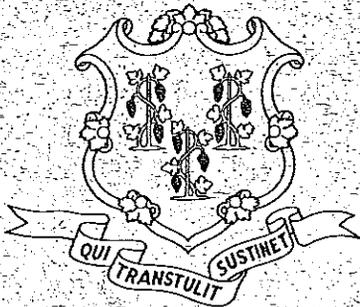


Connecticut Siting Council

Connecticut
General Assembly



LEGISLATIVE
PROGRAM REVIEW
AND
INVESTIGATIONS
COMMITTEE

SUNSET 1983

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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 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements where indicated. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

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Anne E. McAloon, Program Review Coordinator
George W. McKee, Sunset Review Coordinator
Carrie E. Vibert, Staff Attorney
L. Spencer Cain, Program Analyst
Catherine McNeill Conlin, Program Analyst
Debra S. Eyges, Program Analyst
Jill E. Jensen, Program Analyst
Michael O'Malley, Program Analyst
Gary J. Reardon, Program Analyst
Lillian B. Crovo, Administrative Assistant
Mary Lou Gilchrist, Administrative Assistant

Staff on this Project

L. Spencer Cain, Principal Analyst

Legislative Office Building, 18 Trinity St., Hartford, CT 06106 (203)566-8480

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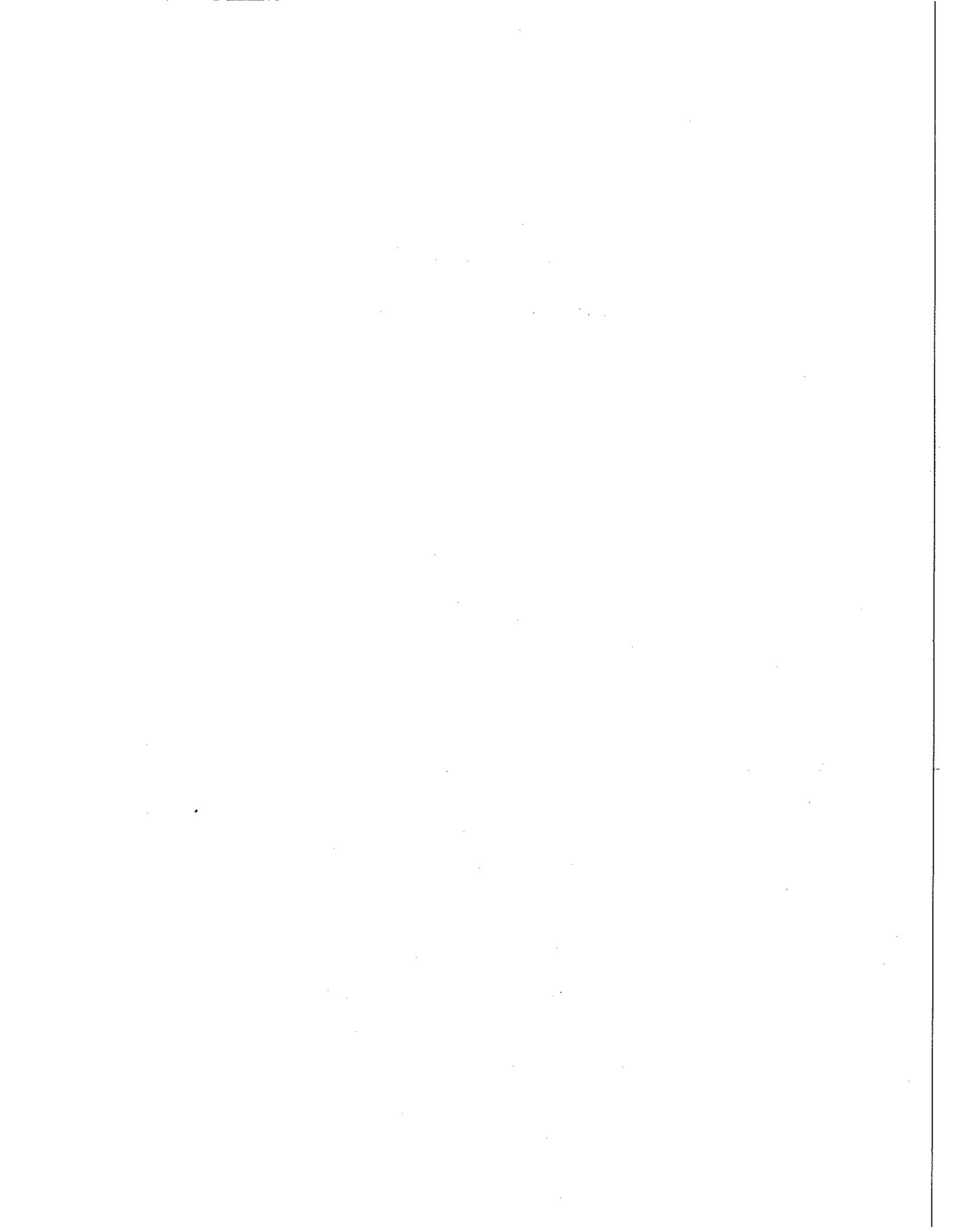
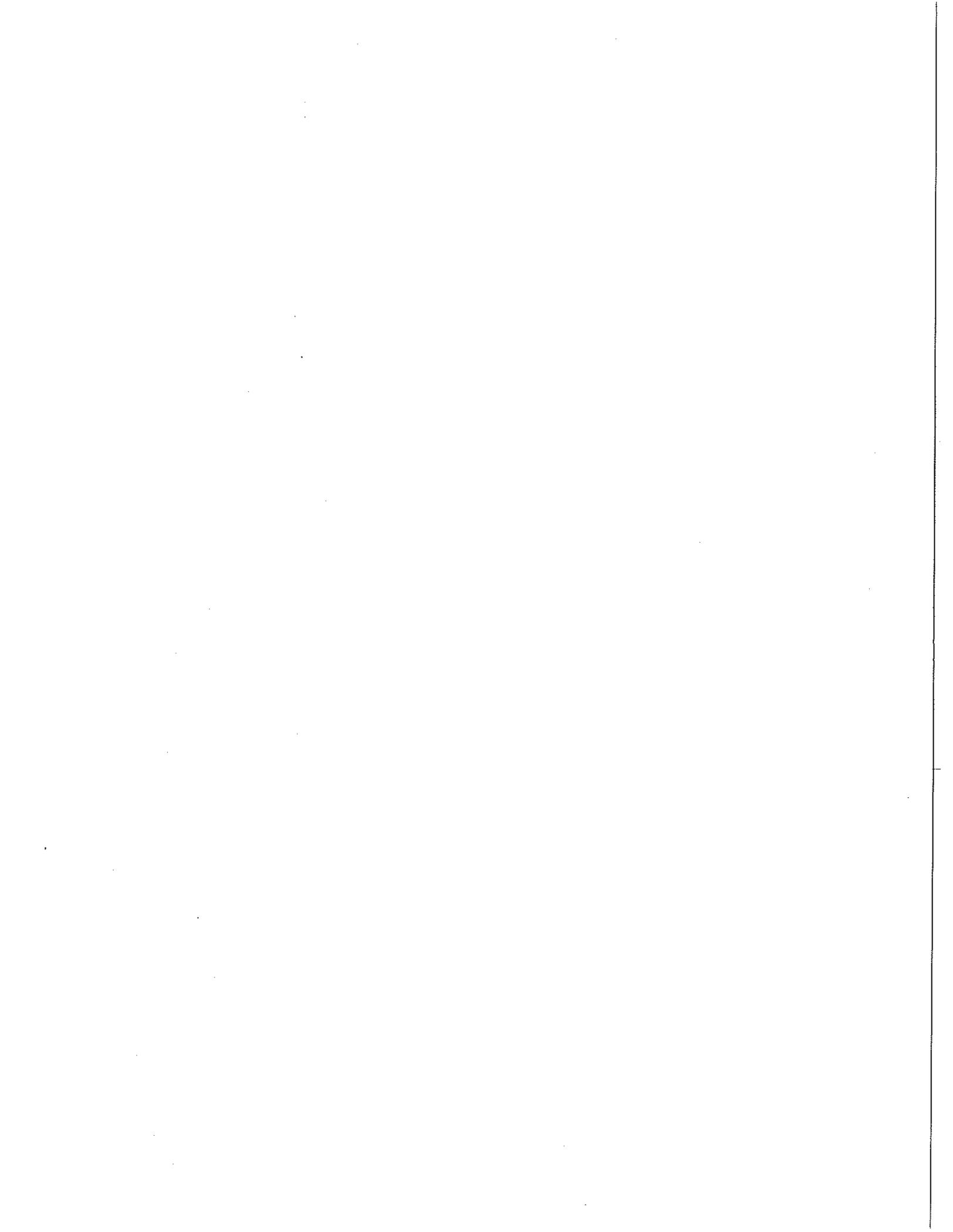


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CONNECTICUT SITING COUNCIL

SUMMARY

The Connecticut Siting Council, formerly known as the Power Facility Evaluation Council, was established by the state legislature in 1971. The council's creation was part of broader legislation involving the establishment of environmental standards for public utility companies.

The intent of the legislation 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 public utilities to come before the Power Facility Evaluation Council and obtain a certificate of "environmental compatibility and public need" for the construction of any facility. In 1981, the council was given the responsibility of issuing permits for the construction of hazardous waste facilities.

The Connecticut Siting Council is composed of two distinct memberships--one for proceedings concerning energy projects and telecommunications, and one for proceedings concerning hazardous waste facilities.

Energy and telecommunications projects are reviewed by nine members: the commissioner of environmental protection, the chairperson of the Department of Public Utility Control; 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 can have any past or present affiliation with any utility or governmental entity regulating a utility.

Hazardous waste facility applications are reviewed by a 13 member council that includes the 7 gubernatorial and legislative appointees, the commissioners of health services and public safety and 4 ad hoc members appointed for the purposes of siting the proposed facility. Three of the ad hoc members are appointed by the chief administrative officer from the town of the proposed site, and one ad hoc member is appointed by the chief administrative officer from the town nearest to the proposed site. All terms are coterminous with the appointing authority except those of the ad hoc members, whose terms coincide with the process for siting a particular hazardous waste facility. The

chairman of the council is appointed by the governor with the advice and consent of the House of Representatives or Senate.

The council is served by a seven-member staff, including an executive director, an executive assistant, three professionals, and two clerical personnel. The Office of the Attorney General provides the council with legal services.

In order to carry out the purposes of the Public Utility Environmental Standards Act and the Hazardous Waste Facility Siting Act, the siting council has several regulatory powers. It is authorized to issue certificates of: 1) environmental compatibility and public need for energy and telecommunications related projects falling within its jurisdiction; and 2) public safety and necessity for the construction of new hazardous waste facilities. In addition to these functions, the siting council is responsible for:

- providing environmental quality standards and criteria for facilities furnishing public utilities;
- encouraging research to develop new and improved methods of generating, storing and transmitting electricity with minimal damage to the environment; and
- reviewing the annual utility forecasts for the supply and demand of electric power.

The council is also required to 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.

Continuation of the Connecticut Siting Council

The Legislative Program Review and Investigations Committee recognized that the Public Utility Environmental Standards Act, which established the siting council, was passed to balance the need for adequate and reliable public utility services with the need to protect the environment of the state. The committee found that the siting process is necessary to facilitate open communication among interested parties and establish a forum necessary for discussion. The program review committee noted that the council serves to negotiate concerns among interests affected by a proposed project. A governmental entity at the state level is required to consider the interests of all citizens

as well as those directly affected by a regulated activity due to the fact that a facility generally benefits residents outside of the immediate project location.

The Legislative Program Review and Investigations Committee, therefore, recommends that the Connecticut Siting Council be continued and its current membership be maintained.

Regulatory Structure

The Connecticut Siting Council has regulatory jurisdiction encompassing seven major areas. The committee examined each area to identify the appropriateness of the level of regulation.

While the program review committee found that all regulatory areas are sufficient to ensure proper review of the environmental impact of utility projects, two deficiencies were noted. The first deals with the regulation of substations and switchyards. The council failed to promulgate regulations to carry out reviews in this area thus leaving the area unregulated.

The second finding is that while new hazardous waste facilities and modifications to newly constructed facilities are within the council's jurisdiction, modifications to existing facilities are not. In the hazardous waste area, the committee is concerned that an existing facility could double in size, covering a much larger area, without the same review intended for new facilities. The committee considers this to be a critical gap in the regulation of hazardous waste facilities; one in need of further study.

The Legislative Program Review and Investigations Committee, therefore, recommends that all public utility substations and switchyards be statutorily regulated in the same manner as transmission lines, and the statutory requirement for the promulgation of regulations be deleted. However, utilities may petition the council to have small substations and switchyards, which do not have an adverse environmental impact, exempted from review and regulation on a case by case basis. The committee also recommends that the legislative committee of cognizance review the hazardous waste legislation and study the implications of extending council jurisdiction to modifications of existing facilities.

Funding for the Administration of the Hazardous Waste Facility Siting Act

The council is currently funding implementation of the Hazardous Waste Facility Siting Act by assessments of public utilities. After June 30, 1984, the council is prohibited from using this mechanism. While funds are expected to be generated

from hazardous waste applications, the council's staff is already providing information and technical assistance to prospective developers. No fees are generated unless an application is submitted, but administrative costs are being incurred.

The Legislative Program Review and Investigations Committee recommends that the Connecticut Siting Council analyze its expenditures for hazardous waste administration and propose alternatives to the current funding mechanism. The council shall report its findings and recommendations to the General Assembly on January 1, 1984.

Conformance with Prior Legislation and Per Diems

It is the belief of the Legislative Program Review and Investigations Committee that certain standardized operating procedures should be required of all state boards and commissions. The requirements placed on boards and commissions by past sunset legislation would be appropriate measures to apply to the operations of the Connecticut Siting Council.

The program review committee recommends that the operation of the siting council be brought into conformance with previous sunset legislation related to operating procedures and member attendance, but that meeting per diems be maintained at \$50 and per diems for public hearings be increased to \$100 with a \$2,000 per year limit for each council member.

Bringing the council's operation into conformance with prior sunset legislation will principally impact attendance--missing three consecutive meetings will result in automatic termination.

The program review committee believes maintaining the current \$50 per diem is appropriate because members serving on the council are not regulating a profession in which they have an interest. Council members are serving on a regulatory body charged with the responsibility of making administrative rulings having a regional or statewide impact. Raising the per diem to \$100 for hearings would adequately compensate members for the additional time consumed during such proceedings. Hearings generally run from four to eight hours. With the added responsibility of hazardous wastes, it is estimated that hearings will be lengthy. It should also be noted that the council must have a quorum present to conduct a hearing. Based upon FY 1981-82 figures, raising the per diem from \$50 to \$100 would cost approximately \$3,250.

INTRODUCTION

Purpose and Authority

Chapter 28 of the Connecticut General Statutes provides for the periodic review of certain governmental entities and programs and for the termination or modification of those which do not significantly benefit the public health, safety, or welfare. This law was enacted in response to a legislative finding that a proliferation of governmental entities and programs had occurred without sufficient legislative oversight.

The authority for undertaking the initial review in this oversight process is vested in the Legislative Program Review and Investigations Committee. The committee is charged, under the provisions of Section 2c-3 of Chapter 28, with conducting a performance audit of each entity or program scheduled for termination. This audit must take into consideration, but is not limited to, the four criteria set forth in Section 2c-7. These criteria include: (1) whether termination of the entity or program would significantly endanger the public health, safety, or welfare; (2) whether the public could be adequately protected by another statute, entity, or program or by a less restrictive method of regulation; (3) whether the governmental entity or program produces any direct or indirect increase in the cost of goods or services and, if it does, whether the public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and (4) whether the effective operation of the governmental entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

In addition to the criteria contained in Section 2c-7, the Legislative Program Review and Investigations Committee is required, when reviewing regulatory entities or programs, to consider, among other things: (1) the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program; (2) the extent to which the governmental entity involved has complied with federal and state affirmative action requirements; (3) the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated; (4) the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and (5) the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to review.

Methodology

The Legislative Program Review and Investigations Committee's sunset review process is divided into three phases. The initial phase focuses on collecting quantitative and qualitative data related to each entity's background, purpose, powers, duties, costs and accomplishments. Several methods are used by committee members and staff to obtain this information. These include: (1) a review of statutes, transcripts of legislative hearings, entity records (e.g., minutes, complaint files, administrative reports, etc.), and data and statutes of other states; (2) staff observation of meetings held by each entity during the review period; (3) surveys of selected persons and groups associated with each entity; (4) formal and informal interviews of selected individuals serving on, staffing, affected by or knowledgeable about each entity; and (5) testimony received at public hearings.

During the second phase, the staff organizes the information into descriptive packages and presents it to the committee. The presentations take place in public sessions designed to prepare committee members for the hearings, identify options for exploration and alert entity officials to the issues the committee will pursue at the hearings.

The final step of the review involves committee members and staff following up on and clarifying issues raised at briefings and public hearings. During this period, the staff prepares decision papers and presents recommendations to the committee. The committee, in public sessions, then debates and votes upon recommendations for the continuation, termination or modification of each entity.

BACKGROUND

Legislative History

The Connecticut Siting Council, formerly known as the Power Facility Evaluation Council, was created by the state legislature in 1971. The council's creation was part of broader legislation involving the establishment of environmental standards for public utility companies.

In the late 1960's public concern arose over the impact electric generating stations and power transmission lines were having on the environment. Prior to 1971, most public utilities had been granted the right of eminent domain. This right had been affirmed in 1955 when the Connecticut State Supreme Court declared that "the determination of what [property] is necessary to be taken lies in the discretion of the company."¹

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). Historically, rights-of-way for transmission lines were purchased out of public view, and to a large extent, routes were 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.

Rights-of-way selected prior to the 1960's remain the basis for much of Connecticut's electric transmission system. However, since the 1960's commercial, industrial, residential and recreational land uses have increasingly come closer to the edges of the rights-of-way exposing power lines to view. Public criticism of the power lines increased as electrical needs expanded and the demand for land tightened. Utilities largely planned and developed system changes privately with little public input or notice. In response to mounting pressures from environmental groups, one public utility, Northeast Utilities, adopted an "open planning" process in 1968. The open planning process was first used in connection with a major transmission line project proposed for the western part of the state.

¹ Connecticut Power Co. v. Powers, 142 Conn. 722, 725, 118 A. 2d 304, 305 (1955).

Northeast Utilities' open planning process was not a success. The selection and environmental justification of alternative routes for the transmission line project became the task of the Regional and Environmental Planning Department, a newly created division within Northeast Utilities. The choices in this case were between a route that would use an existing right-of-way occupied by a lower voltage line in a settled valley or a new route that would use rural woodland on a scenic ridgeline in hills east of the valley. The company chose the rural route because it believed it would entail the least amount of disruption to land use. The alternate route would require the removal of several buildings.

When Northeast Utilities made its proposal public, it met stiff opposition from town officials and environmental groups. Meetings held between the company and local groups were unproductive and ineffective in resolving important issues. Clearly in need of a third party arbiter, the various groups requested the Department of Public Utility Control to intervene, but found it could only hold a public hearing on the matter. The department had no legal jurisdiction over the placement of power lines or power generating facilities. A hearing was held, and again no issues were resolved. The company finally withdrew its proposal.

The legislature began to address the problem of balancing environmental concerns with the demand for electrical power in 1969 when it established an interim study committee to examine power facility siting. By 1971 the committee had completed its study and released its report to the General Assembly in February. The report called for the creation of a council that would be:

A regulatory agency involved in a broad, coordinated planning process, fully aware of the trade-offs inherent in every application for new facilities, and one which will grant permits only when and where they are required to meet needs.²

The committee's report further cited the fact that the electrical industry has been more intent on "promoting growth, cutting operating costs, and providing low cost electrical energy than they have been in striking social balances."³ The report recommended that standards be established requiring the regulatory agency to weigh environmental issues and the need for electrical energy when considering an application for a permit.

² Interim Legislative Committee, Connecticut General Assembly, A Comprehensive Study of Electric Power Plant Siting Requirements for Connecticut (February 18, 1971), p. 18.

³ Ibid.

In response to the committee's report, the Public Utility Environmental Standards Act was submitted to the General Assembly. The proposal received bipartisan support in the House and Senate. Testimony in favor of the legislation frequently cited the need for a well documented, orderly process combined with the participation of a governmental body serving as a referee and balancer of the public interest.

Given the information provided by the interim study and the public support, the legislature passed Senate bill 1458, as amended by the House and Senate, on June 2, 1971. The bill, which became Public Act 575, "An Act Concerning Environmental Standards For Public Utility Services," was signed by the governor on June 23.

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 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. Also, if a facility was to be modified and the council determined there would be an adverse environmental effect, a certificate was also required.

The regulatory powers of the council encompassed electric transmission lines with a design capacity in excess of 69 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 correct 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.

Most statutory changes made between 1973 and 1977 dealt with procedural matters. In 1977, the Power Facility Evaluation Council

was given the added authority of regulating the siting of community antenna, television and telecommunication towers. Prior to constructing a tower, a public utility or state agency would have to receive a certificate of environmental compatibility and public need.

The last major legislative revisions to affect the siting council occurred in the 1980 and 1981 sessions of the General Assembly. In 1980, the legislature passed an act which partially addressed problems facing the state concerning hazardous waste facility siting. Public Act 472 requires that a permit be issued before a hazardous waste facility can be constructed or modified. The act set forth criteria and administrative procedures to apply for a permit. The act also outlined the regulatory responsibilities of the Department of Environmental Protection in issuing permits. However, responsibility for issuing the final permit, a certificate of public safety and necessity, rested with a newly created board. The legislation did not create the necessary regulatory board, but instead established an interim study committee to examine the various alternative compositions of a hazardous waste facility siting board. The study committee reported its findings and recommendations to the 1981 General Assembly.

The interim study committee, composed of legislators from the Environment, Planning and Development, and Government Administration and Elections Committees, considered two major options: creating a new board or placing the regulatory authority within an existing state agency. After much debate, the study committee recommended that an existing state agency be chosen. Noting the similarities between the processes for siting electric generating facilities and transmission lines and hazardous waste facilities, the committee recommended that the responsibility for issuing certificates of public safety and necessity be given to the Power Facility Evaluation Council.

Legislation was introduced into the 1981 session to implement the committee's recommendation and make the necessary statutory changes to allow the council to carry out the regulatory procedures for approving permit applications. The legislation incorporated a siting process that defined local and state 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.

Hazardous waste facility applications are reviewed by a 13 member council that includes the 7 gubernatorial and legislative appointees, the commissioners of health services and public safety and 4 ad hoc members appointed for the purposes of siting the proposed facility. Three of the ad hoc members are appointed by the chief administrative officer from the town of the proposed site and one ad hoc member is appointed by the chief administrative officer from the town nearest to the proposed site. All terms are coterminous with the appointing authority except those of the ad hoc members, whose terms coincide with the process for siting a particular hazardous waste facility. The chairman of the council is appointed by the governor with the advice and consent of the House of Representatives or Senate.

Occasionally, the council is required to make decisions on matters relating to hazardous waste without actually having an application for a permit before it. In such cases ad hoc members are not appointed and decisions are made by the seven appointed members and two commissioners.

The council is served by a seven member staff, including an executive director, an executive assistant, three professionals, and two clerical personnel. The Office of the Attorney General provides the council with legal services.

Powers and Duties

In order to carry out the purposes of the Public Utility Environmental Standard Act and the Hazardous Waste Facility Siting Act, the siting council has several regulatory powers. The council's two major regulatory tools include: 1) issuing certificates of environmental compatibility and public need for energy and telecommunications related projects falling within its jurisdiction; and 2) issuing certificates of public safety and necessity for the construction of new hazardous waste facilities. In addition to these functions, the siting council is responsible for:

- providing environmental quality standards and criteria for the location, design, construction and operation of facilities furnishing public utilities;
- encouraging research to develop new and improved methods of generating, storing and transmitting electricity with minimal damage to the environment; and

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 divided among the Department of Environmental Protection, the siting council and municipal officials. (The entire hazardous waste siting process is described in detail in the Activities section of the report.)

After careful deliberation, the legislation passed the House and Senate and was signed by the governor as Public Act 81-369, effective July 1, 1981. This legislation represents the most significant change to the council's structure, powers and duties since its inception.

Purpose

The Connecticut Siting Council was created in 1971 as a regulatory agency with the power to issue permits for projects related to the generation and transmission of electrical energy. Its chief purpose is to make decisions on applications for permits and to insure that projects are constructed in a manner that minimizes environmental damage. As previously noted, telecommunication towers, community antenna television towers and hazardous waste facilities were added to the regulatory responsibilities of the siting council.

Structure

The Connecticut Siting Council is composed of two distinct memberships--one for proceedings concerning energy projects and telecommunications, and one for proceedings concerning hazardous waste facilities.

Energy and telecommunications projects are reviewed by nine members: the commissioner of environmental protection; the chairperson of the Department of Public Utility Control; 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 shall have any past or present affiliation with any utility or governmental entity regulating a utility.

- reviewing the annual utility forecasts for the supply and demand of electric power as required by the Public Utility Environmental Standards Act.

The council is also required to 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. In making such a determination the council follows the provisions of the Uniform Administrative Procedure Act, C.G.S. Sec. 4-176, and issues a declaratory ruling on the applicability of appropriate statute regulation or order of the agency.

Regulatory Programs

The siting council has regulatory jurisdiction in seven major areas covering the fields of energy, telecommunications and hazardous wastes. The council's specific role in these areas, as noted earlier, is to review the environmental impact proposed projects will have on the sites chosen. The council requires detailed plans, which it must approve, of any applicant seeking a certificate.

Each regulatory area has certain parameters outside of which the council has no jurisdiction. The council's regulatory powers are further limited to matters not within the exclusive jurisdiction of the federal government. Specifically, the Public Utility Environmental Standards Act:

shall not apply to any matter over which any agency, department or instrumentality of the federal government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such jurisdiction, to the exclusion of regulation of such matters by the state.¹

The seven areas of regulation, along with their limiting parameters are:

- electric transmission lines (those lines exceeding 69kv);

¹ Connecticut General Statutes, Chapter 277a, Sec. 16-50k(d), 1981 revised.

- fuel transmission facilities (intrastate pipelines exceeding 200 lbs. per square inch pressure only);
- electric generating and storage facilities (those facilities exceeding a generating capacity of one megawatt);
- substations, switchyards and other similar facilities (those prescribed in regulations adopted by the council);
- community antenna television towers and head-end structures (temporary replacements for damaged towers are exempted);
- telecommunication towers (those owned or operated by a state agency or regulated utility--temporary replacements for damaged towers are exempted); and
- hazardous waste facilities (new facilities only; existing facilities are exempt from review, even if they are modified).

Currently, under the council's jurisdiction are approximately 1800 miles of electric transmission lines with a design capacity in excess of 69 kilovolts. In the area of generating facilities, the council has 23 fossil fuel electric generating plants at 8 sites; 4 nuclear (one under construction), 9 hydroelectric, and 24 gas turbine plants within its purview. Also, there are approximately 110 substations and switchyards associated with transmission lines over a 69 kilovolt capacity. The council also regulates 235 community antenna television and telecommunication towers. While the council's jurisdiction does extend to new hazardous waste facilities, no facilities have been built. Modifications to any certified facility that either results in a significant change or alteration in the general physical characteristics of the facility or has a substantial adverse environmental effect must be approved by the council.

The council has exclusive jurisdiction over the location of facilities and over the modification of facilities under its control. Whenever the council certifies a facility, the certification is in lieu of any other permit required by state or local governments regarding any questions of public need, convenience and necessity.

In the case of an application for a hazardous waste facility site, the council may not act until the Department of Environmental Protection has issued a notice of intent to issue the necessary permits under its jurisdiction. Also, local authorities may issue permits within their jurisdiction, but the council may override the local decisions by a vote greater than two-thirds of the council.

Fiscal Information

The council currently employs seven full-time people and uses three-fourths of the time of an assistant attorney general. The seven positions include the executive director, an executive assistant, two environmentalists, an economist, one clerk and one typist.

The council's appropriated budget for FY 1982-83 is \$365,476. The council expended \$373,146 in FY 1981-82, \$191,816 in FY 1980-81 and \$182,283 in FY 1979-80. A detailed breakdown of the council's budget is contained in Table II-1.

Table II-1. Siting Council's Operating Budget--FY 78-79, 79-80, 80-81, 81-82, 82-83.

	<u>FY 78-79</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u>
Personal Services	\$ 68,040	\$ 78,512	\$ 86,889	\$ 132,764	\$ 147,949
Council per diems	22,603	26,159	19,713	28,000	30,636
Consultants	13,089	32,979	37,316	110,000	75,000
Other Expenses	<u>37,024</u>	<u>41,492</u>	<u>69,800</u>	<u>102,382</u>	<u>111,891</u>
Total	\$140,756	\$179,142	\$213,718	\$373,146	\$365,476

Source: Auditors of the Public Accounts; Connecticut Siting Council.

Unlike most other state agencies, the Connecticut Siting Council does not receive any money from the General Fund. The agency is totally funded by assessments of electric utilities and fees paid by applicants. Revenues from assessments are generated by taxing a portion of the sales of electricity of 11 Connecticut power companies. Assessments for FY 1978-79, 1979-80 and

1980-81 were \$140,841, \$172,565 and \$183,732, respectively. The total revenue for 1980-81 generated equals .19 percent of gross sales of electric power in the state.

ACTIVITIES

The Connecticut Siting Council generally meets twice a month. The council, aided by staff, functions as a decision-making body. Council activity has been focused in the following areas: 1) issuing certificates of environmental compatibility and public need; 2) acting on petitions for declaratory rulings; 3) overseeing project development and management plans for approved applications and approving plan modifications; 4) holding hearings on utility energy forecasts; and 5) approving its budget and assessment fees to utilities and applicants.

Table III-1 illustrates the council's workload for the previous three fiscal years. Data to compile the table were gathered from a review of the council's annual reports and minutes of council meetings.

Table III-1. Siting Council Workload Statistics.

<u>Activity</u>	<u>FY 1979-80</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Meetings	18	19	25
Hearings	8	12	13
Applications Processed	3	6	4
Petitions for advisory/ declaratory rulings	12	18	17
Oversight of Development and Management Plans	6	6	8
Land Acquisition Approvals	1	1	0

In addition to these activities, the council has been involved in the implementation of the Hazardous Waste Facility Siting Act by establishing regulations for processing applications for certificates of public need and necessity and developing criteria for reviewing applications.

While the council's regulatory activities encompass a number of areas, its greatest involvement is in the regulation of power

transmission lines. To gain an understanding of the council's operation, a brief description of an application before the council during the sunset review process is provided to illustrate the procedures taken before a certificate is issued or denied.

Case Study

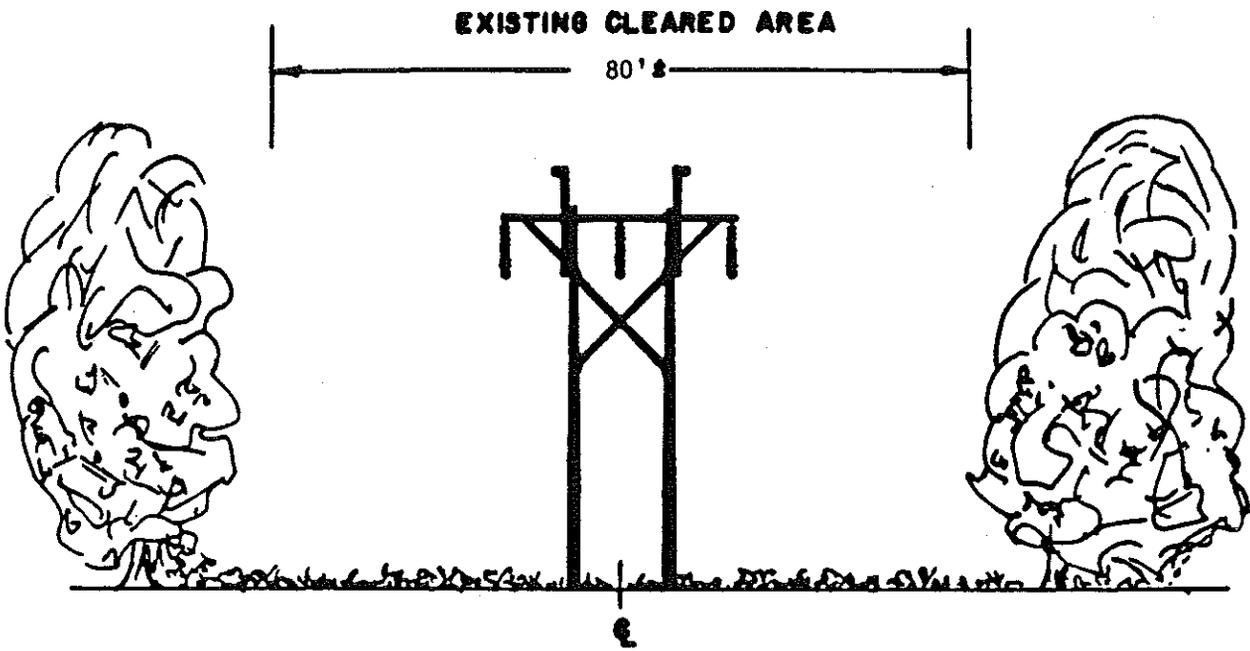
On February 8, 1982, Northeast Utilities applied to the council for a certificate of environmental compatibility and public need for the reconstruction of an existing overhead 115 kv electric transmission line extending 9.3 miles between Plumtree Substation in Bethel and Ridgefield Junction in Redding. In its application Northeast Utilities submitted a two-volume report detailing the need for the project, its proposed route, characteristics of the right-of-way along the route, construction plans and an environmental evaluation. Along with the application, Northeast Utilities submitted a \$20,000 filing fee.

The council took note of Docket #26, Northeast Utilities' application for a certificate, at its March 10, 1982 meeting. Prior to the full council meeting, a subcommittee met and discussed the application and concluded that the review could be accomplished by staff without the need for hiring an outside consultant. At the council meeting action was taken granting party status to individuals and town officials giving them the right to cross-examine the applicant. At the council's meeting on March 30, a public hearing date was set for June 14, 1982.

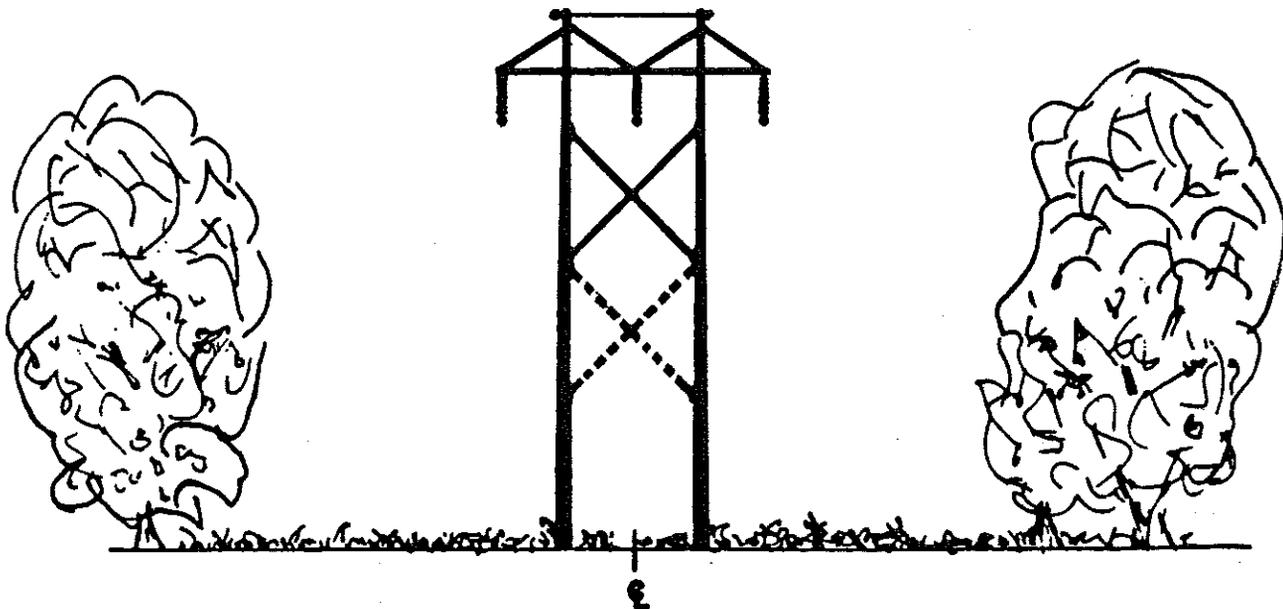
In the interim, council staff conducted a review of the application and a visual inspection of the 9.3 mile route. After conducting its review, staff submitted a list of questions to the applicant on April 30. Answers were received on May 28.

On June 9, five council members, council staff and Northeast Utilities' staff conducted a field visit of the proposed reconstruction site. (Legislative Program Review and Investigations Committee staff also attended.) The entire route was driven by automobile and parts were inspected on foot.

The reconstruction of the line involved the replacement of the wood pole H-frame structures with similar but larger transmission structures. (See Figure III-1.) The council was told the height of the new structures would range from 50 feet to 80 feet, generally 10 or 15 feet taller than the existing poles. The new H-frames would be spaced 15½ feet apart, as compared to the existing 11 foot spacing. New wires would have a slightly larger diameter. The company estimated that the existing lines, installed in 1940, would be overloaded by 1985, thus the need for new transmission lines.



EXISTING
(TO BE REMOVED)



PROPOSED

TYPICAL STRUCTURES EXISTING AND PROPOSED

SCALE : 1" = 20'

Figure III-1

On the field visit, council members noted the proximity of the poles to various homes as well as the impact proposed construction would have on wetlands and preserved woodlands. While reconstruction would not result in the taking of additional land, access roads to work sites might have to be improved and widened. Access for construction equipment must be available to deliver materials for each new structure, excavate pole holes, set and frame the structures and install the conductors. The field visit gave the council members the opportunity to survey the environmental effects of the proposed project.

At one point along the route, town officials in Bethel requested that the line be moved away from school play fields. Alternative realignments were being prepared by the applicant. The site was viewed on the field visit and the impact of various alternatives discussed.

The next phase of the council's process involved a public hearing on June 14 in Bethel. Both afternoon and evening sessions were held. Northeast Utilities submitted written and oral testimony, and parties to the proceedings questioned the applicant on various aspects of the proposed reconstruction. Concerns were raised in primarily two areas: 1) the effect access roads would have on wetlands; and 2) the movement of poles closer to individual property owners. Council members also questioned Northeast Utilities' officials and individuals offering testimony about technical aspects of the project. Since the public hearing, responses to the questions raised have been submitted to the council by Northeast Utilities.

The final step in the process involved action by the council on the certificate. On October 8, the council issued three separate documents detailing its rationale and action. These included: 1) a finding of facts; 2) an opinion; and 3) a decision and order. Several drafts were presented to the council before a final decision was made. In making a decision, the council had three options: issue a certificate; deny a certificate; or issue a certificate based upon certain conditions. On this application the council granted a certificate--contingent upon several conditions concerning the proposed route.

In all cases, once the certificate is issued, the applicant must submit a development and management plan outlining the specific construction procedures and methods to be followed before the project can begin. Staff and council will conduct field visits to monitor the project for conformance to the requirements of the development and management plan. Any changes in the plan must be reviewed and approved by the council. A detailed final report will be submitted by the applicant within six months of project completion.

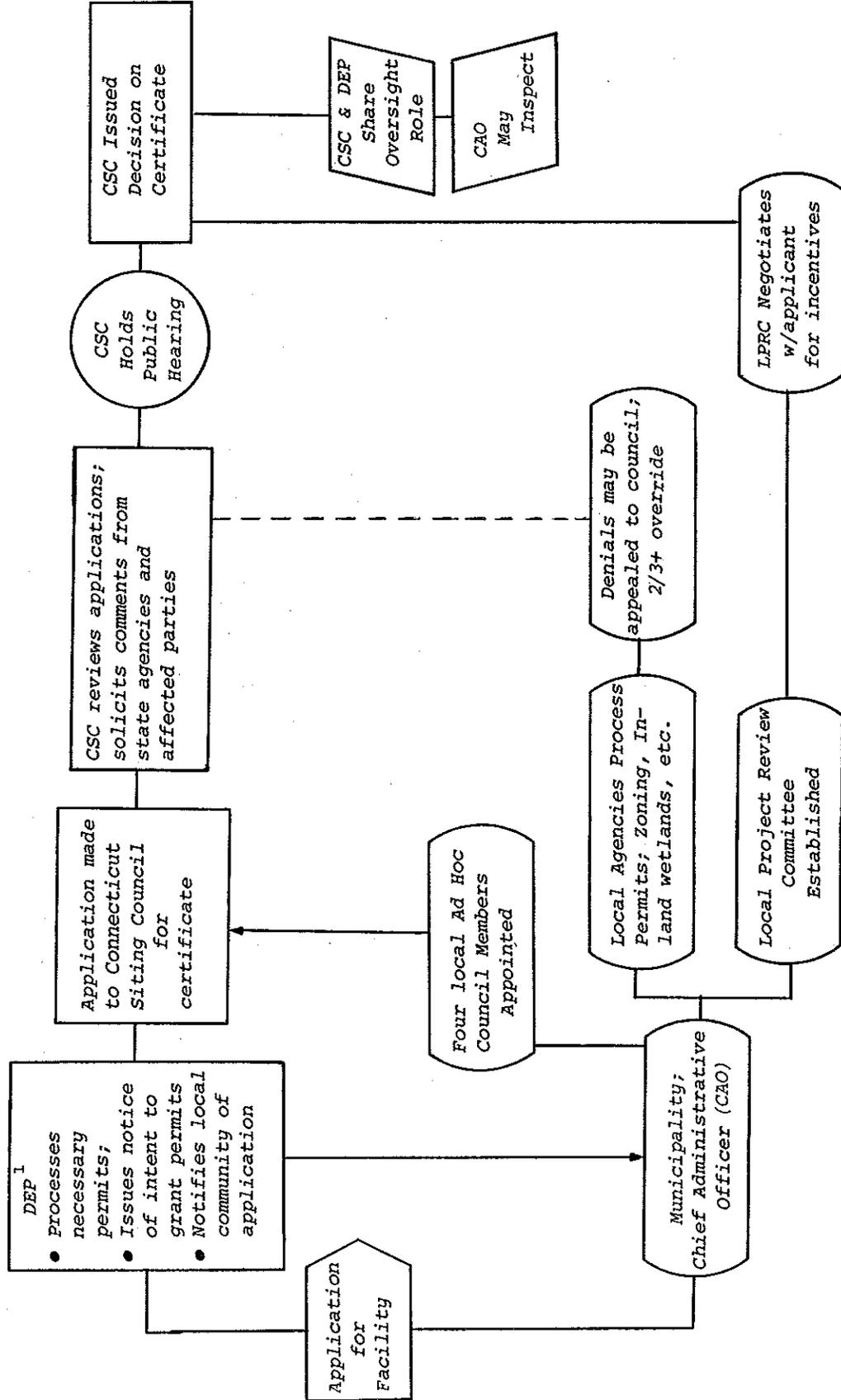
Other Activities

As noted earlier, the council is involved in other matters including issuing declaratory rulings on petitions, promulgating regulations and approving the agency's budget. With the addition of the responsibility for hazardous waste siting, the council promulgated regulations and established an application procedure for permits. However, no applications for hazardous waste sites have yet been received.

The process for siting a hazardous waste facility is outlined in Figure III-2. As the diagram illustrates, an application for a hazardous waste facility site must receive the necessary permits from the Department of Environmental Protection before the application is reviewed by the council. Once the Department of Environmental Protection issues its notice of intent to grant the permits, the application comes before the siting council. At that time four additional members are added, three from the town in which the site is proposed and one from the town nearest the proposed site. The application is also submitted to local regulatory bodies having jurisdiction over the proposed site. A local project review committee is established to negotiate with the applicant for various incentives to be provided to the town for accepting a hazardous waste site, including payments made to property owners for decreased property values that might result from the construction of the facility.

The siting council would review the application, solicit comments and hold public hearings. The council has the power to override local permits upon appeal by the applicant and must take into consideration the negotiated items of the local project review committee in its final decision. Upon making a final decision to grant a certificate, the oversight and management role for the project is shared by the Department of Environmental Protection, the Connecticut Siting Council and the chief administrative officer of the municipality.

Hazardous Waste Facility Siting Process



¹ Department of Environmental Protection

ANALYSIS AND RECOMMENDATIONS

The Legislative Program Review and Investigations Committee conducted a detailed review of the operation of the Connecticut Siting Council as well as the statutes under which it operates. The committee specifically examined four areas: 1) the continued existence of the council; 2) its regulatory structure; 3) funding for the administration of the Hazardous Waste Facility Siting Act; and 4) conformance with prior sunset legislation on board and commission operations.

Continuation of the Connecticut Siting Council

The Legislative Program Review and Investigations Committee considered three options in regard to the council: sunsetting the council and eliminating its statutory function; sunsetting the council and transferring its functions to the Department of Public Utility Control; or continuing the council and maintaining the current memberships. The program review committee recognized that the Public Utility Environmental Standards Act was passed to balance the need for adequate and reliable public utility services with the need to protect the environment of the state. The committee found that the siting process is necessary to facilitate open communication among interested parties and establish a forum necessary for discussion.

The program review committee noted that the council serves to negotiate concerns among the various interests affected by an application for a certificate and has the authority to resolve conflicts arising from a proposed project. A governmental entity at the state level is required to consider the interests of all citizens as well as those directly affected by a regulated activity due to the fact that a facility generally benefits residents outside of the immediate project location. A regulatory agency is needed to weigh the costs and benefits of a proposed facility, not only in relation to the facility's location, but also in relation to all state residents affected by electrical generating and hazardous waste facilities.

The Legislative Program Review and Investigations Committee, therefore, recommends that the Connecticut Siting Council be continued and its current membership be maintained.

Prior to the enactment of this legislation there was no regulatory proceeding concerning the approval of power lines and facilities other than the standardized approval of the method and manner of construction by the Department of Public Utility Control. Historically, rights-of-way transmission lines were

purchased out of the public view and, to a large extent, routes were determined by the availability of undeveloped land. However, a utility company could exercise its right of eminent domain to take whatever property it wanted for power plant siting and transmission lines.

In the absence of the Public Utility Environmental Standards Act, there would be two options available for siting facilities. The state could either return to the pre-1971 siting process and allow the utilities to make the decision or give siting authority to municipalities in the form of zoning and inland wetland permits. The program review committee believes neither option would be in the best interests of the state and concludes the statutory provisions should be retained.

On the question of who should carry out the statutory functions--a separate council or the Department of Public Utility Control--the Legislative Program Review and Investigations Committee considered a separate council to be the more appropriate administrative body. The Department of Public Utility Control is primarily concerned with rate regulation, and environmental issues could not be adequately addressed due to the importance of the rate function and the time consumed in carrying it out. The council, composed of diverse citizens and public officials, provides a forum to resolve issues of statewide concern.

The program review committee also noted that the decision on a siting application requires documentation essential to the environmental planning process. The review found that decisions made by the siting council were clear and buttressed with appropriate rationale. The actions and intent of the council were contained in their findings, order and decision.

Regulatory Structure

As noted earlier, the Connecticut Siting Council has regulatory jurisdiction encompassing seven major areas. The committee examined each area to identify the appropriateness of the level of regulation. The committee found that each area has a minimum limit above which the council becomes involved so as to maximize its resources. The areas of regulation and their respective limits are as follows:

<u>Areas of Regulation</u>	<u>Limits</u>
Electric transmission lines	Lines exceeding 69KV only
Fuel transmission facilities	Intrastate pipelines exceeding 200 lbs. per square inch pressure only

<u>Areas of Regulation</u>	<u>Limits</u>
Electric generating and storage facilities	Facilities generating more than one megawatt of power
Substations, switchyards and other similar facilities as prescribed by regulation	Facilities must be prescribed by regulation (Currently there are no regulations in this area)
Community antenna television towers and head-end structures	Temporary replacements for damaged towers are exempted
Telecommunication towers	Only those operated or owned by a state agency or regulated utility
Hazardous waste facilities	All new facilities; existing facilities are exempt from review, even if modified

While the committee found that all regulatory areas are sufficient to ensure proper review of the environmental impact of utility projects, two deficiencies were noted. The first deals with the regulation of substations and switchyards. The council failed to promulgate regulations to carry out reviews in this area thus leaving the area unregulated. The Legislative Program Review and Investigations Committee believes that the legislature intended to regulate this area. The second finding is that while new hazardous waste facilities and modifications to newly constructed facilities are within the council's jurisdiction, modifications to existing facilities are not. In the hazardous waste area, the committee is concerned that an existing facility could double in size, covering a much larger area, without the same review intended for new facilities. The committee considers this to be a critical gap in the regulation of hazardous waste facilities; one in need of further study.

The Legislative Program Review and Investigations Committee, therefore, recommends that all public utility substations and switchyards be statutorily regulated in the same manner as transmission lines, and the statutory requirement for the promulgation of regulations be deleted. However, utilities may petition the council to have small substations and switchyards, which do not have an adverse environmental impact, exempted from review and regulation on a case by case basis. The Legislative Program Review and Investigations Committee also recommends that the committee of cognizance review the hazardous waste legislation and study the implications of extending council jurisdiction to modifications of existing facilities.

A statutory change is needed to bring the regulation of substations and switchyards into conformance with that of

transmission lines. The committee concluded that due to the fact that substations and switchyards are part of the system incorporating transmission lines, and no regulations are specifically required to conduct a review of transmission lines other than the procedural regulations affecting all applications, the statutory requirement for the promulgation of regulations concerning substations should be deleted. Deletion of this requirement would allow the council to review substations and switchyards without promulgating specific regulations.

Funding for the Administration of the Hazardous Waste Facility Siting Act

The council is currently funding implementation of the Hazardous Waste Facility Siting Act by assessments of public utilities. After June 30, 1984, the council is prohibited from using this funding mechanism for the purposes of hazardous waste administration. While funds are expected to be generated from hazardous waste applications, the council's staff is already providing information and technical assistance to prospective developers. No fees are generated unless an application is submitted, but administrative costs are being incurred. A resolution to this problem will be needed before the assessment prohibition takes effect.

The committee considered three alternatives as possible solutions to the problem:

- continue the current practice of funding the administration of this act by assessing utilities after June 30, 1984;
- require the council to analyze its expenditures for hazardous waste administration and propose alternatives to the current funding mechanism. The council shall report its findings and recommendations to the General Assembly on January 1, 1984; or
- allocate money from the General Fund to pay for expenses associated with the administration of the Hazardous Waste Facility Siting Act.

The Legislative Program Review and Investigations Committee recommends that the Connecticut Siting Council analyze its expenditures for hazardous waste administration and propose alternatives to the current funding mechanism. The council shall report its findings and recommendations to the General Assembly on January 1, 1984.

Because the council is just beginning implementation of the new hazardous waste siting legislation, sufficient data are not yet available to assess its budgetary impact. Therefore, the council should closely monitor expenses related to hazardous waste facility siting and present the legislature with the appropriate data and recommendations for consideration in the 1984 session.

Conformance with Prior Legislation and Per Diems

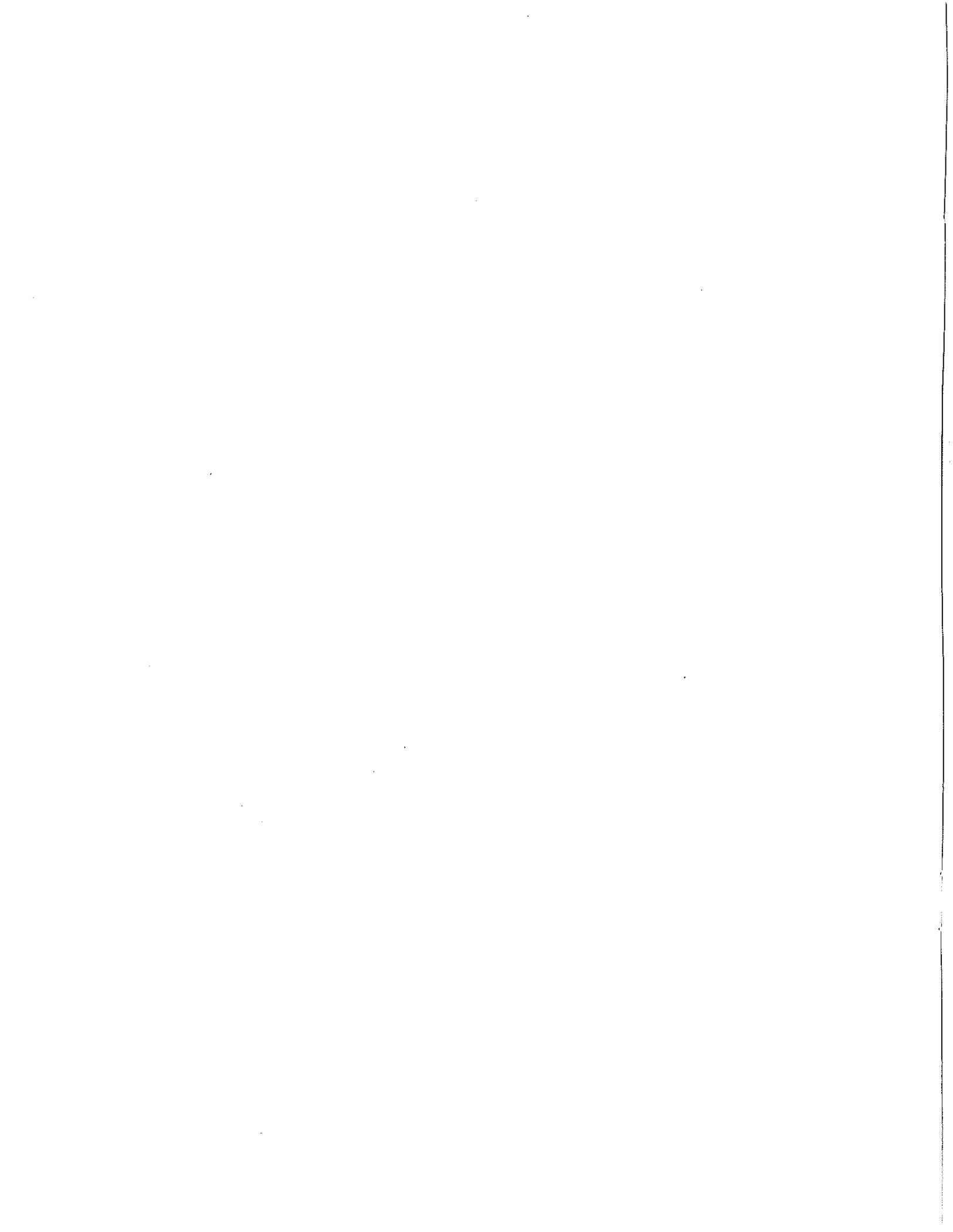
The Legislative Program Review and Investigations Committee considered three options related to prior sunset legislation. Those include:

- bringing council activities and operations into conformance with previous sunset legislation;
- eliminating the \$50 per meeting per diem for council members; and
- maintaining the \$50 per meeting per diem for council members and increasing the per diem to \$100 for public hearings.

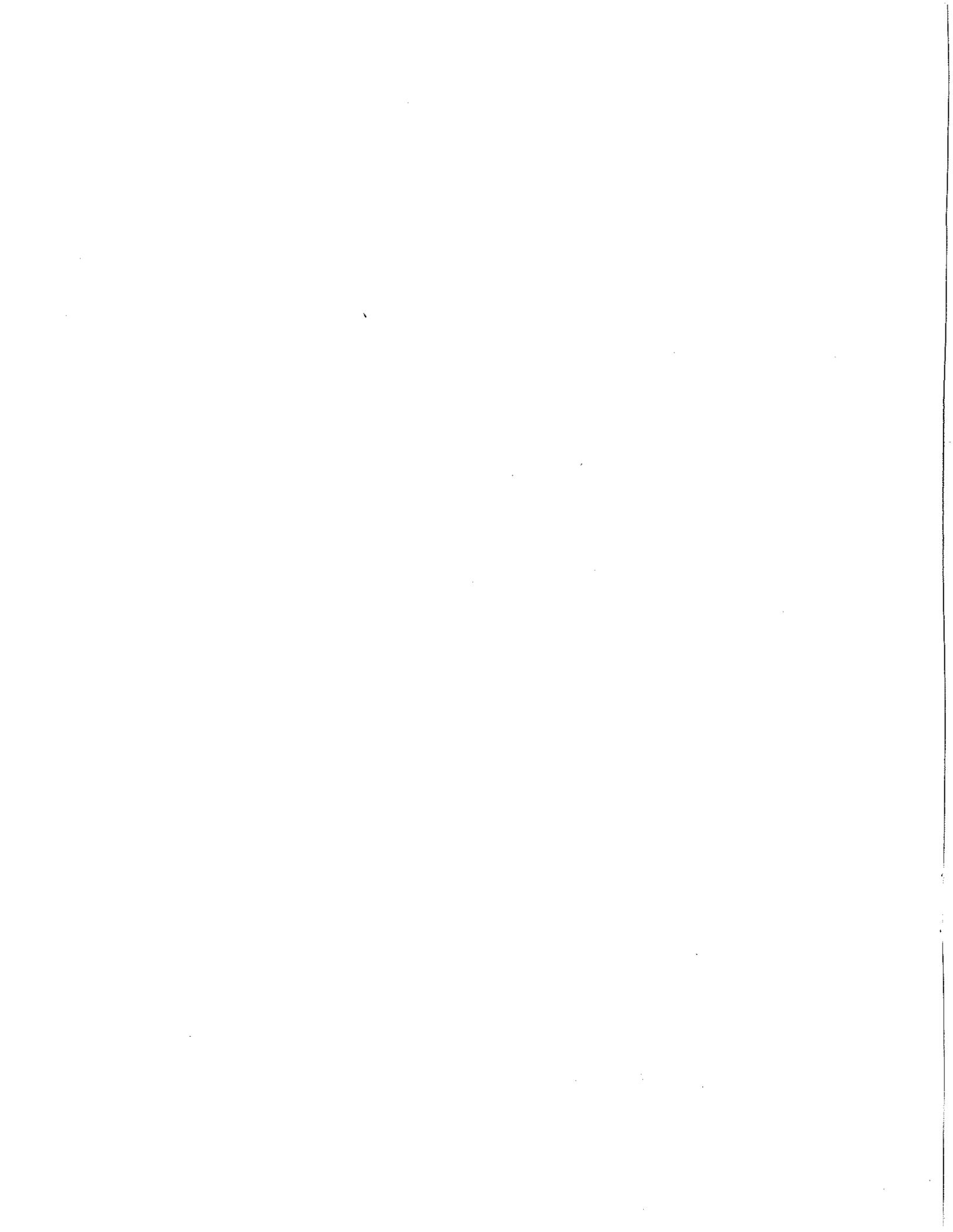
The program review committee recommends that the operation of the siting council be brought into conformance with previous sunset legislation related to operating procedures and member attendance, but that meeting per diems be maintained at \$50, and per diems for public hearings be increased to \$100 with a \$2,000 per year limit for each council member.

Bringing the council's operation into conformance with prior sunset legislation will principally impact attendance--missing three consecutive meetings will result in automatic termination.

The program review committee believed maintaining the current \$50 per diem is appropriate because members serving on the council are not regulating a profession in which they have an interest. Council members are serving on a regulatory body charged with the responsibility of making administrative rulings having a regional or statewide impact. Raising the per diem to \$100 for hearings would adequately compensate members for the additional time consumed during such proceedings. Hearings generally run from four to eight hours. With the added responsibility of hazardous wastes, it is estimated that hearings will be lengthy. It should also be noted that the council must have a quorum present to conduct a hearing. Based upon FY 1981-82 figures, raising the per diem from \$50 to \$100 would cost approximately \$3,250. (See Appendix B.)



APPENDICES



APPENDIX A

CONNECTICUT SITING COUNCIL
(formerly Power Facility Evaluation Council)

STATUTORY AUTHORITY: Chapter 277a of the Connecticut General Statutes and Public Act 81-369 (Public Utility Environmental Standards Act and Hazardous Waste Facility Siting Act)

ESTABLISHED: 1971 by Public Act 575

PURPOSE: 1) provide for the balancing of the need for adequate and reliable public utility services at the lowest possible cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values;

2) to establish and carry out a process for the siting of hazardous wastes facilities that will protect the health and safety of Connecticut citizens as well as assure economic development and strict adherence to federal law.

MAJOR FUNCTIONS:

- provide environmental quality standards and criteria for the location, design, construction and operation of facilities furnishing public utility services;
- issue certificates of environmental compatibility and public need for the construction or modification of a facility as defined in sec. 16-50: electric transmission lines, fuel transmission facilities, electric generating or storage facilities, substations, and community antenna television and telecommunication towers;
- issue certificates of public safety and necessity for the construction or modification of hazardous waste siting facilities;
- encourage research to develop new and improved methods of generating, storing and transmitting electricity with minimal damage to the environment.

- require and review annual forecasts for the demand and supply of electric power.

COMPOSITION: The council has two distinct memberships, one for proceedings concerning power facilities (energy) and one for proceedings concerning hazardous waste facilities:

Energy

Nine members: five public members appointed by the governor; one public member appointed by the speaker; one public member appointed by the president pro tempore; the commissioner of environmental protection; and the chairman of the public utilities control authority.

Hazardous Waste

Thirteen members: the same seven public members as appointed for energy proceedings; the commissioner of public safety; the commissioner of the department of health services; and four ad hoc members, three from the municipality of a proposed hazardous waste facility, and one from the neighboring community most affected by the proposed facility.

Ad hoc members are appointed by the chief elected official of the municipality they represent.

TERMS: All terms are coterminous with the appointing authority except those of the ad hoc members, whose terms coincide with the completion of the procedure for siting a facility

STAFF: Seven full-time positions; and one part-time (3/4) position.

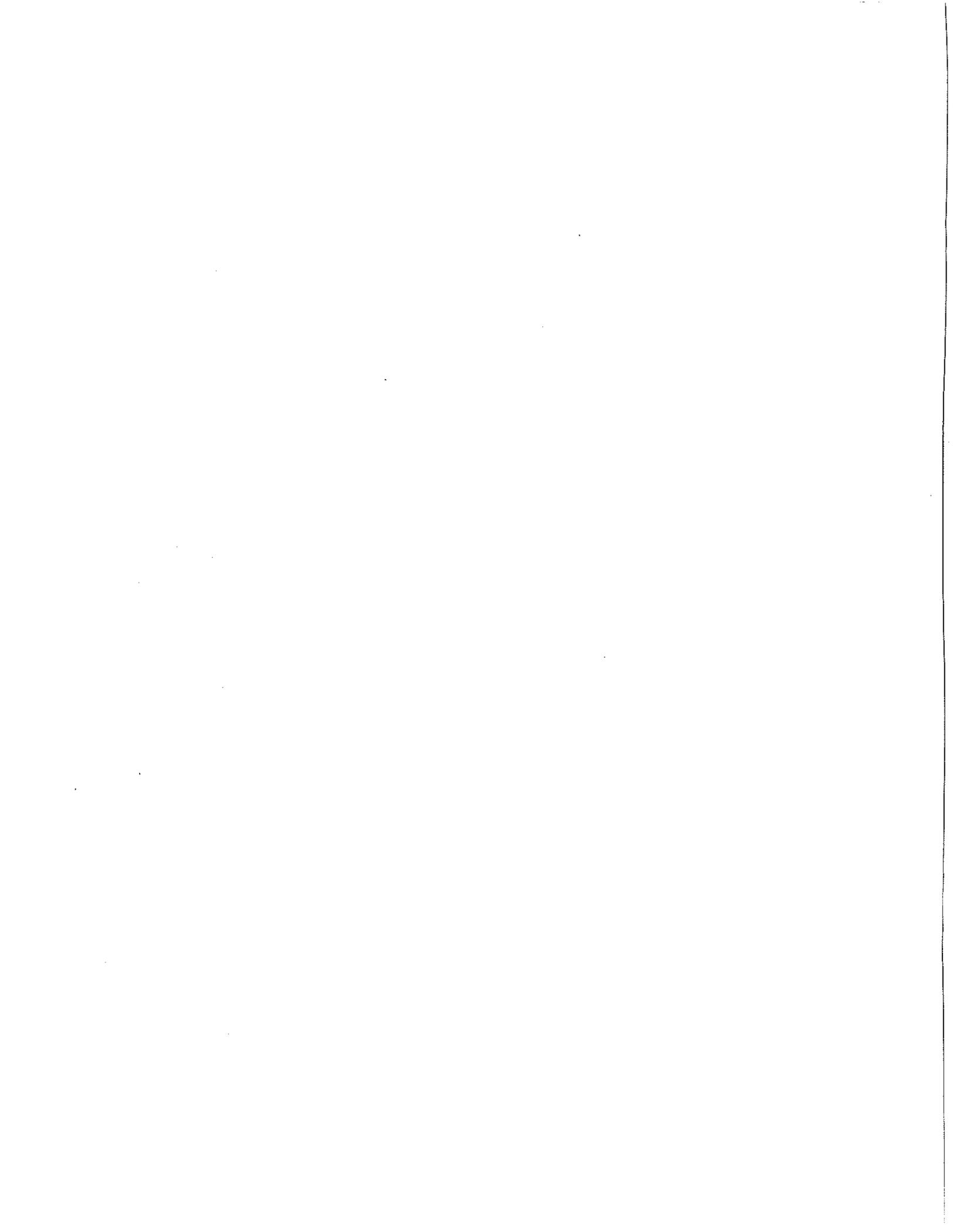
<u>BUDGET:</u>	<u>FY 79</u>	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>
Personnel Services	\$ 68,040	\$ 78,512	\$ 86,889	\$ 132,764
Council Per Diems	22,603	25,159	19,713	28,000
Other expenses	<u>50,113</u>	<u>74,471</u>	<u>107,116</u>	<u>212,382</u>
TOTAL	\$140,756	\$179,142	\$213,718	\$373,146

	<u>FY 79</u>	<u>FY 80</u>	<u>FY 81</u>
<u>REVENUES:</u> (Fees and assessments)	\$140,841	\$172,565	\$183,732

Note: Fees and assessments paid by electric utilities and applicants cover the agency's expenses

AGENCY STATISTICS

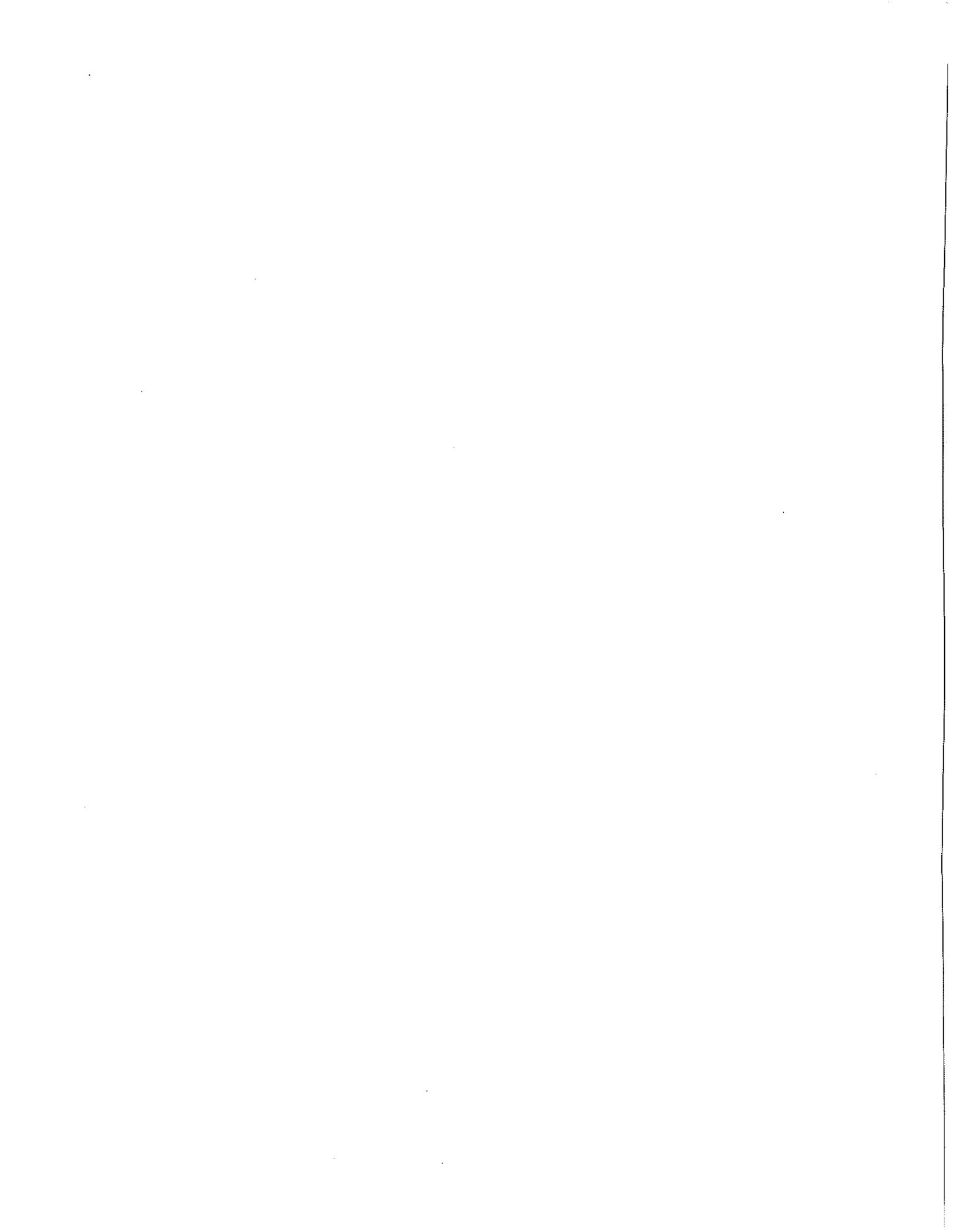
	<u>FY 80</u>	<u>FY 81</u>	<u>FY82</u>
Meetings held:	18	19	25
Hearings:	8 days	12 days	13 days
Applications Processed:	3	6	4
Petitions for advisory determination:	12	18	17
Oversight of Development and Management Plans:	6	6	8
Land Acquisition Approvals:	1	1	0



APPENDIX B

Fiscal Impact of the Per Diem Increase for Public Hearings

It is estimated that an increase in per diems from \$50 to \$100 for public hearings will cost \$3250. This figure was derived by subtracting the product of average number of hearing days times the average number of council members in attendance times the per diem (at the current rate) from the product of the same average number of hearing days times the same average number of council members times the proposed per diem for council hearings. (13 days x \$100 (per diem) x 5 council members = \$6,500; \$6,500 - \$3,250 (\$50 per diems) = \$3,250.)



APPENDIX C

Legislative Changes Needed To Implement The Legislative Program Review and Investigations Committee's Recommendations

- Amend Section 16-50i of the Connecticut General Statutes to delete the requirement that regulations be promulgated for substations and switchyards. Also, amend the section to allow utilities to petition the council for an exemption from review if the council determines that the substation or switchyard will not have an adverse environmental impact.
- Add a new section to Chapter 277a of the Connecticut General Statutes to require the Connecticut Siting Council to analyze its expenditures for hazardous waste administration, propose alternatives to the current funding mechanism, and report its findings and recommendations to the General Assembly on January 1, 1984.
- Amend Section 16-50j of the Connecticut General Statutes to raise the per diem for public hearings to \$100, with a \$2,000 per year limit for each council member; also require that members missing three consecutive meetings be deemed to have resigned.
- Legislation should include a mandate for the committee of cognizance to study the implications of extending the council's jurisdiction to modifications of existing hazardous waste facilities.

