary, utilities could exercise their right of eminent domain and take property needed for power plant siting and transmission lines. Utilities largely planned and developed system changes privately with little public input or notice.

In response to these concerns, the legislature passed the Public Utility Environmental Standards Act in 1971. The intent of the act was to provide a fair process for balancing the public need for adequate and reliable utility services with the need to protect the environment. The law required certain public utilities to come before the Power Facility Evaluation Council, a nine member board established by the act, and obtain a Certificate of Environmental Compatibility and Public Need for the construction of any facility. If a facility was to be modified and the council determined there could be an adverse environmental effect, a certificate was also required.

The regulatory powers of the council encompassed electric transmission lines with a design capacity of 69 or more kilovolts, fuel transmission facilities (pipelines), electric storage and generating facilities, substations, switchyards and other facilities established by regulation. The law also required the applicant to set forth detailed cost and environmental information in the application for a certificate concerning the proposed project.

Further, the act created a hearing process, giving party status to affected individuals. The final decision-making authority for issuing certificates was given to the council.

However, the act did not give the council exclusive jurisdiction in these regulatory areas. Towns had authority to issue permits under Connecticut's

zoning statutes, thus creating a dual regulatory process. To eliminate this, the legislature in 1973 gave the council final jurisdiction over all matters relating to its statutory authority. While this statutory change did not preempt local regulatory bodies from issuing permits, it made local permits subject to appeal to the council which could override a local decision by two-thirds vote of the entire council.

Since its inception the council has undergone many changes, presented in the timeline in Figure I-1. Most statutory changes made between 1973 and 1976 dealt with procedural matters. In 1976, the council's charge was expanded to include forecasting electric power demand and facilitating energy planning. In 1977, the Power Facility Evaluation Council was given the added authority of regulating the siting of community antenna, television, and telecommunication towers. The council was also allowed to make annual assessments, in addition to the application fees, on the regulated industries as a mechanism for paying the council's expenses.

The next major legislative revisions affecting the council occurred in the 1980 and 1981 sessions of the General Assembly. In 1980, the legislature passed an act that partially addressed problems facing the state concerning hazardous waste facility siting. Public Act 80-472 required a permit be issued before a hazardous waste facility could be constructed or modified. The act set forth criteria and administrative procedures to apply for a permit.

Legislation was introduced in 1981 defined local and state siting involvement and gave the council final authority over the siting of hazardous waste facilities, including the power to override local decisions. The council's jurisdiction was limited to new facilities and modifications to new facilities that received a permit under this legislation. Existing facilities were exempted from council review.

The legislation also altered the council in two ways. It changed the council's name from the Power Facility Evaluation Council to the Connecticut Siting Council and added new members whose terms of office are coterminous with the process for siting a hazardous waste facility. Four members are added to the council during the permitting process, three from the town where the site is proposed and one from the town nearest to the site. Oversight of a completed facility is to be divided among the Department of Environmental Protection (DEP), the siting council, and municipal officials.

During the mid-80s, the council's jurisdiction was again affected by adding cellular telecommunications towers (as defined by the federal government), raising the threshold for council jurisdiction over cogeneration facilities (those that generate both electricity and steam) from 10 to 25 megawatts, and requiring council approval for the siting of a low level radioactive waste facility. The late-80s also brought additional procedural changes with respect to filing requirements and deadlines. Applicants were required to consult with municipalities prior to filing applications with the council. The council was directed to encourage tower sharing and was authorized to issue declaratory rulings.

The council's activities was further expanded in the 90s by requiring it to compare the costs of overhead and underground electric transmission lines over the life of the line (life-cycle costs) every five years. Additional provisions were passed to promote tower sharing. In 1994,

exemptions were made for hazardous waste facilities if the council determined, after consultation with DEP, it would not pose a significant threat to public safety, human health, or the environment. Property condemnation proceedings were established for the council in 1995.

In the late 90s, most of the legislative changes involved the energy industry. The council was allowed to issue its own report assessing the overall status of electric supply and demand in the state. In 1998, following the passage of electric restructuring legislation, the council was authorized to approve, by declaratory ruling rather than certification, certain new generating plants. The plants had to use fuel other than coal or nuclear energy, and be proposed for an existing generating plant site, unless the council determined that the plant would cause substantial environmental harm. The amount of time the council had to issue a siting decision for all new generating plants was reduced from 12 to six months. In addition, the requirement the council determine public need for such plants was eliminated. Finally, the council was required to examine its procedures for siting new generating facilities in a restructured electric industry and determine how siting can be expedited while taking environmental concerns into account. The results were presented to the legislature last year and still under consideration.

Current CSC Roles and Responsibilities

The stated mission and charge of the Connecticut Siting Council is the “regulation of facility siting to balance the need for adequate and reliable public services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state.” To accomplish this, the council has several regulatory powers in limited areas covering the fields of energy, telecommunications, hazardous waste, and low level radioactive waste. Its primary function is site regulation including:

- electric generating facilities and substations of utilities and large private power producers;
- fuel and electric transmission lines;
- community antenna television towers;
- certain telecommunications towers owned or operated by the state, public service companies, intrastate telecommunications service providers, or used in a cellular system; and
- facilities that treat, store, and dispose of hazardous waste, low level radioactive waste, and ash residue.

The council examines and acts on applications for approval of sites for construction, operation, and maintenance of these facilities. It is authorized to issue certificates of: 1) *environmental compatibility and public need* for energy and telecommunications facilities under its jurisdiction, and 2) *public safety and necessity* for the construction of new hazardous waste facilities. The council must review every modification of a project under its regulatory jurisdiction to determine if the modifications will have a substantial environmental effect, in

which case a certificate would be required. (The certification process for each type of facility is outlined in the following sections.)

The council also considers petitions for declaratory ruling. At any time, any interested person may request that the council issue a declaratory ruling with respect to the applicability of any statute, regulation, final decision, or order enforced, administered, or promulgated by the council.

In addition, the siting council is responsible for:

- encouraging the shared use of existing telecommunication towers to avoid the proliferation of unnecessary tower structures;
- enforcing certificate and standards requirements;
- assessing the annual utility forecasts for the supply and demand of electric power; and
- reviewing property condemnation proceedings.

Organizational Structure and Staff Resources

Organizationally, the Connecticut Siting Council is part of the Department of Public Utility Control for administrative purposes. The council's current structure, as illustrated in Figure I-2, consists of statutorily appointed members, an executive director, and staff.

Council membership, terms, and qualifications. Council membership varies between nine and 13 appointed members depending on the type of proceeding conducted. The core membership for all council activities includes five public members appointed by the governor, one member appointed by the house speaker, and one member appointed by the president pro tempore of the senate. Of the five public members, two must have a background in the field of ecology. No more than one public member may have any past or present affiliation with any utility or governmental entity regulating a utility.

In addition, energy and telecommunications projects are reviewed by the seven gubernatorial and legislative appointments as well as the commissioner of the Department of Environmental Protection and the chairperson of the Department of Public Utility Control.

Hazardous waste and low-level radioactive waste facility projects are reviewed by a 13 member council including:

- the seven gubernatorial and legislative appointees;
- the commissioner of the Department of Public Health (DPH);
- the commissioner of the Department of Public Safety (DPS);
- three ad hoc members appointed by the chief administrative officer from the town of the proposed site; and

-
- one ad hoc member appointed by the chief administrative officer from the town nearest to the proposed site.

For proceedings concerning ash residue, the membership is a nine-person council consisting of the seven gubernatorial and legislative appointments joined by the commissioners of the Department of Public Health and Public Safety.

All terms are coterminous with the appointing authority except those of the ad hoc members whose terms coincide with the process for siting the particular facility. The chairman of the council is appointed by the governor with the advice and consent of the house of representatives or senate.

Members are compensated for their attendance at public hearings, executive sessions, or other council business as may require their presence at the rate of \$150 per day. Their annual compensation cannot exceed \$12,000.

Staff resources. The day-to-day operation of the agency is the primary responsibility of an executive director appointed by the council. The council is served by a nine member staff, including the executive director, three analysts, a durational analyst, a fiscal administrative officer, and three administrative support personnel. The Office of Attorney General provides any legal services the council may need.

The council's major activities include reviewing petitions and applications for certification, visually inspecting sites and alternative locations, conducting public hearings on proposed projects, and issuing findings of fact, opinions, and decisions and orders at the conclusion of each proceeding. Development and management plans, required of all facilities granted certificates, are also reviewed and monitored by the council staff.

Budget resources. Pursuant to state law, all of the council's operating costs are financed by the facilities under its jurisdiction. The costs of conducting hearings and proceedings before the council are charged directly to the applicants. All other general administrative expenses of the council (i.e., those not billed for specific proceedings) are assessed against the various regulated industries. The agency is completely funded by application and filing fees (described further in the following chapter) as well as assessments collected from the energy, telecommunications, and hazardous waste industries.

According to state law, the council must review its anticipated expenses for the next fiscal year at a public meeting by December 31 each year. The council determines the amount to be paid by each industry based on the percentage of the council's work dedicated to each group. The council must notify interested parties of the meeting and give them an opportunity to speak. The agency must inform the legislature's Appropriation Committee of its determination and apportion the council's expenses among the service providers.

Payroll records are used to calculate the total number of hours, as a percentage, spent on petitions, dockets, exempt modifications, and tower sharing for each industry. The resulting percentage is applied to the budget for the next fiscal year. Table I-1 provides the apportionment of the CSC budget for the last four fiscal years.

Table I-1. Apportionment by Industry of CSC Budget: (FYS 97-01)				
	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Total CSC Operating Expenses	\$ 775,787	\$ 856,262	\$ 1,011,541	\$ 1,068,945
% Apportioned to Energy	\$ 147,399 (19%)	\$ 256,879 (30%)	\$ 596,809 (59%)	\$ 609,299 (57%)
% Apportioned to Telecommunications	\$ 605,114 (78%)	\$ 590,821 (69%)	\$ 404,616 (40%)	\$ 448,957 (42%)
% Apportioned to Hazardous Waste	\$ 23,274 (3%)	\$ 8,563 (1%)	\$ 10,115 (1%)	\$ 10,689 (1%)
Source: Connecticut Siting Council				

As shown in the table, the council's total operating expenses have gradually increased over time. In the most recent fiscal year, the council's total operating costs were just over \$1 million, representing a 38 percent increase from FY98. The major part of the council's expenditures consisted of personal services and related employee fringe benefits for staffing. The table also indicates there has been a shift in the percentage of time dedicated to each industry. Four years ago, the majority of the council's work (78%) was related to telecommunications. However, the council has been increasingly spending a larger part of its time on energy. FY 00-01 reveals slightly more than half of the council's work has been spent in the energy industry. According to council staff, this is primarily due to the growing number of energy projects over recent years.

State law requires the calculation of assessments for each industry type and prohibits assessments from one industry paying for another. The assessment pays for the council's anticipated expenses for the next fiscal year minus those covered by application and filing fees. Companies are invoiced monthly for expenses related specifically to their projects including court reporting fees, council member per diems, travel, advertising, and any other expenses incurred in conducting hearings and proceedings. General administrative expenses and agency overhead is collected using percentage factors.

The method used to assess the energy industry is defined in C.G.S. § 16-50v(b)(1). The statute imposes an annual assessment on any utility with retail sales of more than \$100,000 in the previous calendar year. The assessment percentage is proportional to the utility's gross revenues compared to that of the other utilities. The resulting percentage is then applied to the energy apportioned budget. Therefore, the company with the largest percentage of gross revenues pays the largest assessment. The statute caps the total amount of energy assessments at \$1 million.

Assessments from the telecommunications and hazardous waste industries are billed and collected by statute by the Department of Revenue Services (DRS)¹. State law requires DRS to make assessments for telecommunication service providers according to 1) how often providers appear before the council, 2) the degree of regulation the provider requires, and 3) the percentage of the council's workload the provider represents (C.G.S. § 16-50v(b)(2)) To do this, the agency has developed a formula which calculates and averages the totals for each criteria and produces a proportional percentage. The resulting percentage is then applied to the apportioned budget for telecommunications. There is no statutory cap on the assessed amount.

C.G.S. § 22a-132a specifies the method used to assess the hazardous waste industry. By law, the commissioner of revenue services must assess the council expenses among hazardous waste generators and treatment facilities in proportion to the amount of waste each produces as a share of the total. The commissioner must deposit these assessments with the state treasurer who credits them to a special fund that pays the council's expenses.

Collaboration with other agencies. Because of the broad spectrum of industries (i.e. energy, telecommunications, hazardous waste) under the council's jurisdiction, there are many federal and state agencies associated with the CSC sited facilities. For example, on the federal level, the Federal Communications Commission (FCC) licenses telecommunications providers while the Federal Energy Regulatory Commission (FERC) supervises interstate energy pipelines and supports the development of regional independent system operators (ISOs) to oversee the operation of electric power lines.

Although several federal laws govern the facilities under the council's jurisdiction, the federal government has little to no role in the actual siting of CSC facilities. Siting decisions are left to the state's discretion with some restrictions.

Additionally, there are state agencies involved with the sited facilities such as the Department of Public Utility Control which licenses electric suppliers, and the Department of Environmental Protection which issues operating permits. The council routinely seeks input from these agencies in making its decisions. In fact, commissioners from several state agencies including DPUC and DEP are council members. These agencies, however, play a larger role in the operations of sited facilities after a site has been approved and constructed.

Local municipal agencies also have limited authority in siting decisions. In addition, state law provides opportunities for local consideration and input. A summary of the various federal and state laws affecting the council's siting jurisdiction and a description of local involvement in the process is provided in subsequent chapters.

¹ P.A. 00-174 requires the CSC rather than DRS commissioner to assess and collect telecommunications assessments. This provision becomes effective July 1, 2000 for the next fiscal year.

ENERGY FACILITIES

This chapter describes the council's current siting jurisdiction, certification process, and other mandated functions related to energy facilities. As mentioned earlier, developers of new or modified facilities regulated by the council must obtain approval from the council prior to beginning construction. To carry out its mandate, the council is authorized to conduct certification proceedings, issue declaratory rulings, and override local land use decisions, if necessary.

Jurisdiction

Generally, the council is authorized to site electric transmission facilities, intrastate gas pipelines, electric generation facilities, and electric distribution substations. Table II-1 lists the council's specific statutory jurisdiction over energy facilities.

Table II-1. CSC Jurisdiction of Energy Facilities: C.G.S. § 16-50i

- An electric transmission line of a design capacity of 69 kilovolts (kV) or more, including associated equipment but not including a transmission line tap as defined in CGS § 16-50i (e);
- Any electric generating or storage facility using any fuel, including nuclear materials, including associated equipment for furnishing electricity but not including an emergency generating device, as defined in CGS § 16-50i(f) or a facility:
 - owned and operated by a private power producer, as defined by CGS § 16-243b;
 - a qualified small power production facility or a qualifying cogeneration facility under the Public Utilities Regulatory Policies Act of 1978, as amended, or a facility determined by the Council to be primarily for the producers own use; or
 - a facility utilizing renewable energy sources generating one megawatt (MW) of electricity or less, or utilizing cogeneration technology generating 25 MW or less; and
- Any electric substation or switchyard designed to change or regulate the voltage of electricity at 69 kV or more or to connect two or more electric circuits at such voltage.

Federal and Local Roles

The energy industry is heavily regulated by the federal government, which establishes maximum emissions levels and rates, supervises interstate activity, and oversees various other environmental and public safety standards. However, siting of specific facilities is left at the state level with the stipulation that any state and local regulation cannot interfere with federal initiatives or policies.

Federal role. Under the Federal Power Act of 1935, the Natural Gas Act of 1938, the Natural Gas Policy Act of 1978, the Public Utility Regulatory Policies Act of 1978, and the Energy Policy Act of 1992, the Federal Energy Regulatory Commission (FERC), an independent regulatory agency within the Department of Energy, regulates interstate aspects of electric power, natural gas, oil pipeline and hydroelectric industries.

The Natural Gas Act authorized FERC to regulate the construction of pipeline facilities and the transportation of natural gas in interstate commerce. Companies constructing and operating interstate gas pipelines must obtain FERC certificates of public convenience and necessity. The federal law states "any state or local permits issued with respect to the jurisdictional facilities authorized by FERC must be consistent with the conditions of the certificate of public convenience and necessity." Although FERC encourages cooperation between interstate pipeline companies and local authorities, state or local laws may not prohibit or unreasonably delay the construction of facilities approved by FERC.

FERC does not have jurisdiction over all energy transmission. Pipelines restricted to intrastate operation are regulated by the states in which they operate and are not subject to FERC authority. The siting of intrastate pipelines is under the exclusive jurisdiction of the Connecticut Siting Council.

In 1996, FERC urged states to create independent system operators (ISOs) as part of the framework to support deregulation of the electric industry. ISOs are independent organizations that oversee operation of electric power lines on a regional scale. Pursuant to FERC Order 888, ISOs are approved and regulated by FERC. On July 1, 1997, FERC approved ISO New England, a not-for-profit, private corporation which is responsible for managing the region's electric bulk power generation and transmission systems. Although the ISO does not have direct involvement in the state's siting decisions, the council does consult with it when preparing forecasting reports on electric loads and resources, which help identify need and reliability.

State role. As noted in Chapter I, the electric industry is currently experiencing significant changes due to the recent restructuring legislation passed in 1998. Each electric company must unbundle (separate) its electricity generation and distribution components. The generation component will be subject to competition from other suppliers. The distribution component, called a distribution company, will continue to be regulated as a utility by DPUC.

The legislation requires electricity suppliers, including a distribution company's generation affiliates, to be licensed by DPUC. The suppliers must demonstrate their technical and managerial competence and meet a variety of environmental, consumer protection, and labor

provisions. The impact of restructuring is still evolving and the extent of any necessary additional changes is still unknown. The council, pursuant to the restructuring act, has examined its own procedures. A report with recommended changes, submitted to the legislature's energy and technology committee in 1999, is under consideration.

Energy facilities seeking council siting approval must also obtain and comply with local permits and regulations. State law permits local authorities such as inland wetland agencies and municipal zoning commissions to regulate and restrict the location of facilities. The local agencies have a limited amount of time, varying by type of facility, in which to exercise their authority. If necessary, state law allows the council to override a local decision. (This is further discussed in the certification process.)

Certification Process

The various steps and timeframes of the CSC siting process are established in statute and council regulations. The following is a summary of the siting certification process for energy facilities under CSC jurisdiction. A flowchart of the process is provided in Figure II-1.

A certificate of environmental compatibility and public need must be obtained from the council prior to the construction or significant modification of an energy facility. Prior to submitting an application to the council, state law mandates certain pre-application activities.

Pre-application phase. By state law, a developer of an energy facility must consult with the municipality of the proposed or alternate locations at least 60 days before submitting a certification application to the council.² At the time of the consultation, the applicant must provide the chief elected official of the municipality with any technical reports concerning public need or benefit, site selection process, and environmental effects of the proposed facility. The municipality then has the opportunity to hold hearings on the proposed facility and to issue recommendations for consideration by the council within 60 days of the initial consultation.

A public notice containing the applicant's name, filing date, and a summary of the application must be published at least twice before the filing of the application. The notice must be made in a newspaper having general circulation in the potential municipality sites. At the same time public notice is given, the applicant must mail a notice of the application to all abutting landowners of all potential facility sites.

In addition, applicants for electric transmission facilities must provide notice to each electric company customer in the proposed municipality. The notice must be on a separate enclosure with each customer's monthly bill for one or more months but no sooner than 60 days before the filing of the application. The notice must include:

- the proposed facility's location relative to the affected municipality and adjacent streets;

² For electric generating facilities, the applicant must also consult with any municipality having a boundary not more than 2500 feet from the proposed facility.

-
- a brief technical description stating the proposed length and voltage, as well as the type and range of heights of support structures or underground configurations;
 - the reason for the project; and
 - an address and toll-free number where additional information about the project can be obtained.

Application filing. Applicants must follow detailed form and filing requirements specified in council regulations. The applicant may include any exhibits, sworn written testimony, data, models, illustrations, and all other materials the applicant deems necessary to support its application. Within 15 days after the application is filed, the applicant must provide the council all materials provided to the municipality and a summary of their consultations including the municipality's recommendations.

Each type of facility requires a number of items to be included in the application, such as maps, complete site data, estimated projects costs and schedule, as well as justification for the adoption of the site selected (with a comparison of alternatives). The mandated filing requirements for each type of facility are listed in Appendix A.

Each application filed with the council must also include proof of service and notice to:

- each proposed and alternative municipality in which any portion of the facility is to be located, including the chief elected officer, the planning and zoning commission, the conservation commission, inland wetland agencies, and regional planning agency;
- the State Attorney General;
- each member of the legislature in whose district the facility may be located;
- any federal agency that may have jurisdiction; and
- the state Departments of Environmental Protection, Public Health, Public Utility Control, Economic and Community Development, Transportation, Office of Policy and Management, and the Council on Environmental Quality.

The application fee is based on the project's estimated construction costs. Projects up to \$5 million pay .05% of the construction costs or \$1,000, whichever is greater. The fee for projects above \$5 million is .1% of the construction costs or \$25,000, whichever is less. The application fee is paid when filing the application. However, additional assessments may be made for expenses in excess of the filing fee. In the event fees exceed the council's actual costs, the difference will be refunded to the applicant.

The council staff reviews each application and may reject, within 30 days, any application not complying or correcting filing requirements.

During this thirty-day period, local authorities such as municipal zoning commissions and inland wetland agencies may regulate and restrict the location of a proposed electric substation. They have 65 days to regulate and restrict the location of proposed electric generating facilities. However, the order of the local agency is subject to appeal to the council. The council is authorized by statute to override local decisions by a vote of six of its members. According to the council, this is rarely done.

Completed applications are assigned to a council siting analyst who conducts a technical review to ensure compliance with state and federal law and regulations. Council staff may also complete some independent review of the information such as computer modeling or mapping. According to the council's executive director, consultants are rarely used in this evaluation but the staff does solicit comments from the various state agencies such as the Department of Environmental Protection or the Department of Public Utility Control that may have involvement in the regulation of the proposed facility.³ The council may request any additional information it deems relevant.

The council may also conduct one or more field reviews of the proposed sites to visually assess the location and surrounding land uses. Council members may accompany staff on its inspection. Any identified discrepancies and necessary contingency plans are reported to the full council at its public hearing.

Public hearing. The council must hold a public hearing on the application between 30 and 150 days after receiving it.⁴ The hearing must be held by the council prior to making a final decision on certification. State law mandates at least one hearing must be held after 6:30 p.m. for the convenience of the general public in the county where the proposed facility may be located. The council must advertise the date and location of the hearing in local newspapers at least a week in advance of the scheduled date.

In addition to the applicant and those persons statutorily entitled to notice, any person or group interested in the council's proceedings may petition the council to participate as a party or intervenor. Petitions for recognition by the council must be sought at least five days before the date of the proceeding. The petition must include the petitioner's name and address, a description of the manner in which the petitioner is affected by the proceedings, and in what way and to what extent the petitioner proposes to participate in the proceedings. The council, at its discretion, may group parties and intervenors with the same interests.

By law, the council may acknowledge any such other persons it deems appropriate if the petitioner's participation, in the council's opinion, is in the interests of justice and will not impair the orderly conduct of the proceeding.

All parties and intervenors may participate in the proceedings by:

- filing pre-hearing questions for the applicant or other parties or intervenors;

³ Applicants for certain energy facilities must be registered and licensed by the state DPUC prior to filing application. Environmental permits required by DEP are sought concurrently with the CSC application; however, decisions are independent and not contingent upon each other.

⁴ Hearings for amendments to certificates must be held between 30 and 60 days after receipt.

-
- presenting testimony at the hearing;
 - cross-examining witnesses at the hearing; and
 - filing exhibits, briefs, and proposed findings of fact.

All parties and intervenors are obligated to:

- respond to pre-hearing questions filed by the council, applicant, or other parties or intervenors;
- submit to cross-examination from the council, applicant, or other parties or intervenors; and
- provide the applicant and all other parties and intervenors with copies of all filings.

Any person who is not a party or intervenor may make an oral statement at the public hearing or file a written statement within 30 days after the close of the hearing.

The public hearing typically consists of:

- opening by the chairman;
- testimony by the applicant and cross-examination by the council, parties, and intervenors;
- testimony by parties and intervenors and cross-examination by the council, applicant, parties, and intervenors;
- public statements made during the evening session reserved for such statements; and
- rebuttal by the applicant.

A record must be made of the hearing and a copy of the record must be filed with the council and at a public office, designated by the council, in the county where the facility will be located. The council's record must remain open for 30 days after the close of the hearing.

Council deliberations. Based upon the information and materials collected through the application and public hearing, the council staff drafts formal Findings of Fact, Opinion, and Decision and Order. These draft documents are considered at a publicly noticed council meeting allowing the public to observe council deliberations. At this point, no new information, evidence, argument, or reply briefs will be considered by the council. However, parties and intervenors may identify any errors or inconsistencies with the council's drafts and the record.

As mentioned previously, state law dictates council membership by the type of facility proceeding. For energy, council membership consists of nine members. Five are appointed by the governor including the chairperson. At least two of the gubernatorial appointments must be experienced in the field of ecology and not more than one can have an affiliation with any utility,

government utility regulatory agency, or facility under the council's jurisdiction. The Speaker of the House and the President Pro Tempore of the Senate each appoint one member. Finally, the commissioners of the Departments of Public Utility Control and Environmental Protection complete the membership.

The siting council is required to issue its decision to approve, approve with conditions, modifications, or limitations, or deny a certificate within 12 months of receiving an application for electric or fuel transmission and 180 days for electric generating or substation facilities.⁵ The council can extend any of these deadlines by another 180 days with the applicant's consent.

Statutory factors governing council energy facility decisions include the following:

- 1) a finding of public benefit which is statutorily deemed to exist if such a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity;
- 2) consideration of probable environmental impact and conflicts with state policies on the natural environment, ecological balance, public health and safety, scenic, historic, and recreational values, forests and parks, air and water purity, and fish and wildlife; and
- 3) a determination that any adverse impact or conflicts with state policies are not sufficient to deny certification.

Three additional factors must be considered for electric transmission line facilities: what part will be overhead; conformance with a long-term electrical system plan; and conformance with state and federal regulations and guidelines for overhead parts. Undue hazards to persons or property also must be considered for both electric and fuel transmission lines.

In making its decision, the council must disregard whether the applicant already owns the facility site. The council must serve a copy of its decision on each party and publish it in the appropriate local newspapers. Council decisions can be appealed to the courts. According to the Attorney General's Office, few council decisions are challenged. As of June 2000, two court appeals regarding CSC energy siting decisions were pending – one from 1998 and one from 1999.

Follow-up and monitoring phase. The council confirms compliance of its orders through field investigations and approval and on-going review of detailed development and management plans. The development and management plans are finalized documents consisting of professionally engineered designs, site plans, construction schedules, and site inspection reports. Enforcement of council orders and state law is performed by the Attorney General which provides the council with legal assistance.

⁵ If the electric substation facility is incorporated with an application for an electric transmission facility, the council decision is due within 12 months of filing.

Council activities. Figure II-2 maps out all existing CSC-approved energy facilities in the state. Currently, there are three facilities under construction and two more have development and management plans pending.

Table II-2 provides energy certifications outcomes since 1990. As the table shows, the council approved nine generating facilities and seven transmission lines during the decade. Six of the nine approvals for generating facilities were made in the late 90s following passage of P.A. 98-28, which restructured the electric industry. Three proposed facilities have been denied since 1990. One transmission line project was dismissed in 1990.

Table II-2. CSC Certifications: Energy Facilities (1990-July 2000*)													
TYPE		90	91	92	93	94	95	96	97	98	99	00*	TOTAL
Generators	<i>Approved</i>	1		1				1		1	3	2	9
	<i>Denied</i>	1									2		3
Transmission Lines**	<i>Approved</i>	2	2	1	1					1			7
	<i>Denied</i>												-
	<i>Dismissed</i>	1											1
** Includes electric and fuel transmission lines and substations													
Source: CSC Certification Dockets													

Petitions for Declaratory Rulings

Facilities seeking exemptions from the certification process must petition the council for a declaratory ruling. Most petitions are seeking approval for modifications not producing substantial adverse environmental impact. The petitioner must state in writing the substance and nature of the request. The request must be accompanied by a statement of any data, facts, and arguments that support the position of the person making the inquiry.

Within 30 days after receipt of a petition, the council provides notice to all interested parties. The council may receive and consider data, facts, arguments, and opinions from persons other than the persons requesting the ruling. The council and its staff may conduct one or more field visits to assess whether the project may produce any substantial adverse environmental effect. The council, at its discretion, may schedule a hearing to determine any issues concerning the request for the declaratory ruling. Within 60 days after receipt of a request, the council must issue a written determination on the petition stating the reasons for its action.

The filing fee for a declaratory ruling is \$500. Additional assessments may be made to cover all other expenses incurred by the council. Any fees in excess of the actual expenses of the council are refunded to the petitioner.

Table II-3 shows the number of petitions considered by the council since 1990. As the figure shows, more petitions have been filed regarding energy transmission lines and substations than for generating facilities. Since 1990, the council approved 120 petitions related to energy transmissions lines, with no denials. As mentioned previously, these are typically for facility modifications which do not have a substantial environmental adverse effect. The council also approved 23 petitions regarding electric generators during this same timeframe. However, it denied three petitions in this area.

Table II-3. CSC Petitions: Energy Facilities (1990-July 2000*)													
TYPE	Year	90	91	92	93	94	95	96	97	98	99	00*	TOTAL
Generators	<i>Approved</i>	4	1	1	4	1	-	3	5	1	3	-	23
	<i>Denied</i>			1	1			1					3
Transmission Lines**	<i>Approved</i>	13	12	9	2	5	4	11	9	19	21	15	120
	<i>Denied</i>												
**Includes fuel and electric transmission lines and substations													
Source: CSC documents													

One provision of Public Act 98-28, the electric restructuring law, allows the council to approve by declaratory ruling rather than certification a new generating plant, using a fuel other than coal or nuclear energy, proposed on an existing generating plant site. To date, only two new generating facilities have been approved by petition.

Forecast of Loads and Resources

Annually, electricity generators, except private power producers that generate electricity using renewable resources or cogeneration,⁶ must file a 20-year forecast of loads and resources with the Connecticut Siting Council. The council is statutorily required to review the long-term comprehensive planning of the annual forecasts including the companies' plan to meet public demand for safe, reliable, and cost-effective electricity. These forecasts are used by the utilities and the council to identify future generating and transmission facility needs.

⁶ Cogeneration is the simultaneous production of electricity and thermal energy such as steam. Renewable energy resources are solar, wind and hydro power and biomass fuels such as wood and solid waste.

Each mandated reporter must provide the following information:

- a tabulation of estimated peak loads, resources, and margins for each year;
- data on energy use and peak loads for the five preceding calendar years;
- a list of existing generating facilities in service;
- a list of scheduled generating facilities for which property has been acquired, certificates issued, and certificate applications filed;
- a list of planned generating units at plant locations for which property has been acquired, or at plant locations not yet acquired, that will be needed to provide estimated additional electrical requirements, and the location of such facilities;
- a list of planned transmission lines on which proposed route reviews are being undertaken or for which certificate applications have already been filed; and
- a description of the steps taken to upgrade existing facilities and to eliminate overhead transmission and distribution lines.

Additionally, information must be provided by each private power producer with a facility of more than one megawatt from whom the person furnishing the report has purchased electricity during the preceding calendar year. The information must include the name, location, size and type of generating facility, the fuel consumed by the facility and the by-product of the consumption.

The council must hold an annual public hearing on the electric companies' yearly forecasts of electricity demand and generating capacity. At least one session must be held after 6:30 p.m. The forecast report must be made available to the public upon request. While the council has had responsibility for compiling forecasting reports since the early 70s, it was not until 1996 that the council was authorized to issue its own report assessing the overall status of the supply and demand in the state.

In preparing its report, the council may consult with representatives of the energy industry including ISO New England which manages the New England region's electric bulk power generation and transmission systems. As described previously, the information assists the council and the industry to assess future needs and reliability. Copies of the council's report must be provided to members of the legislature's energy and technology committee, any legislators who request it in writing, and other state and municipal bodies designated by the council.

The most recent forecast hearings were held in June 2000. Among the items examined were historical data, projected outlook of load, demand and the effectiveness of conservation and load management programs. A final report is expected in September.

Investigation of Life-cycle Costs

The council is also required to compare the costs of overhead versus underground transmission lines over the life of the line known as life-cycle costs. The first investigation was statutorily mandated on October 1, 1994, and subsequent inquiries must be held every five years. Pursuant to state law, the investigation must address all relevant life-cycle costs, relative reliability, constraints on access and construction, potential damage to the environment, and compatibility with the electric supply system.

The council determines the schedule and scope of the investigation at a public meeting. The meeting must take place within 90 days before the first public hearing on the investigation. The hearing must provide all interested parties an opportunity to be heard and at least one hearing must be held after 6:30 p.m.

In conducting the investigation, the council may hire consultants, manufacturers, and other experts to objectively determine the range of life-cycle costs of overhead and underground lines. Experts may not have any current financial interest in, or in the 12 months preceding the investigation, have been associated with, companies that own, lease, control, or operate electric transmission or distribution lines within the state or that manufacture equipment for such lines.

The information ensures the overhead parts of existing and proposed transmission lines are cost effective and are the most appropriate alternative based on the life-cycle costs analysis of the facility and its underground alternatives. The 2000 life-cycle proceedings were held in July and August. A final report will be available in September.

Property Condemnation Proceedings

Finally, the council is also authorized to play a role in property condemnation proceedings. Any person engaged in the sale and generation of electric power may exercise rights of eminent domain only after the council has approved the facility location. Utility companies engaged in property condemnation proceedings are required by state law to inform property owners of their right to contest the taking.

The owner has 30 days from receiving the notice to request, in writing, that the council review whether the proposed takings are necessary and consistent with the state's energy policy. The council must issue its decision within 90 days of receiving the owner's request. The utility must pay the costs of the proceeding. If either party contests the council's decision or cannot agree on a price, it may petition the judicial district where the property is located to determine the issue. To date, the council has not received a request to initiate these proceedings.

TELECOMMUNICATIONS

Similar to energy proceedings, developers of new or modified telecommunications facilities regulated by the council must obtain approval from the council prior to beginning construction. This chapter describes the council's current siting jurisdiction and processes related to telecommunications.

CSC Siting Jurisdiction

In Connecticut, jurisdiction over the siting of telecommunication towers is split between the Connecticut Siting Council and local land use agencies. Table III-1 outlines the statutory parameters of the council's jurisdiction in telecommunications.

Under state law, the council has siting authority over towers used to provide cable TV and cellular telephone service. It also has jurisdiction over telecommunication towers owned or operated by the state, a public utility, or a telecommunications company certified by the Department of Public Utility Control.

Table III-1. CSC Jurisdiction for Telecommunications: C.G.S. § 16-50i

- Community antenna television and head-end structures;
- Telecommunications towers, including associated equipment:
 - owned or operated by the state;
 - owned or operated by a public service company, as defined by CGS § 16-1;
 - owned or operated by a person, firm, or corporation certified by the Department of Public Utility Control to provide intrastate telecommunications services pursuant to CGS § 16-247f through 247h, inclusive; or
 - used in a cellular system as defined in the Code of Federal Regulations Title 47, Part 22, as amended.

Local land use agencies, such as zoning commissions and inland wetland agencies, have jurisdiction over all other telecommunication towers. These include towers used for personal communication services (PCS)⁷ as well as radio and television broadcast towers.

Federal role. In 1996, the federal government restructured the telecommunications industry by opening the market to competition and fundamentally changing its regulation. Through the federal Telecommunications Act of 1996, state and local governments can regulate the siting of telecommunications facilities with some restrictions. The major regulatory restrictions on state and local governments, pursuant to the federal act, are as follows:

- regulations may not unreasonably discriminate among providers of functionally equivalent services;
- regulations may not prohibit wireless services within a community; and
- regulations may not address radio frequency emissions if they meet Federal Communications Commission (FCC) standards.

Under the act, states and municipalities are required to act on requests for permission to build or modify these facilities within a reasonable time. The decisions must be in writing and based on substantial evidence in a written record. Any person adversely affected by a government's action or failure to act can appeal to state or federal court. In the case of alleged violations of the FCC standards, appeals go to the FCC.

In addition, towers near airports are subject to Federal Aviation Administration (FAA) regulation. Towers more than 200 feet tall may be regulated if they obstruct navigable airways.

State and local role. Both state and local agencies must comply with the federal Telecommunications Act of 1996. In Connecticut, the Connecticut Siting Council has exclusive jurisdiction over the siting of telecommunications towers used for cable television and certain types of telecommunications facilities including cellular services. Local land use agencies such as zoning commissions have jurisdiction over the rest, including towers used to provide radio, television, and personal communication services (PCS).

There has been extensive case law clarifying what states and municipalities can do in regulating towers under the federal act. Recently, Sprint PCS has taken the Connecticut Siting Council to federal court arguing that the state's split jurisdiction (cellular facilities to the council and PCS facilities to local zoning commissions) constitutes unreasonable discrimination. The district court rejected Sprint's motion for summary judgment. The U.S. Court of Appeals for Second Circuit disagreed with the lower court decision. On remand, the district court is expected to rule on the merits of Sprint's claim.

⁷ PCS is a telecommunications technology that is superseding cellular telephones. In the United States, PCS operates in the 1850 to 1990 megahertz (MHz) bands. In contrast, cellular systems operate in the 824 to 849 MHz bands. Unlike the earlier analog versions of cellular, PCS uses digital signals.

Under current state law, the council has exclusive siting jurisdiction over its statutorily defined facilities. The municipality where the tower is proposed to be built is entitled to notice of the certificate application and may participate in the siting proceedings as a party.

Certification Process

As with energy facilities, the steps and timeframes of the CSC telecommunications siting process are established in statute and council regulations. A flowchart of the process is provided in Figure III-1.

A certificate of environmental compatibility and public need must be obtained from the council prior to the construction or significant modification of a telecommunication facility. Prior to filing an application with the council, state law mandates certain pre-application activities.

Pre-application phase. At least 60 days before submitting a CSC application, an applicant must consult with the proposed municipality. As part of the consultation, the applicant must meet with the municipality's chief elected official to provide any technical reports and information regarding need for the facility, the site selection process, and the environmental effects of the project. The municipality is required to issue its recommendations by the time the application is submitted to the council. The applicant must provide the council all materials given to the municipality within 15 days after the application is filed.

Proof of service and public notice requirements are the same as energy proceedings. The applicant must publish notice of the application in newspapers in the affected towns and send notice to abutting property owners by certified or registered mail.

Application filing. Detailed form and filing requirements are specified in council regulations. Appendix A provides a listing of these requirements. As with energy applications, the applicant must provide the council with 20 copies of the application and may include any additional exhibits, sworn written testimony, data, models, illustrations, and all other materials the applicant deems necessary to support its application. The application fee schedule is identical to energy filing fees.

The council staff reviews each application and may reject any incomplete applications within 30 days. A council siting analyst conducts a technical review to ensure compliance with state and federal law and regulations. Council staff may also complete some independent review of the information such as computer modeling or propagation analysis. Consultants are rarely used in this evaluation but the staff does solicit comments from state agencies when needed.

Council members and staff may also conduct one or more field reviews of the proposed sites to visually assess the location and surrounding land uses. Weather permitting, a balloon may be flown to approximate the height of the proposed tower. Observations and recommendations are reported to the full council at its public hearing.

Public hearing. A public hearing on the application must be held between 30 and 150 days after receiving it. The hearings must be held by the council prior to making a final decision

on certification. At least one hearing in the county where the facility will be located must be held after 6:30 p.m. for the convenience of the general public. The council must advertise the date and location of the hearing in local newspapers at least a week in advance of the scheduled date.

Any person or group, including municipalities interested in the council's proceedings, may petition the council to participate as a party or intervenor. Anyone entitled to party or intervenor status may:

- file pre-hearing questions;
- present testimony at the hearing;
- cross-examine witnesses at the hearing; and
- file exhibits, briefs, and proposed finding of fact.

All parties and intervenors are required to respond to pre-hearing questions and cross-examination by the council, applicant, or other parties or intervenors. In addition, any person who is not a party or intervenor may make an oral statement at the public hearing or file a written statement within 30 days after the close of the hearing.

A record and copy of the hearing must be filed with the council and at a public office, designated by the council, in the county where the facility will be located. The council's record must remain open for 30 days after the close of the hearing.

Council deliberations. The information and materials submitted through the application and public hearing form the basis of the council's Findings of Fact, Opinion, and Decision and Order. These documents are considered in draft form, at a publicly noticed council meeting allowing the public to observe council deliberations. Parties and intervenors may identify any errors or inconsistencies with the council's drafts and the record. A final decision must be made within 180 days of the application although the council may extend this deadline by another 180 days if the applicant consents.

Council membership for telecommunications is the same as for energy proceedings. In making its decision, the council must review the need for the facility and its probable impacts on the natural environment, public health and safety, scenic, historic and recreational values. A certificate cannot be granted unless the council determines that the facility's adverse environmental impacts are not sufficient to deny the application.

In addition, the council must determine whether it is feasible to require the developer to share an existing tower or whether the proposed tower could be shared if built. The council may deny a certification if the applicant can share an existing tower or is unwilling to share the proposed tower.

A copy of the council's decision must be served on each party and published in the appropriate local newspapers. The decision is subject to judicial review. According to the

Attorney General's Office, few council decisions are challenged. As of June 2000, one court appeal from 1998 was pending.

Follow-up and monitoring phase. Compliance with council orders are verified through field investigations and detailed development and management plans. Enforcement of council orders and state law is performed by the Attorney General who provides the council with legal assistance.

Council activities. The map in Figure III-2 shows all existing CSC-approved telecommunications facilities in the state. Table III-2 lists the outcomes of CSC certifications for telecommunications since 1990.

As of July, the council has not certified any new telecommunications facilities this year. The last certificated facilities include one cellular telephone facility and one community antenna television facility in 1999. As the table shows, the council has approved a number of telecommunications projects each year. Since 1990, the council has approved a total of 69 telecommunications facilities and denied 34. The largest number of facilities were considered in 1990 when 24 projects were approved. Few applications are withdrawn or dismissed.

TYPE	Outcome	90	91	92	93	94	95	96	97	98	99	TOTAL
Telecommunications including cellular	<i>Approved</i>	24	6	3	10	5	5	4	4	7	1	69
	<i>Denied</i>	3	-	3	6	3	7	4	2	6	-	34
	<i>Withdrawn Dismissed</i>	2							1	1		4
CATV	<i>Approved</i>			1				1			1	3
	<i>Denied</i>	1										1
	<i>Withdrawn Dismissed</i>											-
Source: Connecticut Siting Council												

Exemptions. State law allows exemptions to the certification process for the modification of existing telecommunications towers, the replacement of damaged towers, and temporary use of cellular equipment. In general, exemptions may be permitted if routine general maintenance is needed and one for one replacement of facility components is necessary for reliable operation. Exemptions are also allowed if the changes do not:

- increase the tower height;

-
- extend the boundaries of the tower site;
 - increase noise levels at the site boundary by six decibels or more; and
 - increase the total radio frequency electromagnetic radiation power density measured at the tower site boundary to or above the standard adopted by DEP.

Parties seeking exemptions must give the council and the chief elected official of the municipality of the site prior written notice detailing its reasons for claiming exemption. The council reviews the proposed modifications to ensure there are no significant changes or alterations in the physical and environmental characteristics of the site. If not, the council may find the project constitutes a regulatory exemption. In FY00, the council reviewed and acknowledged 62 modifications of existing telecommunications facilities.

Tower Facility Sharing

In 1993, the Connecticut General Assembly passed legislation supporting the sharing of towers to avoid unnecessary tower proliferation. As a result, the Connecticut Siting Council must consider whether it is technically, environmentally, and economically feasible and consistent with public safety to have an applicant share an existing tower. The council may impose reasonable conditions on a certificate for a telecommunications tower to avoid undue proliferation. As discussed earlier, the council may deny an application if it determines that shared use of an existing tower is feasible and the applicant would not cooperate with regard to future sharing of the proposed tower.

State law also allows a potential tower user to ask the owner of an existing tower to share it and establishes proceedings to compel sharing if the owner denies the request. If the owner agrees to shared use, the requesting party must comply with reasonable conditions imposed by the owner regarding its use. The council can arbitrate any issue between the requesting entity and the tower owner regarding the conditions of shared use of the tower.

If the owner refuses to share, the requesting entity can bring the issue to the council. A council hearing must be held within 90 days to determine whether sharing is technically, legally, environmentally, and economically feasible, and whether such sharing would meet public safety concerns. The host municipality must receive notice of the hearing. If the council finds shared use is feasible and consistent with public safety concerns, it must order the owner to share the tower upon the terms and conditions the council deems appropriate. The council does not determine the compensation paid to the tower owner. If the parties cannot agree on compensation, they can submit the matter to arbitration within 90 days of the council's decision or petition the Superior Court to determine the issue.

According to CSC reports, the council reviewed and acknowledged 94 requests in FY00 for tower sharing at existing facilities to avoid the construction of new telecommunications towers.

HAZARDOUS WASTE, LOW LEVEL RADIOACTIVE WASTE, ASH RESIDUE

In addition to energy and telecommunications, the Connecticut Siting Council has a regulatory role in the siting of hazardous waste, low level radioactive waste, and ash residue management facilities. Generally, the council has limited siting jurisdiction over facilities that treat, store, and dispose of these materials. The extent of the council's involvement in the siting of these facilities is described below.

Hazardous Waste Facilities

The federal Resource Conservation and Recovery Act (RCRA) establishes a "cradle-to-grave" management system that regulates hazardous waste from the time it is generated to its final disposal. The act also establishes a system for controlling solid non-hazardous waste including ash residue. RCRA leaves the siting of hazardous waste and ash residue facilities primarily to the states. States may seek approval from the federal Environmental Protection Agency to administer and enforce a state hazardous waste regulatory program in lieu of the federal program so long as the state program is equivalent to the federal program.

The Connecticut Siting Council has carried siting authority for hazardous waste facilities since 1981. Pursuant to state law, the council's certification jurisdiction was limited to facilities constructed after July 1, 1981. In addition, the statutes allow for exemptions to the council's certification proceedings for certain hazardous waste facilities. The exemptions are listed in Table IV-1.

Table IV-1. CSC Hazardous Waste Exemptions: C.G.S. § 22a-115

Exemptions to the CSC certification process are allowed for the following facilities:

- operating prior to June 1, 1983 or which had received all necessary permits before July 1, 1981;
- whose primary business is not disposal, treatment or recovery of hazardous waste but treats or recovers on site as part of an industrial process determined by DEP;
- approved by DEP, designed and operated for municipalities to dispose solid waste;
- used for short term storage; or
- CSC determines, after consultation with DEP, does not pose a threat to public safety, human health or the environment.

To date, the council has never sited a new hazardous waste facility. However, the council does review proposed modifications and issues declaratory rulings on exemptions.

Certification process. The certification process for hazardous waste facilities is similar to the energy and telecommunications proceedings in terms of notification requirements, public hearings, appeals and certain deadlines. Yet, there are some notable differences. For example, the council membership includes the commissioners of the Departments of Public Health (DPH) and Safety (DPS). A certificate of public safety and necessity, rather than a certificate of environmental compatibility and public need, must be obtained from the council prior to the construction of a hazardous waste facility.

In addition, some procedural differences exist with respect to application content and fee, municipal input, and siting decision criteria. The following discussion, illustrated in Figure IV-1, summarizes the significant differences in the hazardous waste siting process.

Application Filing. Similar to the energy and telecommunications proceedings, hazardous waste applicants must consult with the host municipality prior to submitting an application. Hazardous waste applications require additional information including detailed provisions for mitigating the effects of the facility's operations on public safety and the environment, plans for meeting the financial responsibility requirements, as well as the incentives offered and benefits accruing to the proposed municipality. A complete list of mandated filing requirements are listed in Appendix A.

Applicants must provide proof of service and notification to the fire marshal, director of health, police commissioner and water company for the municipality where the proposed facility is to be located, as well as the entities and individuals previously listed for energy and telecommunications facilities.

The application fee is based on the project's estimated construction costs, including land, but cannot be less than \$5,000 or more than \$100,000. Additional fees may be made for council expenses in excess of the application fee.

Applicants are required to apply for all local permits at the same time as filing an application with the council. Local authorities may regulate and restrict the proposed hazardous waste management facility but must make their decisions within 130 days of the application. Local decisions are subject to appeal to the council. An affirmative vote of eight council members is needed to override local decisions.

The siting process for a hazardous waste facility also includes provisions for the operator/owner to provide the host municipality with payments of a statutorily established assessment formula or to negotiate incentives. The total amount paid in incentives cannot be more than the amount that would be paid to a municipality as an assessment.

Negotiations for incentives are conducted with a local project review committee, consisting of four to nine electors from the affected municipalities appointed by their chief elected official. The applicant deposits a local project review grant of up to \$50,000 with the

siting council for use by the committee for technical and professional assistance. The council is the sole arbitrator of disputes arising from the negotiations. The council’s decision on whether to approve or deny the siting of the facility includes the items negotiated between the parties.

The applicant provides public notice of the application in the newspapers with a general circulation in the area of the proposed facility. The notice will also instruct other municipalities on how to petition the council to become an “affected neighboring municipality”. The council determines the neighboring municipality most likely affected by the facility by considering factors such as, but not limited to, proximity of the facility to the neighboring municipality, air quality and movement, surface and groundwater conditions, population density, and traffic data. Representatives from the most affected neighboring municipality serve as a voting council member and on the local project review committee.

Council Deliberations. During the consideration of a hazardous waste facility, council membership is expanded to include four ad hoc voting members, three of whom are electors from the proposed municipality and one is an elector of the neighboring municipality most likely affected by the proposed site, all are appointed by their chief elected official.

The statutory factors governing council decisions for a hazardous waste facility are more extensive than for other CSC facilities. Similar to other facility types, the council considers public need, environmental impact and conflicts with state policies, including adverse impact. Additionally, the council is required to make findings concerning a number of topics listed in Table IV-2. Before the granting a certificate, the council must also find that the applicant is in compliance with a variety of financial responsibility requirements.

Table IV-2. Hazardous Waste Facility: Siting Council Decision Factors
<ol style="list-style-type: none">1. Impact on public health, safety and welfare including:<ol style="list-style-type: none">a. risk/impact of accident during transportationb. risk/impact of fire, explosion from improper storage or disposalc. consistency with local/regional plans, state conservation and development plan, and existing or proposed developmentd. protection of public from adverse economic and other impacts during construction, operation and closuree. risk/impact on public drinking water supplies2. Population density and proximity to residential areas3. Data on permitted and illegal discharges in area4. Proximity to schools5. Availability of other sites6. Other criteria consistent with assuring maximum public safety

Similar to energy transmission facilities, the council is required to issue its decision on a certificate within 12 months of receiving an application; the council can extend this deadline by another 180 days with the applicant's consent. As mentioned earlier, the council has yet to certify a new hazardous waste facility. However, it has received a small number of petitions for declaratory rulings regarding proposed modifications. Table IV-3 indicates the number of hazardous waste petitions for the last 10 years. Since 1990, the council has reviewed and approved 16 hazardous waste petitions.

Table IV-3. CSC Petitions for Hazardous Waste Facilities (1990-July 2000*)												
Year	90	91	92	93	94	95	96	97	98	99	00*	Total
HW Petitions	-	2	2	-	2	1	1	4	-	2	2	16
Source: Connecticut Siting Council												

Low Level Radioactive Waste

Pursuant to the Low Level Radioactive Waste Policy Act of 1980 (amended in 1985), the federal government requires each state to manage and dispose of its own low level radioactive waste (LLRW). Federal law encourages regional cooperation and permits states that form interstate LLRW compacts to restrict the use of their disposal facilities to member states.

In 1986, Connecticut, along with New Jersey, joined the Northeast Interstate Low Level Radioactive Waste Management Compact. Under this compact, both states were designated as "hosts" and each was directed to develop a low level radioactive waste disposal facility. This compact failed to produce any new low level radioactive waste facilities and there has not been an active site selection process in Connecticut since 1990. Recently, the Northeast Compact was renamed the Atlantic Interstate Low Level Radioactive Waste Management Compact with the admission of South Carolina. The Atlantic compact limits the use of the Barnwell, South Carolina site to member states and Connecticut and New Jersey are no longer designated as "hosts".

There is a statutory provision in Connecticut's LLRW siting law which prevents the council from issuing a certificate of public safety and necessity if any state or regional compact agrees to take all of Connecticut's low level radioactive waste. As a result of the Atlantic compact, the state Office of Policy and Management estimates that Connecticut will not need to site a low level radioactive waste disposal facility for approximately fifty years. The statutory provisions for siting low level radioactive waste facilities, summarized in Appendix B, are still contained in the Connecticut General Statutes for future use.

Ash Residue Disposal Facility

Another area under the council's jurisdiction is ash residue. Similar to the other facility types, authority for the siting of ash residue management facilities is left to state or local governments. However, unlike the other facilities, the Connecticut Siting Council does not provide a certificate for the construction or operation of an ash residue disposal facility. The council's role is to negotiate and arbitrate agreements between the municipality in which the proposed facility is to be located and the Connecticut Resources Recovery Authority (CRRA) which is the quasi-public agency statutorily created to develop and manage these facilities in the state. There has been no siting of new facilities since the law went into effect in 1989. The state has two pre-existing facilities – one in Hartford and Putnam.

If a new ash residue facility were proposed, CRRA must file an application with the council in order to initiate the negotiating process with the host municipality. Similar to hazardous waste and low level radioactive waste siting, a local negotiating committee must be established. The committee members are electors of the municipalities where the facility will be located in and those that are within 1000 feet of the facility. All members are appointed by their respective chief elected official.

In order to participate in the negotiation and arbitration process, a municipality must send the council a resolution adopted by its legislative body stating an intent to negotiate, and list its committee members. CRRA must deposit \$50,000 with the council for costs incurred for legal and technical assistance used by the committee's review of the proposed facility.

CRRA is required to negotiate with the committee regarding 12 items specified in statute. The negotiation items are listed in Table IV-5. Either party may petition the council in writing to determine if a proposal may be negotiated.

Table IV-5. Ash Residue Disposal Facility: Statutory Items for Negotiation

1. Compensation to persons for substantial economic effects (shown by property value study conducted before and after construction)
2. Reimbursement to municipal negotiating committee for costs that exceed \$50,000
3. Screening and fencing
4. Facility operations such as noise, dust , debris, odors, and hours
5. Traffic flow and patterns
6. Site closure costs and post-closure use
7. Payment for road repairs
8. Establishment of a greenbelt buffer
9. Purchase of fire equipment necessary for the site
10. Payment for actual police and fire costs
11. Funding of a municipal monitoring program of the site
12. A municipal compensation plan

For ash residue proceedings, the council statutorily consists of nine members. Five are gubernatorial appointees. One member is chosen by the Speaker of the House and another by the Senate President Pro Tempore. In addition, the commissioners of Public Health and Public Safety are mandated appointments. However, unlike the hazardous waste and LLRW process, there is no local representation on the council.

The council must conduct a public hearing on petitioned proposals and issue a decision within 14 days of the close of the hearing. Pending the council's decision, negotiation may continue on any proposal. Mediators can be used at any time during the negotiations.

State law requires negotiations conclude within 180 days. Agreements are binding if approved by both the applicant and the legislative body of the host municipality. If no agreement can be reached, the parties are required to request arbitration with final offers submitted to the siting council within 60 days of the arbitration request. The council will conduct a hearing so that both parties can present supporting arguments for their final offers. The council issues an arbitration award within 60 days. The council adopts the final offer of either party without modification.

Any negotiated agreement approved or arbitration award issued by the siting council must be by an affirmative vote of 75 percent of council members. After the siting council has approved a negotiated agreement or issued an arbitration decision and the applicant submits documentation of compliance with all host municipality zoning requirements, the Commissioner of Environmental Protection may issue final permits to construct the facility.

After five years of the facility's operation any of the items negotiated can be renegotiated if a party petitions the council and demonstrates substantial changes that warrant renegotiation. The council must render a decision on this petition within 180 days. All decisions may be appealed to the court.

CSC Process and Outcomes

The focus of the program review study was to examine the policies, procedures, and overall operations of the Connecticut Siting Council. Committee staff used a variety of methods in its examination. One method was to review the council's process as laid out in statute and regulation and compare it to a random sample of case files of the council activities since 1995. This chapter includes the analysis of that review.

Adherence to Statutory Mandates and Timeframes

The majority of the council's work consists of certification applications and petitions for declaratory rulings, exempt modifications, and tower sharing. By law, individuals interested in constructing or significantly modifying a CSC regulated power or telecommunication facility must apply to the council for approval. Completed applications and petitions are assigned to council siting analysts who conduct technical reviews to ensure compliance with state and federal law and regulations.

Decision-making timeframes. A developer of a new or modified facility regulated by the council must obtain a certificate of environmental compatibility and public need from the council prior to beginning construction. In making certification decisions, the council has two primary statutory deadlines. The council is required to issue a decision within 12 months of receiving an application for an electric or fuel transmission facility. Applications for electric generating/substation facilities or telecommunications facilities must be decided within 180 days. The council can extend any of these deadlines by another 180 days with the applicant's consent.

Facilities seeking exemptions from the certification process must petition the council. Within 60 days after receipt of a petition request, the council must issue a written determination on the petition stating the reasons for its action.

Program review staff examined a random sample of certification dockets and petitions submitted to the council since 1995. Of the 30 dockets filed during that time period, committee staff reviewed 17 (57 percent) which covered all facility types. Committee staff also reviewed a random sample of 62 of the 134 petitions for declaratory ruling (46 percent) decided since 1995.

The staff analysis reveals the council adheres to its statutory deadlines for all facility types. All certification decisions in the random sample were made within the requisite 12 month or 180 day timeframe with extensions rarely needed. Action was taken on petitions within the 60 day deadline. In fact, more

than 50 percent of the petitions were decided within a month.

Public hearing requirements. The council must hold a public hearing on a certification application between 30 and 150 days after receiving it. The hearing must be held by the council prior to making a final decision on certification. State law mandates at least one hearing be held after 6:30 p.m. for the convenience of the general public in the county where the proposed facility may be located.

The staff analysis of certification dockets found the council fulfills its public hearing requirements. All public hearings for certifications were held within the 30 and 150 day statutory window. Fifty-three percent of the proceedings had more than one public hearing. At least one hearing for each certification application was held in the proposed town and included a public portion held after 6:30 p.m.

The council, at its discretion, may schedule a hearing to determine any issues concerning a request for a petition for declaratory ruling. The committee analysis of petitions indicates the council rarely holds public hearings on petitions. Only four of the 62 petitions reviewed had a public hearing. All four were held in the proposed towns.

The committee finds council procedures on public notice could be improved. Connecticut General Statutes § 16-50l(b) requires public notice of applications to be published in newspapers as “will serve substantially to inform the public of such application and to afford interested persons sufficient time to prepare for and to be heard at the hearing... .”

The council, by statute, must advertise the date and location of a hearing in local newspapers at least a week in advance of the scheduled date. Based on committee analysis, the majority of public notices are published in two to three newspapers. On average, the public hearing notices in the random sample were published more than a month in advance. In some instances, notices were circulated two to three months in advance.

This complies with the statutory requirement and is consistent with the legislative intent to allow individuals time to prepare for a proceeding. However, the committee staff’s profile of CSC proceedings indicate general public input is typically low. The program review committee finds the time lapse without a subsequent reminder closer to the scheduled date may contribute to low public participation at most council proceedings. (Council interaction with the public and other interested groups is further discussed in Chapter VI.)

To promote public participation, the program review committee recommends the council ensures its public hearing notices are also advertised at least once within the two week period prior to the actual hearing date.

CSC Decision Outcomes, Format, and Content

Each CSC siting decision includes three documents entitled: 1) Finding of Fact; 2) Opinion; and 3) Decision and Order. These documents are drafted by council staff, reviewed by the executive director, and approved by the council members. Based on the program review sample analysis, nearly all projects submitted to the council are granted certificates. Of the 17 random certifications reviewed, 14 were granted certificates and three were denied.

The majority of the 62 petitions examined by committee staff were seeking approval for facility modifications on the grounds the proposed changes would not produce substantial adverse environmental impact. The council found no substantial adverse impact and determined no certificate was needed in approximately 80 percent of the cases reviewed. In the remaining cases, the petitions were either converted into dockets for the certification process, withdrawn, or dismissed for miscellaneous reasons.

The council theorizes the high approval rate is due to its stringent review process, which allows only well prepared applications to come before the agency. Given the time and costs involved, council staff believes the majority of project developers will not pursue or submit applications for projects that are inappropriate, unjustified, or unprepared.

Decision format and content. In addition to basic decision outcomes, the committee's random file sample of 17 certifications and 62 petitions were also examined for format and content. Among the items committee staff looked for were:

- CSC field visits;
- independent CSC staff analysis;
- consideration of alternatives;
- discussion and application of statutory criteria in decisions; and
- extent of municipal and public input.

The following are the results of the committee staff's review. Some review results relating to municipal and local input are also discussed in Chapter VI.

Field visits. As part of the CSC decision process, siting council members and staff may conduct one or more field visits at a proposed site to visually assess the location and surrounding land uses. Any identified problems and necessary contingency plans are reported to the full council. State law does not direct or require the council to conduct field visits in either certifications or petitions. Nonetheless, a minimum of one field visit was conducted with council members present in almost all the files reviewed. Seventy-five percent of the petitions had one site visit. Ten percent had more than one. Every certification file included one field visit by CSC staff accompanied by one or two council members.

Independent staff analysis. Another area program review staff examined was independent CSC staff analysis. This was an area of concern stated in testimony at the program review public hearing as well as in comments from the municipal survey. One reason independent analysis is important is that non-applicants (municipalities and private citizens) often do not have the resources or expertise to counter claims made by industry applicants.

In reviewing files, program review staff found the council does conduct varying degrees of independent analysis. For example, the council staff will review and analyze mathematical models that may be employed to predict stack emissions, downwash conditions, and projected air quality during operation of the proposed facility. For telecommunication projects, the council

staff performs its own detailed computer analysis of propagation and radio frequency power density. CSC conducts site inspections and requires applicants to float balloons to proposed tower or stack height to assess visual impact on surrounding communities. The council frequently makes additional requests for information in the form of interrogatories to all parties. The council also consults and solicits input from various regulatory state and federal agencies such as the Department of Environmental Protection and Federal Aviation Administration.

Based on the committee staff file review, a perception the council relies heavily on the applicant information is understandable. Evidence of the council's independent analysis and requests for additional information is not always clear in the written opinions. CSC case files are voluminous and contain more detailed analysis and documentation than is incorporated into the final written decision.

Site selection and alternatives. The statutes and regulations both specify an applicant must provide justification for adoption of the site selected including a comparison with alternative sites. For a telecommunication tower, an applicant must specifically include a description of the siting criteria and the narrowing process by which other possible sites were considered and eliminated. Information about environmental effects, cost differential, coverage lost or gained, potential interference with other facilities, and signal loss due to geographical features compared to the proposed prime and alternative sites is required.

In reading CSC decisions, the committee found alternatives to the prime site were always mentioned. However, the amount of discussion and rationale comparing the prime and alternate sites varied. In almost half of the proceedings, non-applicant parties (usually municipalities) will propose alternative sites. The sample decisions show the council frequently supports an applicant's prime site.

It is important to note each project may need to meet certain technical requirements because of proximity to a water source or transmission connection, or topographical considerations. As such, the council must weigh these considerations against any environmental impact as well as how any project may be integrated with existing or future projects. For example, the construction of a tower at an alternative site may be feasible but not preferable because it may require a higher tower structure or the siting of additional towers in order to obtain the proposed coverage.

Although the council may have weighed all potential site and design considerations in its determinations, the program review committee finds the limited discussion of alternatives in the written decisions may promote the impression the council favors applicants. While it is reasonable for the council to clearly state why a chosen site is the preferred location, it does little to inform the other side about why the alternatives are not.

Discussion and application of statutory criteria. State law requires council members to consider a number of statutory criteria in making siting decisions. Statutory factors governing council decisions include the following:

- 1) a finding of public need for the facility and the basis of that need;

-
- 2) consideration of probable environmental impact and conflicts with state policies on the natural environment; ecological balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife; and
 - 3) a determination that any adverse impact or conflicts with state policies are not sufficient to deny certification.

In addition, the statutes also require the consideration of a few facility-specific factors. For electric generating projects, the statutes call for a *public benefit* determination rather than public need. Public benefit is statutorily deemed to exist if such a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity.

For telecommunication towers, the council also must determine whether it is feasible to require the developer to share an existing tower or whether the proposed tower could be shared if built.

Three other factors must be considered for electric transmission line facilities: what part will be overhead; conformance with a long-term electrical system plan; and conformance with state and federal regulations and guidelines for overhead parts. Undue hazards to persons or property also must be considered for both electric and fuel transmission lines.

As stated earlier, each CSC decision includes three parts. The written Findings of Fact (FOF) lists the documented information on the project used in making the decision. Each FOF cites information collected from all the parties. In terms of format, each FOF typically includes a variety of subheadings for public need/benefit, proposed project, proposed site, environmental considerations, visibility, and municipal approvals. The Opinion presents the council's determination on the project and rationale. The Decision and Order outlines the council's final position and conditions.

There are three siting analysts who prepare decisions. All decisions are reviewed by the executive director prior to presenting them in draft form to the council. The committee found a high degree of consistency in the FOF format among the decisions issued.

Unlike the FOF, the written opinions do not have headings and set out the council's determination in no specific format. Every opinion reviewed by committee staff cited the statutory criteria somewhere in the narrative. The committee found the level of discussion of statutory factors varied. A direct link between the findings of facts and the statutory criteria was difficult to distinguish.

Current law requires the council to "state in full its reasons." There is no requirement the members explain specifically by issue how the statutory criteria are considered. As a result, the impact of the various factors in the context of the evidence presented and thus, the basis of the decisions, is not clearly identified in every decision. Therefore, the committee finds the current CSC decision format does not provide the kind of explanation that would be most informative about how the council members are making decisions.

The program review committee recommends council decisions be structured in a format that clearly outlines the criteria used and provides evidence of independent analysis. Council decisions should state with particularity the basis for each decision as to each disputed issue and the manner in which the statutory criteria were considered in arriving at such decision, including where applicable, the specific evidence relied upon, and the reasons for the reliance.

The decisions should also contain more discussion as to the council position on opposing party claims and more explanation as to why alternatives are not chosen.

When analyzing how the written decisions address the statutory criteria, it is important to note the statutory factors are not prioritized in any way in the statute. In addition, certain terms used in the criteria, like “public need” and “significant adverse impact,” are not defined in the statutes or regulations.

A review of the decisions issued since 1995 indicates that although format and content of written decisions have varied slightly over time, the statutory criteria is always discussed and relevant information is always noted.

Given the statutory criteria and the council discretion in weighing the evidence, it is hard to conclude how council members are balancing interests as the legislature has asked them to do. The committee acknowledges it may be difficult to incorporate the rationale of each council member who may have different views on particular evidence and issues but yet arrive at the same decision.

Nonetheless, the committee finds the present statutory criteria are sufficiently broad to allow all parties to present relevant information addressing a wide range of concerns and interests. The statutory criteria are and should be intentionally broad to be interpreted and applied to each individual project. Changes in industry and the federal approach to regulation make it difficult to establish comprehensive definitions. The criteria should have the flexibility to absorb any impact technological changes an evolving industry may bring. Prioritizing or otherwise delineating the statutory language could hamper council deliberations. Decision format changes, as suggested in the above committee recommendations, should enable anyone to review an individual decision and determine why the decision was made.

Council views on the criteria. Council members were surveyed by program review committee staff on the council’s process, procedures, and decision making process. Specifically, council members were asked if they felt they had the necessary statutory and regulatory guidance to make decisions. All respondents indicated they did. Council members do not believe the statutory criteria for siting decisions currently under their jurisdiction needs to be change.⁸ Most members noted experience provided the best guidance given the nature of case-by-case decision making and the criteria can only be interpreted in relation to a specific case.

A review of current council appointments reveals years of siting experience. Table V-1 presents the tenure of siting council members.

⁸ Almost all of the council members did mention that jurisdiction over telecommunications facilities should be consolidated. (See Chapter VII)

Table V-1. Tenure of Current CSC Members		
Name	Years on Council	Total Number of Years on Council
Mortimer A. Gelston	1974-Present*	26 years
Colin C. Tait	1975-Present	26 years
William Smith	1985-1992, 1994-Present	15 years
Daniel Lynch	1989-1994, 1998- Present	9 years
Edward Wilensky	1996- Present	5 years
Pamela Katz	1986, 1998- Present	4 years
Albert Gary	1997- Present	4 years
*Years as Council Chairman 1974-1976, 1991-2000		
Source: Connecticut State Register and Manual		

As the table shows, at least three of the council members including the chairman have been on the council more than 15 years. The statutory appointment of the DEP and DPUC commissioners to the council also bring continuity. Although the commissioner appointments could theoretically change every four years, in fact, their current designees have served on the council in both full-time and part-time capacity over the last 20 years. In addition, the current executive director has been with the council since 1984.

Decision outcome analysis and tracking. While there is a need for council decisions to balance the statutory criteria and respond to case-specific considerations, council policies must also be consistent and uniformly applied. It is essential to periodically analyze what actions have been taken to ensure this. Tracking or trend analysis is not done on the council work.

Currently, the council does compile information on various aspects of its activities. The council records tower heights, structure type, and application and decision dates as well as numerous other variables. This information serves its purpose but in the present format has limited usefulness for monitoring and comparing outcomes.

Minutes from the council meetings and the written decisions themselves provide the only guidance on previous council decisions. Committee staff observation of CSC meetings revealed council members and staff rely primarily on their memories of prior cases when questions arise about previous actions taken in regard to specific issues. At the moment this seems to have worked fairly well given the tenure of council members and staff.

The program review committee finds reliance upon institutional memory problematic and contrary to good operating practice. Individual recollections of past actions are bound to vary. Moreover, the council membership will change in the future. In addition to adding discussion time to proceedings, the lack of a written compilation of council decisions increases the chances similar cases will be treated differently.

With broad criteria and statutory definitions, council interpretation of certain issues is the only guidance to standards and policy. In reviewing the council decisions committee staff found some recurrent themes and language. While it would be difficult to summarize the statements of

the council members decisions, what follows are excerpts from decisions that are representative of the types of thoughts and statements expressed in council decisions.

On public need for telecommunications:

“The public need for cellular telephone facilities has been determined by the Federal Communications Commission (FCC) which has declared a general public need for wireless service, established a competitive market structure for system development, and developed technical standards that have restricted the design for facilities. These pre-emptive determinations by the FCC have resulted in a system of numerous cellular telecommunications facilities in nearly all areas of the country. Connecticut State law directs the Council to balance the need for development of proposed cellular telecommunications facilities with the need to protect the environment, including public health and safety.”

[CSC Docket 182 (June 25, 1998); CSC Docket 188 (December 17, 1998); CSC Docket 195 (October 8, 1999)]

On public benefit for energy projects:

“Reliability of electric supply is of great importance in Connecticut, a service-oriented state that has become increasingly dependent on high technology. To improve the reliability of the electric supply system of the state, the proposed facility would operate on natural gas with a proven technology to augment and replace other existing generation facilities in the state. Some of these existing plants that would be replaced are over 40 years old and approaching retirement. These existing facilities to be replaced also include nuclear facilities that are not in operation or that have retired prematurely.”

[CSC Docket 187 (January 8, 1999); CSC Docket 190 (April 27, 1999); CSC Docket 192 (June 23, 1999)]

On air quality for energy projects:

“The Council is aware that air quality in Connecticut is in need of improvement, which may be possible through the replacement of aging oil-burning generation plants with new, highly efficient gas-fired units. As the proposed and other new gas-fired plants displace older plants, nitrogen oxides and sulfur dioxide will decrease, improving both state and regional ambient air quality and the health of Connecticut residents.”

[CSC Docket 187 (Jan 8, 1999); CSC Docket 190 (April 27, 1999); CSC Docket 192 (June 23, 1999); CSC Docket 193 (December 15, 1999)]

On siting telecommunications towers:

“The Council only approves the construction of a new tower if: no other alternative to share an existing tower or structure exists; the Council finds a

technical need for a new tower at a particular site based on a detailed analysis of propagation, capacity, signal strength, and facility sharing; and the need for the facility outweighs the environmental effects of the facility after a detailed analysis of the effects on scenic resources, land use, ecological resources, and human health through worst-case modeling of radio frequency power density consistent with federal guidelines. This practice is supported by federal law and State policy.”

[CSC Docket 188 (December 17, 1998); CSC Docket 182 (June 25, 1998)]

The program review committee believes it would be beneficial for the council to periodically review its own decisions to gauge its level of consistency and the direction of council policy. This is especially critical at times when changes in the industry or regulatory approach are occurring. In addition, reliance on institutional memory and experience becomes problematic when appointments change. **To assist in reviewing CSC actions, the program review committee recommends a summary digest of council decisions be developed and maintained by October 1, 2001.**

As stated earlier, the council has parts of a potential index or digest already available. Augmentation of existing council databases along with the newly formatted written decisions should produce a more comprehensive reference guide for the council. The digest recommended by the committee would be a reference document to aid council discussions and promote consistent actions on similar projects.

In addition to assisting existing members, the digest would also aid in familiarizing potential new members. Despite the low incidence of council member turnover, the council is guaranteed new appointments in the future. Considerations on proposed projects are often complex and difficult. Without the benefit of experience, initiation into council policy and proceedings would not be easy. Accordingly, the statutory mandates and council regulations as well as a copy and explanation of the newly created digest should be provided to all future members upon their appointment to the council.

Conclusions. The program review committee evaluation of council procedures indicates the Connecticut Siting Council adheres to its statutory mandates and timeframes. Improvements can be made in the publishing of hearing notices to promote public participation. CSC decisions all mention the statutorily mandated elements in varying degrees. Evidence of independent staff analysis is not always clear. The written opinions tend to focus on discussion and rationale on the viability of the chosen site with little discussion given to why the alternative sites or designs would not work.

Public confidence in a siting authority is fostered when its decisions are made on an objective basis, using accurate and reliable data, and procedures for selecting sites are formally established and followed. Therefore, council decisions should be written in a format that clearly states the criteria used, clear evidence of independent analysis, and more discussion of council positions on opposing party claims. The council should periodically analyze and track outcomes and orientation materials including a decision summary digest should be prepared for future CSC member appointments.

CSC Interaction With Municipalities and Other Interested Groups

A variety of interested groups including state and local government entities may play a role in the siting process. One prominent entity involved is the proposed municipality. In addition, other interested groups such as citizen coalitions and members of the general public may participate in council proceedings. Chapter VI discusses the major groups and organizations involved in the process and their current interaction with the council.

Municipalities

By law, municipalities have an opportunity to participate in and provide input to all CSC certifications. The municipal role is statutorily dictated by the type of facility and the point in the siting process. The first step in the application process requires an applicant to meet and confer with the proposed municipality at least 60 days before filing an application with the council.

As part of this consultation, the applicant must provide the municipality with any technical reports concerning public need, the site selection process, and the environmental effects of the proposed facility. The municipality then has the opportunity to hold public hearings on the proposed facility and to issue recommendations for consideration by the council within 60 days of the initial consultation. Within 15 days after the application is filed, the applicant must provide to the council all materials given to the municipality and a summary of their consultations including the municipality's recommendations.

Once an application is filed, the role of the municipality changes depending on the type of facility involved. Municipalities are statutorily allowed to restrict and regulate the location of energy facilities. Local authorities have a limited amount of time, varying by the type of energy facility, in which to exercise their authority. If necessary, state law allows the council to override a local regulatory decision.

For CSC regulated telecommunication towers, state law grants the council exclusive jurisdiction. The council is not bound by local regulations. The municipality may participate in the siting proceedings as a party and its regulations may be considered by the council.

One area of review in the committee staff file sample was the extent and nature of municipal input to the siting council process. The review results are highlighted below.

Municipal pre-application consultations. The program review staff examined its random sample of certification dockets to determine how much

time passed between the first contact with the municipality and the filing of the application. In the majority of cases, the first consultation occurred within six months to a year before the application was filed. However, in a few instances, mainly electric generating projects, it was substantially more.

Interviews and the case file review indicate these consultations are taking place. Committee staff noted evidence of municipal contact in all the files reviewed. However, only 75 percent of the CSC decisions actually mention it in varied detail. In some cases, it is a general statement the town supports the project.

The program review committee recommends CSC include in each decision a summary of any municipal consultation and recommendations. One comment mentioned frequently in the program review survey of municipalities (described in more detail below) cites insufficient consideration given local concerns. Not only would the program review recommendation promote the sense municipal opinion had been reviewed, it would also underscore the significance of municipalities' statutory role.

Municipal regulation and override. While municipalities have a role in the pre-application process and must issue a recommendation to the siting council, the council need only give consideration to state laws and municipal regulations the council deems appropriate. A council certificate satisfies and is in lieu of all certifications, approvals, and other requirements of state and municipal agencies in regard to any questions of public need, convenience, and necessity for such facility.

The program review analysis found towns supported the proposed projects in 69 percent of the cases. Reviewing the it's sample, staff found the council ultimately approved all but one town-supported project. Conversely, the council approved half of the town opposed projects.

Committee staff also examined these decisions by facility type. Energy facilities seeking council siting approval must also obtain and comply with local permits and regulations. State law permits local authorities such as inland wetland agencies and municipal zoning commissions to regulate and restrict the location of these facilities.⁹ Individuals who are aggrieved by municipal orders may appeal to the council. If necessary, state law allows the council to override a local decision. As mentioned in the briefing report, the council has rarely done this. Since 1995, three appeals of municipal orders were brought to the council. The appeal outcomes are summarized in Table VI-1.

As the table shows, two appeals were filed by citizens seeking to reverse town approval of electric generating plants. Another appeal was brought by the applicant to reverse town denial. The council denied the certificate in one of the citizen appeals in effect nullifying the town's approval. The council approved the project in the second citizen's appeal. Consequently, the citizen's appeal was lost but the municipal order was not reversed. In the applicant appeal of municipal denial, the council denied the project concurring with the municipal order.

⁹ C.G.S. §16-50x(d) states "Any town, city or borough zoning commission and inland wetland agency may regulate and restrict the proposed location of a facility... . Each such order shall be subject to the right of appeal....by any party aggrieved to the council... "

Table VI –1. CSC Appeal Outcomes				
Case	Town Position on Project	Appeal by	CSC Decision on Project	Override of Town Position
1	Approved	Citizen	Denied	Yes
2	Approved	Citizen	Approved	No
3	Denied	Applicant	Denied	No
Source: LPR&IC				

For telecommunications projects, council override is not an issue. State law gives CSC exclusive jurisdiction over its telecommunications facilities. Municipalities are relegated to party status. As mentioned previously, the council may consider local regulations in making its decisions. For example, local zoning commissions routinely set height limits for all structures including towers. They frequently restrict towers to certain zones and specify minimum distance between towers and property lines.

The committee’s file review suggests the council often takes into consideration local zoning ordinances and preferences. Many times the municipality will make requests regarding items such as property setbacks, landscaping, or other measures to diminish visual impact. In 73 percent of the committee staff’s sample, municipalities made requests such as painting the structure a certain color or positioning the structure behind a tree line on the property.

Committee staff analysis found the council routinely grants these requests. When issuing a certificate for a telecommunications facility, the council may impose such reasonable conditions as it deems necessary to minimize the visual effects of the tower which may have the most demonstrable effects on the environment.

Frequently, a municipality will suggest alternative locations for the proposed tower. Based on the municipal survey response, some municipalities feel the industry-chosen location is always presumed valid and alternatives are not seriously explored. As discussed in Chapter V, the committee found alternatives to the prime site were always mentioned in the written decisions. However, council opinions usually focused on the feasibility of the prime sites proposed by applicants with limited discussion of the feasibility of alternatives.

The committee acknowledges the council’s ultimate decision is on the project proposed before it. Therefore, it is reasonable for an opinion to focus on the merits of the applicant’s primary site. However, this approach promotes a sense the council is not listening to town input and favors industry information. This concern further supports the committee’s earlier recommendation the council provide fuller written discussion of alternatives.

Municipal view of siting. For local opinion on the state siting process, program review committee staff surveyed the chief elected official of each Connecticut city and town. Completed surveys were received from 121 (72 percent) of the state's 169 municipalities. A copy of the questionnaire and cover letter, along with a tabulation of the responses, are in Appendix C. Survey responses are highlighted below.

Questionnaire respondents were primarily first selectmen or mayors, although other individuals such as planning and zoning representatives, town managers, planners or engineers completed 39 percent of the surveys. Communities of all sizes and from all areas of the state were represented.

Sixty percent of municipalities reported have had some experience with the council process, 83 percent within the last five years. Respondents with experience with the council were asked to evaluate:

- the quality of its work;
- timeliness and fairness of its process;
- objectivity of council members;
- opportunities to present local concerns;
- responsiveness to requests for information;
- follow-up and monitoring of sited facilities;
- consideration of municipal input in its siting decisions;
- disclosure of its policy and criteria to make decisions; and
- overall working relationship with the municipality.

The municipal ratings were generally positive. Almost 70 percent rated the council's overall working relationship with the municipality as good or excellent. Approximately 25 percent indicated it was fair or poor, and the remaining few did not respond to the question.

More than 70 percent rated the council as good or excellent in terms of work quality (72%) and responsiveness to requests for information (79%). The council also received good or excellent ratings in terms of timeliness (63%) and fairness (65%) of its process and providing opportunities to present local concerns (62%).

Only about half of the respondents rated the council as good or excellent in terms of consideration of municipal input in its siting decisions (51%), objectivity of council members (54%), and disclosure of its policy and criteria to make siting decisions (56%).

The council was rated lower on follow-up and monitoring of sited facilities. Less than 40 percent rated the council as good or excellent in this area. A number of municipalities did not rate the council on this item stating they had little or no knowledge about this aspect.

Despite the somewhat mixed ratings of certain agency operations, most (76%) indicated the siting council is fulfilling its goal of balancing the need for a facility with the need to protect the environment and ecology of the state. Many (70%) also felt the council is the best mechanism for balancing the statewide need for facilities and local environmental concerns. It is

important to note, however, several mentioned some exceptions – most notably the jurisdiction of telecommunications towers. (This issue is further explored in Chapter VII.)

Conducting this survey provided program review committee staff with a unique opportunity. In 1991, as part of a program review study on siting controversial land uses, municipal officials were surveyed on their opinion regarding the Connecticut Siting Council. Questions on work quality, objectivity of council members, opportunities to present local concerns, and whether the council was the best mechanism for balancing statewide need for facilities and local environmental concerns were included in the survey. Similar questions were used in the current survey so comparisons of municipalities' experiences with and opinions of the council over time could be made.

Similar to the current survey results, the 1991 responses regarding local opinions on the council and the siting process were generally positive. Changes in local opinions of the council since the 1991 survey are negligible. Attitudes about work quality and opportunities to present local concerns improved somewhat; however, opinions concerning the objectivity of council members decreased slightly. In 1991, 60 percent of the municipalities rated the council objectivity as excellent or good compared to 54 percent in the year 2000.

Committee staff also conducted numerous cross-tabulations and analysis on the rated items and opinions to determine whether population size, regional location, or number of CSC sited facilities in each municipality impacted the results. The committee staff found no identified statistical relationship among these areas.

Public Participation

As mentioned in Chapter V, an applicant for a CSC certificate must publish a notice of the application in newspapers serving the affected area in time for interested people to prepare for the council's hearing on the application. The siting council is also required to publish a notice of the hearing in local newspapers and send notices of the hearing to statutorily entitled parties within one week of scheduling the hearing.

The council must hold a hearing on the application in the area where the facility would be located. Part of the hearing must be held in the evening to accommodate the general public. Individuals other than the statutorily entitled parties interested in participating in the council proceedings may ask to be recognized as a party or intervenor. The council determines whether such participation will assist the council in resolving the case.

The council in its discretion may limit testimony and provide for the grouping of parties with the same interest to avoid redundant testimony and unnecessary delay in the proceeding. Parties and intervenors are entitled to present oral and documentary evidence and to conduct cross-examinations. They are also subject to cross-examination.

Anyone who is not a party or intervenor may file a written statement explaining facts and concerns at any time during the proceeding or within 30 days after the close of the hearing. Such

statements become part of the record for council consideration. The council may allow at its discretion members of the public to present oral statements. However, members of the public cannot cross-examine witnesses.

Almost 90 percent of the cases in the file review had additional parties and intervenors. An examination of the council's documented proceedings indicates general public participation is rare at most hearings. More controversial facilities such as electric power plants tend to generate more public statements.

A concern mentioned at the program review public hearing as well as in comments from the municipal survey is in some CSC cases there have been limited or no opportunities to speak. In addition, the committee was told of specific instances where members of the public felt they were treated inappropriately. A few of the municipalities also commented that the proceedings were too adversarial and council members behaved in an intimidating fashion.

To address these concerns, the committee reviewed CSC transcripts and observed a number of council proceedings. Lacking intonation, gestures, and atmosphere, it is difficult to conclude from written transcripts if certain comments or behavior would be generally viewed as inappropriate. Nevertheless, the committee believes the mere perception of mistreatment or bias on the part of the public is problematic.

At one proceeding committee staff observed, there was only one public member offering testimony. He was told to wait his turn and his comments were limited to two minutes. According to the council chairman, the gentleman's oral testimony would be limited because his written comments would be filed. Committee staff also observed the industry representatives at the proceedings were treated in a similar firm manner.

A primary goal of allowing the public to participate in and potentially affect the outcome of siting processes for controversial facilities is to develop a sense of fairness. Public participation helps ensure community concerns are adequately addressed. This is especially critical when local control over decisions is preempted by the state.

The committee recognizes productive participation may be difficult to achieve when a proposed facility provokes strong emotions or when communities have had bad experiences with government agencies in the past. Nonetheless, there should be an awareness of the potential negative impact of a forceful demeanor and what may appear to be arbitrary admonishment of parties. Such behavior whether intentional or not may deter testimony and participation by parties and the public.

On the occasions where CSC may act on its discretion, council members should afford parties and members of the public as much consideration and courtesy as possible. The committee believes this is important for a sense of trust and fairness to be developed and reinforced. Parties and members of the public must not feel or perceive they are unfairly prevented from providing what they view as important evidence from getting into the record or not being allowed to present it as effectively. This may deter other citizens from voicing concerns or offering other potentially important information.

Other Government Entities

There are several government entities with an interest or related charge in the oversight of certain aspects of CSC facilities. For example, the Federal Aviation Administration (FAA) is concerned with tower height for navigability. Regional independent system operators (ISOs), sanctioned by the federal government, manage and oversee the region's electric bulk power generation and transmission systems. The state Department of Environmental Protection (DEP) grants operating permits to control emissions and environmental impact.

For the most part, other government entities have separate and discrete jurisdiction. Many typically play a larger role in the operations of sited facilities after a site has been approved and constructed. A few such as DEP may have a staged or phased in jurisdiction as the facility is being built.

Pursuant to state law, the council must consult with and solicit written comments from relevant state agencies. In fact, commissioners from several state agencies including DEP and DPUC are council members. The committee file review found the council routinely seeks input from these agencies in making its decisions. At times, the council will condition its approval upon a determination by another entity, such as a DEP water diversion permit for an electric generating facility.

The statutes authorize the council to take reasonable steps to insure each facility for which a certificate has been issued is constructed, maintained, and operated in compliance with council orders. The council confirms compliance with its orders through field investigations and approval and on-going review of detailed development and management plans. The development and management plans are finalized documents consisting of professionally engineered designs, site plans, construction schedules, and site inspection reports. Enforcement of council orders and state law is performed by the Office of the Attorney General, which provides the council with legal assistance.

The committee's review of case files indicates the council routinely requires a certified applicant to submit a development and management plan including some type of periodic progress report. According to council staff, follow-up inspections are typically conducted after the filing of mandated progress reports or if the council staff is in the general vicinity of the site during a field visit for another project. During the inspection, the staff will tour the premises verifying the status of council orders. The staff will then meet and discuss any issues with the site manager and, if necessary, bring any identifiable concerns to the attention of the council.

Although the council reports few problems with compliance, the committee finds that the current system provides limited follow-up and monitoring. **Therefore, the program review committee recommends the council staff increase its efforts in this compliance phase. There should be a more structured schedule for inspections and as much as possible incorporate other interested government agencies such as local municipal planning and zoning authorities or the state Department of Environmental Protection.**

As mentioned earlier, municipalities responding to the committee survey indicated little to no knowledge of council follow-up and monitoring of approved facilities. By keeping

municipalities informed and involved in the monitoring process, the council would foster good relations and allow developers to demonstrate good faith effort to address the community and local concerns. In addition, it would reinforce the council orders for the proposed project and state agencies especially in conditioned approvals.

One area where the committee noted a need for stronger coordination was between the council and the regional ISO. Sanctioned by the federal government, ISO New England is a not-for-profit, private corporation responsible for managing the region's electric bulk power generation and transmission system. It assesses each new electric generation facility requesting connection to the electric grid for transmission system reliability. It identifies and plans transmission improvements that need to be made to ensure electrical system reliability on a regional level. In a few CSC decisions, the council required the completion of an ISO transmission impact study before approval of any grid interconnection. The council itself has recently acknowledged the importance of collaboration with the ISO during its 2000 Forecast of Loads and Resources hearings. The need for timely information exchange and future planning documents between the council and ISO New England was underscored during those hearings.

Concurring with council sentiment, the program review committee believes the Connecticut Siting Council should take steps to strengthen and more actively pursue coordination and collaboration with other interested groups such as the ISO New England. Although other entities play little to no role in the actual siting of a facility, each might ask similar questions and seek the same information which may provide input and value to each other's processes. Therefore, the committee believes stronger collaboration and communication between these agencies would benefit the interests which they all seek to protect and promote.

Conclusions. Despite their social benefits, CSC facilities may arouse controversy of real or perceived negative effects on the proposed community, such as health and safety risks, diminished property values and other economic harm, or adverse environmental impact. In addition, a municipality may fear that by accepting one facility, it will be targeted for more.

A review of siting literature suggests participants will consider a siting process successful if it fosters fairness and trust. Local resistance frequently results from a lack of trust the state will act fairly or adequately to protect the public from possible health, safety, or economic harm.

At times, local opposition may become so strong and widespread the state must intervene and, if necessary, preempt or override municipal control to insure that needed facilities are developed. When a community feels forced by state action to accept an unwanted facility, resentment over the loss of local control in determining their character and future development can cause even greater conflicts. Siting problems are compounded if the process used to select locations is viewed as biased, flawed, or unresponsive to local concerns.

In the committee's opinion, current opportunities for municipal and public participation during the siting process are, in general, sufficient. To the extent these opportunities are not now used, communities should be encouraged and welcomed by the council to participate. Municipalities and interested parties must be confident their positions are being fully heard, and considered fairly.

Given the contested case nature of the process, there will always be inherent tension in the proceedings. However, some of the municipal and public comments raise an additional issue. The committee attributes some tension to municipal and public misconception or perhaps resistance to what the council's role is. From the survey results, it appears towns expect or desire a partnership with the council. This is exacerbated by the changing role of municipalities in the CSC process depending on the facility type.

The council is a state regulatory agency with responsibility over facilities whose effects have statewide significance and transcend municipal boundaries. The council and locals share many of the same goals: to provide reliable services, protect the environment and the community, and encourage economic development. However, the council pursuant to its statutory charge must evaluate and consider the cumulative benefits and impacts of proposed projects on the entire state as well as on the local community.

The committee acknowledges and supports the council's primary charge to remain neutral and objective in siting proposed facilities. This is consistent with the council's underlying legislative purpose. The council has a difficult mandate which makes it oftentimes an unpopular entity. However, the generally positive ratings on its performance by municipalities suggests it is working. Nonetheless, improvements, as outlined in committee recommendations, can be made.

Whenever possible, the council should seek opportunities to promote and reiterate its role as an impartial panel and at all times ensure that even the appearance of fairness be protected. Members of the public should be encouraged to participate in the process to address their specific concerns regarding community effects on local land use and harmful effects in natural resources and potentially the identification of alternatives. Finally, there should be a more structured schedule for follow-up and monitoring of sited facilities and better collaboration with interested groups.

CSC Jurisdiction

One specific area of analysis listed in the study scope was the examination of the range of jurisdiction, powers, duties, role, and responsibilities of the council. In this chapter, the committee outlines the council's current scope of jurisdiction, discusses industry changes affecting CSC jurisdiction, and describes other state models for comparison.

Scope of CSC Regulated Community

First created as the Power Facility Evaluation Council in 1971, the council's primary charge was to oversee the placement of electric facilities. Over the years, the council's scope of jurisdiction has been expanded to include site regulation of certain telecommunications towers, hazardous waste facilities, and low-level radioactive waste (LLRW) disposal areas. The council also has an indirect role in the siting of certain ash residue landfills.

Given its jurisdictional scope, the Connecticut Siting Council is responsible for siting a number of traditionally unwanted facilities from electric generating plants to telecommunications towers. At times, the siting of these facilities is resisted by the proposed municipalities and surrounding communities. As pointed out previously, the council has been effective in getting energy and telecommunication facilities established in a timely manner. However, the council process has not been fully tested in that it has yet to be applied to other areas it can regulate – low-level radioactive and hazardous waste facilities.

The council has carried siting authority for hazardous waste projects since 1981. To date, the council has never received an application to site a new hazardous waste facility. The need for constructing LLRW facilities has been preempted by the inclusion of Connecticut into the Atlantic Interstate Low Level Radioactive Waste Management Compact. Barring changes to the compact, Connecticut will not need to site a low level radioactive waste disposal facility for approximately 50 years.

In addition to siting decisions, the council is also statutorily responsible for a variety of siting related proceedings. It must annually assess forecasts for the supply and demand of electric power and conduct studies of transmission line life-cycle costs every five years.

CSC staffing has remained relatively constant over the years. Currently, the council is served by a nine member staff, including the executive director, three analysts, a durational analyst, a fiscal administrative officer, and three administrative support personnel. The program review evaluation of these CSC

functions concludes that presently the council adheres to its statutory mandates and timeframes and seems able to fulfill these roles and responsibilities.

Even as it meets its mandates, the council's workload in each area under its jurisdiction has been impacted by external factors such as industry and regulatory changes. For example, the recent restructuring of the energy industry has renewed interest in project developments in the last few years. At the moment, the council appears to be handling the volume in energy certifications and petitions. One reason may be the telecommunications industry movement away from cellular service which is under the council's jurisdiction and toward personal communication service¹⁰ (PCS) under local control. It is not known whether the council's ability to adhere to statutory mandates and timeframes would be compromised if the present regulatory status or industry climate in any of the CSC jurisdictions changed.

Industry Changes Affecting CSC Jurisdiction

The Connecticut Siting Council has regulatory jurisdiction encompassing major industry areas. It is difficult to definitively conclude whether there is an appropriate level of siting regulation in each. To assist in this evaluation, committee staff asked current council members whether the council's existing scope of jurisdiction should be expanded, reduced, or remain the same. Based upon their responses, the committee finds all current regulatory areas seem sufficient to ensure proper review of environmental impact of utility projects except one – telecommunications. The following discussion focuses on recent industry changes affecting CSC regulation.

Telecommunications. In 1996, the federal government restructured the telecommunications industry by opening the market to competition and fundamentally changing its regulation. Under the federal Telecommunications Act of 1996, state and local governments can regulate the siting of wireless telecommunications facilities, including cellular and PCS towers. However, the act prohibits unreasonable regulatory discrimination against functionally equivalent services.

Since 1984, the Connecticut Siting Council has had siting authority for cellular towers. Connecticut statutes define a "facility" under CSC jurisdiction to include among other things "such telecommunications towers, including associated telecommunications equipment...used in a cellular system, as defined in the Code of Federal regulations Title 47, Part 22, as amended, which may have a substantial adverse environmental effect, as said council shall, by regulation, prescribe." (C.G.S. 16-50i(a)(6))

PCS technology did not exist when the CSC telecommunications definition was first enacted in 1984 and was just emerging when the statute was last amended in 1994. By expressly including only cellular services, the statutory definition seems to exclude PCS.

¹⁰ PCS refers to a recent generation of wireless service using digital transmission to provide wireless telecommunications services.

This is the official interpretation by CSC, which believes any other position would be beyond its authority as an administrative agency. As a result, Connecticut municipalities are left siting control of PCS facilities by default, while CSC continues to regulate cellular tower siting.

This bifurcation of jurisdiction is the subject of an ongoing lawsuit filed in January 1998. Sprint PCS has taken the issue to federal court arguing that the state's split jurisdiction constitutes unreasonable discrimination of functionally equivalent services in violation of the Telecommunications Act of 1996. (*See sidebar*)

Municipal response. When setting up their system networks, telecommunications providers must seek approval from CSC for cellular facilities or from approximately 169 local jurisdictions for PCS. As mentioned in the previous chapter, this issue was frequently mentioned in the municipal surveys conducted by program review staff. The municipal survey responses provided committee staff information regarding the siting experience of telecommunications facilities under municipal jurisdiction.

Approximately 70 percent of the 121 municipalities responding to the committee survey indicated they made one or more telecommunications siting decisions falling under their jurisdiction since 1994. Their written comments to the survey suggest municipalities fall into one of three positions on the split jurisdiction issue: municipalities should retain local control; CSC should have exclusive jurisdiction; or a combined system should be established.

A common sentiment found in the written responses was locals know their community and potentially viable alternatives. Some were concerned a statewide entity would not be in touch with the preferences of local regulators or the community. Many felt the decision should be kept at the local level in the best interest of the community. Some believe they have the ability to regulate these facilities on their own. A few suggested an intertown/regional approach for siting.

PCS vs. Cellular Service

PCS and cellular service are both considered "commercial mobile radio services" (CMRS) under the Federal Communications Commission (FCC) regulations. The FCC addresses PCS and cellular services in separate parts of its regulations, Part 24 and Part 22 respectively. However, the Sprint claim asserts that PCS is functionally equivalent in that it satisfies the component parts of the cellular system definition found in the FCC regulations.

Traditional cellular carriers use a system of broadcast towers to transmit communications to and from their mobile users. PCS is a relatively new technology that is superceding cellular systems. Unlike the earlier analog versions of cellular, PCS uses digital signals to allow for better coverage and wider range of services such as wireless data transmission.

Although similar in some respects, a PCS system differs from a cellular system in that PCS is authorized by FCC to operate at the 1850-1910 and 1930-1990 megahertz (MHz) bands of the radio spectrum. Traditional cellular uses analog technology and operates at the 800-900 MHz bands of the radio spectrum. Because PCS uses higher frequencies and thus has less power than cellular systems, PCS technology requires that towers and antennas be placed closer to each other than does cellular technology.

More of the written comments seem to prefer some type of collaborative approach. One suggestion was to allow for CSC review of towers under local regulations. Others proposed a statutory requirement that CSC provide technical assistance and advisory comments to municipalities. A couple indicated it would be helpful to have another group review the proposed projects before a town decision to lessen their workload. A few mentioned that as long as local issues are considered, jurisdiction should not be a problem.

A much less common position was to give CSC exclusive jurisdiction over telecommunications. Most of those municipal officials also stated they felt they lack the necessary expertise to make the decision. A few stated they did not have the resources to handle the number of tower applications.

Among the resources used by the responding municipalities in making a siting decision, that falls exclusively under municipal jurisdiction are: town planner (86 percent); town engineer (65 percent); inland wetlands commissioner (70 percent); consultant hired by the municipality (38 percent); planning and zoning representative (26 percent); Connecticut Siting Council (22 percent); and Department of Environmental Protection (12 percent). Other resources used include: town attorney; board of selectmen; land use official; building inspector; environmental planner; area conservation group; regional planning group; and ad hoc committee.

Unfortunately, the emergence of PCS may have caught a number of municipalities unprepared to handle the situation. Problems have arisen in some municipalities that have tried or wanted to adopt “moratoriums” on the processing of siting application to better cope with this situation and in hopes of revamping or developing regulations that would assist in the decision making. Although several towns would like time to study the relevant issues and important regulations surrounding siting, the industry has argued in other states these moratoria violate the Telecommunications Act of 1996 because they in effect constitute a prohibition of wireless service and impose unreasonable delay. Service providers and the industry have challenged these moratoria in the courts.

Council member response. The survey responses of CSC council members support telecommunications jurisdiction under one entity. Among the council members comments: the split jurisdiction results in various siting criteria allowing more and higher towers than required; and local authorities, even if they had the expertise to site, are not aware of how their tower relates to the overall scheme of things on a statewide basis.

Past legislative proposals. For the past several years, the state legislature struggled with the question of who should have jurisdiction over telecommunication tower siting. According to the Office of Legislative Research, legislation was introduced in the last four years to alter the jurisdiction over tower siting. Bills placing PCS towers under council jurisdiction were proposed in 1996, 1997, and 1998. Each year the Energy and Technology committee favorably reported the legislation but it subsequently died when many legislators objected favoring local control.

After these efforts led to impasse, compromise legislation was proposed. For example, in 1997, the Energy and Technology committee raised a bill to transfer PCS facilities to the council’s jurisdiction but postpone CSC hearings to permit the applicant and the municipality to

negotiate alternative sites and require a two-thirds CSC vote to approve such facilities (HB 6019). In 1999, the committee raised another bill transferring PCS jurisdiction to the council but allowing a municipality to go to binding arbitration if aggrieved by the council's decision (SB 108).

Bills were also raised in the Planning and Development committee in 1998 and 1999. In each year, the committee proposed legislation allowing municipalities to choose to regulate all personal wireless service facilities or none, in which case the jurisdiction would go to the council. All of these proposed bills were favorably reported by their committees but none were ultimately enacted. There were no bills addressing siting jurisdiction issues in the 2000 session. However, there were amendments offered requiring CSC to provide technical assistance to a municipality on issues involving telecommunications towers and mandating municipalities file with CSC the location and height of existing and proposed telecommunications towers. None were passed.

Committee recommendation. There is no doubt that the development of emerging technologies will continue to create new and complex regulatory issues. In fact, the bifurcated jurisdictional status of cellular and PCS telecommunications was recently challenged in court as a violation of federal law. In its ruling, the federal court interpreted Connecticut's existing statutory definition to include both cellular and PCS telecommunications under the Connecticut Siting Council's jurisdiction.

On December 5, 2000, the program review committee made a recommendation of its own on this issue. **The committee recommended municipal planning and zoning boards have siting jurisdiction over PCS telecommunications facilities. The Connecticut Siting Council may participate as an intervenor in any such planning and zoning board proceedings. Municipal planning and zoning boards shall establish timeframes for these proceedings.**

Tower sharing information. Regardless of the final jurisdiction authority, the committee believes a statewide perspective on how telecommunication projects are developing across the state is necessary to be consistent with legislative policy on tower proliferation. Without a mechanism to oversee statewide impact, it would be difficult, if not impossible, to control tower proliferation.

Currently, the siting council is responsible for promoting tower sharing. Given its statewide jurisdiction on cellular facilities, the council is in a good position to view the big picture and recognize opportunities for shared use. By law, the council can order the owner of an existing PCS or other telecommunications tower to share it with another telecommunications provider, notwithstanding the split jurisdiction over siting. The committee found the council routinely explores the possibility for tower sharing in its decisions. According to CSC reports, the council reviewed and acknowledged 94 requests in FY 00 for tower sharing at existing facilities to avoid the construction of new telecommunications towers.

The program review committee found a weakness, recognized by council staff, in the current tower sharing system. The council does not have complete information on telecommunications facilities sited only by municipalities. There is no statutory requirement the

council compile nor municipalities or service carriers provide information on telecommunications facilities under local jurisdiction. The council does maintain a database on towers staff becomes aware of during the course of their work. While this database is probably the most comprehensive tower listing available, council staff acknowledges it is not complete.

It is difficult to maintain updated information about tower siting, in part because there are so many players involved. Information collected from the municipal survey indicates at least 74 municipalities made siting decisions under their own jurisdiction. The program review committee finds comprehensive information gathering is essential to properly promote tower sharing and thereby reducing proliferation. **Therefore, the program review committee recommends CSC develop a method of collecting information on all telecommunications towers in Connecticut, and establish and maintain a statewide inventory of these telecommunications towers.**

The recommended inventory of towers is key to effective implementation of tower sharing policy. It may also serve decision makers, under any regulatory scheme, in locating future facilities. The information may assist in determining telecommunications coverage and need.

Energy. Another significant regulatory change which will likely impact the council's work is the restructuring of the state's electric utilities. In 1998, following the passage of electric restructuring legislation, the council was authorized to approve, by declaratory ruling rather than certification, certain new generating plants. The plants had to use fuel other than coal or nuclear energy, and be proposed for an existing generating plant site, unless the council determined the plant would cause substantial environmental harm.

The amount of time the council had to issue a siting decision for any new generating plant was reduced from 12 to six months. In addition, the requirement the council determine need for such plants was eliminated. Finally, the council was required to examine its procedures for siting new generating facilities in a restructured electric industry and determine how siting can be expedited while taking environmental concerns into account. The results were presented to the legislature last year and still under consideration.

In its report to the legislature, the council noted a number of suggested changes to be consistent with existing CSC practice and in recognition of the provisions for competitive electric generation as provided by Public Act 98-28. Among its recommendations are changes to the reporting requirements for entities in the new restructured environment. Specifically, changes to the information companies have to provide to assist the council in the development of the annual forecast of load and resources report were recommended. According to council staff, these changes will be proposed this legislative session.

The impact of restructuring is still evolving and the extent of any necessary additional changes still unknown. Nonetheless, the council recommended changes are practical in light of the redefining of electric utilities and would assist the council in fulfilling its mandates.

Siting Authority and Processes in Other States

As part of its study, the program review committee compared selected other states' siting authority to that of the Connecticut Siting Council. Because CSC jurisdiction encompasses a number of major industries but has limited activities in some, the committee focused its attention on comparisons in the energy and telecommunications fields.

The states used for this profile were selected for one or more of the following reasons: geographical proximity to Connecticut, mentioned in environmental policy literature, or for regional contrast. Based on these criteria, the following 13 states were chosen: California, Florida, Iowa, Maine, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Texas, Vermont, and Wisconsin. The information was compiled through a review of other state statutes and regulations as well as telephone interviews with other state regulators. Appendix D provides a synopsis of each state's siting authority and characteristics.

In terms of jurisdictional structure, the Connecticut Siting Council is unique in that no other single entity, within the states reviewed, has such broad siting jurisdiction. Most states separate the siting authority of energy and telecommunications facilities. The siting of energy facilities is usually performed by a statewide entity with little to no local regulation. As with Connecticut, some states reserve the authority to preempt local regulation for certain energy facilities.

In the states reviewed, the primary energy siting authority can be classified as an interagency entity in which members are commissioners or representatives of existing state agencies or a group of independent representatives usually appointed by the governor and confirmed by one or more legislative house. This is comparable to the Connecticut Siting Council membership which consists of both gubernatorial and legislative appointments.

Connecticut is the only state in the committee profile which has exclusive siting jurisdiction over telecommunications facilities on non-state land. The siting of telecommunications, including cellular, is most commonly found on the municipal level with some exceptions. In a few cases, the state will assume siting authority if the proposed site involves state property or the proposed structure is over a certain height (New Hampshire, Vermont). In Massachusetts, the state may exempt certain telecommunications facilities from local authority if it finds that the facility is necessary for the convenience or welfare of the public.

The committee also tried to collect information on siting process and criteria in other states. Similar to Connecticut, the siting criteria for energy facilities in other states usually include a determination of need, effect on public health and safety, assessment of the environmental impact, and cost. Given the time and resources needed to contact the various local siting authorities involved, the committee was not able to compile information on siting criteria for telecommunications in other states.

Based on the other state information, the program review committee finds Connecticut is unique in its structure and authority. It is difficult to determine whether any one approach is better than another. According to academic literature, no single set of procedures can guarantee

uncontroversial siting in every case. Oftentimes, it seems the ability of the state to locate publicly needed but locally unwanted facilities has less to do with the process used than the nature of the facility proposed or the past experience of the community chosen to host the facility. Therefore, the committee concludes that no one model or organizational structure appears to be a better alternative to the present.

Conclusions. The council's current statutory authority grants it siting jurisdiction over a broad range of industries including energy, telecommunications, hazardous waste, and low level radioactive waste. The majority of the council's work involves energy and telecommunications. The council adheres to its statutory mandates and timeframes allowing it to fulfill its roles and responsibilities. However, it is unknown whether the council's ability to do this would be compromised if the present regulatory status or industry climate in any of the CSC facility jurisdiction changed.

Current state law grants exclusive jurisdiction over cellular telecommunication towers to CSC and by default grants municipalities control over the siting of other telecommunications facilities. Legislative efforts to change the current telecommunication siting structure have failed in recent years. The bifurcation of jurisdiction in the siting of telecommunications facilities has caused controversy and has been the subject of a pending federal lawsuit.

Compared to other states, Connecticut is unique in granting siting jurisdiction to one entity for a broad scope of industries. In terms of siting energy facilities, Connecticut is similar to several other states. Telecommunications siting authority is more commonly found on the municipal level in other states. However, no one model or organizational structure appears to offer more or less benefits than the Connecticut Siting Council.

APPENDICES

APPENDIX A CONTENTS OF CERTIFICATION APPLICATIONS

Energy (electric and fuel transmission lines and substations):

(A) A description, including estimated costs, of the proposed transmission line, substation or switchyard, covering, where applicable underground cable sizes and specifications, overhead tower design and appearance and heights, if any, conductor sizes, and initial and ultimate voltages and capacities; (B) a statement and full explanation of why the proposed transmission line, substation or switchyard is necessary and how the facility conforms to a long-range plan for expansion of the electric power grid serving the state and interconnected utility systems, that will serve the public need for adequate, reliable and economic service; (C) a map of suitable scale of the proposed routing or site, showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, and showing existing transmission lines within one mile of the proposed route or site; (D) Justification for adoption of the route or site selected, including comparison with alternative routes or sites which are environmentally technically and economically practical; (E) a description of the effect of the proposed transmission line, substation or switchyard on the environment, ecology, and scenic, historic and recreational values; (F) a justification for overhead portions, if any, including life-cycle cost studies comparing overhead alternatives with underground alternatives, and effects described in subdivision (E) of under-grounding; (G) a schedule of dates showing the proposed program of right-of-way or property acquisition, construction, completion and operation; and (H) identification of each federal, state, regional, district and municipal agency with which proposed route or site reviews have been undertaken, including a copy of each written agency position on such route or site.

Energy (electric generating & storage facilities):

(A) A description of the proposed electric generating or storage facility; (B) a statement and full explanation of why the proposed facility is necessary; (C) a statement of loads and resources as described in section 16-50r; (D) safety and reliability information, including planned provisions for emergency operations and shutdowns; (E) estimated cost information, including plant costs, fuel costs, plant service life and capacity factor, and total generating cost per kilowatt-hour, both at the plant and related transmission, and comparative costs of alternatives considered; (F) a schedule showing the program for design, material acquisition, construction and testing, and operating dates; (G) available site information, including maps and description and present and proposed development, and geological, scenic, ecological, seismic, biological, water supply, population and load center data; (H) justification for adoption of the site selected, including comparison with alternative sites; (I) design information, including description of facilities, plant efficiencies, electrical connections to system, and control systems; (J) description of provisions, including devices and operations, for mitigation of the effect of the operation of the facility on air and water quality, for waste disposal, and for noise abatement, and information on other environmental aspects; (K) a listing of federal, state, regional, district and municipal agencies from which approvals either have been obtained or will be sought covering the proposed facility, copies of approvals received and the planned schedule for obtaining those approvals not yet received.

Telecommunications:

(A.) A brief description of the proposed facility, including the proposed locations and heights of each facility at the prime and alternative sites; (B.) A statement of the purpose for which the application is made; (C.) A statement describing the statutory authority for such application; (D.) The exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person. If any applicant is a corporation, trust association, or other organized group, it shall also give the state under the laws of which it was created or organized; (E.) The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant; (F.) A statement of the need for the proposed facility with as much specific information as is practicable to demonstrate the need including a

description of the proposed system and how the proposed facility would eliminate or alleviate any existing deficiency or limitation; (G.) A statement of the benefits expected from the proposed facility with as much specific information as is practicable; (H.) A description of the proposed facility at the proposed prime and alternative sites including: 1) Height of the facility and its associated equipment and antennas; 2) Access roads and power supplies; 3) Special design features; 4) Type, size, and number of transmitters and receivers, as well as the signal frequency, power output, and power density at the tower base, site boundary, and building where people might be exposed to the maximum power densities from the facility; 5) A map showing any fixed facilities with which the proposed facility would interact; 6) The coverage signal strength, and integration of the proposed facility with any adjacent fixed facility, to be accompanied by propagation maps showing interfaces with any adjacent service areas; and 7) For cellular systems, a forecast of when maximum capability would be reached for the proposed facility and for facilities that would be integrated with the proposed facility; (I.) A description of the proposed prime and alternative site, including: 1) The most recent U.S.G.S. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the site of the facility and any significant changes within a one mile radius of the site; 2) A map (scale not less than 1 inch = 200 feet) of the lot or tract on which the facility is proposed to be located showing the acreage and dimensions of such site, the name and location of adjoining public roads or the nearest public road, and the names of abutting owners and the portions of their lands abutting the site; 3) A site plan (scale not less than 1 inch = 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, 100 year flood zones, waterways, wetlands, and all associated equipment and structures on the site; 4) Where relevant, a terrain profile showing the proposed facility and access road with existing and proposed grades; and 5) The most recent aerial photograph (scale not less than 1 inch = 1,000 feet) showing the proposed site, access roads, and all abutting properties; (J.) A statement explaining mitigation measures for the proposed facility including: 1) Construction techniques designed specifically to minimize adverse effects on natural areas and sensitive areas; 2) Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas; 3) Establishment of vegetation proposed near residential, recreation, and scenic areas; 4) Methods for preservation of vegetation for wildlife habitat and screening; (K.) A description of the existing and planned land uses of the proposed prime and alternative sites and surrounding areas; (L.) A description of the scenic, natural, historic, and recreational characteristics of the proposed prime and alternative sites and surrounding areas; (M.) Sight line graphs to the proposed prime and alternative sites from visually impacted areas such as residential developments, recreational areas, and historic sites; (N.) A list describing the type and height of all existing and proposed towers within a ten mile radius within the site search area, or within any other area from which use of the proposed prime or alternative tower might be feasible from a location standpoint for purposes of the application; (O.) A description of efforts to share existing towers, or consolidate telecommunications antennas of public and private services onto the proposed facility; (P.) A description of technological alternatives and a statement containing justification for the proposed facility; (Q.) A description of rejected sites with a U.S.G.S. topographic quadrangle map (scale 1 inch = 2,000 feet) marked to show the location of rejected sites; (R.) A detailed description and justification for the site selected, including a description of siting criteria and the narrowing process by which other possible sites were considered and eliminated including, but not limited to, environmental effects, cost differential, coverage lost or gained, potential interference with other facilities, and signal loss due to geographical features compared to the proposed prime and alternative sites; (S.) A statement describing hazards to human health, if any, with such supporting data and references to regulatory standards; (T.) A statement of estimated costs for site acquisition and construction of a facility at the proposed prime and alternative sites; (U.) A schedule showing the proposed program of site acquisition, construction, completion, operation and relocation or removal of existing facilities for the proposed prime and alternative sites; (V.) A statement indicating that, weather permitting, the applicant will raise a balloon with a diameter of at least three feet, at the sites of the proposed prime and alternative towers, on the day of the Council's first hearing session on the application or at a time otherwise specified by the Council. For the convenience of the public, this event shall be publicly noticed at least 30 days prior to the hearing on the application as scheduled by the Council; and (W.) Such information as any department or agency of the State exercising environmental controls may, by regulation, require including: 1) A listing of any federal, State, regional, district, and municipal agencies, including but not limited to the Federal Aviation Administration; Federal Communications Commission; State Historic Preservation Officer; State Department of Environmental Protection; and local conservation, inland wetland, and planning and zoning commissions with which reviews were conducted concerning the facility, including a copy of any agency position or decision with respect to the facility; and 2) The most

recent conservation, inland wetland, zoning, and plan of development documents of the municipality, including a description of the zoning classification of the site and surrounding areas, and a narrative summary of the consistency of the project with the Town's regulations and plans. (X.) Such information as the applicant may consider relevant.

Hazardous Waste:

An application for a certificate shall contain such information as the council may deem relevant, including, but not limited to, the following: (1) A description, including estimated cost, of the proposed facility; and a description of the types of wastes to be handled and disposal technology to be used and, if a land disposal is proposed, an explanation of why no other disposal method is reasonably available; (2) reasons for choosing the site and the proposed type of hazardous waste facility selected and a comparison of alternative sites and technologies; (3) a schedule of dates setting forth the proposed program of acquisition, construction, completion and operation; (4) environmental site information obtained from the Department of Environmental Protection review required by subsection (c) of this section including (A) maps with narrative description of air quality and movement, ground and surface water conditions, levels, movement and fluctuations, vegetation and wildlife populations and habitat, seismic characteristics and hydro geologic evaluation of the site, setting forth data and analysis as the council shall require, including but not limited to, a map showing the proximity of the proposed site to facilities or properties owned or operated by a water company as defined in section 25-32a, a map showing the land classification of the proposed site under the classification established by section 25-37c, and a report of the impact of the proposed facility on present and future public water supplies and private wells and (B) design, capacity, operation and management information including facility efficiencies of tanks and any other containers; surface impoundments, waste piles, land treatment facilities, land fills, incinerators, thermal, physical, chemical, and biological treatment units, and injection wells; (5) human population density information for the area of the proposed facility; (6) traffic information including road and transportation access data and maps; (7) information on present and future development of the town where the facility is proposed to be located and for the surrounding towns; (8) a detailed description of provisions, including equipment and operation, for planning for prevention of hazards, monitoring of ground water quality, mitigation of the effect of the operation of the facility on public safety and the environment, and contingency plans and emergency procedures for dealing with facility malfunctions; (9) a listing of federal, state, regional and municipal agencies from which approvals have been received and the planned schedule of obtaining those approvals not yet received; (10) incentives offered and benefits accruing to the municipality in which the proposed facility is to be located; (11) an assessment of the need for the facility and the amount and types of the state's annual hazardous waste generation which the applicant proposes to dispose of, treat, transfer, store or recover at the facility; (12) the energy and resource recovery benefits, if any, which will be derived from the facility; (13) the plan for facility closure and post closure care and liability; (14) a detailed statement of the applicant's financial capabilities as well as a statement of the applicant's qualifications and previous experience with hazardous waste disposal, including a listing of all hazardous waste disposal projects or methods with which the applicant has had any connection or affiliation, either as owner, contractor, supplier, or consultant and (15) a list of all criminal and civil charges and enforcement actions, or other proceedings related to hazardous or solid waste or disposal of such waste in which the applicant or any corporate parent, subsidiary or affiliate has been involved.

Low level Radioactive Waste: Contents of Application

An application for a certificate shall contain such information as the council may deem relevant, including, but not limited to, the following: (1) A description, including estimated cost, of the proposed facility; and a description of the waste to be handled and management technology to be used and, if a land disposal facility is proposed, an explanation of why no other management method is reasonably available; (2) reasons for choosing the site and the proposed type of low-level radioactive waste facility selected and a comparison of alternative sites and technologies; (3) a schedule of dates setting forth the proposed program of acquisition, construction, completion and operation; (4) environmental site information including, but not limited to, (A) maps with narrative description of air quality and movement, ground and surface water conditions, levels, movement and fluctuations, vegetation and wildlife populations and habitat, seismic characteristics and hydro geologic evaluation of the site, setting forth data and analysis as the council shall require, including but not limited to, a map showing the proximity of the proposed site to facilities or

properties owned or operated by a water company as defined in section 25-32a, a map showing the land classification of the proposed site under the classification established by section 25-37c, and a report on the impact of the proposed facility on the environment including, but not limited to, present and future public water supplies and private wells and (B) design, capacity, operation and management information; (5) human population density information for the area of the proposed facility; (6) traffic information including road and transportation access data and maps; (7) information on present and future development of the town where the facility is proposed to be located and for the surrounding towns; (8) a detailed description of provisions, including equipment and operation, for planning for prevention of hazards, monitoring of ground water quality, mitigation of the effect of the operation of the facility on public health, safety and welfare and the environment, and contingency plans and emergency procedures for dealing with facility malfunctions; (9) a listing of federal, state, regional and municipal agencies from which approvals have been received and the planned schedule of obtaining those approvals not yet received; (10) incentives offered and benefits accruing to the municipality in which the proposed facility is to be located; (11) an assessment of the need for the facility and the amount and types of the state's annual low-level radioactive waste generation which the applicant proposes to dispose of, treat or store at the facility; (12) a plan for facility closure and stabilization and post closure observation and maintenance and transfer of the facility to the custodial agency for institutional control, as required by regulations adopted by the commissioner pursuant to section 22a-163f; (13) a detailed statement of the applicant's financial capabilities as well as a statement of the applicant's qualifications and previous experience with low-level radioactive waste management, including, but not limited to, a listing of all low-level radioactive waste management projects or methods with which the applicant has had any connection or affiliation, either as owner, operator, contractor, supplier or consultant and if the person is a business entity, the names and addresses of all parent and subsidiary corporations, partners, corporate officers and stockholders holding more than fifteen per cent of the stock of the corporation; (14) a list of any criminal or civil charges and enforcement actions, or other formal or informal enforcement proceedings related to low-level radioactive waste or to other state or federal laws, regulations, licenses, permits, approvals, certificates or orders in which the applicant or any corporate parent, subsidiary, affiliate, partner, corporate officer or director or stockholder holding more than fifteen per cent of the stock of the corporation has been involved; (15) a schedule of dates for the initial receipt of wastes at the facility and facility closure; (16) an analysis of the compatibility of the facility with surrounding land uses; (17) local, state, and federal standards, codes, and regulations applicable to the design, location, operation, and closure of the facility; (18) a description of the proposed methods of segregation and storage of wastes, any treatment processes to be used, and methods of waste emplacement; (19) a description of all proposed facility pollution monitoring and proposed control methods and procedures; (20) a description of proposed audit and quality control procedures; (21) a health risk assessment, including projected effects on mortality and morbidity rates among affected populations; (22) a description of methods of preventing inadvertent intrusion and assuring facility security; (23) applicable design criteria pertaining to natural phenomena and a description of how the proposed design of the facility meets these criteria; (24) an analysis of the amounts of third party insurance, surety bonds, trust funds and other forms of security that will be required to meet the financial requirements specified in subsection (d) of section 22a-163l and in section 22a-163o; (25) a plan for meeting the financial requirements analyzed under subdivision (24) of this subsection; (26) a description of the management and administrative program for the operation of the proposed facility which contains the name of the principal individual to be responsible for operation, a resume of the individual's qualifications and experience, and a statement of the number, duties, qualifications and experience of all key personnel, as determined by the council, to be involved in the storage, treatment or disposal of low-level radioactive waste; and (27) a copy of any application and any environmental report the applicant files with the United States Nuclear Regulatory Commission to obtain a license to operate a regional low-level radioactive waste management facility if a license is required.

APPENDIX B

Low Level Radioactive Waste Facility Siting Process

The statutory siting process for a low level radioactive waste disposal facility is similar to the other facility types in terms of notification requirements, public hearings, appeals and deadlines. The siting process resembles a hazardous waste siting in terms of council membership, decision making, voting requirements, application fee and municipal input. However, there are some differences in the siting process with regards to application content, local project review grant amount, host municipality compensation and incentives, siting decision criteria, and council follow up. The following summarizes the significant differences in the siting certification process for a low level radioactive waste disposal facility as compared to a hazardous waste management facility.

Application Filing. Similar to a hazardous waste facility siting, a low level radioactive waste disposal facility applicant must provide information on the provisions for mitigating the effects of the operation of the facility on public safety and the environment, closure and postclosure plans, a plan for meeting all the financial requirements of a low level radioactive waste operator/owner, applicant qualifications and experience, criminal and civil charges and enforcement actions related to low level radioactive waste, as well as the incentives offered and benefits accruing to the municipality in which the proposed facility is to be located. The additional information required by statute for the low level radioactive waste applicant includes more comprehensive description and analysis of the facility's ownership, design, method of low level radioactive waste management, construction, operation, schedule, and security. Council regulations require the low level radioactive waste applicant to demonstrate compliance with minimum distance requirements. The regulation specifies the minimum distance between active parts of the facility and a safety fence, any water supply or water table, and includes areas prohibited from low level radioactive waste disposal development. Applicants must identify all existing and planned schools, hospitals, nursing homes, and occupied dwellings within a 2 mile radius of the facility. The applicant is required to provide documentation of compliance with all local, state and federal regulations, and submit pre-site selection property appraisals of all properties within a two mile radius of the proposed facility. The Council arbitrates all pre-site selection property appraisal disputes between the property owner and the applicant. (The mandated filing requirements for each type of facility are listed in Appendix A.)

Applications for a certificate of public safety and necessity for a low level radioactive waste disposal facility must provide proof of service and notification to the Northeast Interstate Low Level Radioactive Waste Commission (now known as the Atlantic Compact) and the Connecticut Hazardous Waste Management Service in addition to the entities and individuals previously listed for energy, telecommunications, and hazardous waste facilities.

Just as in a hazardous waste siting, low level radioactive waste disposal applicants are required to apply for all local permits at the same time as filing an application with the council. Local authorities may regulate and restrict the proposed low level

radioactive waste disposal facility but must do so within 130 days of the application. Local decisions can be appealed to the council. An affirmative vote of eight council members is needed to override local decisions.

The compensation package for a low level radioactive waste host community is more comprehensive than for other facility types and includes an assessment, the costs for mitigating the social and economic impact of the facility, services and incentives. The types of compensation provided by statute are summarized in Table B-1.

Table B-1. LLRW Facility: Affected Community Compensation	
Assessment	Percentage of quarterly gross receipts at the following rates: a. 10% \$0 up to \$1.25 million b. 5% over \$1.25 to \$2.5 million c. 2.5% over \$2.5 million
Mitigation	Up to \$150,000 for items such as: “greenbelt” buffer; development of open space/recreational facilities; fire equipment; road repair
Compensation	Annual payment in lieu of taxes at industrial rate; cost of full time monitor (municipal employee); annual well testing within one mile of facility; property value guarantee (difference between market value and pre-site selection appraisal) within two mile radius for up to five years after operation

A local project review committee negotiates the costs for mitigating the social and economic impact of the facility with the low level radioactive waste developer. The low level radioactive waste developer is required to provide \$100,000 (versus \$50,000 for hazardous waste facility development) for use by the committee. The membership of the committee is slightly different than for hazardous waste negotiations since there is no maximum number of committee members. The chief elected official of each municipality in which the facility will be located may appoint three members to the committee and the chief elected official of the neighboring municipality most likely affected by the facility can appoint one member. The Council is the sole arbitrator of disputes arising from the negotiations. The Council’s decision on whether to approve or deny the siting of the facility includes the items negotiated between the parties.

Council Deliberations. During the consideration of a low level radioactive waste disposal facility, council membership is expanded to include four ad hoc voting members, three of whom are electors from the municipality in which the proposed facility would be sited and one is an elector of the neighboring municipality most likely affected by the proposed site, all are appointed by the chief elected official from their respective municipality. For low level radioactive waste facility proceedings, council actions, with the exception of the override of local decisions, require the vote of seven members.

Similar to electric transmission, generating, and hazardous waste facilities, the council is required to issue its decision on a certificate within 12 months of receiving an

application, the council can extend this deadline by another 180 days with the applicant's consent.

The statutory factors governing council decisions for a low level radioactive waste disposal facility are essentially the same as those established for hazardous waste facilities, however, a low level radioactive waste disposal siting utilizes additional criteria. The council must also consider compliance with the minimum distance requirements regulations, including considerations of the health and safety of persons occupying structures within a 2 mile radius of the facility.

Follow-Up and Monitoring Phase. The compliance mechanism for a low level radioactive waste disposal facility is slightly different than for other facility types since statutes specify the follow up timeframe. Within 60 days of completing construction, a low level radioactive waste disposal applicant must file a final report, which includes certification by the operator, and engineer that facility conforms to the specifications and requirements in the development and management report, the date operations will begin, and the actual construction costs. Within 90 days of receipt of final report or notice of full time operation, the council will review the facility and issue a final approval of completion of the development and management plan. The council can make recommendations necessary for final approval. A letter of completion is issued when the council determines the facility has been constructed and is operating in accordance with certificate of public safety and necessity. The council has the statutory authority to issue cease and desist orders and to suspend or revoke any permit issued by it upon a showing of cause and after a hearing.

Appendix C Municipal Survey

July 5, 2000

Dear Chief Elected Official:

The Legislative Program Review and Investigations Committee of the General Assembly is conducting a study of the Connecticut Siting Council. The council has siting jurisdiction in a number of areas including: energy, telecommunications, hazardous waste disposal, low level radioactive waste management, and ash residue management facilities. The study will review the overall operation of the council, focusing on its ability to balance the need for the facilities it oversees with those of the environment, public health, and safety.

As part of the study, each chief elected official (in office as of January 1, 1999), as spokesperson for his or her community, is asked to complete the enclosed questionnaire and return it in the envelope provided by *July 24, 2000*. The committee staff will use the numeric code in the top right hand corner of the survey for follow-up mailing purposes only; your responses will remain confidential. The survey results will be compiled so that identification of any individual will be impossible.

If you have any questions about the survey, the study, or would like to provide additional information on the council or siting process, do not hesitate to contact Michelle Castillo or Corey Simmons, the committee staff assigned to this project, at 240-0300.

The information you provide will help the committee identify the council's relationship with municipalities and give a better understanding of local concerns. Thank you for your cooperation.

Sincerely,

Michael L. Nauer
Director

Enc.

**LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONNECTICUT SITING COUNCIL SURVEY**

N=121

1. Title of individual completing this survey:
10% Mayor **51%** First selectman **39%** Other _____

2. County:
14% Fairfield **16%** Hartford **16%** Litchfield **11%** Middlesex
16% New Haven **14%** New London **7%** Tolland **7%** Windham

3. Current population of your municipality:
49% Under 10,000 **41%** 10,000-50,000 **10%** Over 50,000

4. The Connecticut Siting Council reviews and approves proposals to build or expand power plants, transmission lines, communication towers, and hazardous waste facilities. Has your municipality had any experience with the Connecticut Siting Council?
60% Yes **40%** No  **SKIP TO QUESTION 10**

5. When was your municipality's last experience with the Connecticut Siting Council?
83% Within the last 5 years **17%** More than 5 years ago

6. Based on your municipality's experience, how would you rate the Connecticut Siting Council in terms of the items listed in the chart below: *Circle your answers.*

	Excellent	Good	Fair	Poor	Not Applicable
a) Quality of its work (i.e. engineered designs, site plans, findings of fact, opinions, and decisions/orders)	16%	56%	13%	6%	9%
b) Timeliness of its process	20%	43%	25%	3%	9%
c) Fairness of its process	21%	44%	15%	7%	12%
d) Objectivity of council members	10%	44%	16%	7%	22%
e) Providing opportunities to present local concerns	24%	38%	18%	11%	10%
f) Responsiveness to requests for information	34%	45%	13%	1%	7%
g) Follow-up and monitoring of sited facilities	6%	33%	15%	9%	36%
h) Consideration of municipal input in its siting decisions	22%	29%	24%	11%	13%
i) Disclosure of its policy and criteria to make decisions	18%	38%	19%	13%	12%
j) Overall working relationship with municipality	25%	43%	17%	8%	6%

 *Continued on next page*

7. Do you think the Siting Council is fulfilling its goal of balancing the need for a facility with the need to protect the environment and ecology of the state?

76% Yes 24% No, please explain _____

8. Do you believe the Siting Council is the best entity for balancing statewide need for the facilities it oversees and local environmental concerns?

70% Yes 30% No, please explain _____

9. Do you believe that the Siting Council in making its decisions treats all towns equally?

78% Yes 22% No, please explain _____

10. Jurisdiction over siting telecommunications towers is split between the council and local municipalities. In your opinion, does the split jurisdiction make it difficult to manage the proliferation of telecommunications towers in the state?

54% Yes 46% No
Please explain your response _____

11. Has your municipality made one or more **telecommunications** siting decisions that fall exclusively under municipal jurisdiction since 1994?

73% Yes ☞ **HOW MANY TIMES** _____ 27% No ☞ **SKIP TO QUESTION 12**

11A. What resources are generally used by your municipality to make telecommunications siting decisions that fall exclusively under your jurisdiction? *Check all that apply.*

Local Resources:

- Town Planner
- Town Engineer
- Inland Wetlands Commissioner
- Consultant hired by municipality
- Other _____

State Resources:

- Connecticut Siting Council
- Dept of Environmental Protection
- Other _____

Other Resources:

- _____
- _____
- _____

11B. Does your municipality have the necessary expertise to make telecommunications siting decisions?

67% Yes 33% No, please explain _____

11C. Overall, is your municipality satisfied with the resources available to it to make telecommunications siting decisions?

76% Yes 24% No, please explain _____

12. Please feel free to add any other comments or suggestions about the Connecticut Siting Council and the State's siting process on the back of this questionnaire or attach a separate page.

Please Return In The Enclosed Prepaid Envelope By July 24, 2000

THANK YOU FOR YOUR PARTICIPATION.

Appendix D

Siting Authority In Selected Other States

The following provides a brief synopsis of the siting authority and process used to site electric transmission lines, electric generating and telecommunications facilities in California, Florida, Iowa, Maine, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Texas, Vermont, and Wisconsin.

California

Transmission lines. The California Public Utility Commission regulates the siting of transmission lines. The Governor appoints the five commissioners, who must be confirmed by the Senate. An in depth analysis of environmental issues is required under California's Environmental Quality Act (CEQA).

The commission has twelve months, after the submission of a complete application, to site a transmission line but can authorize a shorter period because of exceptional circumstances. The commission may hold public hearings at its discretion. One commissioner is assigned to oversee the siting proceeding. Based upon the presiding commissioner's recommendation, all five commissioners vote on the application. The criteria the commission uses to make siting decisions includes if a facility is necessary to promote the safety, health, comfort, and convenience of the public.

In instances where the public utilities and local agencies are unable to resolve their differences, the commission has the statutory authority to preempt local regulation.

Electric generating facilities. The California Energy Commission regulates the siting of electric generating facilities. The Governor appoints, with Senate confirmation, the five commissioners, one of which represents the public at large. The criteria the commission uses to make siting decisions includes factors related to safety, reliability, and environmental impact. Need was eliminated as a criterion when the state moved toward electric competition. As with transmission lines, an in depth analysis of environmental issues is required under California's Environmental Quality Act (CEQA).

The commission has twelve months, after the submission of a complete application, to make a decision on an application but the applicant can request an extension. The Energy Commission conducts public informational presentations and nonadjudicatory hearings prior to the certification hearing in order to understand the electrical demand basis for the facility and obtain knowledge of the proposed facility and sites. The commission then holds a formal adjudicatory hearing. All five commissioners vote on the application.

In instances where the public utilities and local agencies are unable to resolve their differences, the commission has the statutory authority to preempt local regulation.

Telecommunications towers. The California Public Utility Commission defers to local government to regulate the location of telecommunications towers and to act as the lead agency for purposes of satisfying CEQA requirements. According to commission personnel, there have been recent discussions as to whether or not the state should override or preempt local decisions when there is clear conflict with the commission's goals and/or statewide interest.

Florida

Transmission lines and electric generating facilities: The Florida Public Service Commission, Department of Environmental Protection, and a gubernatorial appointed board are all involved in the siting process. The Governor appoints the five public service commissioners, who must be confirmed by the Senate. The siting board consists of the governor and seven cabinet members, all elected officials.

The commission determines need and the Department of Environmental Protection reviews environmental issues. An administrative law judge holds a certification hearing to determine if the proposed site is consistent and in compliance with existing zoning ordinances. The board reviews the judge's recommended order, and determines if the proposed site conforms to existing land use plans. The board has the statutory authority to preempt local regulation. The board has final authority over certification and siting and considers reliability and the balance between need and impact on the public when making siting decisions.

Telecommunication towers. A certificate of necessity is required from the Public Service Commission prior to construction or operation of any telecommunications facility or extension; however, the siting of towers is left to local authorities.

Iowa

Transmission lines and electric generating facilities. The Iowa Utility Board, within the Department of Commerce, has siting jurisdiction over transmission lines and electric generating facilities. The Governor appoints, with Senate confirmation, the three board members. The board determines whether the transmission line is necessary to serve a public use and its relationship to an overall plan of transmitting electricity. For electric generating facilities, the board considers if the facility is required for public convenience, use and necessity, has minimum adverse land and environmental impacts.

The board has the statutory authority to preempt local zoning requirements for transmission lines and electric generating facilities.

Telecommunications towers. A certificate of public convenience and necessity is required from the board prior to a utility providing land-line local telephone service; however, the siting of towers is left to local authorities.

Maine

Transmission lines. The Public Utility Commission has siting jurisdiction over transmission lines. The Governor appoints the three commissioners, subject to review by the joint standing committee of the state legislature having jurisdiction over public utilities. The commission issues a certificate of public convenience if a need for the proposed transmission line exists.

A public hearing can be held at the discretion of the commission. The issuance of a certificate by the commission does not supercede municipal authorities to regulate the siting of a proposed transmission line; however, if the applicant is a public service corporation the commission can preempt local regulation after a public hearing. A public service corporation includes every gas utility, natural gas pipeline utility, electric utility, telephone utility, water utility, public heating utility and ferry.

Electric generating facilities. The siting of electric generating facilities is left to local authorities since the state enacted law to restructure electric utilities and establish retail competition for electricity generation.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

Massachusetts

Transmission lines and electric generating facilities. The Energy Facility Siting Board, an independent state review board within the Department of Telecommunications and Energy, has siting jurisdiction over transmission lines and electric generating facilities. The board has nine members including commissioners of Department of Telecommunications and Energy, the Secretary of Environmental Affairs, the Director of Economic Development, the Commissioner of Division of Energy Resources, and public members appointed by Governor.

The board considers need, alternatives, environmental impact, cost, and reliability when making siting decisions for transmission line siting decisions. Siting decisions for electric generating facilities also consider these factors except for need. Need was eliminated as a criterion since the state enacted law to restructure electric utilities and establish retail competition for electricity generation.

The board uses an adjudicatory process to reach siting decisions. A public hearing is a required component of the board's siting process. A hearing officer, who is an attorney for the Department of Telecommunications and Energy's Siting Division, oversees the public and evidentiary hearings and determines intervenors. After the evidentiary hearing, the board staff drafts a tentative decision based on the record of evidence, the board then votes, decisions require a majority vote.

The board does have the statutory authority to preempt local regulation of transmission lines and electric generating facilities.

Telecommunications towers. The siting of telecommunications towers is primarily left to local authorities; however, land or structures used by a public service corporation may be exempted from local zoning upon petition to the Department of Telecommunications and Energy, which will conduct a public hearing. Cellular providers are considered public service corporations. The Department of Telecommunications and Energy can preempt local regulations if it finds that a structure is necessary for public convenience or welfare.

New Hampshire

Transmission lines and electric generating facilities. The Site Evaluation Committee and the Public Utilities Commission have siting jurisdiction over transmission lines and electric generating facilities. The Committee is an interagency group with fifteen members consisting of the three Public Utilities Commissioners and the Chief Engineer of the Public Utilities Commission, Commissioner of the Department of Environmental Services (or designee), Director of the Division of Water; Commissioner of the Department of Resources and Economic Development (or Director of the Division of Economic Development as designee); Commissioner of the Department of Health and Human Services (or designee); Executive Director of the Fish and Game Department; Director of the Office of State Planning; Director of the Division of Parks and Recreation; Director of the Division of Forests and Lands; Director of the Division of Air Resources; Director of the Governor's Office of Energy and Community Services (or designee); and the Commissioner of the Department of Transportation (or designee).

The committee holds joint hearings with the commission. A public hearing is a mandatory component of the siting process. The commission must find the proposed facility is needed and will not adversely affect system reliability and economic factors. Upon a majority vote, the commission decided whether to grant or deny a certificate.

Once a certificate is granted, the Site Evaluation Committee must balance environmental concerns with public need when making siting decisions. A proposed project must be consistent with regional development and not have adverse effect on aesthetics, historic sites, environment, public health and safety. Committee decisions require a majority vote of a full committee. The committee has the statutory authority to preempt local regulation for the siting of transmission lines and electric generating facilities.

Telecommunications towers. The siting of telecommunications towers is under the authority of local planning boards, however, if it is a state owned facility on state property then Commissioner of Transportation with the approval of the Governor can site and is exempt from local regulation. If it is a state-owned facility but not on state property then local regulation is binding.

Recent legislation (HB733), signed by the Governor, requires the Office of State Planning to establish a wireless master plan which identifies the location of all existing towers and develop model municipal ordinances relative to the deployment of personal wireless facilities. Wireless carriers doing business in the state are required to provide the director of the office of state planning all of their tower locations. The new law also establishes a study committee to look at the state's wireless communications policy.

New Jersey

Transmission lines. The Board of Public Utilities has siting jurisdiction over transmission lines. The Governor with the consent of the Senate appoints the three board members; not more than two of the members can be members of the same political party. The board considers need, alternative corridors, safety, and adequacy of the transmission line when making its decision.

The board requires the applicant to obtain local zoning approval but does have the statutory authority to preempt local regulation of transmission lines. If it is an uncontested case, the board will hear and vote on the application. If it becomes a contested case, the board usually sends the application to the Office of Administrative Law, which will hold a hearing before an administrative law judge who will make a decision. The board can accept, reject or amend the judge's decision. A public hearing can be held but it is not mandatory. Application decisions require a majority vote.

Electric generating facilities. The siting of electric generating facilities is left to local authorities since the state enacted law to restructure electric utilities and establish retail competition for electricity generation.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

New York

Transmission lines. The Public Service Commission, within the Department of Public Service, has siting jurisdiction over transmission lines. The commission consists five gubernatorial appointments confirmed by Senate. In making its decisions the board considers need, environmental impact, and whether the transmission line does not pose any undue hazard.

The Commission has the statutory authority to preempt local regulation of transmission lines. The amount of time the Commission has to make its decision on an application depends on the size of the line and complexity of the application. The commission, at its discretion, may hold hearings. If the application is contested, a mandated hearing(s) must be overseen by an administrative law judge. Commission decisions require a majority vote.

Electric generating facilities. The New York State Board on Electric Generation Siting and the Environment, which is part of the Department of Public Service, has siting jurisdiction over electric generating facilities. The board consists of seven members: five permanent members (Chairman of the Public Service Commission, Commissioner of the Department of Environmental Conservation, Commissioner of the Department of Health, Commissioner of the Department of Economic Development, and Chairman of the Energy Research and Development Authority, or their designees) and two public members, a resident from the judicial district and one from the county where a facility is proposed to be located, are named by Governor.

Applicants are required to establish communication with the public early in the pre-application process, which includes a public involvement program. An applicant must hold public meetings, offer presentations to individual groups and organizations, and establish a community presence via a local office, toll-free telephone number, an internet web site, or through some other means. After an applicant submits its preliminary statement of its intent to construct a facility, a public forum is held by the Department of Public Service staff to explain the siting process how the public can participate.

The siting board is required in making its decision to consider whether the facility is consistent with state energy plan or the electricity generated by the facility will be sold into the competitive market, minimizes the environmental impacts, is in public's interest, and is compatible with public health and safety. Board decisions require a majority vote and retains the statutory authority to preempt local regulation of electric generating facilities.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

North Carolina

Transmission lines and electric generating facilities. The North Carolina Utilities Commission, an administrative board of the General Assembly, has siting authority over transmission lines and electric generating facilities. The seven members of the commission are appointed by the Governor and confirmed by the General Assembly by joint resolution. The commission considers need, cost, location, and environmental compatibility when making siting decisions for transmission lines. Environmental impact, need, reliability, efficiency, and economical service are considered for electric generating facility siting decisions.

All seven commission members may hear cases but usually commissioners sit in panels of three. A public hearing is a mandatory component of the siting process if requested. Commission decisions require a majority vote. The commission can preempt local regulation for the siting of transmission lines and electric generating facilities.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

Rhode Island

Transmission lines and electric generating facilities. The Energy Facility Siting Board has siting jurisdiction over transmission lines and electric generating facilities. The board consists of three members: the chairperson of the Public Utilities Commission, the Director of the Department of Environmental Management; and the Associate Director of Administration for Planning. State law requires that the board, in making its decision whether to grant a license, determine whether the facility: is necessary to meet the needs of the state for energy, is cost-justified; will not cause unacceptable harm to the environment; and will enhance the socio-economic fabric of the state.

The board members conducted contested case proceedings. Other state agencies and political subdivisions of the state, at the direction of the board, render advisory opinions on issues with the proposed facility. The board is required to conduct at least one public hearing in each town or city affected by the proposed facility prior to taking any final action on an application. A majority vote of the board is required for all actions.

The Energy Facility Siting Board does have the statutory authority to preempt local regulation of transmission lines and electric generating facilities.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

Texas

Transmission lines. The Public Utility Commission consisting of three gubernatorial appointments has jurisdiction over the siting of transmission lines. The commission solicits recommendations of the Electric Reliability Council of Texas (ERCOT) and the Independent System Operator (ISO) in determining the need of a transmission line.

If the application is contested, an administrative law judge decides intervenors and parties; conducts evidentiary hearings; and issues a proposed order. The proposed order is put on the Public Utilities Commission agenda. Public hearings are held. By law, the commission must consider if the facility is necessary for the service, accommodation, convenience or safety of the public. Commission decisions to approve or deny an application require a majority vote and can preempt local regulation.

Electric generating facilities. The siting of electric generating facilities is left to local authorities.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

Vermont

Transmission lines and electric generating facilities. The Public Service Board has siting jurisdiction over any facility that will connect to the electrical grid. The Governor appoints, with confirmation by the Senate, the three board members. In making its decision, the board considers need, environmental impact, public health and safety, economic benefit to the state and its residents, and if the facility is consistent with the development of the region.

The siting process is treated as a contested case proceeding, including public hearings in at least one county in which the proposed facility will be located. The board considers the recommendations of the municipal bodies and regional planning commissions of any affected municipality but has the authority to preempt local regulation. Board decisions to approve or deny an application require a majority vote.

Telecommunications towers. The siting of telecommunications towers is left to local authorities. However, if the facility will be located on state property the Secretary of Administration must issue siting approval using a tower siting advisory committee consisting of consumers and representatives of various state agencies. In addition, towers proposed over 20 feet require a permit from the State Environmental Board.

Wisconsin

Transmission lines and electric generating facilities. The Public Service Commission has final siting jurisdiction over transmission lines and electric generating facilities. The Governor appoints, with Senate confirmation, the three commission members.

The commission holds contested case proceedings within 180 days. However, an extension of an additional 180 days can be made with court approval. A public hearing must be held in the area to be affected by the facility. Commission staff identifies issues and prepares briefings on the proposed facility for commission consideration. The commission considers need, environmental impact, alternatives, and cost when siting these facilities. The commission has the authority to preempt local regulation and must approve or reject a facility by a majority vote.

Telecommunications towers. The siting of telecommunications towers is left to local authorities.

Appendix E

Agency Response

February 2, 2001

Mr. Michael L. Nauer
Director
Legislative Program Review
and Investigations Committee
State Capitol, Rm. 506
Hartford, CT 06106

Dear Mr. Nauer:

The Connecticut Siting Council (Council) compliments the Legislative Program Review and Investigations Committee (Committee) on their thorough investigation of the Council. Furthermore, the analysis conducted by your staff was thoughtful and responsive to the public. The Council does, however, have some comments and responses to the draft report issued by the Committee on December 5, 2000, as follows:

CSC PROCESS AND OUTCOMES

RECOMMENDATIONS

- 1. The council must advertise its public hearing notice at least once within the two week period prior to the actual hearing date.**

The Council is in agreement that hearing notices can and often do precede the hearing by several weeks. However, the Council publishes its hearing notices as soon as the hearing is established to allow all interested persons an opportunity to participate in discovery prior to the hearing. This time before the hearing enables the Council to review letters from members of the public, and allow parties and intervenors an opportunity to ask pre-hearing interrogatories with responses due prior to the hearing. The purpose of this discovery process is to increase participation and allow more factual evidence to be brought into the record prior to the hearing, thus preserving valuable hearing time for cross-examination and statements by members of the public. Existing procedures for notification include public notice of application required of the applicant, service of the application to state and local officials, notice to abutting property owners when required, notice of the hearing by the Council, a noticed pre-hearing conference, scheduled discovery including pre-hearing interrogatories, and varying degrees of coverage by the press which frequently reports on Council activities. The Council believes that these notice procedures are currently more than adequate to ensure public participation.

Nonetheless, the Council does not object to a second notice two weeks in advance of the hearing. This provision may cost approximately \$2,000 based on a review of notice invoices from the last six dockets. The public and applicants may be concerned with this total notice expense, which could exceed \$6,000 per application when considering the public notice of the application required of the applicant, two public notices of the hearing required of the Council, and public notice of the decision required of the Council.

The Council would suggest a statutory change by the Committee if this recommendation were finalized. As an alternative to a statutorily required second notice, the Council suggests use of a press release to local papers and community access television two weeks prior to the hearing. Such press release could substantially serve as a reminder of the hearing without adding any substantial cost to the proceeding.

2a. Written council decisions should be structured in a format that clearly outlines the criteria used and provides evidence of independent analysis. Council decisions should state with particularity the basis for each decision as to each disputed issue, and the manner in which the statutory criteria were considered in arriving at such decision, including where applicable, the specific evidence relied upon, and the reasons for the reliance.

The Council is in agreement with the Committee's investigation that independent analysis is undertaken by the Council, but evidence of this independent analysis is not always clear nor is it always documented in the Council's decision. The Council is concerned that the formal introduction of independent analyses by staff into a proceeding may require the sequestering of staff to be available for cross-examination. Development of such a process would expand the Council to include a prosecutorial division for this specific purpose. However, the Council believes that the essence of its analysis could be brought into a record in the form of discovery without the need for development of prosecutorial staff.

Nonetheless, the Council believes it can better describe independent analyses and discuss the statutory criteria, evidence, and reasons for reliance on such evidence in more detail in its written decisions. The Council would not object to this recommendation being developed as a statutory requirement; however, there may be sufficient statutory guidance to carry out this recommendation without additional change.

2b. The decisions should also contain more discussion as to the council position on opposing party claims and more explanation as to why alternatives are not chosen.

The Council is in agreement that its decisions can be expanded to discuss opposing party claims with more explanation as to why alternatives are not chosen. This recommendation could be developed as a statutory requirement, however, the Council believes that there is sufficient statutory guidance to carry out this recommendation without additional change.

3. A summary digest of council decisions must be developed and maintained by October 1, 2001.

The Council agrees that this recommendation might be of interest to persons reviewing Council decisions; however, the Council's charge is to base its decisions on statutory policy and facts of a unique site-specific record. Although some applications may have similarities and some decisions may have common language, it would be inappropriate for its decisions to become regimented only for the sake of consistency. Council members, including any new Council member, need only apply statutory policy with the facts of the record to carry out their responsibilities.

Furthermore, any review of Council decisions should focus on the actual decisions and not rely on a summary document that could be subject to personal interpretation. For this reason the Council maintains public files indexing all decisions by docket and/or petition number and alphabetically by town. These records are meticulously maintained for use by staff, Council members, and members of the public who seek to review Council decisions.

In addition, the development of a summary digest would require hundreds of hours of research to develop such a document for limited use and applicability. At the present time the Council does not have the staff or resources to develop this project and would respectfully request this recommendation be reconsidered.

CSC INTERACTION WITH MUNICIPALITIES & OTHER INTERESTED GROUPS

RECOMMENDATIONS

- 4. CSC must include in each decision a summary of any municipal consultation and recommendations.**

The Council agrees with this recommendation that it would promote the sense that a municipal opinion had been reviewed and it would underscore the significance of the municipality's statutory role. This recommendation could be developed into a statutory requirement, however, the Council believes that this recommendation can be carried out now without additional statutory change.

- 5. CSC should establish a more structured schedule for follow-up and monitoring inspections and as much as possible incorporate other interested government agencies such as local municipal planning and zoning authorities or the state Department of Environmental Protection.**

The Council is in general agreement that additional efforts to include the Department of Environmental Protection and municipal officials in construction and post-construction inspection would improve coordination with such government entities. However, the Council notes that it has not been established primarily as a monitoring agency and has very limited resources for regimented site inspections.

Furthermore, it appears that the purpose and nature of the Council was clearly understood during the survey undertaken by the Committee with 36% of municipalities reporting this provision was not applicable. Of the 63% of the towns that rated the follow up and monitoring of sited facilities as applicable, 62% rated the Council's performance as excellent or good (39% of the total), 86% rated the Council's performance as fair or better (54% of the total).

Nonetheless, the Council agrees that additional coordination with municipal and state officials can and should be undertaken. This recommendation could be developed as a statutory requirement; however, the Council can carry out this recommendation without additional statutory change. If, however, more detailed and regimented inspection schedules are desired by the legislature, the Council will be forced to increase its budget to hire additional staff.

CSC JURISDICTION

RECOMMENDATIONS

- 6. The program review committee recommended municipal planning and zoning boards have siting jurisdiction over PCS telecommunications facilities. The Connecticut Siting Council may participate as an intervenor in any such planning and zoning board proceedings. Municipal planning and zoning boards shall establish timeframes for these proceedings.**

Although this recommendation attempts to achieve compliance with the Telecommunications Act of 1996, it will not address the problems associated with telecommunications facility siting. The problems that should be addressed directly include 1) development of a method to determine if and where new facilities are needed, and 2) development of a method to explore how alternatives and options to determine how and where facilities can be developed, if they are determined to be needed. We believe a more innovative solution with State oversight is necessary to address this problem. The shifting of jurisdiction between municipalities and the State does not address this problem. Furthermore, this proposed bill may tend to alienate municipalities from each other and the State.

A more innovative and comprehensive approach to directly address the problem would include the following provisions:

- Require the maintenance of a statewide database for the development of comprehensive telecommunications plans of development for municipalities upon request.
- Plan and regulate the infrastructure of telecommunications networks in a uniform and consistent manner for efficient deployment to avoid construction of unnecessary or inappropriate facilities.
- Structure jurisdiction in a way that takes advantage of municipal commission's knowledge of potential alternatives, land use, and local values.
- Structure jurisdiction in a way that provides State guidance and oversight to determine if and when facilities are needed.
- Structure jurisdiction in a way that allows both State and municipal regulators to take advantage of the strengths of each other for cooperative processing of shared applications.
- Improve communications between State and municipal regulators and the public with improved mechanisms for notice and preapplication consultation.
- Provide a streamlined process for applications that have been reviewed and deemed acceptable by both State and municipal regulators.

A cooperative process based on comprehensive plans will provide:

- Higher quality, lower cost, and more competitive telecommunications.
- An efficient deployment of telecommunications facilities with the minimum number of towers necessary.
- The formation of a strong regulatory team that has technical expertise and knowledge of local land use to assess radio frequency propagation, multiple use of facilities, and assessment of alternatives.
- Improved radio frequency power density modeling to protect public health.
- Improved relationship between municipalities and the State with high quality decisions based on evidence.
- Lower cost to municipalities for technical consultation and legal representation.

The Council strongly encourages the committee to reconsider this recommendation and consider solutions to the problem of telecommunications facility siting; and not simply to address the symptoms that have arisen due to the existing regulatory structure which has been strained by bifurcation and obsolete jurisdiction.

7. CSC must develop a method of collecting information on all telecommunications towers in Connecticut, and establish and maintain a statewide inventory of these telecommunications towers.

The Council is in agreement that it can and in fact does function as a clearinghouse for tower information. This clearinghouse provides public and private entities information for tower sharing, consideration of alternatives, development of comprehensive plans, and tax assessment for municipal revenue. The Council has developed and maintains this database without legislative mandate, free of charge for public and private use. Nonetheless, the Council notes deficiencies including the development of municipal towers that do not get entered into this database unless such specific information is collected by the Council. The clearinghouse/database that the Council has developed includes a UNIX-based platform GIS system with combined databases from municipalities, DEP, the FCC, the FAA, information provided by private industry, information provided public service companies, and information obtained through staff investigations.

The Council would seek to continue with the operation of this clearinghouse database function; however, the Council must rely on the cooperation of municipal agencies for the downloading of information, state agencies which share data with the Council, federal agencies, and private vendors.

This recommendation could be developed as a statutory requirement, however, the Council can continue to undertake this recommendation without legislative change. If a substantial upgrading of this clearinghouse is sought, additional resources and staffing, as well as a statutory mandate, may be necessary.

The Council again thanks the Committee for their diligent and detailed investigation. The Council also thanks the Committee for its understanding and appreciation of the Council's role and responsibility to carry out this difficult legislative charge in an effective and efficient manner.

Very truly yours,

Mortimer A. Gelston
Chairman

Joel M. Rinebold
Executive Director

JMR/laf