

RETURN DATE: APRIL 16, 2024	:	SUPERIOR COURT
	:	
TOWN OF FAIRFIELD	:	JUDICIAL DISTRICT OF NEW BRITAIN
	:	
v.	:	AT NEW BRITAIN
	:	
CONNECTICUT SITING COUNCIL, ET AL.	:	MARCH 25, 2024

ADMINISTRATIVE APPEAL

To the Superior Court for the Judicial District of New Britain at New Britain this 25th day of March, 2024, comes Plaintiff-Appellant Town of Fairfield aggrieved by and appealing from the Connecticut Siting Council’s Findings of Fact, Opinion, and Decision and Order dated February 16, 2024 granting the United Illuminating Company a Certificate of Environmental Compatibility and Public Need, and complains and says:

INTRODUCTION

1. The Town of Fairfield (the “Town” or “Fairfield”) takes this appeal pursuant to the Public Utility Environmental Standards Act (“PUESA”), Conn. Gen. Stat. §§ 16-50q et seq., and the Uniform Administrative Procedure Act (“UAPA”), Conn. Gen. Stat. § 4-166 et seq., from the Findings of Fact, Opinion, and Decision and Order mailed by the Connecticut Siting Council on February 16, 2024 (collectively, the “Decision”).

2. The Town is a municipality under Conn. Gen. Stat. § 16-50i(b) and a party to the Connecticut Siting Council proceeding pursuant to Conn. Gen. Stat. § 16-50n(a)(2).

3. The defendant Connecticut Siting Council (the “Council”) is an agency of the State of Connecticut with an address of 10 Franklin Square, New Britain, Connecticut.

4. The defendant The United Illuminating Company (“UI”) is an electric distribution company doing business in the State of Connecticut with an office at 180 Marsh

Hill Road, Orange, Connecticut and a party to the Council proceeding pursuant to Conn. Gen. Stat. § 16-50n(a)(1).

5. On or about March 17, 2023, UI filed an application with the Council (the "Application") seeking a Certificate of Environmental Compatibility and Public Need ("Certificate") pursuant to Conn. Gen. Stat. § 16-50l.

6. UI's Application sought approval for the rebuild of approximately 7.3 miles of its existing 115-kilovolt overhead transmission lines that presently are aligned within the Connecticut Department of Transportation's ("CT DOT") Metro-North Railroad corridor in Fairfield and Bridgeport, between Catenary Structure B648S (located just east of Sasco Creek) and UI's Congress Street Substation (located in Bridgeport), as well as two 115-kV transmission lines located within UI's 0.23-mile existing right-of-way that extends from the CT DOT corridor in Fairfield to UI's Ash Creek Substation in Bridgeport (the "Project").

7. Pursuant to the procedure set forth in the UAPA for contested cases, the Council opened a docket and held hearings on the Application in a proceeding identified as "Docket 516".

8. Pursuant to Conn. Gen. Stat. § 4-181a(b), the procedure set forth in the UAPA for contested cases applied to Docket 516.

9. This appeal is being served and filed within 45 days of certified mailing of the Decision, in accordance with Conn. Gen. Stat. § 4-183(c).

THE PUESA STANDARD

10. UI's Application is governed by PUESA.

11. Conn. Gen. Stat. § 16-50k(a) provides that "no person shall exercise any right of eminent domain in contemplation of, commence the preparation of the site for, commence the construction or supplying of a facility, or commence any modification of a facility, that may, as

determined by the council, have a substantial adverse environmental effect in the state without having first obtained a certificate of environmental compatibility and public need.”

12. UI’s Application sought approval for the relocation of its 115-kilovolt (kV) electric transmission line, which is a “facility” within the meaning of Conn. Gen. Stat. § 16-50i(a)(1).

13. PUESA is an environmental protection statute that was enacted to ensure that Connecticut’s environmental, scenic, and historic resources are given paramount importance in siting decisions.

14. In the first section of PUESA, the Connecticut General Assembly made the legislative finding that “transmission lines for electricity and fuels...have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants, lines and towers, if not properly planned and controlled, could adversely affect the quality of the environment, the ecological, scenic, historic and recreational values of the state.” Conn. Gen. Stat. § 16-50g.

15. The purposes of PUESA “are to provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable 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.” Conn. Gen. Stat. § 16-50g.

16. An applicant for a Certificate bears the burden of providing sufficient evidence for the Council to find and determine a “public need” for the proposed project, and to balance that need against the “nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect,” and “why the adverse effects . . . are not sufficient reason to deny the application.” Conn. Gen. Stat. § 16-50p(a)(3)(A)-(C).

UI'S SOUTHERN OVERHEAD DESIGN

17. UI's Application sought approval to "remove" and "rebuild" its existing 115-kV transmission lines that are currently situated on "bonnets" on top of railroad catenary structures within the CT DOT Metro-North Railroad corridor and within existing rights-of-way. From the outset of Docket 516 and throughout the case, UI advocated for its design involving new overhead 115-kv transmission lines situated on taller monopoles south of the Metro-North Railroad ("UI's Southern Overhead Design").

18. UI's Southern Overhead Design would have necessitated the unprecedented seizure of more than 19 acres of permanent easements over private property in sensitive historic areas in the Town of Fairfield and the City of Bridgeport, all of which abutted the south of the CT DOT Metro-North Railroad corridor.

19. UI's Southern Overhead Design would have caused devastating impacts to the environment and precious religious, cultural, historic, and scenic resources in the Town of Fairfield and throughout the route.

20. Throughout the proceedings in Docket 516, all of the parties and intervenors contested UI's Southern Overhead Design to the south of the CT DOT Metro-North Railroad corridor.

21. Throughout the proceedings in Docket 516, UI opposed any material modifications to the siting of the transmission lines anywhere but to the south of the CT DOT Metro-North Railroad corridor and, specifically, UI reached a conclusion – as stated in the Application – that siting of its transmission lines to the north is not viable.

22. Throughout the proceedings in Docket 516, including through the close of the evidentiary hearings and the filing of post-hearing briefs, the Town opposed UI's Application because UI failed to establish a "public need" for the Project, failed to adequately consider

alternatives that would have dramatically fewer adverse effects on the environment and local resources, understated the anticipated costs of the Project, artificially inflated the costs associated with more appropriate alternatives (such as undergrounding), and overall failed to meet its burden of allowing the Council to balance the need for adequate and reliable public utility services at the lowest reasonable 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.

THE COUNCIL’S CREATION OF THE “HANNON-MORISSETTE ALTERNATIVE”

23. At the Council’s February 1, 2024 meeting, when the Council took a straw poll vote of its members, not one Council member indicated support for UI’s Southern Overhead Design to the south of the CT DOT Metro-North Railroad corridor.

24. However, four Council members indicated support for a completely different route consisting of a double-circuit overhead design to the north of the Metro-North Railroad tracks from Ash Creek Substation west to the connection with Eversource (referred to as the “Hannon-Morissette Alternative”). The Council named this alternative after two members of the Council who participated in Docket 516 – John Morissette and the late Robert Hannon.

25. On February 15, 2024, the Council voted in favor of granting a Certificate to UI for construction of the Hannon-Morissette Alternative by a vote of 4 members in favor, 1 opposed, and 2 abstaining.

26. Thereafter, on February 16, 2024, the Council issued its Decision in which it issued a Certificate to UI for the Hannon-Morissette Alternative.

27. The Council’s Decision to approve the Hannon-Morissette Alternative was made without a sufficient record to allow it to satisfy the requirements set forth in PUESA for the

issuance of a Certificate, including the necessary details to allow the Council to balance the alleged public need with the environmental impact.

28. UI's Application rejected the rebuilding of the 1130 Line, as would be required under the Hannon-Morissette Alternative, and during the proceedings, UI did not provide detailed estimates, drawings, or plans relating to the Hannon-Morissette Alternative.

29. Indeed, there is no evidence at all that UI has ever designed the Hannon-Morissette Alternative. Specifically, there is no evidence in the record regarding any of the following essential elements of the design – all of which are central to the balancing required by the Council under PUESA:

- a) The design of the new double-circuit monopoles, such as their shape and size.
- b) How UI will address environmentally sensitive areas and residences to the north of the railroad tracks.
- c) Where the monopoles will be located.
- d) The number of monopoles that will be required.
- e) The height of each of the monopoles.
- f) The design of the foundations.
- g) The methods of construction to be used for the monopoles.
- h) The location, extent, and acquisition cost of permanent and temporary easements that UI will require to construct the Hannon-Morissette Alternative.
- i) Cross-section diagrams, maps, plans, and profiles relating to the Hannon-Morissette Alternative, similar to that which UI provided in its Southern Overhead Design.
- j) The impact of the Hannon-Morissette Alternative on the local environment.
- k) The impact of the monopoles on the scenic, historic and recreational values in the Town, including visual impacts.

30. As a result, the Council's Decision to approve the Hannon-Morissette Alternative violated PUESA because there was nothing in the record to allow the Council to satisfy the requirements set forth in PUESA for the issuance of a Certificate, including the necessary details to allow the Council to balance the alleged public need with the environmental impact.

31. The Council's Decision to approve the Hannon-Morissette Alternative violated PUESA because UI never presented any design of this alternative route, nor did UI present any evidence of the potential adverse impacts on the environment, the ecological, scenic, historic and recreational values in the Town resulting from the Hannon-Morissette Alternative – as it had with its unsuccessful effort to seek approval of the Southern Overhead Design.

32. There has never been any notice to any of the abutting property owners to the north of the Metro-North Railroad tracks that UI would be constructing a new double-circuit transmission line to the north, and that there may be impacts on those property owners, including, without limitation, temporary and permanent easements in favor of UI encumbering the properties to the north of the railroad tracks and other adverse environmental, ecological, scenic, historic and recreational impacts.

33. Because none of the abutting property owners to the north of the Metro-North Railroad tracks were ever provided notice that UI would be constructing a new double-circuit transmission line to the north that may impact their properties, none of those abutters appeared in Docket 516 and none of those abutters had the ability to exercise their right to participate in the hearing, conduct cross-examination, submit evidence, file briefs, and contest the application – all in violation of their due process rights.

THERE IS NO PUBLIC NEED FOR THE PROJECT

34. “[A] public need exists for an energy facility if such facility is necessary for the reliability of the electric power supply of the state.” Conn. Gen. Stat. § 16-50p(h).

35. UI admitted that the Project is not about increased demand or load capacity, and that information relating to the voltages and capacities of its proposed transmission lines are not relevant to its claim for need because that information would be “related to reliability concerns.” UI admitted that the Project is not necessary for the reliability of the electric power supply of the State.

36. The sole asserted basis of “need” for UI’s Project to “remove” and “rebuild” its existing 115-kV transmission lines that are currently situated on “bonnets” on top of railroad catenary structures, is the alleged physical condition of those structures.

37. UI admitted that the purpose of the Project is to do nothing more than “replace legacy electric system equipment.”

38. UI did not submit sufficient evidence that the existing condition of the catenary structures requires removal of the transmission lines from those structures and, instead, UI relied on conclusory allegations, which the Council failed to carefully examine and are unsubstantiated by the record.

39. UI admitted that there is no need for increased electrical capacity today, and UI admitted that there will be no need for increased electrical capacity based on its 10-year projections into the future.

40. Despite these admissions, UI’s Project approved by the Council does not involve a mere replacement of its existing 115-kV transmission lines but instead involves a massive, unnecessary upgrade to the electrical capacity of these transmission lines.

41. Accommodating this upgrade requires taller poles, and larger and deeper foundations with larger diameters, necessitating a wider right of way that risks unacceptable adverse environmental effects and takings of private property that the Council failed to consider in approving the Hannon-Morissette Alternative.

42. UI failed to submit any evidence as to the height of the proposed monopoles, the extent or location of proposed easements, the adverse environmental impact that will be caused by the construction of the Hannon-Morissette Alternative, and failed to submit any design at all for the Hannon-Morissette Alternative.

43. UI admitted that the company's real motivation for seeking approval of the Project involving a massive unnecessary upgrade to capacity is for the purpose of "wheeling" of electricity outside of the State, and UI admitted that the Project is not necessary for the reliability of the electric power supply of the State. The primary purpose of "wheeling" electricity outside of the State is for UI to achieve profits.

44. UI has sought approval of the Project for its own profit-margin rather than any public need for additional electrical capacity.

THE COUNCIL FAILED TO REQUIRE UI TO CONSIDER ALTERNATIVES

45. In order to obtain a Certificate, PUESA imposes on UI strict statutory obligations to provide significant details relating to its proposed transmission lines and to undertake a rigorous examination of overhead and underground alternatives.

46. Conn. Gen. Stat. § 16-50I(a)(1)(A) requires an applicant to include a description of estimated costs, overhead and underground cable and conductor sizes and specifications, and "initial and ultimate voltages and capacities."

47. Conn. Gen. Stat. § 16-50l(a)(1)(D) requires an applicant to include “a justification for adoption of the route or site selected, including comparison with alternative routes or sites which are environmentally, technically and economically practical.”

48. Conn. Gen. Stat. § 16-50l(a)(1)(F) requires an applicant to include “a justification for overhead portions, if any, including life-cycle cost studies comparing overhead alternatives with underground alternatives, and the [environment, ecology, and scenic, historic and recreational values] effects ... of undergrounding.”

49. The record establishes that the Council issued the Certificate even though UI failed to satisfy its statutory obligations to consider alternatives in the following ways:

- a) UI failed to evaluate alternative overhead conductors that are commonly employed in the industry and would be narrowly tailored to the alleged need to remove the existing 115-kV transmission lines from railroad catenary structures, while eliminating or minimizing the need for expanded easements and takings of private property.
- b) UI admits that longer spans between poles typically require taller poles, and that as span length increases, conductor blowout increases, requiring larger easements over private property to account for that blowout. However, none of the alternatives described in the Application or anywhere else in Docket 516 involved the evaluation of the direct burying of shorter poles, in closer distance to each other, within the existing Metro-North Railroad right-of-way in the same longitudinal plane as the catenary structures.
- c) UI did not meaningfully consider underground alternatives, and instead: (i) ignored the benefits of burying the transmission lines beneath public roads; (ii) overstated – without support – the cost of constructing, operating, and maintaining underground transmission lines; (iii) ignored the site-specific benefits of burying the transmission lines underground; (iv) concealed its failure to meaningfully consider underground alternatives by asserting that interrogatories seeking information on what steps it took to do so were “not relevant”; (v) only analyzed a design with transmission lines having far more capacity to carry electricity than is needed today or that is projected to be needed into the future; and (vi) failed to present expert evidence, follow standard industry practice or undertake the required studies to determine the feasibility of siting transmission lines underground, including under the Post Road.

THE COUNCIL'S ARBITRARY EVIDENTIARY RULINGS

50. Throughout the proceedings in Docket 516, the Council also restricted the Town's right to fundamental fairness, and prevented a full and true disclosure of the facts, by, *inter alia*, cutting off the testimony of the Town's witnesses, preventing the Town from challenging evidence submitted by UI, refusing to require UI to fully respond to document requests, improperly limiting the rights of intervenors to cross-examine the Town's witnesses, and improperly limiting the rights of the Town to cross-examine the witnesses of intervenors. As a result, the Council improperly issued its Decision based on a limited evidentiary record to the Town's prejudice.

AGGRIEVEMENT

51. The Town is aggrieved because the Council's Decision prejudices its substantial rights and its specific, personal, and legal interests as it is the municipality in which the Project is located, for the reasons described above and for the reasons described below, including, but not limited to:

- a) The Project, if built, will be constructed along Town roads, within Town neighborhoods, and through certain properties owned by the Town;
- b) The Project, if built, will cost Connecticut ratepayers, including residents of the Town, hundreds of millions of dollars, even though there is no demonstrated public need for the Project;
- c) The Project, if built, will have a materially adverse environmental impact in the Town;
- d) The Project, if built, will have a materially adverse effect on the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, parks, air and water purity within the Town;
- e) The Project, if built, will materially adversely impact and diminish the scenic views of the surrounding areas;
- f) The Project, if built, will pose an undue harm to public health, safety and welfare;

- g) The Town was a party to Docket 516 pursuant to Conn. Gen. Stat. §§ 4-177a(a) and 16-50n(a)(2);
- h) The Project, if built, will affect wetlands and watercourses located in the Town; and
- i) The Council violated the Town's rights under PUESA.

LEGAL CLAIMS

COUNT I: Administrative Appeal Pursuant to Conn. Gen. Stat. § 4-183

52. The Town incorporates herein by reference Paragraphs 1 through 51 above as if fully set forth herein.

53. The Council's Decision approving the Hannon-Morissette Alternative prejudices the substantial rights of the Town and its residents, violated constitutional or statutory provisions, exceeded the Council's statutory authority, was made upon unlawful procedures, was affected by other errors of law, was clearly erroneous in view of the reliable, probative and substantial evidence of the whole record, and was arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion for one or more of the following reasons:

- a) UI failed to meet its burden of proof demonstrating that there is a "public need" as required by Conn. Gen. Stat. § 16-50p.
- b) UI failed to meet its burden of proof allowing the Council to find and determine the "nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect," and "why the adverse effects . . . are not sufficient reason to deny the application" as required by Conn. Gen. Stat. § 16-50p.
- c) UI failed to provide sufficient details regarding the Hannon-Morissette Alternative as required by Conn. Gen. Stat. § 16-50l(a)(1)(A).
- d) UI failed to meet its burden of proof regarding alternatives as required by Conn. Gen. Stat. § 16-50l(a)(1)(D).
- e) UI failed to meet its burden of proof regarding overhead portions of the Hannon-Morissette Alternative as required by Conn. Gen. Stat. § 16-50l(a)(1)(F).

- f) The Council disregarded its statutory responsibility pursuant to Conn. Gen. Stat. § 16-50g to balance the need for adequate and reliable public utility services at the lowest reasonable 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.
- g) The Council impermissibly shifted the burden of proof from UI onto the parties and intervenors by failing to require UI to submit sufficient details relating to the Hannon-Morisette Alternative before issuing the Certificate.
- h) The Council disregarded its responsibility to balance environmental impacts with the public need for the Project by failing to require UI to submit sufficient details relating to the Hannon-Morisette Alternative before issuing the Certificate.
- i) The Council also restricted the Town's right to fundamental fairness, and prevented a full and true disclosure of the facts, by cutting off the testimony of the Town's witnesses, preventing the Town from challenging evidence submitted by UI, refusing to require UI to fully respond to document requests thereby issuing its Decision based on a limited evidentiary record to the Town's prejudice, improperly limiting the rights of intervenors to cross-examine the Town's witnesses, and improperly limiting the rights of the Town to cross-examine the witnesses of intervenors.
- j) By issuing a Certificate for the Hannon-Morisette Alternative in the absence of any details concerning the sites and facilities to be installed, including their locations, as described above, the Council undermined the purpose and function of the Council to publicly consider the environmental compatibility and public need for facility installations on a particular site within the state. Moreover, the Council's anticipated use of a Development & Management Plan to approve an installation on a site that was not considered or approved by the Council undermines the Council's purpose and authority, circumvents the procedures and balancing required under PUESA for siting decisions, undermines the public's participation in the approval process, and is antithetical to the very purpose and function of the Council, which is to publicly deliberate and make siting decisions.

54. Accordingly, pursuant to Conn. Gen. Stat. § 4-183, the Town requests that the Court sustain this appeal and render a judgment vacating the Council's Decision.

COUNT II: Violation of Due Process

55. The Town incorporates herein by reference Paragraphs 1 through 54 above as if fully set forth herein.

56. Beginning with the initial Application and continuing throughout the proceedings in Docket 516, UI advocated for its Southern Overhead Design involving the construction of new overhead 115-kv transmission lines south of the Metro-North Railroad.

57. Throughout the proceedings in Docket 516, UI opposed any material modifications to the route of its Project and, specifically, UI reached a conclusion – as stated in the Application – that a route to the north of the Metro-North Railroad was not viable.

58. The Council's approval of the Hannon-Morisette Alternative with an insufficient record and without any design denied the Town its due process rights to contest the Hannon-Morisette Alternative because the Town was afforded no opportunity to submit evidence, briefs, or evaluate the significant adverse impacts of the new route.

59. The Council's approval of the Hannon-Morisette Alternative with an insufficient record and without notice being provided to the abutters to the north of the Metro-North Railroad, denied those abutters due process rights, including the right to participate in hearings, conduct cross-examination, submit evidence and briefs, and otherwise contest the Hannon-Morisette Alternative.

60. As a result of the foregoing, by approving the Hannon-Morisette Alternative based on an insufficient record and insufficient notice to abutters, the Council unlawfully circumvented the procedures that PUESA and the UAPA require in order to obtain such an approval and violated the Town's common law right to fundamental fairness in administrative hearings, the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and Article I, Section 8 of the Connecticut Constitution.

WHEREFORE, the Town appeals from the Connecticut Siting Council's Findings of Fact, Opinion, and Decision and Order dated February 16, 2024 granting UI a Certificate of Environmental Compatibility and Public Need, and prays judgment:

1. Sustaining this appeal and issuing an Order directing that the Council's Decision in Docket 516 be voided and vacated;
2. Granting such other relief, legal and/or equitable, as the Court may deem just and proper.

PLAINTIFF-APPELLANT
TOWN OF FAIRFIELD

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