

DAVID A. BALL

Please Reply To Bridgeport
E-Mail: dball@cohenandwolf.com

September 30, 2021

Via e-mail and hand-delivery

Attorney Melanie Bachman
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

ORIGINAL



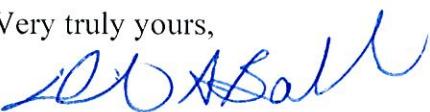
Re: Docket No. 500 - ARX Wireless Infrastructure, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1061-1063 Boston Post Road, Milford, Connecticut – ARX Petition for Reconsideration

Dear Attorney Bachman:

On behalf of the Applicant, ARX Wireless Infrastructure, LLC, I've enclosed an original and fifteen (15) copies of the Applicant's Petition for Reconsideration.

Thank you.

Very truly yours,


David A. Ball

Enclosures

cc: Service List

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

ARX WIRELESS INFRASTRUCTURE, LLC : DOCKET NO. 500
APPLICATION FOR A CERTIFICATE OF :
ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR THE :
CONSTRUCTION, MAINTENANCE, AND :
OPERATION OF A WIRELESS :
TELECOMMUNICATIONS FACILITY :
LOCATED AT 1061-1063 BOSTON POST : September 30, 2021
ROAD, MILFORD, CONNECTICUT

ARX WIRELESS INFRASTRUCTURE, LLC'S
PETITION FOR RECONSIDERATION

Pursuant to Conn. Gen. Stat. § 4-181a, the Applicant, ARX Wireless Infrastructure, LLC ("ARX"), respectfully submits this Petition for Reconsideration of the Council's Final Decision dated September 23, 2021. In support hereof, ARX states the following:

1. This proceeding is an Application for Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance, and Operation of a Wireless Telecommunications Facility Located at 1061-1063 Boston Post Road, Milford, Connecticut (the "Application").
2. The Application proposed to locate the proposed facility in the rear of the property in an undeveloped portion of the property (the "Proposed Location"). In order to accommodate the perceived objection from the City of Milford that the Proposed Location would put the proposed facility in a residential zone, during the hearing, ARX offered an alternative location on the property which would move the tower out of the residential zone (the "Alternate Location").

3. At its meeting on September 9, 2021, the Council discussed the Application and conducted a non-binding straw poll. In the straw poll, four Council members voted in favor of the Application, with Mr. Edelson and Ms. Cooley voting in favor of the Proposed Location; Mr. Silvestri and Mr. Nguyen voting in favor of the Alternate Location; Mr. Morrissette voting no without prejudice; and Mr. Lynch abstaining. As a result of the straw poll, Mr. Morrissette directed staff to draft a favorable Opinion and Decision and Order to be reviewed at the Council's next meeting.

4. At its meeting on September 23, 2021, the Council discussed the draft Opinion, Decision, and Order. Mr. Edelson moved that the Council approve the Application, as proposed for the Proposed Location (the "Motion to Approve"). Mr. Edelson, Ms. Cooley, and Mr. Lynch voted in favor of the Motion to Approve. Thus, three of the Council members present and voting voted to approve the Application at the Proposed Location.

5. On September 24, 2021, the Council issued its approval with the Council's Certificate, Findings of Fact, Opinion, and Decision and Order, all dated September 23, 2021 (the "Decision").

6. Although the Council's vote could be properly construed as an approval because a plurality of its members was in favor of approving the Application at the Proposed Location, there is some ambiguity as to whether the Motion to Approve was successful because it did not receive four votes (i.e., a majority of those present and voting).

7. Pursuant to Conn. Gen. Stat. § 4-181a(a)(1), reconsideration is appropriate whether "other good cause for reconsideration has been shown." Here, the Counsel

should grant this Petition for Reconsideration so that it may vote to affirm the Decision with a clear majority vote. The Council clearly is in favor (by a 5-1 margin) of approving the Application at one of the two locations but did not approve the Motion to Approve by a majority.

8. In addition, ambiguity in an agency decision constitutes good cause to support reconsideration. See, e.g., *Application of Yankee Gas Services Company for a Rate Increase*, 2002 WL 1477258 (Conn. D.P.U.C. March 8, 2002) (ambiguity sufficient to reopen proceeding).¹

9. In accordance with Conn. Gen. Stat. § 4-181a(a)(4), "an agency decision made after reconsideration . . . shall become the final decision in the contested case in lieu of the original final decision . . ." Thus, by granting this Petition for Reconsideration and voting on the Application again, the Council's vote will supplant the vote on the Motion to Approve and the Decision, dispelling any perceived ambiguity in the process.

10. In order to ensure that any perceived ambiguity is not repeated in a subsequent round of voting, ARX respectfully suggests that the Council do the following:

- a. Grant the Petition for Reconsideration and conduct a further meeting to deliberate and vote on the Application.
- b. Vote to approve the Application (i.e., at the Proposed Location), subject to the Council's consideration of moving the proposed facility to the Alternate Location.
- c. Vote on whether to move the proposed facility to the Alternate Location.

¹ A copy of this decision is attached hereto.

This sequence of votes should allow the Council to approve one site or the other and avoid a potential deadlock or any ambiguity in the approval process.

WHEREFORE, the Applicant respectfully requests that the Council grant this Petition for Reconsideration so that it may conduct a further meeting to deliberate, vote and approve the Application.

RESPECTFULLY SUBMITTED,

ARX WIRELESS INFRASTRUCTURE, LLC

By: 

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was sent via electronic mail on this 30th day of September, 2021, to the following:

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David A. Ball

2002 WL 1477258 (Conn.D.P.U.C.)

APPLICATION OF YANKEE GAS SERVICES COMPANY FOR A RATE INCREASE - REOPENING

010519PH01

Connecticut Department of Public Utility Control

March 8, 2002

DECISION

By the following Commissioners: Jack R. Goldberg, Donald W. Downes, Glenn Arthur, John W. Betkoski, III, Linda J. Kelly

BY THE COMMISSION:

By letter dated February 8, 2002, Yankee Gas Services Company (Yankee or Company) submitted a letter to the Department of Public Utility Control (Department) stating that the Decision dated January 30, 2002 in Docket No. 01-05-19PH01, Application of Yankee Gas Services Company for a Rate Increase, contained an inadvertent error. According to the Company, the calculation of the bill credit rate in the Decision is based upon gas volumes of 33,268,670 Mcf. Those volumes were used as the basis for computing the unit rate reduction associated with the \$4,006,000 rate reduction in the January 30, 2002 Decision. According to the Company, the 33,268,670 Mcf amount excludes all transportation volumes, while including interruptible and special contract sales.

In its letter, the Company states that the bill credit rate calculation should have been based on 35,745,675 Mcf, as per: 1) Schedule E-3.4, page 2, column H; 2) OCC-313, page 2; and 3) GA-350-SP01. According to the Company, this calculation would include firm sales, seasonal and firm transportation volumes, while excluding interruptible and special contract sales. The Company states that sales associated with special contracts and interruptible customers should have been excluded from the bill credit calculation as those customers are not subject to the rate decrease.

In addition, the Office of Consumer Counsel (OCC) requested the Department by Petition for Reconsideration and Clarification dated February 13, 2002 (Petition) to clarify the Decision's language regarding funding of the Infrastructure Expansion Rate Mechanism (IERM) projects with internal rates of return (IRRs) of less than 10%. Petition, pp. 13 and 14. The OCC finds the language in the Decision on this matter to be ambiguous and contradictory.

Pursuant to §§ 4-181a(a) and 16-9 of the General Statutes of Connecticut, the Department hereby reopens this proceeding to review the bill credit calculation that is required to implement the rate reduction and to clarify funding treatment of IERM projects with IRRs of less than 10%. The reopened docket is hereby designated Docket No. 01-05-19PH01 RE01, Application of Yankee Gas Services Company for a Rate Increase - Bill Credit Calculation and IERM Clarification.

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

Donald W. Downes

Glenn Arthur

John W. Betkoski, III

Linda J. Kelly

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

3/8/02

Louise E. Rickard Acting Executive Secretary Department of Public Utility Control

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