

Siting Law for Renewable Energy Facilities

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Issue

This report describes (1) the Siting Council's jurisdiction over renewable energy generating facilities, (2) the process by which the council grants declaratory rulings for the facilities, and (3) how residents can participate in the declaratory hearing process. It updates OLR Report [2010-R-0489](#).

Summary

State law gives the [Connecticut Siting Council](#) exclusive jurisdiction over siting most electric generating facilities in the state, including renewable energy facilities with a generating capacity over one megawatt (MW). Although the law also allows municipal zoning commissions or inland wetland agencies to issue orders that regulate the proposed location of an electric generation facility, the Siting Council can ultimately modify or revoke the municipal orders by a vote of six of its nine members.

In most cases, a facility developer must obtain a certificate of environmental compatibility and public need from the council before beginning work on the facility. However, the council must approve certain generating facilities by declaratory ruling, an alternative process. These include customer-side distributed resources with a generating capacity of 65 MW or less, such as solar photovoltaic (PV) systems and other renewable energy systems, which typically fall under this threshold.

Within 30 days after receiving a petition for a declaratory ruling, the council must notify (1) all persons to whom notice is required by law and (2) anyone who has requested notice of petitions on the subject matter of the petition. Within 60 days after receiving a petition, the council must issue a ruling or take certain other steps. If the agency holds a hearing in a declaratory ruling proceeding, a person can apply to the council to participate as a party or intervenor. Alternatively, he or she can make an oral or written statement at the hearing. Various provisions of the Uniform Administrative

Procedure Act (UAPA) also apply to these proceedings, including the ability of parties and intervenors in a case to cross-examine one another.

Siting Council Jurisdiction

The Siting Council has jurisdiction over siting most electric generating facilities, although its jurisdiction does not extend to emergency generators or generation facilities that are:

1. owned and operated by a private power producer (certain non-utility generators);
2. a qualifying small power production facility or a qualifying cogeneration facility under the federal Public Utility Regulatory Policies Act (i.e., a facility that uses renewable energy or simultaneously produces electricity and useful heat) or a facility the council determines to be primarily for a producer's own use; and
3. a renewable energy facility with a generating capacity of 1 MW or less or a cogeneration facility with a capacity of 25 MW or less ([CGS § 16-50i\(a\)](#)).

The law gives the council exclusive jurisdiction over the location and type of facilities it regulates but requires the council to consider municipal regulations and other state laws as it finds appropriate when ruling on applications ([CGS § 16-50x\(a\)](#)).

In addition, the law allows a municipal zoning commission and inland wetland agency to regulate and restrict an electric generation facility's proposed location. The local body may make all orders needed to exercise this power, but it must make the orders within 65 days after an application for the facility was filed with the Siting Council. The orders must be in writing and recorded in the records of their respective communities, and written notice of any order must be given to each affected party.

Each order may be appealed to the Siting Council by an aggrieved party or any municipality that is entitled to notice of the original application. The appeal must be filed within 30 days after the municipality issuing the order gives its notice. In deciding the appeal, the council can affirm, modify, or revoke the order or make any substitute order by a vote of six of the council's nine members ([CGS § 16-50x\(d\)](#)).

DECLARATORY RULINGS

Requirements

In most cases, a facility's developer must obtain a certificate of environmental compatibility and public need from the Siting Council before beginning work ([CGS § 16-50k\(a\)](#)). However, the council must approve certain generating facilities by declaratory ruling, if they meet certain requirements. This requirement applies to, among other things, projects or facilities that are customer-side

distributed resources or grid-side distributed resources (this would include any renewable energy facilities with a generating capacity between 1 MW and 65 MW).

By law, customer-side distributed resources include electricity generating units with a rating of not more than 65 MW on a retail end user's premises within the transmission and distribution system, including fuel cells, PV systems, or small wind turbines ([CGS § 16-1\(a\)\(34\)](#)). Grid-side distributed resources are electricity generating units with a rating of not more than 65 MW that are connected to the transmission or distribution system, including units used primarily to generate electricity to meet peak demand ([CGS § 16-1\(a\)\(37\)](#)).

The requirement to approve these facilities by declaratory ruling applies if the project meets the Department of Energy and Environmental Protection's (DEEP) air and water quality standards and the council does not find a substantial adverse environmental effect. Additional provisions and requirements apply if the project is a wind facility (see OLR Report [2020-R-0170](#) for additional details specific to wind facilities).

Additional requirements also apply if the facility is (1) a solar PV facility with a generating capacity of at least 2 MW and (2) proposed for siting on prime farmland or forest land. For facilities on prime farmland, the Department of Agriculture must state in writing that the project will not materially affect the land's status as prime farmland. For facilities on forest land, DEEP must state in writing that the project will not materially affect the land's status as core forest. Both agencies may consult with the U.S. Department of Agriculture (USDA) and soil and water conservation districts when evaluating these projects. (These additional requirements do not apply to facilities that DEEP selected in certain energy procurement solicitations issued before July 1, 2017 ([CGS § 16-50k\(a\)](#))).

Process

Declaratory ruling proceedings are governed by [UAPA](#) as well as laws specific to the council. Under the UAPA, anyone may petition an agency for a declaratory ruling as to whether a provision of the statutes applies to specific circumstances, among other things. Each agency must adopt regulations on the (1) form and content of these petitions, (2) filing procedure for petitions, and (3) procedural rights of persons with respect to the petitions ([CGS § 4-176](#)). The councils' regulations are found in [Conn. Agencies Regs. §§ 16-50j-38](#) to [16-50j-40](#).

Notice. Developers seeking a declaratory ruling ("petitioners") must first notify (1) owners of properties on or abutting proposed and alternative sites and (2) the same municipal officials and government agencies who must be notified about an application for a certificate of environmental compatibility and public need. These include:

1. chief executive officers of affected municipalities;

2. municipal commissions and agencies, including planning, zoning, conservation, and inland wetland agencies;
3. regional councils of governments encompassing each affected municipality;
4. the 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, among other state entities; and
8. any other state or municipal bodies the council designates ([Conn. Agencies Regs. § 16-50j-40](#)).

Within 30 days after receiving a petition, the council must notify anyone who is legally entitled to receive notice or who has requested notice of declaratory ruling petitions on the subject matter of the petition. This notice must include the council's contact information; a timeline for public involvement; and the date, location, and time for any scheduled field review ([Conn. Agencies Regs. § 16-50j-40](#)).

Decisions. Within 60 days after receiving a petition, the council must take one of the following actions:

1. issue a ruling declaring the applicability of the provision of the general statutes;
2. order the matter set for specified proceedings (e.g., public hearings);
3. agree to issue a declaratory ruling by a specified date;
4. decide not to issue a declaratory ruling and start the regulation-making process instead; or
5. decide not to issue a declaratory ruling and state the reasons for its action.

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\(c\) & \(d\)](#)).

Public Hearings and Participation

The regulations generally allow, but do not require, the council to hold a public hearing if it deems it necessary ([Conn. Agencies Regs. § 16-50j-40\(b\)](#)). However, the council must hold a hearing on a petition for a declaratory ruling for a wind turbine facility ([Conn. Agencies Regs. § 16-50j-18](#)).

Hearings on declaratory rulings are subject to contested case provisions ([Conn. Agencies Regs. §§ 16-50j-13 to 16-50j-34](#)).

Participation. When the Siting Council holds a hearing on a petition for a declaratory ruling, individuals may participate as a party or intervenor, or through limited appearance statements. Someone must apply to the council for party or intervenor status. The council generally grants party status to those with legal rights, duties, or privileges that will be specifically affected by the proceeding. It grants intervenor status to someone whose participation is in the interests of justice and will not impair the proceedings. Parties and intervenors may participate at the hearings by presenting witnesses and exhibits and cross-examining other parties and intervenors. Additional information about party and intervenor status is available [here](#).

Individuals participating through limited appearance statements do not need pre-approval from the council and may either speak publicly at the public comment part of a hearing or submit written comments to the council. They may not, however, ask questions to the petitioner, parties, or intervenors. Both oral and written comments are entered into the public record for the proceeding and are taken into consideration by council members.

Additional guidance on participating in Siting Council declaratory ruling procedures is available [here](#).

Appeals

A final decision on a petition for a declaratory ruling is a final decision under the UAPA, which means that an aggrieved party can appeal it to Superior Court. In order to file an appeal, a person must demonstrate a specific personal and legal interest in the case that might be specially and injuriously affected by the decision (see *Town of Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382 (2001), affirmed 260 Conn. 266 (2002)).

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