



For a thriving New England

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By Email

March 9, 2018

The Honorable Cale P. Keable  
Chair, Special Legislative Commission to Study the Energy Facility Siting Act  
State House Room 101  
Providence, R.I. 02903

RE: Suggested Changes to the Energy Facility Siting Act

Dear Chair Keable:

Thank you for the opportunity to serve on the Special Legislative Commission to Study the Energy Facility Siting Act (the Commission). I write to offer Conservation Law Foundation's (CLF's) suggested changes to the Energy Facility Siting Act (the Act), R.I. Gen. Laws § 42-98-1 et seq.

As noted at the Commission several times, the Act has not been substantially updated since the eighties. With the work of the Commission, the enormous amount of change in the energy markets over the last thirty years, and the effects of climate change upon us, CLF agrees that meaningful reform is long overdue. Your forthcoming legislation is an opportunity to recognize the transformation of our energy markets, steer Rhode Island towards a future of renewable energy, and clarify parts of the Act.

Thank you for the opportunity to provide you with the following suggestions for your legislation:

- § 42-98-2. Declaration of Policy.
  - In (3), insert “its greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.” after “most particularly,” and before “its land.”
  - In (6), add “, including the state’s greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.” at the end of the sentence.
  - In (8)(i), delete “, natural gas, or coal processed by ‘clean coal technology’” so it reads “Using renewable fuels as their primary fuel;”
  - Add a new (8)(ix) that reads “(ix) Complying with the state’s greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.”
- § 42-98-3. Definitions.
  - In (b), change the definition of “Alteration” by deleting the sentence that reads “Conversion from one type of fuel to another shall not be considered to be an ‘alteration.’”

- § 42-98-7. Powers and duties.
  - At the end of (d), insert “, which shall be liberally granted.”
  
- CLF supports amending the Act to include a Counsel for the Public similar to the one in New Hampshire’s Chapter 162-H, Energy Facility Evaluation, Siting Construction and Operation. We suggest creating a new R.I. Gen. Laws § 42-98-7.1 entitled “Counsel for the Public” that reads:
  - (a) Within fifteen (15) days of the board’s docketing of an application, the attorney general shall appoint a current state employee attorney or attorneys, or contract with an attorney or attorneys licensed in Rhode Island, to serve as counsel for the public.
  - (b) Counsel for the public shall represent the public in seeking to protect the quality of the environment, including advocating for environmental justice matters.
  - (c) Counsel for the public shall be accorded all the rights, privileges, and responsibilities of an attorney representing a party in formal action and shall serve until the decision to issue or deny an application is final.
  - (d) Costs incurred by the attorney general in connection with the counsel for the public, including the hiring of attorneys and the hiring of experts, shall be funded by the applicant through the board’s assessment process.
  - (e) This section shall not be construed to prevent any person from being heard or represented by counsel.
  
- § 42-98-8. Applications – Contents – Acceptance for filing.
  - In the second sentence in (a), delete “where applicable.”
  - In (a)(2), at the end, add “and a detailed description of applicant’s access to all necessary utilities, including but not limited to water, sewer, electric, and gas.”
  - Insert a new (a)(8) that says “A detailed and specific statement as to the effects the proposed facility would have on the state’s greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.”
  - In (b), replace the second sentence with “An application must meet every requirement of this section and all applicable regulations in order to be docketed; no applications will be docketed that do not satisfy every requirement of this section and all applicable regulations. If the application is in the form and addresses all matters that are required by this section and the rules and regulations as are promulgated pursuant to § 42-98-7, then it shall be docketed.”
  - In (b), replace the last sentence with “Within thirty (30) days of the resubmission of an application following a rejection for deficiency, the board shall notify the applicant if the application is still deficient by returning it to the applicant, together with a concise and explicit statement of the application’s deficiencies. If a resubmitted application is in the form and addresses all matters that are required by this section and the rules and regulations as are promulgated pursuant to § 42-98-7, then the board shall docket the resubmitted application together with the correspondence from the board specifying the deficiencies in all earlier applications.”

- § 42-98-10. Agency procedures – Advisory opinion.
  - Change (d) so it reads “Failure or refusal of the applicant to provide requested information will result in denial.”
  - Add a new (f) that reads “(f) Any town council or city council may submit to the board a resolution setting forth its support for or opposition to the application at any time after the application is docketed by the board and no later than thirty (30) days following the submission of advisory opinions, unless an extension is granted by the board for good cause shown.”
  
- § 42-98-11. Final hearing – Standards – Decisions.
  - In (b)(3), insert “, will not hinder the state from reaching its greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.,” after the word “environment.”
  - Insert the following new section (c), and renumber the remaining sections: “(c) The board shall not issue a decision granting a license to any applicant unless the board has considered whether construction and operation of the proposed facility will adversely impact the ability of the state to meet its greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.”
  - In what is currently (c), amend the fourth sentence so it reads, “The board’s decision shall explicitly address each of the advisory opinions received from agencies, and the board’s reasons for accepting, rejecting, or modifying, in whole or in part, any of those advisory opinions; any resolution from a host community, and the board’s reasons for accepting or rejecting that resolution; and the effect that construction and operation of the proposed facility will have on the state’s achievement of its greenhouse gas emissions reductions targets in the Resilient Rhode Island Act, § 42-6.2-1 et seq.”
  
- § 42-98-12. Appeals and judicial review.
  - In (b), change “ten (10)” to “thirty (30).”

Thank you for your consideration. Please do not hesitate to contact me with questions.

Sincerely,



Amy E. Moses  
 Vice President & Director, CLF Rhode Island

Cc: Michael Hogan, House Policy Office (by email)