



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

Web Site: portal.ct.gov/csc

DATE: August 21, 2020

TO: Council Members

FROM: Melanie A. Bachman *MAB*
Executive Director

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. **DRAFT Staff Report – Boynton Motion to Reopen and Modify the final decision pursuant to Connecticut General Statutes §4-181a(b).**

On May 10, 2019, pursuant to Connecticut General Statutes (CGS) §4-176 and §16-50k, Eversource Energy (Eversource) submitted a petition for a declaratory ruling for the “667 Line Rebuild Project” (Project) to the Connecticut Siting Council (Council). The purpose of the Project is to replace structures and reconductor the No. 667 electric transmission line located entirely within an approximate 6.1 mile section of an existing Eversource right-of-way (ROW) due to degradation of the conductors, shield wires and structures from age and weathering. Two conductor failures occurred since 2017 and two shield wire failures occurred since 2009 along the 667 Line. Any increases in height of the replacement structures and widening of the maintained vegetation management zone within the existing ROW are required to comply with updated National Electrical Safety Code (NESC) conductor clearance requirements.

In compliance with Regulations of Connecticut State Agencies (RCSA) §16-50j-40, Eversource provided notice of the filing of the petition for a declaratory ruling to the Towns of Canaan, Sharon and Salisbury (Towns) traversed by the existing electric transmission line facility and abutting property owners to the existing electric transmission line facility.¹ The Council sent correspondence to the Towns requesting any comments on the Project. No comments were received. The Council also provided a 30-day public comment period for the Project. No comments were received. The Council issued a declaratory ruling for the Project on June 7, 2019.

On May 20, 2020, the Council received correspondence from Devin McEwan (McEwan), a copy of which is attached, indicating he lives in Salisbury on a property owned by his mother, Sandra Boynton, over which Eversource has a ROW where line construction was scheduled to begin on June 1. McEwan alleged Eversource failed to provide notice of the Project in accordance with RCSA §16-50j-40 and requested the Council delay the Project. On May 21, 2020, the Council responded to McEwan indicating Map Sheet 11 attached to Petition 1371 (Map Sheet 11) identifies the three properties owned by his mother (Boynton properties) and the Affidavit of

¹ RCSA §16-50j-40 (2020) (Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall provide notice to each person appearing of record as an owner of property which abuts the facility site and the appropriate municipal officials and government agencies. Proof of such notice shall be submitted with the petition for a declaratory ruling.); Council Petition No. 1371, Affidavit of Service of Notice, Andrew W. Lord, dated May 8, 2019 (Attachment G to Petition 1371).

Service of Notice attached to Petition 1371 demonstrates notice was provided in accordance with RCSA §16-50j-40 on May 8, 2019. A copy of the Council's response is also attached.

On June 23, 2020, pursuant to CGS §4-181a(b), Sandra K. Boynton, Trustee (Boynton) filed a Motion to Reopen and Modify (Motion) the Council's June 7, 2019 final decision to issue a declaratory ruling to Eversource for the Project. Under CGS §4-181a(b), on a showing of changed conditions, an agency may reverse or modify a final decision, at any time, at the request of any person or on the agency's own motion.

In its Motion, Boynton requests that the Council:

1. reopen and modify its final decision to issue a declaratory ruling to Eversource based on changed conditions;
2. reverse its final decision to issue a declaratory ruling and require Eversource to file an Application for a Certificate of Environmental Compatibility and Public Need (Certificate Application); and/or
3. modify its final decision with regard to vegetation management.

In support of its Motion, Boynton submitted an Affidavit of Sandra K. Boynton and an Affidavit of Devin McEwan related to the three properties owned by Boynton identified on Map Sheet 11. Boynton claims Eversource's alleged failure to provide notice of the Project is a changed condition that warrants reversal or modification of the Council's June 7, 2019 final decision on the Project.

On June 24, 2020, the Council requested the service list for Petition 1371 to submit written comments with respect to whether the Motion should be granted or denied and whether a public hearing should be held on the Motion by July 23, 2020.

On July 6, 2020, Boynton submitted an additional Affidavit and a letter from an arborist indicating Red Cedar trees growing under the existing electric transmission line "will not in any way interfere with the power lines."

On July 23, 2020, Eversource submitted a Memorandum in Opposition to the Boynton Motion (Memorandum) supported by three Affidavits related to the notice provided to Boynton, correspondence between Eversource and Boynton about Project construction on the Boynton properties, and a timetable of communications between Eversource and Boynton commencing in September 2018; and a certified copy of the 1926 easement in favor of Eversource that traverses the three properties owned by Boynton.

On July 27, 2020, Boynton submitted a Reply to Eversource's Memorandum in Opposition to the Boynton Motion reiterating the claims in its Motion that Eversource failed to provide notice to Boynton and cannot defend the removal of cedar trees on the Boynton properties under the 1926 easement.

On August 20, 2020, Eversource submitted a Response to Boynton's July 27, 2020 Reply to Eversource's Memorandum in Opposition to the Boynton Motion objecting to the submission of the Boynton affidavits on the basis that proper notice was provided to Boynton under the Council's regulations, the 1926 easement expressly authorizes Eversource to cut trees and trim vegetation within its ROW, and the Council's June 7, 2019 final decision in Petition 1371 determined the Project would not have a substantial adverse environmental effect.

A. Changed conditions do not exist under CGS §4-181a(b) to reopen and modify the final decision.

Under CGS §4-181a(b), on a showing of changed conditions, an agency may reverse or modify a final decision, at any time, at the request of any person or on the agency's own motion. Council precedent demonstrates changed conditions include, but are not limited to, an increase in demand for energy,² employment of new technologies,³ project reconfiguration to reduce environmental impacts,⁴ and compliance with new state policies and legislation.⁵ In support of its claim of changed conditions, Boynton argues that due to Eversource's failure to provide notice to abutting property owners, they were prevented from presenting facts and information while Petition 1371 was pending with the Council.

Notice to abutting property owners of the filing of a petition is a personal notice requirement. Personal notice requirements are procedural, not substantive, legal requirements. The only notice of constitutional dimension is a notice of *hearing*, not the notice of the filing of the petition.⁶ Connecticut courts distinguish between statutorily required publication of notice to the general public and statutorily required personal notice to specific individuals.⁷ Failure to give personal notice to a specific individual is not a jurisdictional defect and lack of notice may be waived by the party entitled to it.⁸ In *Schwartz v. Town of Hamden*, owners of land within the survey of street lines for a new highway connector appealed the planning and zoning commission decision establishing the street lines alleging lack of notice by mail. The Supreme Court held failure to provide notice by mail did not render the commission's decision void.⁹

Allegations of failure to provide notice are not changed conditions. In Petition 1371, Eversource provided evidence of notice by mail to Boynton in compliance with RCSA §16-50j-40. In its Memorandum, Eversource provided additional evidence of correspondence between Eversource and Boynton about Project construction on the Boynton properties and a timetable of communications between Eversource and Boynton about the Project that commenced in September 2018. In McEwan's correspondence to the Council, in addition to alleging lack of notice by mail to him and Boynton, he alleges 7 other abutting property owners did not receive notice by mail of Eversource's Project. Persons do not have standing to raise a lack of notice to any other person.¹⁰ Notice is required to be provided to each person appearing of record as an owner of property which abuts the facility site. McEwan admits in his correspondence that the property where he resides is owned by Boynton. According to the documents submitted by Eversource in the record of Petition 1371 and the documents submitted by Eversource with its Memorandum, Boynton, as well as McEwan, were provided notice of the Project.

² Council Docket No. 470B, Killingly Energy Center, available at https://portal.ct.gov/CSC/1_Applications-and-Other-Pending-Matters/Applications/3_DocketNos400s/Docket-No-470B-NTEKillingly

³ Council Docket No. 192B, Towantic Energy Center, available at https://portal.ct.gov/CSC/1_Applications-and-Other-Pending-Matters/Applications/1_DocketNos1-199/Docket-No-192B--Oxford

⁴ Council Petition No. 1310A, Quinebaug Solar, available at https://portal.ct.gov/CSC/3_Petitions/Petition-Nos-1301-1310/Petition-No-1310A-CanterburyBrooklyn

⁵ Council Docket No. NT-2010, Findings and Recommendations of the Kleen Energy Investigation Review Panel, available at https://portal.ct.gov/CSC/1_Applications-and-Other-Pending-Matters/Applications/Docket-NT-2010

⁶ *Mobley v. Metro Mobile CTS of Fairfield County, Inc.*, 216 Conn. 1 (1990).

⁷ *Lauer v. Zoning Commission of Redding*, 220 Conn. 455, 461-4 (1991).

⁸ *Schwartz v. Town of Hamden*, 168 Conn. 8, 14-16 (1975); *Palo v. Rogers*, 116 Conn. 601, 605 (1933); *Torrington v. Connecticut Siting Council*, 1991 Conn. Super. LEXIS 2084 (1991).

⁹ *Id.* (Constructive notice by legal publication was provided. Plaintiffs waived lack of personal notice by mail.)

¹⁰ *Town of Middlebury, et al v. Connecticut Siting Council*, 326 Conn. 40 (2017).

B. The Project was properly submitted to the Council as a petition for a declaratory ruling.

In its Motion, Boynton requests the Council reverse its final decision to issue a declaratory ruling and require Eversource to file a Certificate Application. Under CGS §16-50k, a Certificate is required for any facility that may have a substantial adverse environmental effect as determined by the Council. The 667 Line is an existing electric transmission line facility. Petition 1371 requested the Council issue a declaratory ruling, pursuant to CGS §4-176 and §16-50k, that a Certificate is not required for the Project because the proposed modifications to the existing electric transmission line facility would not have a substantial adverse environmental effect.

The purpose of the Project is to replace structures and re-conductor approximately 6.1 miles of the existing 667 Line entirely within Eversource's existing ROW between Falls Village Substation and Salisbury Substation due to degradation of the conductors, shield wires and structures from age and weathering. Additionally, increases in height of the replacement structures and widening of the maintained vegetation management zone within the existing ROW are required to comply with updated NESC conductor clearance requirements.

In its June 2019 Declaratory Ruling, pursuant to CGS §4-176 and §16-50k, the Council determined the Project would not have a substantial adverse environmental effect and would not require a Certificate based on environmental considerations that include, but aren't limited to:

1. Establishment of erosion and sedimentation controls in accordance with the *2002 Connecticut Guidelines for Soil Erosion and Sediment Control* and Eversource's Best Management Practices;
2. Development of a Project-specific Stormwater Pollution Control Plan under DEEP's *General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities*; and
3. Utilization of temporary matting and temporary railroad car frame bridges for construction activities near wetlands and watercourses.

C. The Council's final decision addressed vegetation management in the existing ROW.

In its Motion, Boynton argues that Eversource did not provide the NESC clearance standards that require the removal of the cedar trees within Eversource's ROW on the Boynton properties. The most recent NESC was published in 2017.¹¹ Boynton also argues that Eversource failed to demonstrate how or why the cedar trees within Eversource's ROW on the Boynton properties are problematic.

Vegetation management within utility ROWs must be balanced against reliability and safety. The **full ROW** for the 667 Line is 150 feet. "Full ROW" means the portion of land for which Eversource has documented legal rights to build and maintain transmission facilities, such as the portions of the three Boynton properties that are subject to the 1926 easement Eversource holds on the properties. The **maintained ROW** for the 667 Line is 50 feet. "Maintained ROW" means the portion of the full ROW for which the utility conducts vegetation management. In its Motion, Boynton acknowledges that the cedar trees have been located within the "original 50-foot zone of vegetation management for years." In its Report on Transmission Facility Outages During the Northeast Snowstorm of October 29-30, 2011, the Federal Energy Regulatory Commission (FERC) recommends

¹¹ Council Petition No. 1293, Eversource Energy declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for all transmission facility asset condition maintenance improvements to comply with the updated National Electrical Safety Code Clearance Requirements, available at https://portal.ct.gov/CSC/3_Petitions/Petition-Nos-1291-1300/Petition-No-1293Eversource (The NESC is published every five years to keep the code up-to-date with changes in the industry and technology. The 2017 NESC was published in August 2016. It is the 100th Anniversary Edition.)

reclamation of the full ROW.¹² Eversource will expand the maintained ROW for the 667 Line to 90 feet. This is 60 feet less than the full ROW.

In its June 7, 2019 final decision to issue Eversource a declaratory ruling in Petition 1371, the Council found that the expansion of the maintained ROW would result in the conversion of approximately 13.5 acres of forest into a scrub-shrub or herbaceous areas, of which 2.6 acres occur in wetlands. Converting forest (including forested wetland) to shrubland, or emergent vegetation along the transmission line ROW would modify, but not adversely affect habitat values. During clearing and vegetation removal activities, temporary construction mats may be used to provide access for mechanized equipment within watercourse or wetland areas where hand clearing work is not feasible. Therefore, modification of the final decision with regard to vegetation management is not warranted.

D. CONCLUSION

Pursuant to CGS §4-181a(b), changed conditions do not exist to reopen and modify the Council's June 7, 2019 final decision in Petition 1371. The record reflects Boynton was provided notice and was engaged in communications with Eversource about the Project since September 2018. The Project was properly submitted to the Council as a petition for a declaratory ruling because the modifications to the existing electric transmission line facility will not have a substantial adverse environmental effect. Vegetation management for the Project ROW, including, but not limited to, the ROW on the Boynton properties subject to the 1926 easement, was directly addressed in the Council's Declaratory Ruling.

Therefore, staff recommends Boynton's Request to Reopen and Modify the Council's June 7, 2019 final decision to issue a declaratory ruling to Eversource in Petition 1371 be denied.

¹² Federal Energy Regulatory Commission, Report on Transmission Facility Outages During the Northeast Snowstorm of October 29-30, 2011, available at <https://www.ferc.gov/sites/default/files/2020-07/TransmissionFacilityOutagesDuringtheNortheastSnowstormofOctober29-30-2011.pdf> (Maintaining narrower areas within a full ROW is not a best practice.)

From: Devin McEwan <lobsterdelivery@gmail.com>
Sent: Wednesday, May 20, 2020 11:07 AM
To: CSC-DL Siting Council <Siting.Council@ct.gov>
Subject: Eversource's Failure to Provide Required Notice

To Whom It May Concern,

I live in Salisbury, Connecticut, on a property that's owned by my mother, Sandra Boynton, and over which Eversource Energy has a right-of-way easement. As you know, Eversource will be replacing the transmission lines and towers between their Falls Village and Salisbury substations, with work slated to begin June 1. While I of course acknowledge the necessity of maintaining electrical infrastructure, I've been seriously troubled by Eversource's careless attitude toward the project and its effect on the abutting properties.

I wanted to know whether there are any legal limits to Eversource's actions within the right-of-way, so I did some research and came across their May 2019 petition to the Siting Council for a declaratory ruling to make modifications to their electric transmission line. In accordance with section 16-50j-40 of the Regulations of Connecticut State Agencies, Eversource was to provide written notice of the intent to file the petition to the Siting Council, to the First Selectmen of Canaan, Sharon, and Salisbury, and to the abutting property owners; they affirmed in an affidavit that they had done so. Neither I nor my mother ever received this notice, nor did a family friend whose property also abuts the right-of-way. I wrote a letter to my fellow abutters asking whether they'd received the notice, and while I haven't heard back from everyone, it appears that at least 7 abutters did not. By failing to provide the required notice to all of the abutters, Eversource violated a state regulation and deprived us of the opportunity for public comment on a matter that could have a significant impact on our properties.

I urge the Siting Council to hold Eversource accountable for its failure to abide by the aforementioned regulation and to delay the project until the abutting property owners can be properly notified and a public comment period held.

Sincerely,

Devin McEwan



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VIA ELECTRONIC MAIL

May 21, 2020

Devin McEwan

lobsterdelivery@gmail.com

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 Mr. McEwan:

The Connecticut Siting Council (Council) is in receipt of your recent correspondence concerning Petition No. 1371. The Council issued a Declaratory Ruling on June 7, 2019.

Map Sheet 11 within Petition No. 1371 identifies the abutting property owner to whom notice under Regulations of Connecticut State Agencies §16-50j-40 is required to be sent as "Sandra K. Boynton Trust" for two parcels on Dugway Road in Salisbury and one parcel on Brinton Hill Road in Salisbury. The Map Sheet is dated April 2019. The Affidavit of Service of Notice is dated May 8, 2019. As noted below, you can view all of the documents related to Petition No. 1371 on the Council's website.

In reaching a final decision on a petition for a declaratory ruling, the Council carefully considers all of the facts contained in the evidentiary record that is developed by the Council, the petitioner, and members of the public who submit written statements to the Council.

A copy of the Council's Declaratory Ruling is enclosed for your review. Please note that you can view all of the documents related to this petition on the Council's website at www.ct.gov/csc under the "Decisions" link. You may also keep apprised of Council events on the website calendar and agenda.

Thank you for your interest and concern in this very important matter.

Sincerely,

s/ Melanie A. Bachman

Melanie A. Bachman
Executive Director

MAB/emr

Enclosure: Petition No. 1371 Final Decision, dated June 7, 2019

c: Council Members