

**STATE OF CONNECTICUT  
SITING COUNCIL**

The Connecticut Light and Power Company and The	:	Docket No: 272
United Illuminating Company Application for a	:	
Certificate of Environmental Compatibility and Public	:	
Need for the Construction of a New 345-kV Electric	:	
Transmission Line and Associated Facilities Between	:	
Scovill Rock Switching Station in Middletown And	:	
Norwalk Substation in Norwalk, Connecticut	:	March 21, 2005
Including the Reconstruction of Portions of Existing	:	
115-kV and 345-kV Electric Transmission Lines, the	:	
Construction of the Beseck Switching Station in	:	
Wallingford, East Devon Substation in Milford, and	:	
Singer Substation in Bridgeport, Modifications at	:	
Scovill Rock Switching Station and Norwalk	:	
Substation and the Reconfiguration of Certain	:	
Interconnections	:	

**REPLY BRIEF OF THE CONNECTICUT DEPARTMENT OF  
TRANSPORTATION**

The Connecticut Department of Transportation (“DOT”) replies to the Applicant’s argument concerning preemption of the DOT statutes by the statutes within the purview of the Connecticut Siting Council (“Siting Council”).

**ARGUMENT**

**THE SITING COUNCIL’S AUTHORITY TO APPROVE A LOCATION ON THE STATE HIGHWAY RIGHT OF WAY DOES NOT PREEMPT THE DOT FROM REGULATING THE PRECISE LOCATION OF THE TRANSMISSION FACILITIES WITHIN THE STATE HIGHWAY RIGHT OF WAY FOR THE PROTECTION OF THE TRAVELLING PUBLIC.**

The statutory authority granted to the Siting Council and the DOT over the location of transmission lines can be easily reconciled. The Applicants’ attempt to create a conflict between the statutory authority of the Siting Council and the DOT because both

of those statutes refer to the “location” of transmission lines. The Siting Council has general jurisdiction over the location of the transmission facilities in Connecticut (Conn. Gen. Stat. §16-50x) whereas the DOT has jurisdiction over the transmission facilities located “within, on, along, over or under the right-of-way of any state highway” (Conn. Gen. Stat. §13a-126a and §13a-126c).

The need for these interrelated statutory provisions is evident in reviewing the different functions of each agency. The legislature directed the Siting Council “...*to provide environmental quality standards and criteria for the location*, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria.” Conn. Gen. Stat. §16-50g, emphasis added. Thus, the legislature directed the Siting Council to consider the environmental impacts of the proposed transmission facilities.

On the other hand, the legislature charged the DOT with “*protecting the functional or aesthetic characteristics of any state highway or state highway appurtenance*” by “*promulgat[ing] regulations for the location* and installation of any public service facility within, on, along, over or under the right-of-way of any state highway or state highway appurtenance” with regard to the location and installation of the transmission facilities. Conn. Gen. Stat. §13a-126a, emphasis added. Thus, the legislature directed the DOT to protect the travelling public from the effects of locating the transmission facilities “*within*” the state highway right-of-way.

The Applicants' attempt to create a conflict between the statutory authority of the Siting Council and the DOT by creating false hypotheticals. Although not mentioned in the Applicants' brief, those issues were dealt with successfully in Docket 217 by the DOT and Connecticut Light and Power Company without creating the speculative conflicts listed in their brief.

The Applicant's argue that there may be areas where "disagreements" arise between the Applicants and the DOT, necessitating action by the Siting Council. This argument is contradicted by repeated testimony for the Applicants which highlights a history of working out differences, as shown below.

MR. O'NEILL: Have there been any problems coordinating these efforts with DOT in the past?

MR. PRETE: Mr. O'Neill, none whatsoever.

Testimony of John Prete Tr. 4/20/2004 p.78, 1.4-6; See also p.142, 1.510.

MR. REED: I've worked with the DOT for 33 years in this business and we have had many occasions where we've had conflicts. We have always been able to work them out with the DOT.

Testimony of Richard Reed Tr. 4/20/2005, p.86, 1.13-23; See also p. 97, 1.12-16; p. 101, 1.15-17.

MR. ZAKLUKIEWICZ: I'm confident that between ourselves and the DOT, we will come to an agreement of what we need to use to accommodate both needs.

Testimony of Roger Zaklukiewicz, Tr. 4/20/2994, p.132, ll. 8-11; See also p.142, ll.5-12.

The testimony above clearly indicates that the Applicants' own witnesses do not believe that there will be any conflicts between them and the DOT that cannot be

resolved. The Applicants cannot testify about cooperation with the DOT on the one hand and argue in their brief about speculative conflicts that, based on their own testimony, will not occur.

One of the areas of disagreement listed in the Applicants' brief concerns the burial depth of duct bank for the transmission lines. As stated previously, the Applicants have worked with the DOT to resolve such conflicts in the past. Additionally, the Applicants testified that there may be many places where the duct bank will have to be located deeper than desired to avoid conflicts with existing utilities in the state highway right-of-way, Testimony of Roger Zaklukiewicz, Tr.4/22/2004, pp.8-9; Testimony of John Prete, Tr.1/5/2005, p.174, l. 6-20 or to cross under rivers and streams Testimony of John Hair, Tr. 4/20/2004, p.163, l.4-17.

Similarly, the concerns expressed by the Applicants in their brief about the location of splice vaults are directly contradicted by their own testimony. The Applicants' own witness agreed that they would work with DOT to locate splicing vaults outside of the travelled portion of the highway, Testimony of John Prete, Tr. 4/20/2004, p.82, l.14-24, p. 83, l.1. This is consistent with the DOT's need to provide the public with a viable transportation system that can convey the expected traffic loads as demonstrated by the Average Daily Traffic ("ADT")(DOT Exhibit 3, Table 2) for the proposed route and the Applicants' testimony concerning the need to close lane for splicing in vaults located in the travelled portion of the state highway right-of-way. Testimony of Roger Zaklukiewicz, Tr. 4/20/2994, p.109, l.14-24, p.110, l.1-20.

The Applicants' brief poses questions about construction delays due to time of day restrictions and limits on the use of steel plating to cover open trenches. When asked

about construction methodology, the Applicants' own witness testified about night time construction and the use of steel plates to cover open trenches during rush hour.

Testimony of John Prete, Tr. 4/20/2004 p.70-72. Subsequent discussions between the DOT and CL&P in Docket 217 make the steel plate issue moot.

The DOT believes that both the Siting Council and the Applicants lack the expertise necessary to protect the functional or aesthetic characteristics of any state highway or state highway appurtenance. By way of example, the applicants testified that they lack expertise concerning the effect of fluidized thermal backfill on the performance of the roadway. Testimony of Jay Williams and Roger Zaklukiewicz, Tr. 4/20/2205, p.131, ll.4-21.

In this docket, the Siting Council took administrative notice of the DOT's Exhibits 4, 5 and 6 -Highway Design Manual, the Standard Specifications for Roads, Bridges and Incidental Construction and the Supplement Specifications (Tr. 6/16/2004 p. 209-210). These documents, along with the DOT's Encroachment Permit Regulations (R.C.S.A. Sections 13b-17-1 through 46 and the DOT's "A Policy on the Accommodations of Utilities on Highway Rights-of-Way" as adopted in R.C.S.A. §13b-17-17) evidence the DOT's expertise to protect the functional or aesthetic characteristics of any state highway or state highway appurtenance.

Based upon the above, the Siting Council should find that there is no conflict between the Siting Council's jurisdiction over the environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services and the DOT's jurisdiction over the location of the transmission

facilities to protect the functional or aesthetic characteristics of any state highway or state highway appurtenance.

**CONCLUSION**

The Siting Council and the DOT have concurrent jurisdiction over the transmission facilities when the transmission facilities are located within, on, along, over or under the right-of-way of any state highway or state highway appurtenance.

**RESPONDENT**

**CONNECTICUT DEPARTMENT OF TRANSPORTATION**

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**CERTIFICATION**

I hereby certify that a copy of the foregoing was sent by U.S. Mail, postage prepaid, this 21st, day of March, 2005, to the Service List.

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