

OLR Backgrounder: Siting On-Shore Wind Facilities

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Issue

Describe state law and regulations on siting on-shore wind facilities in Connecticut. The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

Under the state Public Utility Environmental Standards Act, the Connecticut Siting Council has jurisdiction over on-shore wind facility siting. Generally, the council may approve facilities up to 65 megawatts (MW) in size through its declaratory ruling process. That process is subject to requirements under the state's Uniform Administrative Procedures Act and regulations specific to Siting Council procedures. Additionally, [PA 11-245](#) required the council to adopt regulations specific to wind facilities that addressed parameters specified in the legislation. The act also effectively established a moratorium on wind facilities by barring the council from acting on any application or petition for siting a wind turbine until the regulations were adopted. The legislature approved the council's regulations in 2014.

Wind Colebrook South, a 4.8 MW wind facility in Colebrook, is the only utility-scale wind electric generating facility in the state. Because the council's approval of the project predated [PA 11-245](#), the facility was neither subject to the moratorium nor the regulations subsequently adopted under the act. The project's approval withstood a legal challenge in *FairwindCT Inc. v. Connecticut Siting Council* (313 Conn. 669 (2014)), in which the state Supreme Court affirmed the lower court's rejection of appeals of the council's approval made by a community group and nearby property

owners. Among other things, the court held that the council has jurisdiction over wind facilities under [CGS § 16-50k\(a\)](#) and that its approval of this project was supported by substantial evidence.

Siting Council Jurisdiction

The Siting Council has jurisdiction over most electric generating facilities under the Public Utility Environmental Standards Act ([CGS § 16-50g et seq.](#)). By law, the council can approve proposals for electric generating facilities by (1) issuing a declaratory ruling, depending on the facility's characteristics or (2) granting a certificate of environmental compatibility and public need.

A wind facility with a capacity of up to 65 MW is generally considered a distributed resources facility ([CGS §§ 16-1\(34\) & \(37\)](#)). The law requires the council to approve this type of project through a declaratory ruling, provided (1) the project meets the Department of Energy and Environmental Protection's (DEEP) air and water quality standards and (2) the council does not find a substantial adverse environmental effect ([CGS § 16-50k\(a\)](#)). A wind facility with a capacity under 1 MW may be exempt from any requirements for council approval depending on the facility's ownership and certain other factors ([CGS § 16-50i\(a\)\(3\)](#)).

Developers seeking to construct wind facilities with capacities over 65 MW must apply to the council for a certificate of environmental capability and public need ([CGS § 16-50k](#)). Compared to the process for declaratory rulings, the certificate process is longer, more formal, and more expensive. As there are currently no such large on-shore wind farms in Connecticut, this report focuses on the declaratory ruling process.

Declaratory Ruling Process

In addition to Siting Council regulations described below, the declaratory ruling process is also subject to requirements under Connecticut's Uniform Administrative Procedures Act ([CGS § 4-166 et seq.](#)).

Notice

Developers seeking a declaratory ruling ("petitioners") must first notify (1) property owners for properties on or abutting proposed and alternative sites and (2) appropriate municipal officials and government agencies, including:

1. chief executive officers of affected municipalities;
2. municipal commissions and agencies, including planning, zoning, conservation, and inland wetland agencies;

3. regional council of governments encompassing each affected municipality;
4. the state attorney general;
5. legislators representing districts that include proposed facility locations;
6. any federal agency with relevant jurisdiction;
7. various state agencies, including the departments of agriculture, economic and community development, energy and environmental protection, public health, and transportation, and the Office of Policy and Management;
8. any other state or municipal bodies the council designates.

Within 30 days after receiving the petition, the council must give notice to those who have requested it, and others as required by law, and include contact information; a timeline for public involvement; and the date, location, and time for any scheduled field review ([Conn. Agencies Regs. § 16-50j-40\(a\)](#)).

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Filing Fee

After providing notice, petitioners may submit a request for a declaratory ruling from the council, along with a \$625 filing fee ([Conn. Agencies Regs. § 16-50v-1a](#)).

Public Hearing

Regulations allow the council to schedule a public hearing if it deems a hearing necessary (but, as explained below, regulations specific to wind projects require a public hearing) (Conn. Agencies Regs. § 16-50j-40(b)). Hearings on declaratory rulings are subject to contested case provisions ([Conn. Agencies Regs. §§ 16-50j-13 to 16-50j-34](#))

Decision

Within 60 days after receiving the petition, the council must generally order the matter set for a specified proceeding, agree to issue a declaratory ruling by a specified date, or decide not to issue a declaratory ruling. The council's declaratory ruling must include the particular facts on which it is based and the reasons for its conclusion. The council must deliver its ruling promptly to the petitioner and other parties ([Conn. Agencies Regs. § 16-50j-40\(c\) & \(d\)](#)).

Additional Regulations for Wind Facilities

Legislation and Moratorium

[PA 11-245](#) required the Siting Council, by July 1, 2012, to adopt regulations concerning the siting of wind turbines. The act required the regulations to consider various factors, including setbacks, flicker, ice throw, blade shear, and noise. It also required the regulations to require a public hearing for wind turbine projects.

The act barred the council from acting on any application or petition for siting a wind turbine until the regulations were adopted, effectively placing a moratorium on on-shore wind projects in Connecticut until the legislature approved the council's regulations in 2014.

Wind Regulations (2014)

[State regulations for wind facilities](#) apply regardless of whether the facility is petitioning for a declaratory ruling or applying for a certificate. The regulations require project developers to include the following additional information with each petition or application:

1. proof of service of a copy of the application or petition to various entities, including the U.S. Department of Defense, the Federal Aviation Administration, the State Historic Preservation Office, and certain telecommunications infrastructure owners and operators;
2. a map showing the proposed site, alternative sites, and information on abutting properties;
3. a visual impact evaluation report analyzing the potential visibility of each turbine location and any alternative locations;
4. a noise evaluation report describing potential noise levels generated by proposed and alternative turbines, including calculations in accordance with DEEP's noise control regulations;
5. an ice drop and ice throw evaluation report calculating distances that ice could be dropped from stationary turbine blades or thrown from blades in operation;
6. a blade shear evaluation report;
7. a shadow flicker evaluation report (i.e., a report analyzing moving shadow or flickering effects caused by the turbine's rotating blades);
8. a natural resource impact evaluation report; and
9. a decommissioning plan ([Conn. Agencies Regs. §§ 16-50j-92 to 16-50j-94](#)).

The regulations also establish minimum setback requirements and shadow flicker restrictions and processes for waiving both under certain circumstances ([Conn. Agencies Regs. § 16-50j-95](#)). Projects must also comply with DEEP's noise regulations ([Conn. Agencies Regs. §§ 22a-69-1 to 22a-69-7](#)).

Developers must also prepare a development and management plan in accordance with the council's final decision approving the project and council regulations ([Conn. Agencies Regs. §§ 16-50j-96](#) and [16-50j-60](#) to [16-50j-62](#)).

Modifications to Approved Facilities

Regulations require facility owners or operators to provide the council with advance written notice of any significant change to the approved development and management plan, including constructing temporary equipment or changing a structure's type or location ([Conn. Agencies Regs. § 16-50j-62\(b\)\(2\)](#)). The council must review and approve, modify, or disapprove the changes within 60 days after receiving them. Clearing and construction may not begin until the council approves the changes.

Related Caselaw

According to the Siting Council, Wind Colebrook South, a 4.8 MW wind facility in Colebrook, Connecticut, is the only utility-scale wind electric generating facility in the state. The council approved the project through a declaratory ruling on June 2, 2011. According to the council, regulations and the moratorium required under [PA 11-245](#) did not apply to this project because the act was effective July 1, 2011, and the regulations were not adopted until 2014.

FairwindCT (an advocacy organization) and certain nearby property owners appealed the council's decision to approve the project, eventually to the state Supreme Court. The plaintiffs conceded that [PA 11-245](#) was not retroactively applicable to the project, but objected to the council's approval of the facility on other grounds. In *FairwindCT Inc. v. Connecticut Siting Council* (313 Conn. 669 (2014)), the Supreme Court affirmed the lower court's rejection of the appeals. Among other things, the court held that the council has jurisdiction over wind facilities under [CGS § 16-50k\(a\)](#) and that its approval of this project was supported by substantial evidence. (The decision also held that for a petition ruling, the law does not require the council to give any consideration to state noise law, but the council has jurisdiction to do so. As explained above, regulations adopted since this decision require the council to consider DEEP's noise regulations when making a determination on a wind facility.)

Resources

Connecticut Siting Council, [*“Renewable Energy Facility Petition Guide,”*](#) August 2018.

Connecticut Siting Council, [*“Renewable Facility Application Guide,”*](#) April 2010.

Connecticut Siting Council, [*“Petition No. 983, Staff Report,”*](#) March 6, 2020.

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