

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

THE CONNECTICUT LIGHT AND POWER	:	DOCKET NO. 272
COMPANY AND THE 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 FACILITES BETWEEN THE	:	
SCOVILLE ROCK SWITCHING STATION IN	:	
MIDDLETOWN AND THE NORWAL	:	
SUBSTATION IN NORWALK, INCLUDING	:	
THE RECONSTRUCTION OF PORTIONS	:	
OF EXISTING 115-KV AND 345 KV ELECTRIC	:	
TRANSMISSION LINES, THE CONSTRUCTION:	:	
OF BESECK SWITCHING STATION IN	:	
WALLINFORD, 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	:	July 19, 2004

**COMMENTS OF RICHARD BLUMENTHAL, ATTORNEY GENERAL FOR
THE STATE OF CONNECTICUT, CONCERNING P.A. 04-146**

Richard Blumenthal, Attorney General for the State of Connecticut, hereby responds to the request by the Connecticut Siting Council (“Council”) dated May 25, 2004 that parties and intervenors provide comment on Public Act 04-146, An Act Concerning Electric Transmission Siting Criteria (“P.A. 04-146” or the “Act”). For the reasons stated herein, the Attorney General respectfully submits that P.A. 04-146 requires the Council to take certain affirmative steps to complete the record in this case.¹

¹ On May 24, 2004 in this proceeding, the Attorney General filed a Motion to Conform this Proceeding to the Requirements of Substitute House Bill No. 5418 (later codified as P.A. 04-146). In that Motion, the

I. INTRODUCTION

P.A. 04-146 changes the landscape of the present proceeding in a number of significant ways. First, P.A. 04-146 provides specific guidance on the question of whether the proposed transmission line should be placed underground. The legislature has now stated that there is a presumption that electric transmission lines that are 345 kV or greater shall be placed underground near residential areas, schools, licensed day care facilities, licensed youth camps or public playgrounds. This presumption can only be rebutted if the applicant can demonstrate to the Council that it would be technologically infeasible to bury the power lines, considering the reliability of the electric transmission system of the state.

Second, the legislature has specifically stated in P.A. 04-146 that the electromagnetic field (“EMF”) impact of this line on sensitive human population areas must be analyzed and taken into consideration by the Council in its siting decision. The legislature has made clear that the Council must regard EMFs as a potential health risk and must take affirmative steps to protect the health and safety of the neighboring residential areas as well as schools, parks, day cares and other certain land uses.

P.A. 04-146 imposes new requirements on the Council when it considers applications to build electric transmission lines in Connecticut. The Act requires that the Council fully understand the impact that the EMF emitted by the proposed transmission line will have upon nearby homes and other specific locations where children congregate, such as schools, day care facilities and camps. P.A. 04-146 also requires that the Council

Attorney General requested that the Council require the Applicants to provide certain additional information that is by the Act. The submission of these Comments is supplementary to that Motion. The Attorney General does not, by the filing of these Comments, expressly or impliedly, withdraw that Motion.

take affirmative steps to protect, or “buffer,” those locations from the health and safety impacts of the new transmission lines. In addition, the Act requires that the Council keep current on all scientific and medical research concerning EMF.

Third, P.A. 04-146 imposes new standards and criteria that the Council must apply when considering the application filed by the Connecticut Light and Power Company and the United Illuminating Company (jointly the “Applicants”) in this matter. Because these standards and criteria are new, the record in this case is not sufficient to comply fully with the Act. As a result, the Attorney General respectfully submits that the Council must take a number of specific steps to conform the present proceedings to the requirements of the Act. These steps are:

1. Requiring the Applicants to provide additional or amended maps of their proposed route.
2. Requiring the Applicants to provide additional information concerning EMF at specific sites along the proposed route and alternate routes under consideration.
3. Requiring the Applicants to provide maps of the alternate routes under consideration.
4. Allowing participants a full and fair opportunity to address the issue of buffer zones for all routes under consideration.

II. DISCUSSION

P.A. 04-146 amends various provisions of Conn. Gen. Stat. §§ 15-50l, 16-50p, 15-50o and 16-50t. These amendments include modifications of existing language as well as the addition of entirely new legal standards and requirements that apply to the application in the present case. The new statutory provisions must be incorporated into the Council’s present proceeding as it is unfolding. Following a brief review of P.A. 04-

146 is a discussion of the deficiencies in the record that have resulted from the passage of the Act.

A. The New Statutory Requirements

1. Section 16-50l

The Act amends section 16-50l(a)(1)(C) to require that applications for a certificate for environmental compatibility and public need contain:

a map of suitable scale of the proposed routing or site, showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, residential areas, private or public schools, licensed child day care facilities, licensed youth camps, and public playgrounds and showing existing transmission lines within one mile of the proposed route or site.

(Emphasis denotes the newly added language).

P.A. 04-146 also adds a new subsection to 16-50l(a)(1), identified as subsection (I). This new subsection provides that the applicant must provide “an assessment of the impact of any electromagnetic fields to be produced by the proposed transmission line.”

2. Section 16-50p

Section 16-50p(a) provides, in part, that the Council shall not grant a certificate unless it “shall find and determine” that there is a public need and the basis of the need for the proposed facility, the nature of the environmental impact of the proposed facility and why the adverse environmental effects are not sufficient to deny the application, including why other alternatives are not feasible and prudent with less adverse effects.

P.A. 04-146 amends subsection 16-50p(a)(2) to specify that when evaluating the environmental impact of the proposed facility, the Council must consider EMF.

Similarly, the Act amends section 16-50p(a)(3) to require that the Siting Council, in its written opinion, find and determine the impact of EMF when considering environmental

impact and whether it adverse environmental impacts are sufficient to deny the application.

P.A. 04-146 also amends section 16-50p(a)(4) to state that in the case of overhead electric transmission lines, such as the one proposed by the Applicants in the present case, the Council must also find that the overhead portions, if any, are consistent with the Council's best management practices for EMF.

Further, the Act amends section 16-50p to require what are now known as "buffer zones." Specifically, the new statutory language provides that any overhead portions of the transmission line:

are to be contained within an area that provides a buffer zone that protects the public health and safety, as determined by the council. In establishing such buffer zone, the council shall take into consideration, among other things, residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route. At a minimum, the existing right-of-way shall serve as the buffer zone.

Section 16-50p also requires the CSC to file a decision stating its full reasons for the decision. P.A. 04-146 amends subsection 16-50p(a)(3)(D) to state that in the case of electric transmission lines, the Council must find and determine that any overhead portions of the line comply with those same buffer zone requirements.

The Act further amends section 16-50p by creating a new presumption regarding overhead electric transmission lines. New subsection (h) provides that:

[f]or a facility described in subdivision (1) of subsection (a) of section 16-50i, as amended, with a capacity of three hundred forty-five kilovolts or greater, there shall be a presumption that a proposal to place the overhead portions, if any, of such facility adjacent to residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds is inconsistent with the purposes of this chapter. An applicant may rebut this presumption by demonstrating to the council that it will be technologically infeasible to bury the

facility. In determining such infeasibility, the council shall consider the effect of burying the facility on the reliability of the electric transmission system of the state.

(Emphasis added).

3. Sections 15-50o and 16-50t

P.A. 04-146 amends section 16-50o to require that the Siting Council take administrative notice of completed and ongoing scientific and medical research on EMF.

In addition, the Act amends section 16-50t to require that:

[t]he council shall adopt, and revise as the council deems necessary, standards for best management practices for electric and magnetic fields for electric transmission lines. Such standards shall be based on the latest completed and ongoing scientific and medical research on electromagnetic fields and shall require individual, project-specific assessments of electromagnetic fields, taking into consideration design techniques including, but not limited to, compact spacing, optimum phasing of conductors, and applicable and appropriate new field management technologies. Such standards shall not be regulations for purposes of chapter 54.²

P.A. 04-146 also amends section 16-50t of the Act to provide that if the Act results in the reconfiguration or burial of a transmission line, “all prudent costs incurred by an electric distribution company, as defined in section 16-1 of the general statutes, as amended, associated with the reconfiguration or burial shall be deemed to be reasonable pursuant to sections 16-19 and 16-19e of the general statutes and shall be recovered by the electric distribution company in its rates.”

² The Act also requires that the Council, not later than January 1, 2005, submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to energy and the environment, which report shall contain the Council’s most recent version of its standards for best management practices for EMF for electric transmission lines and a description of the methodology used in selecting such standards.

B. The Record in This Proceeding is Inadequate to Comply with the New Requirements Imposed by the Act

At present, the record in this case is inadequate to allow the Siting Council to satisfy the requirements that are imposed by P.A. 04-146. As a result, the Attorney General respectfully suggests that the Council must take the affirmative steps described herein to comply with the Act.

1. The Council Must Require the Applicants to Provide Additional Maps of Their Proposed Route

Section 16-50l(a)(1)(C), as amended by P.A. 04-146, requires that applications for a certificate for environmental compatibility and public need contain a map of suitable scale of the proposed routing showing details of the rights-of-way or site in the vicinity of settled areas, parks, recreational areas and scenic areas, as well as of residential areas, private or public schools, licensed child day care facilities, licensed youth camps, and public playgrounds. In the present case, while the Applicants have provided maps of their proposed route, these maps do not identify licensed child day care facilities and licensed youth camps and may not sufficiently identify residential areas and public playgrounds.

Moreover, the ongoing discussions between the Applicants and ISO New England (“ISO-NE”) in this case could conceivably result in a route or configuration that is different from those proposed in the Application on or about August 16, 2004 to address ISO-NE’s reliability concerns. See Memorandum of the Council, June 25, 2004. If so, the Applicants would be required to provide maps that meet the requirements of P.A. 04-146 for any such new route or configuration. The Siting Council should require the Applicants to provide such information in this case.

2. The Council Must Require the Applicants to Provide Additional Information Concerning EMF at Specific Sites Along the Proposed Route and Alternate Routes Under Consideration in this Proceeding

New subsection (I) to 16-50l(a)(1), as amended, states that the applicant must provide “an assessment of the impact of any electromagnetic fields to be produced by the proposed transmission line.” It is very important to note that while the amendment to section 16-50l(a)(1)(C) appears to apply to the applicants’ proposed route, the language of the new subsection (I), as amended, is not limited to the proposed route.

Consequently, new subsection (I) imposes two additional requirements upon the Applicants. First, it requires that the Applicants provide an assessment of any EMF produced by the proposed transmission line along the proposed route. Since the Applicants have yet to identify and map licensed child day care facilities, licensed youth camps and may not have sufficiently identified and mapped residential areas and public playgrounds, they clearly have not yet fully satisfied subsection (I) in that they have not adequately assessed the impact of EMF on such heretofore unidentified locations.

Second, as noted above, in order to comply with the requirements of subsection (I) the Council must assess the impact of any EMF produced by the proposed transmission line wherever it may be sited. In other words, new subsection (I) requires that the applicants provide an assessment of EMF impacts that would be produced by the newly added transmission line regardless of whether it is actually sited along the proposed route or elsewhere by the Council.

In the present case, the Council is considering a number of alternate routes in addition to the Applicants’ proposed route. In addition, as noted above the Applicants may propose yet another route or configuration on August 16, 2004 based upon its

consultations with ISO-NE. In order to comply with the clear requirements of new subsection (I), the Council should require that the Applicants provide an assessment of the impact of any EMF to be produced by the transmission line along the alternate routes that are under consideration, including any new route or configuration proposed on or about August 16, 2004. Such assessments, for obvious reasons, have yet to be done in the present case and will aid the Council in comparing the relative impact of the proposed route with that of the various alternate routes.

The amended provisions in section 16-50p also require the Council to direct the Applicants to provide additional information concerning EMFs along the various routes under consideration in this case. First, when considering the environmental impact of a proposed facility, in order to determine whether that impact is sufficient to outweigh the public need for the facility, the Council will have to consider EMF. See 16-50p(a)(2) and 16-50p(a)(3), as amended. Second, pursuant to section 16-50p(a)(4) as amended, the Council must find that the overhead portions of any route that is finally approved by the Council are consistent with the Council's best management practices for EMF. Third, the buffer zone requirements of section 16-50p also indicate that the Council must know more about EMF along the various alternate routes. Since the Council is considering a number of alternate routes in this case in addition to the Applicants' proposed route, the Council will have to receive additional information as to EMFs along the various proposed routes.

3. Buffer Zone Requirements

The buffer zone language in section 16-50p provides that any overhead portions of the proposed electric transmission line must be contained in an area that "provides a

buffer zone that protects the public health and safety, as determined by the council.” In establishing such buffer zones, the Council must consider, among other things, “residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds adjacent to the proposed route of the overhead portions and the level of the voltage of the overhead portions and any existing overhead transmission lines on the proposed route.” Section 16-50p further states that “at a minimum, the existing right-of-way shall serve as the buffer zone.”

a. The Council Should Require the Applicants to Provide Maps of the Alternate Routes Under Consideration

The buffer zone requirement is not limited to the route proposed by the Applicants. Rather, the Act requires the Council to establish a buffer zone surrounding the transmission line that is actually sited, be it along the proposed route or along any of the alternate routes under consideration. Consequently, the Council should require that the Applicants provide maps of the alternate routes under consideration in this proceeding to enable the Council and participants to evaluate potential buffer zones along those routes. Such maps should identify residential areas, schools, licensed child day care facilities, licensed youth camps or public playgrounds along the alternate routes.

b. The Council Should Adopt Appropriate Standards Governing Buffer Zones

The Act establishes specific standards that will protect the health and safety of the public when overhead electric transmission lines are being sited. Because EMFs are a major focus of the legislation, a primary purpose of the buffer zone requirement is to provide reasonable and adequate protection to residential areas and other certain specified

facilities that are frequently used by children from the EMFs emitted by overhead electric transmission lines.

The language of P.A. 04-146 does not provide specific requirements for buffer zones in specific circumstances. Rather, the legislature left it to the Council to determine the buffer zones that are necessary to protect the public health and safety in each affected area.

The Council should adopt criteria that will govern the establishment of buffer zones surrounding overhead transmission lines. These criteria should, at the very least, include the following. First, as noted herein, the intent of any buffer zone established pursuant to the Act is to protect the statutorily specified facilities (residential, schools, etc.) from the health effects associated with EMFs. Therefore, the Council should seek to create buffer zones that maintain EMF levels at ambient levels at the statutorily specified facilities. This way, such facilities would effectively be held harmless for the EMF effects associated with the new overhead transmission line.

Second, although the language in P.A. 04-146 concerning buffer zones states that “[a]t a minimum, the existing right-of-way shall serve as the buffer zone,” the Council should make clear that it is neither appropriate nor consistent with the intent of the Act for the Council to establish an existing right-of-way as a buffer zone if there are houses, schools or other statutorily specified facilities located within that very right-of-way.

During the hearings in this proceeding, the Council requested that parties and intervenors address the issue of whether the Siting Council must consider cost when establishing buffer zones pursuant to the Act. Conn. Gen. Stat. § 16-50p provides that the Council shall not grant a certificate unless it shall find a public need for the proposed

facility, the probable environmental impact of the facility and why the adverse impacts are not sufficient to deny the application. Section 16-50p(a) also provides that in the case of electric transmission lines, the Council must find that the overhead portions “are cost effective” and are consistent with the Council’s best management practices for EMF and are to be contained within a buffer zone. Thus, while cost may be a consideration, the clear and overriding intent of P.A. 04-146 was to reduce EMF’s at the statutorily specified facilities.

In light of the foregoing, the Council should allow all participants the opportunity to present evidence concerning buffer zones for each of the various alternate routes under consideration in this proceeding, including any route or configuration that is proposed on August 16, 2004 as a result of the Applicants’ consultations with ISO-NE. Such an opportunity, however, should only occur after the Applicants have provided the information discussed herein; the proposed route and configuration as well as the location and EMF levels at the residential areas, schools, day care facilities, youth camps and playgrounds along each of the routes under consideration in this case.

WHEREFORE, for the foregoing reasons the Attorney General submits these
Comments in this proceeding.

Respectfully Submitted,

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