DOCKET NO. 516R – The United Illuminating Company (UI) application for a Certificate of Environmental Compatibility and Public Need for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project that consists of the relocation and rebuild of its existing 115- kilovolt (kV) electric transmission lines from the railroad catenary structures to new steel monopole structures and related modifications along approximately 7.3 miles of the Connecticut Department of Transportation's Metro-North Railroad corridor between Structure B648S located east of Sasco Creek in Fairfield and UI's Congress Street Substation in Bridgeport, and the rebuild of two existing 115-kV transmission lines along 0.23 mile of existing UI right-of-way to facilitate interconnection of the rebuilt 115-kV electric transmission lines at UI's existing Ash Creek, Resco, Pequonnock and Congress Street Substations traversing the municipalities of Bridgeport and Fairfield, Connecticut. **Court-ordered Remand Regarding Connecticut Siting Council's February 15, 2024 Final Decision pursuant to Connecticut General Statutes §4-183(j). Final Decision on Reconsideration, pursuant to Connecticut General Statutes §4-181a(a).**	}	Connecticut Siting Council January 30, 2026

DRAFT Reconsideration Conclusions of Law

I. The hearing procedure did not violate due process.

Due process requires notice and an opportunity to be heard. It is flexible and calls for procedural protections as particular situations demand.[1] Due process does not guarantee any particular form of state procedure.[2] The right in this state to fundamental fairness in administrative proceedings stems not so much from the constitution but rather from a "common-law right to due process in administrative hearings that is not coextensive with constitutional due process."[3]

State agency proceedings, including, but not limited to, proceedings held by the Council on an application to relocate and rebuild existing electric transmission facilities, are governed by the Uniform Administrative Procedure Act (UAPA). A central purpose of the UAPA is to prevent piecemeal appeals.[4] It demands substantive and procedural protections necessary for a fundamentally fair hearing process.[5] Under the UAPA, each party and the agency conducting the public hearing shall be afforded the opportunity to respond, to cross examine other parties, intervenors and witnesses, and to present evidence and argument on all issues involved.[6]

On April 13, 2023, the Council approved a schedule for the public hearing.[7] On June 28, 2023, the Council hosted a pre-hearing conference to discuss procedures for before, during and after the hearing.[8]

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[1] *Concerned Citizens of Sterling v. Conn. Siting Council,* 215 Conn. 474, 484 (1990); *FairwindCT, Inc., v. Conn. Siting Council,* 2012 Conn. Super LEXIS 2465, *35-36 (Conn. Super. 2012).
[2] *FairwindCT, Inc., supra* note 1 at *52-54, citing *Katz v. Brandon*, 156 Conn. 521, 537-38 (1968).
[3] *FairwindCT, Inc. v. Conn. Siting Council*, 313 Conn. 669, 711 (2014).
[4] *Town of Killingly v. Conn. Siting Council,* 220 Conn. 516, 523 (1991).
[5] Conn. Gen. Stat. §4-166, *et seq*. (2023).
[6] Conn. Gen. Stat. §4-177c (2023).
[7] Remand Finding of Fact ¶30.

Between July 20 and November 28, 2023, the Council granted 27 requests for party, intervenor and CEPA intervenor status in the proceeding.[9] During each evidentiary hearing session, the Presiding Officer indicated that cross examination would be limited to topics relevant to the final decision to be rendered by the Council under the Public Utility Environmental Standards Act (PUESA).[10] After each evidentiary hearing session, the Council announced a revised discovery schedule, including dates for submission of interrogatories, pre-filed testimony and late-filed exhibits and issued a memorandum addressing how the next evidentiary hearing would proceed.[11] After the evidentiary record closed, the Council received additional comments from the public and additional information, briefs and proposed findings of fact from the parties and intervenors.[12]

Every party and intervenor to this proceeding enjoyed a full opportunity to present its case.[13] Every party and intervenor was afforded an opportunity to submit pre-filed testimony and exhibits, interrogatories, responses to interrogatories, motions, objections, additional information, briefs and proposed findings of fact.[14] Every party and intervenor was afforded an opportunity to cross examine witnesses for each of the other parties and intervenors on pre-filed testimony, exhibits and responses to interrogatories, during the evidentiary hearings, and to submit additional information, briefs and proposed findings of fact after the close of the evidentiary hearings.[15]

SCNET Group, the Grouped LLCs and the Town attempt to portray the Council's proceedings on this application as a denial of due process.[16] This mischaracterizes the proceedings.[17] The administrative process involved six days of hearings and exhibits, interrogatories, and testimony over seven months creating a substantial evidentiary record.[18] Every party and intervenor, including, but not limited to, SCNET Group, the Grouped LLCs and the Town, was afforded opportunities to respond, to cross examine other parties, intervenors and witnesses, and to present evidence and argument on all issues involved.[19]

In their post-hearing briefs, SCNET Group, the Grouped LLCs and the Town claim the Council violated due process and deprived them of fundamental fairness because it withheld relevant evidence; imposed arbitrary time limits; did not consult with state agencies pursuant to C.G.S. §16-50j(g); and did not hold a hearing session in Fairfield County pursuant to C.G.S. §16-50m(a).[20]

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[8] Remand Finding of Fact ¶34 (Only UI and BWC participated in the Council's pre-hearing conference.)
[9] Remand Findings of Fact ¶14-21.
[10] Conn. Gen. Stat. §16-50p (2023); Remand Findings of Fact ¶1, *et seq*.
[11] Remand Findings of Fact ¶27-122.
[12] Remand Findings of Fact ¶116-118 (SCNET Group submitted Revised Pre-Filed Testimony of Harry Orton on December 29, 2023. The Town submitted correspondence from the new chief elected official on January 9, 2024 and Revised Pre-Filed Testimony of Peter Vimini on January 11, 2024); *Town of Middlebury v. Conn. Siting Council*, 2016 Conn. Super. LEXIS 84, *26-27 (Conn. Super. 2016), *affirmed* 326 Conn. 40 (2017).
[13] Remand Findings of Fact ¶1, *et seq*.
[14] Remand Findings of Fact ¶1, *et seq*.
[15] Remand Findings of Fact ¶1, *et seq*.
[16] Remand Findings of Fact ¶120 and 121 (The Town incorporated SCNET Group's brief and the Grouped LLCs incorporated the Town and SCNET Group's brief. The Town incorporated SCNET Group's proposed Findings of Fact and SCNET Group incorporated the Town's proposed Findings of Fact.)
[17] *Town of Middlebury, supra* note 12 at *27-28.
[18] Remand Findings of Fact ¶1, *et seq*.
[19] Remand Findings of Fact ¶1, *et seq*.
[20] Remand Findings of Fact ¶119-120.

In *Town of Middlebury v. Connecticut Siting Council*, the court referenced the gas-fired generating facility opponent-plaintiffs' attempt to "trivialize constitutional claims by denoting routine procedural matters such as a decision on a request for a continuance or a ruling on the admission of evidence as a denial of due process."[21] It found "the plaintiffs essentially dump a grab bag of claims on the court, ask the court to sort them out, and somehow conclude that they amount to a violation of due process," and in rejecting the plaintiffs' claims, the court noted, ***"[R]obing garden variety claims [of an evidentiary nature] in the majestic garb of constitutional claims does not make such claims constitutional in nature . . ."***[22] (Emphasis added).

It is well settled that denials of continuances and rulings on the admission of evidence invoke the discretionary authority of the Council.[23] In *FairwindCT, Inc. v. Connecticut Siting Council*, the wind facility-opponent plaintiffs claimed the Council violated due process and deprived them of fundamental fairness by its decisions on requests for continuances and rulings on the admission of evidence.[24] The party claiming a violation of due process has the burden of demonstrating their substantial rights have been prejudiced as a result of any of the rulings they challenge.[25] The Supreme Court rejected the *FairwindCT, Inc*. plaintiffs' effort to create a due process claim as they failed to identify any evidence they would have produced, arguments they would have made or questions they would have posed to the witnesses if the Council had granted their requests that likely would have affected the Council's decisions.[26] Neither the *Town of Middlebury* plaintiffs nor the *FairwindCT, Inc*. plaintiffs could demonstrate that their substantial rights had been prejudiced as a result of any of the Council's decision on requests for continuances and rulings on the admission of evidence they challenged.[27]

In this proceeding, SCNET Group, the Grouped LLCs and the Town challenge the Council's decisions on requests for continuances and rulings on the admission of evidence as a violation of due process. They have the burden of demonstrating their substantial rights have been prejudiced as a result of the Council's decisions on requests for continuances and rulings on the admission of evidence.[28] However, SCNET Group, the Grouped LLCs and the Town have not identified any evidence they would have produced, arguments they would have made or questions they would have posed to the witnesses if the Council had granted their requests that likely would have affected the Council's decisions.[29] Based on the Supreme Court's holding in *FairwindCT, Inc*., the record of this proceeding evidences SCNET Group, the Grouped LLCs and the Town cannot demonstrate their substantial rights have been prejudiced as a result of any of the Council's decisions on requests for continuances and rulings on the admission of evidence they challenge and therefore, their efforts to create due process claims must be rejected.

a. The Council makes the final determination on relevance.

SCNET Group, the Grouped LLCs and the Town argue the Council improperly withheld evidence from the record, while acknowledging the Presiding Officer has broad discretion in deciding the relevancy of evidence as it pertains to cross examination under the UAPA.[30] The Presiding Officer also has broad

[21] *Town of Middlebury*, *supra* note 12 at *26-27.
[22] *Id.* at *27, citing *State v. McHolland*, 71 Conn. App. 99 (Conn. App. 2002).
[23] *Concerned Citizens of Sterling, supra* note 1; *FairwindCT, Inc., supra* note 3.
[24] *FairwindCT, Inc., supra* note 3 at 734; *Town of Middlebury, supra* note 12 at *27-28.
[25] *FairwindCT, Inc.*, *supra* note 3 at 718, 734-35.
[26] *FairwindCT, Inc*., *supra* note 3 at 734-35.
[27] *Concerned Citizens of Sterling, Inc., supra* note 1 at 486; *FairwindCT, Inc., supra* note 3 at 734-35.
[28] *Id.*; *Town of Middlebury, supra* note 12 at *27-28.
[29] *FairwindCT, Inc*., *supra* note 3 at 734-35; *Pet v. Dept. of Health Services*, 228 Conn. 651 (1994).
[30] Remand Findings of Fact ¶120 and 121.

discretion in requiring the production of records, physical evidence, papers and documents to any hearing held in a contested case under the UAPA.[31]

In its October 3, 2023 interrogatories, SCNET Group asked UI to identify persons who were not witnesses and to produce documents that were not exhibits.[32] UI objected on the basis the information sought is irrelevant to the Council's evaluation of the application and is either proprietary or Critical Energy Infrastructure Information (CEII).[33] On November 14, 2023, SCNET Group submitted a Motion for an Order to Compel Production that was denied by the Council on the basis that SCNET Group would have opportunities during the proceeding for additional cross examination of UI witnesses on topics that are relevant to the Council's evaluation of the application including, but not limited to, UI's Fairfield to New Haven Railroad Corridor Transmission Line Asset Condition Assessment, UI's responses to Council Interrogatories Nos. 5 and 6, and publicly available asset condition presentations related to UI's Project on the ISO-New England, Inc. (ISO-NE) website.[34]

On November 27, 2023, SCNET Group submitted a Motion for Reconsideration of the Council's denial of its Motion for an Order to Compel Production.[35] In support of its position, SCNET Group relied on the Rules of Superior Court and an undecided case related to proprietary information for telecommunications facilities.[36] SCNET Group further relied on the Council's 2017 issuance of a certificate to Eversource Energy (Eversource) for a new electric transmission line facility in the Town of Greenwich where life-cycle cost studies ***specifically requested by the Council*** during the proceeding were subject to a protective order.[37] Eversource's project was a new reliability project.[38] UI's Project is an existing asset condition project.[39] There is a distinction.

It is well settled that "parties to… quasi-judicial proceedings are not entitled to pre-trial discovery as a matter of constitutional right."[40] Pre-trial discovery may be expressly authorized by statute, but, absent an express provision the extent to which a party to an administrative proceeding is entitled to discovery is determined by the rules of the particular agency."[41] Consistent with the UAPA, the Council's regulations state, "the purpose of a hearing is to provide all parties and intervenors with an opportunity to present evidence and cross-examine such issues ***as the Council permits***."[42] (Emphasis added). The Council ***may exclude evidence*** that is not probative or material. (Emphasis added). To avoid unnecessary cumulative evidence, ***the Council may limit the time for testimony*** upon a particular issue in the course of any hearing.[43] (Emphasis added). The Supreme Court held that unless administrative regulations are shown to be inconsistent with the authorizing statute, they have the force and effect of a statute.[44]

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[31] Conn. Gen. Stat. §4-177b (2023); R.C.S.A. §16-50j-22a(c) (2023).
[32] Remand Finding of Fact ¶68.
[33] Remand Finding of Fact ¶68.
[34] Remand Findings of Fact ¶68-70, 73-75 (UI objected to certain interrogatories on the basis of relevance, and without waiving objection, provided limited responses to some of the interrogatories.)
[35] Remand Finding of Fact ¶78.
[36] Remand Finding of Fact ¶78.
[37] Remand Findings of Fact ¶78, 222. (Council Administrative Notice Item No. 37 – Docket 461A Record).
[38] Remand Finding of Fact ¶175.
[39] Remand Finding of Fact ¶177.
[40] *Pet, supra* note 24.
[41] *Id.*
[42] R.C.S.A. §16-50j-25 (2023); R.C.S.A. §16-50j-28 (2023).
[43] R.C.S.A. §16-50j-30 (2023).
[44] *Webster Bank v. Oakley,* 265 Conn. 539 (2003).

SCNET Group was granted intervenor status in this proceeding on August 29, 2023.[45] Under the UAPA, the Presiding Officer may limit an intervenor's participation to designated issues in which the intervenor has a particular interest and ***may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine*** to promote the orderly conduct of the proceedings.[46] (Emphasis added). Absent a showing that the agency abused its discretion in limiting the participation of intervenors, its decision will not be disturbed.[47]

The persons who were not witnesses for UI's case and the documents that were not exhibits for UI's case sought to be compelled by SCNET Group in this proceeding were not necessary for the Council to render the final decisions on two other UI railroad corridor asset condition projects, and are not necessary for the Council to render a final decision on this UI railroad corridor asset condition project.[48] Exercising the discretion expressly granted to it by the UAPA, the Council did not require production of these persons and documents because the Council did not need them to render a final decision and SCNET Group has not identified how the persons and documents sought to be compelled would alter the Council's final decision.[49]

In *City of Stamford v. Department of Public Utility Control* (DPUC), the intervenor-plaintiffs claimed they were denied due process as a result of DPUC's refusal to permit them from making inquiry into and presenting evidence on the question of a water company's need for additional water.[50] The court found that C.G.S. §4-177a(d) defines the scope of participation by an intervenor and because the intervenor-plaintiffs had not identified how the evidence would have altered the final decision, it cannot be said that DPUC abused its discretion by limiting the intervenor-plaintiffs' participation.[51] In this proceeding, SCNET Group failed to identify how the persons and documents would have affected the Council's final decision if these persons and documents were compelled to be produced or how SCNET Group would be prejudiced if these persons and documents were not compelled to be produced.[52] Relevant evidence was not withheld by the Council in this proceeding.

b. Time limits on cross examination are permissible.

In a Joint Motion, SCNET Group, the Grouped LLCs and the Town argue the Council's time limits on party and intervenor appearances during the December 12, 2023 evidentiary hearing were arbitrary, capricious and an abuse of discretion, while acknowledging the Presiding Officer has broad discretion in deciding the relevancy of evidence as it pertains to cross examination under the UAPA.[53] During proceedings, the Presiding Officer may also exercise a reasonable judgment in determining when a line of inquiry has been exhausted.[54] In *Pet v. Department of Public Health Services*, the Supreme Court noted that "although time, per se, does not reflect the adequacy of the cross-examination, it is one factor to

[45] Remand Findings of Fact ¶17, 19 (On October 17 and November 16, 2023, the Council granted additional requests for intervenor and CEPA intervenor status and grouped them with SCNET Group.)
[46] Conn. Gen. Stat. § 4-177a(d) (2023).
[47] *Griffin Hospital v. Comm'n on Hospitals & Health Care*, 200 Conn. 489, 512 (1986).
[48] Remand Finding of Fact ¶73; Council Administrative Notice Item Nos. 35 and 39.
[49] Remand Finding of Fact ¶73; Council Administrative Notice Item Nos. 35 and 39; Tr. 5, p. 130, "We are relying on the assumptions and the values that UI has provided, and we will not compel them to provide the raw data."
[50] *City of Stamford v. Dept. of Public Utility Control*, 1995 Conn. Super. LEXIS 1488 (Conn. Super. 1995).
[51] Conn. Gen. Stat. §4-177a(d) (2023); *Griffin Hospital, supra* note 47.
[52] Remand Findings of Fact ¶68-70, 73-74.
[53] Remand Findings of Fact ¶96-102 (SCNET Group, Grouped LLCs and Town Joint Motion and post-hearing briefs.)
[54] *Pet, supra* note 24; *FairwindCT, Inc., supra* note 3; *Town of Middlebury v. Conn. Siting Council*, 326 Conn. 40 (2017); Conn. Gen. Stat. §4-178 (2023).

consider in determining whether the plaintiff's right to cross-examination was violated."[55] The test of cross-examination is whether there has been an opportunity for full and complete cross-examination rather than the use made of that opportunity.[56] It is SCNET Group, the Grouped LLCs and the Town's burden to demonstrate their substantial rights were prejudiced.[57]

Six evidentiary hearings over seven months were held on this application.[58] Twenty-eight parties and intervenors participated in the hearings.[59] Under R.C.S.A. §16-50j-16, the Council may add parties and intervenors at any time during the pendency of a proceeding. ***Any person granted status is responsible for obtaining and reviewing all materials for the proceeding.*** (Emphasis added). UI and BWC participated in all six evidentiary hearings; SCNET Group, the Grouped LLCs, the Town and FSL participated in five evidentiary hearings; SPC participated in four evidentiary hearings; and the City participated in two evidentiary hearings.[60] Agencies shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.[61] Pursuant to RCSA §16-50j-30, "to avoid unnecessary cumulative evidence, the Council ***may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing***." (Emphasis added).

During the December 12, 2023 continued evidentiary hearing session, all parties and intervenors appeared and were prepared for cross examination by all other parties and intervenors and the Council in the order by which requests for status were granted.[62] The time for the Council's cross examination of the parties and intervenors was not included in the allotted time.[63] Contrary to SCNET Group's claims that it had more questions, after cross-examining each Town witness, SCNET Group's attorney affirmatively stated, "Mr. Chairman, I have no further questions at this time."[64] The record of this matter clearly demonstrates the parties and intervenors to this proceeding, including, but not limited to, SCNET Group, the Grouped LLCs and the Town, had an opportunity for full and complete cross-examination.[65] Under the test for cross-examination in *Pet*, SCNET Group, the Grouped LLCs and the Town cannot demonstrate their substantial rights have been prejudiced by the Council's time limit.

The right to cross examination is subject to reasonable limitation.[66] An interest in contesting the environmental impacts of an energy facility does not have the same individual impact as the interest of a person at risk of losing a professional license. In *Town of Middlebury*, the court characterized the plaintiffs' approach to portray the Council's proceedings as a denial of due process as "primarily to provide a long list of grievances… ***including the Council's assignment of arbitrary time limits to cross-examine witnesses***."[67] (Emphasis added). It held that the plaintiffs never established any harm from any of the rulings that allegedly violated due process and it is not unconstitutional for the Council to balance

[55] *Pet, supra* note 24 at 663.
[56] *Id*.
[57] *FairwindCT, Inc., supra* note 3 at 718.
[58] Remand Findings of Fact ¶1, *et seq*.
[59] Remand Findings of Fact Figure 28 – Party and Intervenor Chart.
[60] Remand Findings of Fact ¶1, *et seq*. (Tr. 1-7).
[61] *Pet, supra* note 24 at 662; Conn. Gen. Stat. §4-178 (2023).
[62] Remand Finding of Fact ¶100.
[63] Remand Finding of Fact ¶101.
[64] Remand Findings of Fact ¶1, *et seq*. (Tr. 7, pp. 183-240).
[65] Remand Findings of Fact ¶1, *et seq*.
[66] *Pet, supra* note 24 at 663, citing *State v. Vitale*, 197 Conn. 396, 401 (1985).
[67] *Town of Middlebury, supra* note 12 at *24-25 (The refusal of the council to set a definitive hearing schedule and consider scheduling witnesses by topic.)

its statutory time constraints against parties' desires for more time to present their objections to a proposal.[68]

Pursuant to C.G.S. §16-50n(f), at the conclusion of the evidentiary hearing session held on December 12, 2023, the Council closed the evidentiary record and established January 11, 2024 as the deadline for the submission of additional comments from the public and additional information, briefs and proposed findings of fact by the parties and intervenors.[69] After the close of the evidentiary record, the Council accepted submissions from SCNET Group and the Town providing additional opportunities for SCNET Group and the Town to voice their concerns.[70] The Council's time limits on cross examination during the final evidentiary hearing were not arbitrary, capricious and an abuse of discretion.

c. The Council consulted with state agencies.

PUESA provides the Council with numerous means of acquiring information in addition to that which must be submitted by the applicant.[71] The Council has a statutory duty to seek input from other state agencies and the legislature clearly contemplated the involvement of other state agencies to supply information to the Council in order to render its decisions.[72] Under C.G.S. §16-50j(g), "prior to commencing any hearing… the Council shall consult with and solicit written comments from [state agencies]… All such comments shall be made part of the record…."

In their post-hearing brief, the Grouped LLCs claim the Council failed to consult with and solicit written comments from state agencies prior to the commencement of the public hearing. According to the Grouped LLCs, the inclusion of written comments from some state agencies, identifying the Connecticut Airport Authority (CAA)[73] and Council on Environmental Quality (CEQ), and the absence of written comments from other state agencies, identifying the Department of Energy and Environmental Protection (DEEP)[74], Department of Public Health (DPH), Department of Agriculture (DOAg), Public Utilities Regulatory Authority (PURA)[75], Office of Policy and Management (OPM), Department of Economic and Community Development (DECD) and Department of Transportation (DOT), evidences the Council did not consult with and solicit written comments from each state agency listed under the statute. This is incorrect.

Consistent with the provisions of PUESA, on April 13, 2023, along with the public hearing notice, the Council issued a memorandum to the state agencies listed in C.G.S. §16-50j(g) and the CAA requesting written comments on the application to be submitted to the Council by July 18, 2023, or at any time while the application is pending with the Council until the evidentiary record is closed.[76] The record includes the comment letters identified by the Grouped LLCs from CAA and CEQ on April 17, 2023 and May 26, 2023, respectively, two written comment letters from DOT on August 18 and September 27, 2023, and two written comment letters from the State Historic Preservation Office (SHPO) on November 17 and 22, 2023.[77] No other state agencies responded to the Council's solicitation.[78] The Council cannot force state

[68] *FairwindCT, Inc., supra* note 3; *Concerned Citizens of Sterling, supra* note 1.
[69] Remand Finding of Fact ¶115; R.C.S.A. §16-50j-31 (2023).
[70] Remand Findings of Fact ¶116-121.
[71] *Town of Preston v. Conn. Siting Council,* 20 Conn. App. 474 (Conn. App. 1990); *City of Torrington v. Conn. Siting Council,* 1991 Conn. Super. LEXIS 2084 (Conn. Super. 1991).
[72] *Id.*
[73] CAA is not listed in the statute; the Council consults with CAA pursuant to R.C.S.A. §16-50j-12(d)(2023).
[74] The Commissioner of DEEP is a member of the Council.
[75] The Chairperson of PURA is a member of the Council.
[76] Remand Finding of Fact ¶123.
[77] Remand Findings of Fact ¶124-134.

agencies to respond to its solicitation. The Council complied with the statutory requirement to consult with and solicit comments from state agencies prior to commencing the hearing.

d. The Council held remote public hearings accessible from Fairfield County.

On September 18, 2023, the Grouped LLCs joined the Town's Motion for Continuance and claimed the Council failed to provide proper notice of the application and the hearings held on it.[79] The Motion was granted.[80] The claim was denied.[81] In its post-hearing brief, the Grouped LLCs contend that Public Act 22-3 does not contravene the requirement under C.G.S. §16-50m for the Council to hold at least one session of the public hearing in Fairfield County, and the requirement to provide for due process and fundamental fairness in the evidentiary session.

Hearings shall be held at times and locations specified by the Council.[82] C.G.S. §16-50m requires the Council to "… promptly fix a commencement date and location for a public hearing on an application for a certificate… not less than 30 days after receipt of an application or more than 150 days after such receipt. At least one session of such hearing shall be ***held at a location selected by the council*** in the county in which the facility or any part thereof is to be located ***after 6:30 p.m. for the convenience of the general public***. After holding at least one hearing session in the county in which the facility or any part thereof is to be located, the council may, in its discretion, hold additional hearing sessions at other locations." (Emphasis added).

Public Act 22-3 was codified at C.G.S. §1-225a and entitled, "*Meetings of public agencies conducted by electronic equipment*." It allows for agency public hearings to be conducted by electronic equipment with substantive and procedural safeguards.[83] In compliance with these safeguards, the Council held the evidentiary hearing session at 2:00 p.m. and the public comment session at 6:30 p.m. for the convenience of the general public on July 25, 2023 via Zoom remote conferencing.[84] Proper notice was provided.[85]

The capacity of the hearing room at the Council's office building is 100 people. In compliance with C.G.S. §1-225a and §16-50m, the Council held each continued evidentiary hearing via Zoom remote conferencing.[86] At points during the six hearings held on this application, there were over 400 interested persons in attendance by computer, tablet, smartphone and telephone from when the hearings promptly started at 2:00 PM to as late as 7:38 PM.[87] If an interested person was not able to tune in, as required by C.G.S. §1-225a, links to video of the hearings were posted to the Council's website the day after the public hearings and links to the official transcript of each hearing were posted to the Council's website upon receipt.[88]

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[78] Remand Finding of Fact ¶134.
[79] Remand Finding of Fact ¶52-54.
[80] Remand Finding of Fact ¶54.
[81] Remand Finding of Fact ¶54.
[82] Remand Finding of Fact ¶103; Conn. Gen. Stat. §16-50m (2023); R.C.S.A. §16-50j-20 (2023).
[83] Remand Findings of Fact ¶27-28.
[84] Remand Findings of Fact ¶37-122.
[85] Remand Finding of Fact ¶31.
[86] Remand Findings of Fact ¶37-122.
[87] Remand Findings of Fact ¶37-122 (The hearings could also be accessed via pay phone from anywhere in the world.)
[88] Remand Finding of Fact ¶104.

Statutes are often interpreted by considering the text of the statute, its relationship to other statutes and the legislative intent.[89] They are also often interpreted so as not to yield an absurd and unworkable result.[90] The text of C.G.S. §16-50m requires the Council to hold a public hearing on an application for a certificate. A "hearing or other proceeding" is an adjudicative process.[91] Provisions of the Freedom of Information Act (FOIA) and UAPA directly relate to adjudicative processes. It is clear that the intent of the requirement to hold at least one session of a public hearing after 6:30 p.m. under C.G.S. §16-50m is "***for the convenience of the general public***." (Emphasis added). A public hearing accessible by computer, tablet, smartphone and telephone is convenient for the general public. To conclude otherwise would yield absurd and unworkable results.

It is also clear that the intent of holding additional evidentiary hearing sessions is to provide for due process and fundamental fairness.[92] The purpose of the hearing is to receive evidence on the applicants' assertions that the public need for the rebuilt electric transmission facilities outweighs any adverse environmental effects from the construction, operation and maintenance of the rebuilt facilities.[93] The Council held six public hearings over seven months. Every party and intervenor, including SCNET Group, the Grouped LLCs, and the Town, was afforded opportunities to respond, to cross examine other parties, intervenors and witnesses, and to present evidence and argument on all issues involved during the Council's public hearings.[94] The intent of the substantive and procedural safeguards under C.G.S. §1-225a is to provide for due process and fundamental fairness in public hearings held under PUESA.

II. The Council's final decision is based on a record of substantial evidence.

In SCNET Group, the Grouped LLCs and the Towns' post-hearing briefs, each claims UI failed to provide an accurate assessment of the historic resources within the proposed Project area.[95] Evidence in the record demonstrates each party and intervenor to the proceeding, including, but not limited to, SCNET Group, the Grouped LLCs and the Town, had ample opportunities to submit testimony on adverse effects to historic resources and cross examine UI's expert on adverse effects to any historic resource.[96] Evidence in the record also demonstrates that SHPO believes UI's Project will have an indirect adverse effect on historic resources, UI agrees with SHPO that the Project will have an indirect adverse effect on historic resources and UI agrees to further consult with SHPO to resolve the effects.[97]

A more thorough examination of substantial evidence in the record related to historic resources, as well as substantial evidence in the record related to other resources specifically identified under PUESA,[98] is provided in the Environmental Effects and Mitigation Measures section of the Findings of Fact.

III. The Council is properly constituted.

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[89] Conn. Gen. Stat. §1-2z (2023); *Citizens Against Overhead Powerline Construction v. Conn. Siting Council*, 139 Conn. App. 565, 572 (Conn. App. 2012).
[90] *Id.*
[91] *City of Meriden v. Freedom of Information Comm'n*, 191 Conn. App. 648 (2019); *Gould* v. *Freedom of Information Comm'n*, 314 Conn. 802, 810-11 (2014).
[92] Conn. Gen. Stat. §4-166, *et seq*. (2023).
[93] Remand Finding of Fact ¶31.
[94] Remand Findings of Fact ¶1, *et seq*.
[95] SCNET Group Post-Hearing Brief at p. 18; Grouped LLCs Post-Hearing Brief at p.10; Town Post-Hearing Brief at p. 17 (Applicant failed to provide an accurate assessment of historic resources its Project would affect.)
[96] Remand Findings of Fact ¶1, *et seq*.
[97] Remand Findings of Fact ¶133, 603.
[98] SCNET Group argues UI's Project would interfere with religious practice rights under the U.S. Constitution. This is not a factor under PUESA for Council review of an application and is a topic for federal court.

In 1970, the proposed construction of an electric transmission line facility over 75 miles of southwest Connecticut, a nuclear electric generating facility on an island off the shores of Norwalk and an oil-fired electric generating facility at Stamford Harbor prompted the passage of PUESA.[99] It is based on the premise that no energy facility will be constructed, maintained and operated in the state unless there is a demonstrable public need for it and the public need outweighs any adverse environmental effects.[100] PUESA created the Council with the purpose to end ad hoc town-by-town regulation of energy facilities in favor of regulation by a statewide body.[101] The Council is a nine-member, per diem board with exclusive jurisdiction over the construction, maintenance and operation of electric transmission facilities throughout the state.[102]

SCNET Group, the Grouped LLCs and the Town argue that the Council is not properly constituted under PUESA because it lacks at least two members appointed by the Governor with experience in the field of ecology and therefore has no authority to act.[103] In support of this position, the Grouped LLCs cite two cases involving professional licensing boards.[104] In *DuBaldo v. Department of Consumer Protection*, a licensed electrician appealed a decision of the Electrical Work Examining Board that suspended its license.[105] The court held the board was not properly constituted because it did not have two journeyman engaged in electrical work as required by C.G.S. §20-311 and remanded the license suspension back to the board.[106] In *Block* v. *Statewide Grievance Committee*, a licensed attorney appealed a decision of a subcommittee to suspend its license.[107] The court held that the subcommittee was not properly constituted because it was not comprised of at least 3 non-lawyers as required by C.G.S. §51-90g(a) and remanded the license suspension back to the board.[108]

Unlike the board members in *DuBaldo*, the Council consists of members experienced in the field of ecology as required by C.G.S. §16-50j. Unlike the board members in *Block*, the Council consists of three public members as required by C.G.S. §4-9a. Unlike the plaintiffs in *DuBaldo* and *Block*, the Grouped LLCs are not the subject of disciplinary proceedings before the Council; they are merely intervenors who oppose UI's application.[109] The Council has no authority to reject gubernatorial appointments, to refuse to seat members duly appointed by the Governor, or to refuse to act on applications until the Governor alters the Council's membership.[110] In contrast with the boards at issue in the cases cited by the Grouped LLCs, the Governor has exclusive authority to appoint the Council's public members and the Council has an express legislative mandate to act on applications submitted to it.[111]

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[99] Public Act 71-575; Conn. Gen. Stat. §16-50g, *et seq.* (2019) (**Legislative finding** that energy facilities have a significant impact on the environment of the state and that continued operation and development of such facilities, if not properly planned and controlled, could adversely affect the quality of the environment. **Legislative purpose** to provide for the balancing of the public need at the lowest reasonable cost with the need to protect the environment; provide environmental standards and criteria for the location, design, construction and operation of facilities; and facilitate planning to implement these purposes.)
[100] *Id*.
[101] *Id*.
[102] Conn. Gen. Stat. §16-50x (2023).
[103] Remand Finding of Fact ¶79; Grouped LLCs Post-Hearing Brief at page 9.
[104] The Grouped LLCs present the same motion filed in Docket 509, denied by the Council and currently on appeal in the Appellate Court, along with a pending Superior Court appeal of the Council's final decision in Docket 509R.
[105] *DuBaldo v. Dept. of Consumer Protection*, 209 Conn. 719 (1989).
[106] *Id*.
[107] *Block v. Statewide Grievance Committee*, 47 Conn. Supp. 5 (Conn. Super. 2000).
[108] *Id*.
[109] Remand Finding of Fact ¶17; Remand Findings of Fact Figure 28 – Party and Intervenor Chart.
[110] Conn. Gen. Stat. §16-50g, *et seq*. (2023).
[111] Conn. Gen. Stat. §4-9a (2023); Conn. Gen. Stat. §16-50j (2023); Conn. Gen. Stat. § 16-50p (2023).

When the application was submitted to the Council on March 17, 2023, Mr. Quinlan was a public member appointed by the Governor with experience in the field of ecology.[112] When the public hearing opened on July 25, 2023, Mr. Hannon was a public member appointed by the Governor with experience in the field of ecology.[113] During the continued evidentiary hearings, Dr. Near was appointed by the Governor as a public member with experience in the field of ecology.[114] At the close of the evidentiary record on December 12, 2023, Mr. Hannon and Dr. Near were two public members appointed by the Governor with experience in the field of ecology.[115] Unfortunately, Mr. Hannon passed away on December 15, 2023.[116] The vacancy created by this loss has no impact on the ability of the Council to transact business under state law.

The Governor's appointment of public members to state boards, including the Council, is regulated under CGS §4-9a, which states, "***Public members*** shall constitute ***not less than one-third*** of the members of each board, … Public member means an elector of the state who has no substantial financial interest in, is not employed in or by, and is not professionally affiliated with, any industry, profession, occupation, trade or institution regulated or licensed by the relevant board or commission, and who has had no professional affiliation with any such industry, profession, occupation, trade or institution for three years preceding his appointment to the board..." (Emphasis added.) On January 4, 2024, Mr. Carter was appointed by the Governor as a public member.[117] In compliance with C.G.S. §4-9a, the Council consists of no less than one-third public members – Mr. Morissette, Dr. Near and Mr. Carter.

A quorum is the minimum number of members of a board required to be present at a meeting or a hearing to transact business.[118] A quorum of the Council is 5 members.[119] In addition to the three public members appointed by the Governor, the Council currently consists of the Commissioner of DEEP's designee, the PURA Chairperson's designee, the President Pro Tempore of the Senate's appointee and the Speaker of the House's appointee. There are currently seven members on the Council. Although vacancies exist because of death and resignations, more than a quorum survives.[120] If a quorum of members is present at a meeting or a hearing, the Council can transact business.[121] The presence of two members with experience in the field of ecology is not required to make the quorum. The Council is properly constituted and may transact business.

The Grouped LLCs argue that Dr. Near did not attend any of the public hearings. It is well settled that members of an administrative agency need not be present at public hearings in order to participate in decisions if the member acquaints themselves sufficiently with the issues raised and the evidence and arguments presented at public hearings in order to exercise an informed judgment.[122] In *Loh v. Town Plan and Zoning Commission of the Town of Fairfield*, a member of the commission voted on an application

[112] Remand Finding of Fact ¶85.
[113] Remand Finding of Fact ¶86.
[114] Remand Finding of Fact ¶86.
[115] Remand Findings of Fact ¶86 and 87.
[116] Remand Finding of Fact ¶86; *Stern v. Conn. Medical Examining Board*, 208 Conn. 492 (1988) (Successors and appointments to fill a vacancy shall fulfill the same qualifications as the member succeeded or replaced.)
[117] Remand Finding of Fact ¶88.
[118] *Elections Review Committee of Eight Utilities District v. Freedom of Information Comm'n*, 219 Conn. 685, 696 (1991); *Ghent v. Zoning Comm'n of City of Waterbury*, 220 Conn. 584, 598 (1991).
[119] Remand Finding of Fact ¶86.
[120] *Ghent, supra* note 118.
[121] *Id*.
[122] *New Haven v. Public Utilities Comm'n,* 165 Conn. 687 (1974); *Dana-Robin Corp. v. Common Council of the City of Danbury,* 166 Conn. 207 (1974); *Loh v. Plan & Zoning Comm'n of Town of Fairfield*, 161 Conn. 32 (1971).

for a zone change in a matter for which that member did not attend the public hearing.[123] The plaintiffs claimed that the member's failure to attend the public hearing rendered the final decision void and illegal.[124] The Supreme Court noted, "Occasions may arise where, because of illness or other inability, a member may be unable to attend the hearing. Such a member should not be prohibited from voting…"[125]

The member who was absent from the hearing in the *Loh* case listened to a tape of the transcript of the hearing and was not disqualified from voting.[126] Participation of this member in the final decision on the zone change did not render the final decision void or illegal.[127] Two members of the Council were absent from hearings on UI's proposed Project.[128] During the non-binding straw poll vote on the proposed final decision at a public meeting of the Council held on February 1, 2024, Dr. Near stated he was sufficiently acquainted with the issues raised and the evidence and arguments presented at public hearings in order to exercise an informed judgment.[129] During the non-binding straw poll vote, Mr. Lynch stated he hasn't finished reading the transcripts and did not cast a straw poll vote during the Council's February 1, 2024 public meeting. Therefore, under the holding in *Loh*, Dr. Near is not disqualified from voting on UI's application and Mr. Lynch is not disqualified from voting on UI's application once he finished reading the transcripts.[130]

IV. The Council may take a new vote on the application.

On April 1, 2024, pursuant to CGS §4-183, the Town, City, BWC, and SCNET Group with Southport Congregational Church filing separately, appealed the Council's February 15, 2024 final decision to issue UI a Certificate for the rebuilt electric transmission line facilities (Fairfield appeal) in the New Britain Superior Court (Court).[131] Oral argument was held on January 13, 2025.[132]

Since the Council's final decision on the application was rendered and the Fairfield appeal was filed, three new members were appointed to the Council between April and October 2024 – Khristine Hall, William Syme and Elin Katz, who was confirmed as Council Chair on April 15, 2025.[133]

On April 23, 2025, the Court remanded the matter back to the Council on the basis that it was in excess of the Council's statutory authority and upon unlawful procedure to order the *Hannon-Morissette Alternative* because modifications to the 1130 Line were not proposed in UI's application.[134] Therefore, the *Hannon-Morissette Alternative* is not a feasible route configuration for the Project.[135]

On April 30, 2025, the Council issued a memorandum related to the Court-ordered Remand Regarding the Council's February 15, 2024 Final Decision to the service list and posted the memorandum on its website.[136] The memorandum indicated the Council would place the matter on a future regular meeting

[123] *Loh, supra* note 122.
[124] *Loh, supra* note 122 at 40.
[125] *Loh, supra* note 122 at 41.
[126] *Loh, supra* note 121 at 40-42.
[127] *Id*.
[128] Connecticut Siting Council, Meeting Minutes, February 1, 2024.
[129] *Id*.
[130] *Loh, supra* note 122 at 40-44 (The burden of proving an agency action is illegal is on the party making the claim.)
[131] Remand Finding of Fact ¶687.
[132] Remand Finding of Fact ¶693.
[133] Remand Findings of Fact ¶689, 690, 691 and 694.
[134] Remand Finding of Fact ¶694.
[135] Remand Finding of Fact ¶695.
[136] Remand Finding of Fact ¶698.

agenda for Council review of a new proposed final decision consistent with the Court-ordered Remand and CGS §4-183(j).[137] Thereafter, parties and intervenors may submit comments on the Council's new proposed final decision.

In May 2025, Council members Chance Carter, Khristine Hall, Brian Golembiewski and William Syme read the record of the proceedings.[138] Council Chair Elin Katz resigned from the Council as of May 30, 2025 and did not read the record of the proceedings.[139] During the non-binding straw poll vote on the new proposed final decision at a public meeting of the Council held on June 12, 2025, Council members Chance Carter, Khristine Hall, Brian Golembiewski and William Syme stated they were sufficiently acquainted with the issues raised and the evidence and arguments presented during the proceedings in order to exercise an informed judgment.[140]

On June 12, 2025, the Council issued a memorandum seeking comments on its Draft Remand Findings of Fact to the Docket No. 516 service list.[141] Comments on the Council's Draft Remand Findings of Fact were submitted by UI and jointly by the Town, the City, and SCNET.[142]

On June 24, 2025, UI submitted a Motion to Stay the final vote on the basis that the Council is not properly constituted under CGS §16-50j(b), which requires the Council to contain at least two public members with experience in the field of ecology among the five public members appointed by the Governor.[143] During a regular meeting held on June 26, 2025, the Council granted UI's Motion to Stay the final decision and tabled Docket No. 516R until the Council is properly constituted.[144] On August 6, 2025, Dr. Scott Williams was appointed to the Council by the Governor as a public member with experience in the field of ecology in succession to Elin Katz.[145] In August 2025, Council Member Dr. Scott Williams read the record of the proceeding.[146]

On August 28, 2025, the Council provided notice of its September 4, 2025 regular meeting, including the associated agenda and access information, and distributed a copy of the regular meeting agenda to the service list of Docket No. 516.[147] During the non-binding straw poll vote on the new proposed final decision at a public meeting of the Council held on September 4, 2025, Council member Dr. Scott Williams stated he was sufficiently acquainted with the issues raised and the evidence and arguments presented during the proceedings in order to execute an informed judgment.[148]

On September 4, 2025, the Council issued a memorandum seeking comments on its August 29, 2025 Draft Remand Findings of Fact to the Docket No. 516 service list.[149] Comments on the Council's August 29, 2025 Draft Remand Findings of Fact were submitted by FSL and jointly by the Town, the City, and

[137] Remand Finding of Fact ¶698.
[138] Remand Findings of Fact ¶699-701; Connecticut Siting Council, Meeting Minutes, June 12, 2025.
[139] Remand Findings of Fact ¶702.
[140] Connecticut Siting Council, Meeting Minutes, June 12, 2025.
[141] Remand Finding of Fact ¶711.
[142] Remand Finding of Fact ¶712.
[143] Remand Finding of Fact ¶713.
[144] Remand Finding of Fact ¶714; Connecticut Siting Council Meeting Minutes, June 26, 2025.
[145] Remand Finding of Fact ¶717.
[146] Remand Finding of Fact ¶718; Council Membership, updated to September 12, 2025.
[147] Remand Finding of Fact ¶719.
[148] Remand Finding of Fact ¶720; Connecticut Siting Council Meeting Minutes, September 4, 2025.
[149] Remand Finding of Fact ¶721.

SCNET.[150] None of the 28 parties and intervenors challenged the Council's constitution or authority to vote on the application.[151]

Therefore, under the holding in *Loh*, Council members Chance Carter, Khristine Hall, Brian Golembiewski, William Syme and Dr. Scott Williams are not disqualified from voting on UI's application.[152]

V. CONCLUSION

An agency is not required to use the evidence and materials presented to it in any particular fashion as long as the conduct of the hearings is fundamentally fair.[153] Due process requires not only that there be notice of a hearing, but at the hearing parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the agency is asked to act, to cross examine witnesses and to offer rebuttal evidence.[154] Notice of the hearing was published on April 15, 2023.[155] During 6 evidentiary hearings over 7 months, 28 parties and intervenors produced 7,278 pages of relevant evidence and had an opportunity to know the facts on which the Council is asked to act, to cross examine witnesses and to offer rebuttal evidence.[156] Contrary to the claims of SCNET Group, the Grouped LLCs and the Town, the Council's hearing procedure did not violate due process.

The Council consists of eight members, four of whom are public members appointed by the Governor under C.G.S. §4-9a, which states, "Public members shall constitute no less than one-third of the members of each board." The Council is a nine-member board. Public members constitute no less than one-third of the members of the Council. Therefore, the Council is properly constituted under C.G.S. §4-9a. The Council consists of at least two public members appointed by the Governor with experience in the field of ecology. Therefore, the Council is properly constituted under C.G.S. §16-50j(b).

PUESA does not mandate any special mix of Council members to transact business as long as there is a quorum. A quorum of the Council is five members. Contrary to the claims of SCNET Group, the Grouped LLCs and the Town, the Council is properly constituted and has the authority to act.

[150] Remand Finding of Fact ¶722.
[151] On September 17, 2025, the Town, City and SCNET jointly requested the Council to remove the final vote on the application from its September 18, 2025 regular meeting agenda. During its September 18, 2025 regular meeting, the Council tabled the final vote on the application to its regular meeting agenda scheduled for October 16, 2025.
[152] *Loh, supra* note 122 at 40-44 (The burden of proving an agency action is illegal is on the party making the claim.)
[153] *FairwindCT, Inc., supra* note 3 at 711; *Town of Middlebury*, *supra* note 54 at 40-41.
[154] *Conn. Fund for the Environment v. Stamford*, 192 Conn. 247 (1984); *Palmisano v. Conservation Commission*, 27 Conn. App. 543 (Conn. App. 1992).
[155] Remand Finding of Fact ¶31.
[156] Remand Findings of Fact ¶1, *et seq*., ¶684; Conn. Gen. Stat. §4-177c (2023).