DOCKET NO: HHB-CV-24-6085259-S

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SUPERIOR COURT
2025 APR 23 P 1:54
JUDICIAL DISTRICT OF
NEW BRITAIN

TOWN OF FAIRFIELD	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
	:	TAX AND ADMINISTRATIVE
CONNECTICUT SITING COUNCIL	:	APPEALS SESSION

#156

DOCKET NO: HHB-CV-24-6085305-S

	:	SUPERIOR COURT
BJ'S WHOLESALE CLUB, INC.	:	
	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
	:	
	:	TAX AND ADMINISTRATIVE
CONNECTICUT SITING COUNCIL	:	APPEALS SESSION

#159

DOCKET NO: HHB-CV-24-6085334-S

	:	SUPERIOR COURT
SASCO CREEK NEIGHBORS	:	
ENVIRONMENTAL TRUST, INC.	:	
	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
	:	
	:	TAX AND ADMINISTRATIVE
CONNECTICUT SITING COUNCIL	:	APPEALS SESSION

#155

DOCKET NO: HHB-CV-24-6085337-S

	:	SUPERIOR COURT
SOUTHPORT CONGREGATIONAL CHURCH	:	
	:	JUDICIAL DISTRICT OF
v.	:	NEW BRITAIN
	:	
	:	TAX AND ADMINISTRATIVE
CONNECTICUT SITING COUNCIL	:	APPEALS SESSION

#152

Electronic notice sent to all counsel of record on 4/23/25 by A. Jordanopoulos, clerk officer:

1) J. Mortelliti, 2) J. Morgan, 3) R. Marconi, 4) D. Ball, 5) M. Copolla, 6) B. Spears, 7) L. Hoffman.

DOCKET NO: HHB-CV-24-6085413-S		
CITY OF BRIDGEPORT	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	
	:	TAX AND ADMINISTRATIVE APPEALS SESSION
CONNECTICUT SITING COUNCIL	:	APRIL 23, 2025

#154

MEMORANDUM OF DECISION

The plaintiffs, the Town of Fairfield (Fairfield), BJ's Wholesale Club, Inc. (BJ's), the Sasco Creek Neighbor's Environmental Trust, Inc. (SCNET), the Southport Congregational Church (Southport Congregational), and the City of Bridgeport (Bridgeport) (all together, the plaintiffs)[1] appeal the February 15, 2024 decision (the decision)[2] of the co-defendant, the Connecticut Siting Council (the council), approving a March 17, 2023 application (the application) for a certificate of environmental compatibility and public need (the certificate) from the co-defendant, the United Illuminating Company (UI), to rebuild a 115 kilovolt (kV) electric transmission line along a 7.3 mile stretch of Metro-North Railroad (MNR) tracks and traversing

[1] Because each of the plaintiffs challenge the same decision, each of the above captioned cases have been consolidated for decision herein. The court finds that each of the plaintiffs is aggrieved. Bridgeport, BJ's, and Fairfield were parties to the underlying proceeding, and, therefore, are statutorily aggrieved. See General Statutes § 16-50q; Return of Record (ROR), 7135. Southport Congregational is classically aggrieved because the decision contemplates an easement across church property. See Docket Entry 147.00, at 7 (in CV-24-6085337-S); Transcript of Proceedings, January 13, 2025, at 5-10. SCNET is statutorily aggrieved pursuant to General Statutes § 22a-19 (a) (1). See also Docket Entry 100.31, at ¶ 21 (in CV-24-6085334-S).

[2] See ROR, 7129-7274.

the municipalities of Fairfield and Bridgeport. As more fully set forth below, the court sustains the plaintiffs' appeal.

UI's application to the council for a certificate sought to rebuild the so-called "1430 Line" south of the MNR tracks. It is undisputed that the 1430 Line is a "facility" within the meaning of General Statutes § 16-50i (a) (1) of the Public Utility Environmental Standards Act (PUESA). The council's decision approved a certificate to rebuild a different "facility" under § 16-50i (a) (1), the so-called "1130 Line," which is north of the MNR tracks. It is undisputed that UI never applied for a certificate to rebuild the 1130 Line and indeed expressly rejected the idea of rebuilding the 1130 Line in its application. See ROR, 214, 7239. The court holds that in wholly changing the "facility" being considered for reconstruction as part of the application, the council exceeded its statutory authority and violated principles of fundamental fairness. The council has statutory authority to make changes to the construction and operation of the facility under consideration in a certification proceeding, see General Statutes § 16-50p (a) (1), but the court can find no statutory authority for the proposition that the council may completely change the facility that is the subject of the certification proceeding. Moreover, the court concludes that changing the facility under consideration in a certification proceeding violates principles of fundamental fairness. The purpose of notice in an administrative proceeding is to "fairly and sufficiently apprise[] the public of the action proposed, making possible intelligent preparation for participation in the hearing." (Internal quotation marks omitted.) *One Elmcroft Stamford, LLC* v. *Zoning Bd. of Appeals of City of Stamford*, 213 Conn. App. 200, 217, 277 A.3d 789 (2022). The plaintiffs, or any interested party, cannot properly prepare to respond to UI's application if the council switches the very subject of the application from one facility to another.

The court holds that the council's February 15, 2024, decision was made in excess of the council's statutory authority, upon unlawful procedure, and that the plaintiffs have been prejudiced thereby. Pursuant to General Statutes § 4-183 (j), the court remands this matter back to the council for proceedings consistent with this memorandum of decision.

FACTS

The administrative record before the court demonstrates the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

On March 17, 2023, UI filed an application with the council under PUSEA, see General Statutes § 16-50g et seq., for a certificate of environmental compatibility and public need. ROR, 1-2987. The application sought approval to remove and replace approximately 7.3 miles of 115-kV overhead transmission lines, including a line approximately 4 miles long between Ash Creek Substation in Bridgeport and the Fairfield-Westport border and generally referred to as the "1430 Line." ROR, 11-12. The 1430 Line is currently situated on top of railroad catenary structures within the Connecticut Department of Transportation's MNR corridor and UI's existing right-of-way along the MNR. Id. As part of its application to rebuild the 1430 Line, UI stated that it had considered rebuilding a separate transmission line that is north of the MNR and that is generally referred to as the "1130 Line." ROR, 214, 7249. Nevertheless, UI stated in its application that modifying the 1130 line was "not viable," and, therefore, UI did not apply for a certificate to modify or rebuild the 1130 Line. ROR, 214; see also ROR, 7249-50 (". . . UI eliminated these alternatives from consideration due to cost, line outages associated with the construction process and potential connection issues to the Eversource transmission system . . . .")

An electric transmission line is a "facility" under General Statutes § 16-50i (a) (1).[3] General Statutes § 16-50*l* sets out detailed requirements for the contents of any application for a certificate of environmental compatibility and public need.[4] See also Conn. Agencies Regs. §

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[3]PUSEA was significantly amended by P.A. 24-14, which became effective on October 1, 2024. Because the application and decision were completed prior to the effective date of P.A. 24-14, all references to applicable provisions for PUSEA in this memorandum of decision refer to PUSEA's provisions prior to the effective date of P.A. 24-14.

[4] Section 16-50p (a) (1) states, in relevant part, "(a) To initiate a certification proceeding, an applicant for a certificate shall file with the council an application, in such form as the council may prescribe. An application shall contain . . . the following information:

(1) In the case of facilities described in subdivisions (1) . . . of subsection (a) of section 16-50i: (A) A description, including estimated costs, of the proposed transmission line, substation or switchyard, covering, where applicable underground cable sizes and specifications, overhead tower design and appearance and heights, if any, conductor sizes, and initial and ultimate voltages and capacities; (B) a statement and full explanation of why the proposed transmission line, substation or switchyard is necessary and how the facility conforms to a long-range plan for expansion of the electric power grid serving the state and interconnected utility systems, that will serve the public need for adequate, reliable and economic service; (C) a map of suitable scale of the proposed routing or site, showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, residential areas, private or public schools, child care centers, as described in section 19a-77, group child care homes, as described in section 19a-77, family child care homes, as described in section 19a-77, licensed youth camps, and public playgrounds and showing existing transmission lines within one mile of the proposed route or site; (D) a justification for adoption of the route or site selected, including comparison with alternative routes or sites which are environmentally, technically and economically practical; (E) a description of the effect of the proposed transmission line, substation or switchyard on the environment, ecology, and scenic, historic and recreational values; (F) a justification for overhead portions, if any, including life-cycle cost studies comparing overhead alternatives with underground alternatives, and effects described in subparagraph (E) of this subdivision of undergrounding; (G) a schedule of dates showing the proposed program of right-of-way or property acquisition, construction, completion and operation; (H) an identification of each federal, state, regional, district and municipal agency with which proposed route or site reviews have been undertaken, including a copy of each written agency position on such route or site; and (I) an assessment of the impact of any electromagnetic fields to be produced by the proposed transmission line." The court observes that many, if not all, of these statutory application requirements appear to be absent from UI's application with respect to any modifications to the 1130 Line.

16-50*l*-1 through 5. General Statutes § 16-50m requires a public hearing on any application under General Statutes § 16-50*l*. General Statutes § 16-50p sets out the requirements applicable to the council's decision in a certification proceeding.[5]

The council held public hearings on the application on July 25, August 29, October 17, November 16, November 28 and December 12, 2023. ROR, 7138-7144. UI, BJ's, Bridgeport, and Fairfield participated in the public hearings. All parties to the public hearing process were given the opportunity to issue interrogatories, present testimony and exhibits, and cross-examine the other parties' witnesses and evidence. On December 12, 2023, the council closed the evidentiary record and established January 11, 2024, as the deadline for public comments and the submission of briefs. ROR, 7145. During the public hearings on the application, the council considered several alternatives that were suggested by the council itself as alternatives to UI's application. ROR, 7171, 7250. One of the alternatives suggested by the council became known as the Hannon-Morissette Alternative.[6] Id. The Hannon-Morissette Alternative proposed rebuilding the 1130 Line north of the MNR. ROR, 7171. The Hannon-Morissette Alternative was not part of UI's application. Id. On February 1, 2025, the council met and held a nonbinding "straw poll" indicating that the council supported the Hannon-Morissette Alternative to UI's application to rebuild the 1430 Line. See Meeting Minutes, Connecticut Siting Council,

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[5] Section 16-50p (a) (1) states, in relevant part, "In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of *the facility* as the council may deem appropriate." (Emphasis added.)

[6] Hannon-Morissette Alternative was named in part for council chairman John Morissette.

Feb. 1, 2024, at 2 (copy available at: https://portal.ct.gov/-/media/csc/minutes/2024/2024_0104-minutes-final_a.pdf?rev=468eb54c5093419a8418a3ab28c5b20d&hash=0E633E383E01CE1509E9D5C04A4EA046). On February 15, 2024, the council voted 4-2 (with two abstentions) in favor of the Hannon-Morissette Alternative. ROR, 7259-61.

LEGAL ANALYSIS

In a certificate of environmental compatibility and public need proceeding, General Statutes § 16-50p (a) (1) provides the council with the authority to "grant[] or deny[] the application as filed," or to grant the application "upon such terms, conditions, limitations or modifications of the construction or operation of *the facility*" that is the subject of the application. (Emphasis added). "Facility" is a defined term under PUESA. See General Statutes § 16-50i (a).[7] Thus, § 16-50p (a) (1) provides the council with statutory authority to simply approve or deny an application as presented, or to grant an application with changes to the construction and operation of the "facility." In other words, by its plain terms, § 16-50p (a) (1) provides the council with the statutory authority to make alterations to the construction and operation of the "facility" for which a certificate is sought. Nevertheless, the court can find no statutory authority providing the council with the additional power to completely change the facility under consideration for modification in a certificate of environmental compatibility and public need proceeding.[8]

[7] General Statutes § 16-50i, in relevant part, states "(a) "Facility" means: (1) An electric transmission line of a design capacity of sixty-nine kilovolts or more, including associated equipment but not including a transmission line tap . . . ."

[8] The court is not convinced by the council's argument that whatever details may be missing from the Hannon-Morissette Alternative can be provided in the Development and Management (D&M) plan. See *Town of Middlebury* v. *Connecticut Siting Council*, No. CV010508047S, 2002

Indeed, there is likely good reason for the foregoing limitation on the council's authority. "The right to fundamental fairness in administrative proceedings encompasses a variety of procedural protections. . . ." (Internal quotation marks omitted.) *FairwindCT, Inc.* v. *Connecticut Siting Council*, 313 Conn. 669, 711, 99 A.3d 1038 (2014). "The procedural right involved in administrative proceedings properly is described as the right to fundamental fairness, as distinguished from the due process rights that arise in judicial proceedings. . . . While proceedings before administrative agencies are informal and are conducted without regard to the strict rules of evidence . . . they cannot be so conducted as to violate the fundamental rules of natural justice. . . . Fundamentals of natural justice require that there must be due notice of the hearing. . . . Whether the right to fundamental fairness has been violated in an administrative proceeding is a question of law over which our review is plenary." (Citations omitted; internal quotation marks omitted.) *One Elmcroft Stamford, LLC*, supra, 213 Conn. App. 216. "[T]he purpose of a prehearing notice is to permit members of the general public to prepare intelligently for a public hearing at which they may be heard about the merits of a pending application. . . . A notice is proper . . . if it fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing." (Citation omitted; internal quotation marks omitted.) Id., 216-17; see also *Jarvis Acres, Inc.* v. *Zoning Comm'n of Town of E. Hartford*, 163 Conn. 41, 47, 301 A.2d 244 (1972) (The "fundamental reason for the requirement of notice is to advise all affected parties of the opportunity to be heard and to be

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WL 442383, at *5 (Conn. Super. Ct. Feb. 27, 2002) ("The D&M plan cannot provide a substitute for matters not addressed during the application process.") See also ROR, 7259-7260 (enumerating a long list of basic issues to be addressed in the D&M plan in light of the council's adoption of the Hannon-Morissette Alternative.)

apprised of the relief sought. . . . Adequate notice will enable parties having an interest to know what is projected and, thus, to have an opportunity to protest. . . . Specifically, . . . the purpose behind the notice . . . is fairly and sufficiently to apprise those who may be affected by the proposed action of the nature and character of the proposed action so as to enable them to prepare intelligently for the hearing.") (Citations omitted; internal quotation marks omitted.); *Grimes* v. *Conservation Comm'n of Town of Litchfield*, 243 Conn. 266, 274, 703 A.2d 101 (1997) ("The purpose of administrative notice requirements is to allow parties to 'prepare intelligently for the hearing.'").

Here, it is undisputed that the council changed the facility under consideration in the application from the 1430 Line to the 1130 Line. As set forth above, General Statutes § 16-50p (a) (1) provides the council with the authority to make changes to the construction and operation of the 1430 Line from that which was proposed in UI's application. But the court can find no statutory authority providing the council with the power to wholly change the facility that is under consideration in the application. Administrative agencies are empowered to act only within the authority provided in their authorizing statutes. See *Klug* v. *Inland Wetlands Comm'n of City of Torrington*, 30 Conn. App. 85, 93, 619 A.2d 8 (1993) ("An administrative agency can act only within the bounds of authority granted to it by its enabling statute and within constitutional limitations.") (Internal quotation marks omitted.); *Del Toro* v. *City of Stamford*, 270 Conn. 532, 541, 853 A.2d 95 (2004) ("Administrative agencies are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves.") (Internal quotation

marks omitted.). Therefore, the council does not have the power to change the facility that is under consideration for modification in a certification proceeding.

Moreover, changing the facility under consideration for modification in the application deprived the plaintiffs of proper notice and therefore violated principles of fundamental fairness. While the plaintiffs (and the public) may have had adequate notice that they should prepare for a hearing considering the merits of rebuilding the 1430 Line, neither the plaintiffs nor the public had any notice that they should prepare their arguments and evidence with respect to modifications to the 1130 Line. This is particularly the case given that the application specifically disclaimed modifications to the 1130 Line. Fundamental fairness requires a proper notice that "fairly and sufficiently apprises the public of the action proposed, making possible intelligent preparation for participation in the hearing." (Internal quotation marks omitted.) *One Elmcroft Stamford, LLC*, supra, 213 Conn. App. 217; cf. *Gold* v. *Siting Council*, No. HHBCV216063707, 2021 WL 5919788, at *9 (Conn. Super. Ct. Nov. 30, 2021) ("The very essence of the purpose and function of the Council is to publicly consider the environmental compatibility and public need for facility installations on a particular site within the state. It is not possible to divorce the environmental compatibility and public need considerations to be made by the Council from the particular location under consideration."). Neither the plaintiffs nor the public can prepare intelligently for the hearing where the council changes the very subject matter of the hearing from one facility to another facility.

CONCLUSION

For all the foregoing reasons, the court holds that the council's February 15, 2024, decision was made in excess of the council's statutory authority, upon unlawful procedure, and

that the plaintiffs have been prejudiced thereby. Pursuant to General Statutes § 4-183 (j), the court remands this matter back to the council for proceedings consistent with this memorandum of decision.

Budzik, J.