

Department of Environmental Protection
Response to Request for Statement of Position
PA 02-95 and EO 26 Task Force
August 2002

The Connecticut Department of Environmental Protection is committed to working with the Task Force formed pursuant to Public Act 02-95 and Executive Order 26 to ensure that development of energy infrastructure proceeds in a manner which is protective of the environment while meeting the energy needs of the citizens of the state. The work of the Task Force is timely given that Connecticut stands at an energy crossroads, with interrelated factors to be balanced. Deregulation of the electric and gas utilities has resulted in a large number of proposed generation and transmission projects. The advent of clean and efficient combined cycle gas generation has made natural gas supplies integral to electricity generation. Southwestern Connecticut is a transmission-constrained area, undergoing economic and energy demand growth, in addition to being a severe non-attainment area for ozone. Due to proposed changes by ISO New England, the premium cost of providing electricity to southwestern Connecticut during times of grid congestion will soon be borne solely by Connecticut residents, rather than all of New England. The federal government is considering the formation of regional transmission organizations. Development patterns and pressures are making it difficult to site new generation and transmission facilities. Energy infrastructure is no longer a state-specific issue, but a regional one, in which each state must balance broader equities. Finally, public interest in conservation and protection of our environment has never greater.

Meeting the energy needs of the citizens of Connecticut must be balanced with protecting Connecticut's natural resources. Historically, this balance has been achieved through the interplay of utility regulation combined with strong environmental protection laws wherein regulators balanced need against environmental protection. Under utility deregulation pursuant to PA 98-28, the competitive market place determines which energy facilities are proposed and constructed, rather than a public policy driven energy planning process which incorporates sound environmental management. While the environmental protection laws have not changed, they were not designed to address the cumulative impacts of competitive projects within a deregulated system. Therefore, a modification to the existing regulatory framework is necessary to achieve an appropriate energy-environment balance. Specifically, we need to modify the way new transmission and generation projects are reviewed and approved by the cognizant state agencies.

The present system evaluates the public benefit and environmental impact of individual projects. Given that transmission and generation projects generally result in some level of adverse environmental impacts, in most cases the determination of public need is necessary to allow the consideration of adverse environmental impacts. For example, if an energy infrastructure project in Long Island Sound will not result in a broad public benefit, whether directly to Connecticut residents or indirectly through increased reliability of the regional grid, then the adverse environmental impacts of the project are likely to be unacceptable.

This Department has consistently been able to make informed technical decisions on specific projects under the existing framework, however, we have not been able to weigh the environmental pros or cons of alternative or competing projects. For example, assume that two projects are proposed to supply energy to a specific area. One may be more environmentally damaging than the other which originates closer to the ultimate user of the energy and is of a smaller scale, but if the environmentally damaging proposal has been filed first it must be considered first, with no easy way to incorporate a meaningful discussion of project alternatives. Accordingly, we suggest that energy projects need to be considered on a more comprehensive, comparative basis, rather than individually on a first-apply, first-served basis. Ideally, such consideration would be made before environmental permit applications are submitted for specific projects. One possible mechanism would be to develop an "open season." Incentives should be developed which encourage applicants to submit proposals that meet the energy-environment balance that we are trying to achieve. While it is premature for the Department to propose a specific process, we are committed to working with our fellow regulatory entities and the Task Force members to develop and evaluate options.

Energy crossings of coastal, tidal and navigable waters, including Long Island Sound, present a unique set of issues in part because of the Department's public trust responsibility. The state holds in trust for the people of Connecticut the waters and bottom lands waterward of mean high water in addition to having direct regulatory jurisdiction in Long Island Sound. The Department approaches energy infrastructure projects the same way it approaches all projects: avoid, minimize or mitigate adverse impacts to natural resources, in that order. However, once the Siting Council has made a finding of public benefit for a project, the issue of large scale avoidance is moot. While we evaluate specific projects for consistency with state statutes, siting alternatives have already been evaluated or not, as part of the Siting Council process. It is critical that the step-wise process of avoid, minimize or mitigate adverse impacts to natural resources be incorporated into all regulatory processes, starting with the planning process so that there is a wide-ranging analysis of alternatives.

In sum, all aspects of energy policy must be weighed in the balance, including unintended adverse consequences, when evaluating proposed energy facilities. However, neither the existing regulatory process nor proponents or opponents of specific projects have been able to achieve such a comprehensive perspective. For instance, some Cross-Sound Cable opponents have suggested that Long Island should generate its own power and then there would be no need to send power across Long Island Sound. However, the two large oil-fired plants on Long Island, Northport and Port Jefferson, emit far more air pollution per kilowatt hour than the so called "Sooty Six" plants in Connecticut. Given that both states share an airshed, unless new generating capacity on Long Island is particularly clean, such an approach will result in additional air pollution in Connecticut, as well as adverse water quality through nitrogen deposition to Long Island Sound. It is also important to note that in order to increase clean generation, Long Island will likely need greater access to natural gas.

Additional Factors for Consideration of the Task Force

Regarding the natural resource assessment and plan that is required by PA 02-95, the Department welcomes the collection of existing data on Long Island Sound resources into one place. However, we would be remiss not to point out that we regularly use such data in our technical review of projects, and that having it in one place will not change the inadequacies in the framework of the decision making process. In addition, it is unrealistic and unnecessary to conduct new resource mapping, without clear identification of data gaps.

In developing a new approach to energy policy, the Task Force undoubtedly recognizes the central paradox that, while per capita demand for electricity is rising, many citizens are opposed to the construction of new generation or transmission facilities. The only way to resolve this dilemma is to reduce or even reverse the growth in electricity demand. Therefore, from a local, state, regional and global environmental perspective, the most important commitment all stakeholders can make is to conservation and efficiency improvements. At a cost of about 2 cents a kilowatt hour, conservation and efficiency improvements provide price and service stability and reduce air pollution. In addition to current load management initiatives, commercial users should be encouraged to conserve energy at all times, not just during peak demands. Another critical step is targeted investment in clean distributed generation and renewable energies. Both promote stability of supply and of price. However, the placement and operation of diesel generators during peak demand that coincide with air quality alerts, is an unacceptable solution.

Connecticut has a strong commitment to improving air quality for all of its residents, with an emphasis on southwestern Connecticut as a severe ozone nonattainment area. Ideally, electricity generation must be integrated with land use and transportation planning as development and transportation patterns influence air quality as well as interacting with each other. One potential mechanism to achieve such integration is through the State Plan of Conservation and Development that is presently being updated. In addition, the ongoing efforts of the Transportation Strategy Board are very relevant to this issue. The Task Force is encouraged to work with these entities toward comprehensive planning.

Energy infrastructure corridors have been suggested by many as the best way to minimize crossing impacts to Long Island Sound. While this approach may minimize the number of sites subject to disturbance, we must evaluate the potential long term environmental and security impacts of grouping utilities in specified corridors. This is a concept that should be thoroughly evaluated by the Task Force, but should not be considered a panacea at this juncture. In addition, the Task Force may want to consider recommending exclusion zones where no energy infrastructure crossing will be allowed in order to protect uniquely sensitive habitats or species. To the extent that energy infrastructure crossings cause any adverse environmental impacts to the Sound, the best way to reduce such impacts is to limit the total number of crossings.

Finally, concern has been expressed that private companies are benefiting from structures being installed in Long Island Sound without commensurate benefit for the people of the state. Many other coastal states have a submerged lands leasing program, whereby authorized

regulated activities must purchase a lease or easement, in addition to receiving required regulatory permits, for use of public trust submerged lands. There are many different methods of calculating lease fees, including a graduated rate based on square footage, a percentage of appraised value, and exemptions for certain types of structures, such as residential docks. Some states such as New York, New Jersey and Delaware apply a per-foot lease fee specifically for submerged cables and pipelines. Depending on the methodology used, submerged cable leasing fees could generate a substantial amount of revenue. For instance, utilizing New York's one-time cable lease fee rate of \$15.23 per lineal foot, the Connecticut portion of the Cross-Sound, LLC cable would yield well over a million dollars in lease fees. Moreover, since a leasing fee would be an expression of the State's property interest rather than a regulatory requirement, it could presumably be applied retroactively to existing cables and pipelines as well as prospectively. Accordingly, the Task Force should seriously consider recommending that the General Assembly create a system of submerged lands leasing for underwater cables, pipelines and other commercial, non-water dependent, non-riparian uses of the State's public trust area. The revenues from such a fee should be dedicated to the protection and improvement of coastal resources of Long Island Sound.