

August 20, 2020

VIA ELECTRONIC MAIL

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

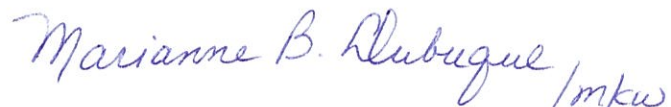
Re: Petition No. 1371 – The Connecticut Light And Power Company d/b/a Eversource Energy Declaratory Ruling, Pursuant to Connecticut General Statutes §4-176 and §16-50k, for the Proposed 667 Line Rebuild Project Consisting of the Replacement and Reconductoring of Approximately 6.1 Miles of its Existing No. 667 69-Kilovolt (Kv) Electric Transmission Line Structures Within Existing Eversource Electric Transmission Line Right-of-Way Between Falls Village Substation in Falls Village (Canaan) and Salisbury Substation in Salisbury, Connecticut, Traversing Canaan, Sharon and Salisbury, and Related Substation and Electric Transmission Line Structure Improvements

Dear Attorney Bachman:

In connection with the above-referenced Petition No. 1371, attached please find the Response of The Connecticut Light and Power Company d/b/a Eversource Energy to Sandra K. Boynton, Trustee's Reply to Eversource's Memorandum in Opposition to a Motion to Reopen and Modify the Council's June 7, 2019 Declaratory Ruling Re: Petition No. 1371.

The original document will be mailed to the Council for its file.

Very truly yours,



Marianne Barbino Dubuque

MBD/mkw

Enclosures

cc: Service List dated May 9, 2019 (copy attached)

David A. Ball, Esq. (via email: dball@cohenandwolf.com)

David E. Dobin, Esq. (via email: ddobin@cohenandwolf.com)

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Petitioner	<input checked="" type="checkbox"/> E-mail	The Connecticut Light and Power Company d/b/a Eversource Energy	<p>Kathleen M. Shanley Manager-Transmission Siting Eversource Energy P.O. Box 270 Hartford, CT 06141-0270 (860) 728-4527 kathleen.shanley@eversource.com</p> <p>Andrew Lord Eversource Energy Project Siting Specialist 56 Prospect Street Hartford, CT 06103 (860) 728-4651 andrew.lord@eversource.com</p>
	<input type="checkbox"/> E-mail		
	<input type="checkbox"/> E-mail		

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

PETITION NO. 1371 – THE CONNECTICUT LIGHT AND POWER COMPANY D/B/A EVERSOURCE ENERGY DECLARATORY RULING, PURSUANT TO CONNECTICUT GENERAL STATUTES §4-176 AND §16-50k, FOR THE PROPOSED 667 LINE REBUILD PROJECT CONSISTING OF THE REPLACEMENT AND RECONDUCTORING OF APPROXIMATELY 6.1 MILES OF ITS EXISTING NO. 667 69-KILOVOLT (kV) ELECTRIC TRANSMISSION LINE STRUCTURES WITHIN EXISTING EVERSOURCE ELECTRIC TRANSMISSION LINE RIGHT-OF-WAY BETWEEN FALLS VILLAGE SUBSTATION IN FALLS VILLAGE (CANAAN) AND SALISBURY SUBSTATION IN SALISBURY, CONNECTICUT, TRAVERSING CANAAN, SHARON AND SALISBURY, AND RELATED SUBSTATION AND ELECTRIC TRANSMISSION LINE STRUCTURE IMPROVEMENTS.

PETITION NO. 1371

AUGUST 20, 2020

**RESPONSE OF THE CONNECTICUT LIGHT AND POWER COMPANY D/B/A
EVERSOURCE ENERGY TO SANDRA K. BOYNTON, TRUSTEE’S REPLY TO
EVERSOURCE’S MEMORANDUM IN OPPOSITION TO A MOTION TO REOPEN AND
MODIFY THE COUNCIL’S JUNE 7, 2019 DECLARATORY RULING RE: PETITION NO. 1371**

The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) respectfully submits this response to the reply filed by Attorneys Ball and Dobin dated July 27, 2020 (the “Reply”) to Eversource’s July 23, 2020 memorandum in opposition (the “Opposition Memo”) to the efforts of Sandra K. Boynton, Trustee and Ms. Boynton’s son (collectively “Boynton Trustee”) to reopen this proceeding. The Reply, now the third filing by Boynton Trustee, although framed in a rather dramatic fashion, does not add anything new or meaningful as a matter of law or fact. Indeed, it misstates or distorts both law and fact.

Discussion

A. Governing Law

Eversource reiterates its position that there are no changed conditions, a prerequisite to the re-opening sought by Boynton Trustee in this proceeding, and that Boynton Trustee’s efforts to reopen are

based solely on an opinion that removal of red cedar trees are unnecessary. Eversource's position is supported by decisions of the Connecticut courts and the Council's interpretations (which the courts upheld). The Reply lists arguments, not any significant new information such as unknown or unforeseen events or scientific or technological breakthroughs that would have a bearing on the Council's finding of the absence of any adverse effects from the project. Further, the Reply cites to the Town of Fairfield v. Connecticut Siting Council decision (also cited by Eversource) but conveniently omits that the Council explained its rationale for determining that newly-published research alone was not sufficient to justify a reopening: "because of a legal expectation of finality of a decision, we must find a showing of changed conditions or a compelling reason to reopen this proceeding." 238 Conn. 361, 366-67 (1996). As was true in that cited proceeding, no such showing has been made here by Boynton Trustee. Significantly, the Reply does not cite a single Connecticut case holding that there are changed conditions when an abutter to a petition proceeding alleges that he/she failed to receive written notice of such petition. Simply stated, there is no showing by Boynton Trustee of a changed condition, along with any extraordinary circumstance that would warrant reopening the Petition 1371 proceeding.

The Reply then states that "it is Eversource's burden to prove that notice was provided 'within 30 days after receipt' of the Petition" (Reply, p. 3). This statement is simply untrue. The referenced requirement for notice applies to the Council's obligation under R.C.S.A. § 16-50j-40(a) to provide notice to certain persons "[w]ithin 30 days after receipt [by the Council] of a petition for a declaratory ruling." Furthermore, the governing regulations do not require an affidavit as to the placement of a stamp on an envelope containing a notice or tracking information. Therefore, Mr. Lord's initial affidavit and his affidavit dated July 22, 2020 provide a sufficient basis for rejecting reopening based on a mere allegation by Boynton Trustee of non-receipt of notice.

Once again, the case law cited in the Reply for the purpose of challenging Eversource's notice misses the mark:

1. National Health Care Associates:
The decision reflects that the plaintiff only submitted a copy of a letter, with the words at the top reading “Via Postal Mail”. No other evidence was submitted. In contrast, Eversource submitted Mr. Lord’s affidavit with the Petition filing along with a form of the letter sent to abutters and the abutter maps.
2. Zaneski – Nettleton:
This case involves the provisions in C.G.S. § 4-180 that not only require agencies that issue a final decision to provide administration notice but also require evidence of receipt with a return receipt or electronic tracking notification. Eversource is not an agency, and its petition for declaratory ruling was not a final decision. Thus, § 4-180 does not apply here.
3. Bozelko:
This case discusses C.G.S. § 52-212(a), which allows a motion to reopen a court judgment based on default or nonsuit within 4 months under certain conditions including a showing of reasonable cause where the party was prevented by mistake, accident or other reasonable cause from prosecuting the action or making a defense. This case has no relevance here, other than to perhaps suggest an appropriate time frame for a potential reopening that is greatly exceeded here, were it to apply.

The Reply discusses cases regarding the admission of hearsay. The Reply fails to mention that the cases rely on C.G.S. § 4-178(1), which allows receipt of oral or documentary evidence. However, § 4-178(1) explicitly directs that “the agency **shall**, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence”. (emphasis added) In addition, the cases cited in the Reply as allowing anything one submits to be considered evidence, do not overrule the fundamental principles that evidence must be reliable and probative. Eversource disputes the notion that everything is admissible as evidence and here, specifically objects to the admission of the affidavits submitted on behalf of Boynton Trustee because they do not constitute credible or relevant evidence for the reasons outlined in Eversource’s Opposition Memo (see pp. 5-7). Consequently, Eversource maintains that § 4-178(1) requires that these submissions of Boynton Trustee be excluded as irrelevant or immaterial to the Council’s finding.

Further, Boynton Trustee challenges Mr. Burnham's affidavit but does not dispute the accuracy of the extensive outreach efforts by Eversource before and after the Petition filing. Such outreach, at a minimum, satisfies the intent of the notice requirement.

Curiously, the Reply also asserts: "As a matter of law, Eversource is required to demonstrate the absence of environmental impact in its Conn. Gen. Stat. § 16-50k Petition." (Reply, p. 6). This assertion is just not correct. The standard is correctly stated in Eversource's Opposition Memo (see p. 2): Under C.G.S. § 16-50k, the Council is authorized to determine, and so determined in this proceeding, that a project would have **no substantial adverse environmental effect**.

B. Facts

The submissions on behalf of Boynton Trustee represent an attempt to creatively re-write the facts to fit Boynton Trustee's theories that have no credible foundation in law or fact. However, facts must be known or proven, not information that has been re-shaped to try to fit a theory that cannot be supported.

For example, the Reply places heavy emphasis on Boynton Trustee's submission of "the affidavit of a licensed arborist, Mr. Koneazny" (Reply, p. 7). This statement is completely inaccurate. Boynton Trustee submitted an "affidavit" of Devin McEwan, purportedly based on his personal knowledge, which contains an attachment designated "EXHIBIT 1". EXHIBIT 1 is an unsigned letter with Mr. Koneazny's name, title and "CT Arborist 5-4455". The unsigned letter is not an affidavit.

The Reply describes Mr. Koneazny as a "qualified" arborist. Yet, as explained in Eversource's Opposition Memo (see p. 6): "There is no demonstration that Mr. Koneazny, who is identified as an arborist, has any familiarity or expertise with the numerous regulations, standards, requirements and safety codes that govern the operation of electric facilities." Thus, it is not appropriate to characterize his opinion as that of a "qualified" arborist, without any showing of qualifications relevant to this proceeding.

The Reply also ignores the fact that the 667 Line Rebuild Project includes construction of new facilities to replace the existing facilities. To accommodate those new facilities, Eversource must widen the cleared portion of its existing right-of-way, which fact was recognized by the Council in its decision. Eversource did not claim in its Opposition Memo that it had the final say over a new project. Instead, Eversource explained that the 1926 Easement would allow Eversource to cut trees and trim vegetation if, in its judgment, such trees and vegetation endangered its existing facilities, even without a project to construct new facilities. The 1926 Easement expressly authorizes such action by Eversource. Boynton Trustee was keenly aware of Eversource's existing right-of-way prior to Eversource's petition filing and should have known the exact terms of the 1926 Easement as it was recorded prior to the acquisition of her properties.

In conclusion, Eversource filed its Opposition Memo, in response to the opportunity provided by the Council, for it to carefully consider the issues presented in this reopening effort. Eversource does not need to misstate or distort the law or the facts here or to manufacture arguments. Rather, its position is based on applicable regulations and Connecticut case law and provides an accurate statement of facts for the Council to deny Boynton Trustee's efforts to undo the Council's thorough consideration of the 667 Line Rebuild Project Petition.

Respectfully submitted,

THE CONNECTICUT LIGHT AND POWER
COMPANY D/B/A EVERSOURCE ENERGY

By: Marianne B. Dubuque

Marianne Barbino Dubuque
Carmody Torrance Sandak & Hennessey LLP
P.O. Box 1110
Waterbury, CT 06721-1110
Telephone: 203-578-4218
Electronic Mail: mdubuque@carmodylaw.com
Its Attorney

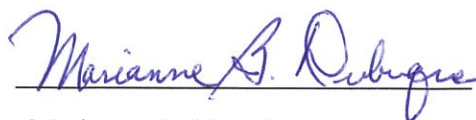
By: Jeffery D. Cochran

Jeffery D. Cochran
Senior Counsel
Eversource Energy Service Company
P.O. Box 270
Hartford, CT 06141-0270
Telephone: 860-665-3548
Electronic Mail: jeffery.cochran@eversource.com
Its Attorney

NOTICE OF SERVICE

I hereby affirm that a copy of this Response of The Connecticut Light and Power Company doing business as Eversource Energy was sent to each Party on the service list dated May 9, 2019, with method of service to each party listed via e-mail and to: dball@cohenandwolf.com and ddobin@cohenandwolf.com.

Dated: August 20 2020

A handwritten signature in blue ink that reads "Marianne A. Dubuque". The signature is written in a cursive style and is positioned above a horizontal line.

Marianne Barbino Dubuque