STATE OF CONNECTICUT
SITING COUNCIL

The Connecticut Light and Power 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 Facilities Between Scovill Rock Switching Station in Middletown And Norwalk Substation in Norwalk, Connecticut 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	:	Docket No: 272 March 11, 2005

BRIEF OF THE CONNECTICUT DEPARTMENT OF TRANSPORTATION

The Connecticut Department of Transportation (hereinafter "DOT") files this brief in support of its jurisdiction over the location and installation of the proposed Middletown to Norwalk 345 kilovolt transmission line in state highway rights-of-way. The preferred alternative seeks to bury the transmission line along approximately 24 miles of the route within highway rights of way. Since the majority of that mileage is located within state highway rights of way within the jurisdiction of the Commissioner of Transportation, the DOT asserts its authority over the precise location of the transmission lines within any specific part of the state highway rights-of-way and the means used to install the transmission lines to the extent necessary to protect the safety of the travelling public and the integrity of the highway system.

1. THE SITING COUNCIL AND THE DOT SHARE CONCURRENT JURISDICTION OVER THE PROPOSED TRANSMISSION FACILITIES WITHIN STATE HIGHWAY RIGHTS-OF-WAY.

A. APPLICANTS' FRANCHISE RIGHTS TO OCCUPY STATE HIGHWAY RIGHTS-OF-WAY ARE SUBSERVIENT TO PUBLIC TRAVEL.

Throughout the hearings in this proceeding, the Applicants asserted that they have "franchise rights" to locate their facilities in state highway rights of way. Although the amended charter of the Rocky River Power Company, XV Spec.Acts 1093, No. 446, §2 (1909), the predecessor to the Connecticut Power and Light Company, grants the Applicants the right to occupy public streets and ways, that right can only be exercised pursuant to the general statutes. In relevant part, the franchise authorization reads:

> ...deliver electricity...to electric companies...authorized to supply and distribute electricity...by wires, cables, conduits, conductors, and pipes, or any other apparatus necessary for the purpose, either overhead or underground, over or under streams, and through public streets and ways and public grounds, with power to change, relocate and alter the same whenever necessary....***The rights granted in this resolution shall be exercised pursuant to the provisions of the general statutes applicable thereto.***

Amending The Charter of the Rocky River Power Company, XV Spec.Acts 1093, No. 446, §2 (1909). Emphasis added.

A franchise is subject to the provisions of the general statutes even when there is no express language in the franchise's enabling legislation.

> "A franchise granted by the legislature does not carry with it the absolute right to place its installations where it pleases and without proper regulation. *State v. Towers*, 71 Conn. 657, 667, 42 A. 1083. Franchises are subject to the interests of the general public as expressed in general regulatory statutes. *Delinks v. McGowan*, 148 Conn. 614, 623, 173 A.2d 488."

Hartford Elec. Light Co. v. Water Resources Commission, 162 Conn. 89, 95-96; 291 A.2d 721, (1971).

Any right that the Applicants have to occupy state highway rights-of-way, whether by franchise or statute, is subservient to the use of the highway by the traveling public.

> 'Charters, franchises, statutory grants and permits affording the use of public ways to utility locations are subservient, expressly or by implication, in the exercise of governmental functions, to public travel and to the paramount police power and relocation of utility facilities in public streets or ways are at utility expense, a common law liability unless abrogated by the clear import of the language used in a particular statute.' 4 Nichols, op. cit. §15.22, and cases cited.

Connecticut Ry. & Lighting Co. v. New Britain Redevelopment Commission, 161 Conn. 234, 240, 287 A.2d 362 (1971).

Therefore, since the Applicants' right to occupy state highway rights-of-way is subservient to the use of the state highway rights-of-way by the travelling public, the Siting Council (hereinafter "Council") must read its own legislation in conjunction with that of the DOT over state highway right-of-way in order to ascertain the extent and limits of its jurisdiction over the proposed transmission line within the state highway right-of-way.

B. SITING COUNCIL JURISDICTION:

Pursuant to Conn. Gen. Stat. § 16-50k the Council is responsible for determining the environmental compatibility and public need of a facility. "Facility" is defined in Conn. Gen. Stat. § 16-50i(a)(1) as "An electric transmission line of a design capacity of sixty-nine kilovolts or more, . . . " The Applicants' argue in their brief that although there are DOT statutes and regulations regarding the use of state highways, if there is a conflict with the Council's authority, the Council authority prevails. Applicants' brief, page 3. That argument presumes a conflict among the statutes. DOT respectfully submits there is no such conflict. The issue is one of statutory interpretation. While the Council has jurisdiction over the general location of the

facility, DOT has jurisdiction over the placement within that location if that location is a state highway.

The specific jurisdictional statute regarding the Council's authority is found in Conn. Gen. Stat. § 16-50x. It provides in relevant part as follows:

> (a) Notwithstanding any other provision of the general statutes to the contrary, except as provided in section 16-243, the council shall have exclusive jurisdiction over the location and type of facilities and over the location and type of modifications of facilities subject to the provisions of subsection (d) of this section. In ruling on applications for certificates for facilities and on requests for shared use of facilities, the council shall give such consideration to other state laws and municipal regulations as it shall deem appropriate. Whenever the council certifies a facility pursuant to this chapter, such certification shall satisfy and be in lieu of all certifications, approvals and other requirements of state and municipal agencies in regard to any questions of public need, convenience and necessity for such facility.

The Applicants' cite this statute as well and focus on the language referring to "notwithstanding any other provision of the general statutes . . .", "exclusive jurisdiction" and "giving consideration to other state laws and municipal regulations as it deems appropriate". However what the Applicants' fail to do is to cite to the last sentence in that section. This is an important omission because that sentence gives clarification to the preceding language cited by the Applicants. That sentence provides that certification by the Council satisfies any other requirements by state or municipal agencies with regard to "public need, convenience and necessity". (emphasis added). Pursuant to Conn. Gen. Stat. § 1-2z "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes." Here the language is clear and if the legislature had intended the certification to be in lieu of all other requirements it would have said so. Instead it limited certification to those three issues.

The Applicants acknowledge that there are DOT statutes and regulations which discuss DOT's authority for state highways. In discussing the Council's jurisdiction, they focus on DOT regulation § 13b-17-17. That regulation provides that no work can be performed within a state highway without a permit from DOT and that issuance of a permit does not waive DOT's jurisdiction with regard to such highway. The Applicants' suggestion that there is a conflict between the language in the regulation and § 16-50x is misplaced. First and foremost the language in the regulation only refers to DOT's not waiving its jurisdiction upon the granting of a permit. Therefore there is no conflict between the regulation and §16-50x. The real question here is whether the Applicants are subject to DOT's permit requirements in the first place. As referenced earlier, DOT statutes give it authority in state highways. Conn. Gen. Stat. § 16-50x which gives jurisdiction to the Council only refers to location and type of facility. In addition, as mentioned earlier, the language also says that certification by the Council is only in lieu of other certifications as to public need, convenience and necessity. So while the Council can determine that the new line should go in or on a state highway (i.e. Route 1) as well as the type of facility (either XLPE or HPFF), DOT determines the conditions of how that line is placed within the highway.

Section 16-50x(d) does not change this analysis. That section allows towns and cities to restrict the location of certain types of facilities, subject however to Council review. This section does not apply to all types of facilities and certainly does not preclude other state agency requirements. The Applicants' cite to a DPUC decision with regard to that provision. What they did not cite is the language in the decision that provides that "[t]he municipalities and the state are also authorized to require all public utilities to obtain a permit for any excavation in a portion of any public highway." *DPUC Investigation of the Process of and Jurisdiction Over Siting*

Certain Utility Company Facilities and Plant in Connecticut, Decision (October 30, 1996), p.5, DPUC Docket No. 95-08-34.

In support of their arguments, the Applicants' also cite to the language in Conn. Gen. Stat. §§ 16-50l(b), 16-50j(h), 16-50g and 16-50p(a). Sections 16-50l(b) and 16-50j(b) which refers to consulting and providing copies of the application to various state agencies for comment and review. These agencies include the DOT, DEP and DPUC. The Applicants would have one believe that review and comments referred to in the statute precludes any other requirements by that agency. That is clearly not the case. The Applicants are still required to get Clean Water Act certification from DEP (Conn. Gen. Stat. § 22a-430), and by their own admission in their briefs, are subject to DPUC jurisdiction. Again, these provisions have to be read in conjunction with the jurisdiction section, § 16-50x. The DOT certainly has an interest in and should be consulted regarding the location and type of facility being proposed. In this docket DOT provided comments regarding the concerns about the fluid filled (HPFF) cable originally proposed (Exhibit 3, Testimony of Art Gruhn), as well as some of the various routes proposed (I-95, Merritt Parkway)(Exhibit 1, Testimony of Art Gruhn). They also indicated that if they had their preference, they would not want the facility in or on the state highway, in this case Route 1 (Exhibit 3, Testimony of Art Gruhn). The DOT concedes that type and overall location is in the Council's authority. However, as indicated earlier and expanded upon below, the DOT statutes and regulations give DOT authority to dictate the conditions of installation within that location.

Sections 16-50g and 16-50p(a) refer to granting or denying an Application upon such terms and conditions of the construction or operation of the facility as the Council deems appropriate. While the language appears to be broad, again, it has to be read in conjunction with § 16-50x. The Applicants argue that DOT cannot require any condition inconsistent with the certificate or

D&M plans approved by the Council. *Applicants' Brief*, page 6. Yet the Council's own regulations only refer to a D&M plan for a utilities right-of-way. The requirements for D&M plans can be found in the Council regulations, § 16-50j-60, et seq. The title of these sections is Right Of Way Development and Management Plan (emphasis added). Section 16-50j-60 subsection (a) sets forth the purpose and provides that "The council may require the preparation of right-of-way d & m plans for proposed electric transmission . . ." Section 16-50j-61 also refers extensively to the right-of-way. The only requirement as to public roads is that the maps show public roads that cross or adjoin the right-of-way. § 16-50j-61(b). In addition, it is also important to point out that § 16-50x exempts out from the Council authority the authority of the DPUC in § 16-243 to determine the methods of construction.

Finally, the Applicants' cite to legislative history to support their arguments. Pursuant to Conn. Gen. Stat. § 1-2z, one does not look beyond the statute unless the language is ambiguous. Here the language is clear. However, even if you look at the legislative history cited by the Applicants, their argument is misplaced. Representative Wagner's testimony cited by the Applicants states that at that time a public utility company had to go through sixteen applications "to have a power plant . . ." and that this "would consolidate the ones on the state level to one . . " (emphasis added). This only refers to the process for approval to have a facility and not the specifics associated with the construction of a facility at a specific location. Furthermore, as stated earlier, the Applicants must obtain approvals from the DEP, DPUC and municipal agencies, thus undermining the entirety of the Applicants argument.

C. THE GENERAL STATUTES GRANT THE DOT AUTHORITY OVER THE LOCATION AND INSTALLATION OF THE APPLICANTS' PROPOSED TRANSMISSION FACILITIES WITHIN STATE HIGHWAY RIGHTS OF WAY.

The DOT is "...responsible for all aspects of the planning, development, maintenance and improvement of transportation in the state." Conn. Gen. Stat. §13b-3. The Commissioner of Transportation is empowered to "coordinate and assist in the development and operation of a modern, safe, efficient and energy-conserving system of highway, mass transit, marine and aviation facilities and service" Conn. Gen. Stat. §13b-4(2), "[t]o study means of improving transportation safety..." Conn. Gen. Stat. §13b-4(6) and "[t]o provide for the planning and construction of any capital improvements and the remodeling, alteration, repair or enlargement of any real asset that may be required for the development and operation of a safe, efficient system of highway...transportation." Conn. Gen. Stat. §13b-4(12). The Commissioner has a duty to exercise "reasonable care to make and keep such roads in a reasonably safe condition for the reasonably prudent traveler." *Baker v. Ives*, 162 Conn. 295, 299, 294 A.2d 290 (1972); *Serrano v. Burns*, 248 Conn. 419, 426, 727 A.2d 1276 (1999).

In order to exercise reasonable care to make and keep state highways in a reasonably safe condition, the DOT exercises control over all persons or entities wishing to utilize the highway right of way for nontravel purposes through the issuance of encroachment permits. This requirement is consistent with the provisions of Conn. Gen. Stat. §13a-247 which reads, in relevant part:

> No person, firm or corporation shall excavate within or under, or place any obstruction or substruction within, under, upon or over, or interfere with construction, reconstruction or maintenance of or drainage from, any state highway without the written permission of the commissioner

Conn. Gen. Stat. §13a-247.

An encroachment is defined as "...an intrusion or use of a highway right of way for purposes other than for traveling." R.C.S.A. §13b-17-2. In this case, the proposed underground

345 kilovolt transmission line constitutes an encroachment within the state highway right of way necessitating written permission from the Commissioner.

The general statutes also grant the Commissioner of Transportation with jurisdiction over public service facilities within state highway right-of-way. A public service facility as "all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing...electricity...which directly or indirectly serve the public. Conn. Gen. Stat. §13a-126. Since the proposed 345 kilovolt transmission line would be a privately owned facility for transmitting electricity which directly or indirectly serves the public, the proposed 345 kilovolt transmission line constitutes a public service facility.

As a public service facility, the proposed 345 kilovolt transmission line, the Commission of Transportation has jurisdiction over the location and installation of the transmission line within, on, along, over or under the state highway right-of-way for functional and aesthetic purposes.

> Notwithstanding the provisions of any other statute, the Commissioner of Transportation may, for the purpose of protecting the functional or aesthetic characteristics of any state highway or state highway appurtenance, promulgate 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 and, when necessary to insure the protection of the aesthetic characteristics of any state highway, within, on, along, over or under the right-of-way of any other public highway; provided no such regulation shall limit, restrict or derogate from any power, right or authority of the Department of Public Utility Control as provided by statute in respect to the location and installation of such public service facilities.

Conn. Gen. Stat. §13a-126a.

This statute is significant in several respects. First, it confirms that the location of public service facilities can have a negative impact upon the functional and aesthetic characteristics of a

state highway, regardless of whether the public service facility is located within the state highway right-of-way or simply along the state highway right-of-way.

Second, this section recognizes the different roles played by various state agencies over the location and installation of public service facilities. Since this is a statute within the DOT's jurisdiction, it is subject to the DOT's interpretation. *Office of Consumer Counsel v. Department of Public Utility Control,* 252 Conn. 115, 742 A.2d 1257 (2000).

DOT interprets this section as granting it jurisdiction over the method of installation and the precise location of public service facilities within state highway right-of-way but reserving to the DPUC jurisdiction over determinations concerning the need to install and locate the public service facilities within its jurisdiction. The DPUC agreed that the DOT has jurisdiction over public service facilities in its Final Decision in Docket Number 00-03-09, an investigation of Cox Communications, in which the DPUC stated:

> ... the DOT has jurisdiction with respect to public service company facilities, including Cox's NRUs, located within state highway rights-of-way. Although the DOT may lack the authority to dictate the type of equipment that Cox may utilize for its network, Cox is required to comply with all applicable DOT statutes and regulations concerning installation of any facility or equipment within state highway rights-of-way.

DPUC Investigation into Coxcom, Inc. d/b/a/ Cox Communications Connecticut's Installation of Ground-Mounted Back-Up Generators, Decision (February 7, 2001), DPUC Docket 00-03-09.

The DOT's and the DPUC's[1] reading of the statutory scheme is consistent with rules of statutory construction where statutes are read together when they relate to the same subject matter.

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[1] The DOT does not attempt to speak on behalf of the DPUC but only references the DPUC decision in response to the lengthy references to the DPUC's statutes in the January 25, 2005 *Applicants' Brief Addressing DOT Jurisdiction Over Projects Approved by the Siting Council.* Since the DPUC statutes have no bearing on the relationship between the jurisdiction of the Siting Council and the DOT, the DOT leaves detailed discussion of the DPUC's statutes for another forum.

> We are obligated, furthermore, to read statutes together when they relate to the same subject matter." (Citations omitted; internal quotation marks omitted.) *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 482-83, 576 A.2d 510 (1990). "This is because of the presumption that the legislature intended to create a harmonious body of law." *Dept. of Administrative Services v. Employees' Review Board*, supra, 226 Conn. at 679, 628 A.2d 957.

State v. State Employees' Review Board, 239 Conn. 638, 653-654 (1997).

The third significant fact about §13a-126a is that it reads "[n]otwithstanding the provisions of any other statute." The sole exception set forth in the statute concerns the concurrent jurisdiction of the DPUC over public service facilities within state highway right-of-way.

The Applicants argue that the Council should interpret this provision as reading the words "Siting Council" into the statute in lieu of the DPUC. This the Council cannot do for two reasons. First, as previously stated, this is a statute within the DOT jurisdiction and subject to the DOT's interpretation. Second, and just as important, the statute does not contain a reference to the Council.

> "It is the duty of the court to interpret statutes as they are written; *Muha v. United Oil Co.*, 180 Conn. 720, 730, 433 A.2d 1009 (1980); and not by construction read into statutes provisions which are not clearly stated. *Glastonbury Co. v. Gillies*, 209 Conn. 175, 179, 550 A.2d 8 (1988)." (Internal quotation marks omitted.) *State v. Johnson*, 227 Conn. 534, 542, 630 A.2d 1059 (1993).

Luce v. United Technologies Corporation/Pratt and Whitney Aircraft Div., 247 Conn. 126, 133 717 A.2d 747 (1998).

The Supreme Court of Connecticut would prohibit a lower court from reading the words "Siting Council" into the provisions of Section 13a-126a. If a court cannot read the words "Siting Council" into the provisions of Section 13a-126a, then surely the Council would be similarly constrained.

Further statutory authority for the DOT's regulation of the transmission line in the state highway right-of-way can be found in Conn. Gen. Stat. §13a-126c.

> ***Notwithstanding any provision of the general statutes***, the Commissioner of Transportation may enter into an agreement with the owner or operator of a public service facility, as such facility is defined in section 13a-126, desiring the longitudinal use of the right-of-way of a state highway to accommodate trunkline or transmission type utility facilities and to fix the terms, conditions and rates and charges for use of such right-of-way; provided, no such agreement shall exempt a public service facility from the provisions of chapter 277a.

Conn. Gen. Stat. §13a-126c.

Section 13a-126c expressly addresses the longitudinal placement of transmission utility facilities within state highway rights-of-way and authorizes the Commissioner of Transportation to fix the terms, conditions, rates and charges for use of such right-of-way.

There could be no clearer indication of the legislature's intent to grant the DOT jurisdiction over the longitudinal placement of transmission facilities within state highway right-of-way than the provisions of Conn. Gen. Stat. §13a-126c.

Based upon the above, the DOT clearly has jurisdiction to control where the transmission line may be placed within the state highway right-of-way and the construction methods utilized to protect the safety of the traveling public.

D. THE COUNCIL AND THE DOT EACH HAVE JURISDICTION OVER THE PROPOSED TRANSMISSION FACILITIES.

The Applicants propose an interpretation of the general statutes in conjunction with their franchises that creates a conflict between the general statutes, with the Council's statutes preempting the DOT's statutes. This contradicts basic rules of statutory construction.

> In construing two seemingly conflicting statutes, "we are guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law...." (Internal quotation marks omitted.) *State v. Ledbetter*, 240 Conn. 317, 336, 692 A.2d 713 (1997). "Legislation never is written on a clean slate, nor is it ever read in isolation or applied in a vacuum. Every new act takes its place as a component of an extensive and elaborate system of written laws.... Construing statutes by reference to others advances [the values of

> harmony and consistency within the law]. In fact, courts have been said to be under a duty to construe statutes harmoniously where that can reasonably be done." 2B J. Sutherland, *Statutory Construction* (6th Ed. Singer 2000) § 53:01, pp. 322-24. Accordingly, "[i]f two statutes appear to be in conflict but can be construed as consistent with each other, then the court should give effect to both." (Internal quotation marks omitted.) *Wilson v. Cohen*, 222 Conn. 591, 598, 610 A.2d 1177 (1992); see *Hirschfeld v. Commission on Claims*, 172 Conn. 603, 607, 376 A.2d 71 (1977). "If a court can by any fair interpretation find a reasonable field of operation for two allegedly inconsistent statutes, without destroying or preventing their evident meaning and intent, it is the duty of the court to do so. *Knights of Columbus Council v. Mulcahy*, 154 Conn. 583, 590, 227 A.2d 413 (1967); *Shanley v. Jankura*, 144 Conn. 694, 702, 137 A.2d 536 (1957)." *Windham First Taxing District v. Windham*, 208 Conn. 543, 553, 546 A.2d 226 (1988). Therefore, "[w]e must, if possible, read the two statutes together and construe each to leave room for the meaningful operation of the other." *State v. West*, 192 Conn. 488, 494, 472 A.2d 775 (1984). In addition, "[i]f two constructions of a statute are possible, we will adopt the one that makes the statute effective and workable...." (Internal quotation marks omitted.) *State v. Scott*, 256 Conn. 517, 538, 779 A.2d 702 (2001). "Moreover, statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant...." (Internal quotation marks omitted.) *State v. Gibbs*, 254 Conn. 578, 602, 758 A.2d 327 (2000).

Nizzardo v. State Traffic Com'n, 259 Conn. 131, 157-158, 788 A.2d 1158 (2002).

Where the courts are charged to read seemingly conflicting statutes together, the Council should do no less.

The DOT statutes govern the location of transmission facilities within state highway rights of way. The Public Utilities Environmental Standards Act ("PUESA") vests the Council with general regulatory authority over high voltage transmission lines. When read together, a reasonable interpretation of the general statutes has the Council dictating the general requirements for the transmission facilities while the DOT regulates the Applicants' construction and maintenance activities in the state highway rights of way. The DOT requirements protect the traveling public through the use of skid resistant steel plates covering open trenches (Testimony of Arthur Gruhn, Tr. 4/22/2004 p. 171) and minimizes the impacts on the transportation system by limiting construction to off- peak travel times (DOT Exhibit 3, Testimony of John F. Carey;

Testimony of Arthur Gruhn, Tr. 4/22/2004 p. 170). These requirements do not infringe upon the Council's jurisdiction over the technical aspects of the transmission facilities just as the Council's determinations on the type of cable (HPFF versus XLPE) or type of current (AC versus HVDC) do not impinge upon the jurisdiction of the DOT.

If the Council were to believe the Applicants argument that a conflict exists between the statutes under the Council's jurisdiction and those under the jurisdiction of the DOT, the more specific terms and conditions fixed by the DOT for the longitudinal use of the state highway right of way pursuant to Section 13a-126c would prevail over the general provisions contained in the PUESA.

> "It is a well-settled principle of [statutory] construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling....

State v. State Employees' Review Board, 239 Conn. 638, 653 (1997)

The Applicants reliance on the Council and DPUC statutes along with their franchises to preempt DOT control of the state highway rights of way is misplaced. The Applicants attempt to transform the state highway right-of-way, paid for by the taxpayers of Connecticut, into a utility right of way for the benefit of and at no cost to the Applicants' shareholders. This was never the intent of the franchise legislation and such an argument flips over one hundred years of utility regulation on its head.

> While the relator is a public corporation, in the sense that it must give all persons the same measure of service for the same measure of money, yet, in the sense that it performs any public duty or any public service, it is not a public corporation. It renders no service for which it does not require full pay. It is not seeking to put its wires underground...in any...street, from any public motive. It is seeking to make gain. It is acting, not upon compulsion, but for its corporate profit. It seeks to increase its private income. If it does any public benefit, that is merely incidental. The right which it has to lay its wires underground in the highways, however it is to be exercised, is to it a valuable franchise, for which it has paid nothing. It is a franchise the granting of which encroached to some extent upon

> the rights of the public in the highways. All such grants must be strictly construed against the grantee. *Wisconsin Cent. R. Co. v. U. S.*, 164 U. S. 202, 17 Sup. Ct. 45; End. Interp. St. 354. The primary purpose for which a street is laid out and maintained is for a highway,--a place common to all for passing and repassing, on foot and in vehicles, at their pleasure, or as their needs may require.

State v. Towers, 71 Conn. 657, 42 A. 1083 (1899).

The DOT does not believe that there is any conflict between the jurisdiction granted to the Council over the installation of the proposed transmission facilities and the jurisdiction granted to the DOT over the installation and location public service facilities in state highway rights of way.

E. CONCLUSION

The Council should defer to the DOT's expertise in protecting the traveling public and recognize the DOT's concurrent jurisdiction over the proposed transmission facilities as a transmission type public service facility within the state highway rights-of-way.

2. THE SITING COUNCIL SHOULD SELECT ALTERNATIVE A AS THE PROPOSED ROUTE FOR THE TRANSMISSION LINE IN ORDER TO ALLOW FOR ADDITIONAL UNDERGROUNDING IN SEGMENTS 1 AND 2.

Alternative A has four significant benefits over the proposed route. First, it includes only 13 miles of undergrounding, allowing the Council to require additional undergrounding in portions of Segments 1 and 2 proximate to statutory facilities as set forth in Section 16-50p, without negatively impacting system reliability.

Second, Alternative A reduces existing magnetic field levels between Hawthorne and Norwalk Substation.

Third, Alternative A utilizes fewer state highway miles for the underground portion, thus reducing the negative impact of the proposed transmission facilities on the State's transportation system.

Fourth, Alternative A is cheaper than the preferred route and with less undergrounding, presents fewer chances for "surprises" that could add to the overall cost of the project.

During cross examination of the Applicants' witnesses on February 1, 2005, the witnesses indicated that they did not believe that the electromagnetic fields along Alternate Route A could attain a 6 milligauss reading along that segment of the transmission lines. Tr. 2/1/2005, pp. 283-286. The Applicants conceded that the proposed 125' right of way for the overhead portion of Alternate A was the same width as the right of way for Segment 2. When asked why Segment 2 could attain a 6 milligauss level but the overhead portion of Alternate A could not, the Applicants indicated that the line loading was higher on Alternate A. The Applicants agreed that additional right of way along Alternate A could assist in attaining a 6 milligauss level at the edge of the right of way. Tr. 2/1/2005, p.285, l.14-17.

In reviewing the Applicants' Exhibit 41, Responses dated March 17, 2004 to the Attorney General's Interrogatories, Set Two, the calculated electromagnetic fields for average loading across Segment 2 is 15 gigawatts and the peak loading was 27.7 gigawatts. The Applicants failed to explain how the loads on Alternate A could be any higher than the 15 GW average and the 27.7 GW peak used in Exhibit 41. This indicates the possibility that Alternate A should be a viable alternative route for consideration by the Council.

The DOT directs the Council's attention to Figures 64, 66 and 68 of Volume 6 of the Application. Although the calculated magnetic fields may exceed 6 milligauss at the edge of the

right of way, by the Applicants' own calculations, the magnetic fields at the edge of the proposed right of way is less than the existing magnetic fields at the edge of the right of way.

The existing right of way on Alternative A is only 80 feet wide. The Applicants represented that they would have to acquire an additional 45 feet of right of way to attain a 125' wide right of way for Alternate A. On page I-29, Volume 1 of the Application, the Applicants indicated that the cost of right of way easements for Alternate A would be $14 million. Therefore, if the Applicants needed to acquire an additional 45' of right of way to further expand the Alternate A right of way, using the Applicants numbers, the Applicants would have to expend an additional $14 million. Considering the fact that the high end estimate of the Proposed Route is $993 million compared to the high end cost of $947 million for Alternative A, an additional $14 million for Alternative A would still be less costly than the Proposed Route. Applicants' Exhibit 172, 172. Testimony of Anne Bartosewicz and John Prete, dated December 28, 2004.

CONCLUSION

The DOT respectfully submits that the Council should designate Alternate A as the preferred route for the construction and installation of the proposed transmission facilities.

RESPONDENT
CONNECTICUT DEPARTMENT OF TRANSPORTATION

BY: _____

Charles H. Walsh
Assistant Attorney General
Juris No. 402623
55 Elm Street
Hartford, CT 06141-1774
Tel: (860) 808-5090
Facsimile: (860) 808-5384

BY: _____

Eileen Meskill
Assistant Attorney General
Juris No.
55 Elm Street
Hartford, CT 06141-1774
Tel: (860) 808-5090
Facsimile: (860) 808-5384

CERTIFICATION

I hereby certify that a copy of the foregoing was sent by U.S. Mail, postage prepaid, this 11th, day of March, 2005, to the Service List.

Charles H. Walsh
Assistant Attorney General