

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**NORTHEAST UTILITIES SERVICE
COMPANY APPLICATION TO THE
CONNECTICUT SITING COUNCIL
FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED (“CERTIFICATE”)
FOR THE CONSTRUCTION OF A
NEW 345-KV ELECTRIC TRANSMISSION
LINE FACILITY AND ASSOCIATED
FACILITIES BETWEEN SCOVILL
ROCK SWITCHING STATION IN
MIDDLETOWN AND NORWALK
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
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 24, 2005

**POST-HEARING BRIEF OF EZRA ACADEMY, CONGREGATION B’NAI JACOB,
THE JEWISH COMMUNITY CENTER OF GREATER NEW HAVEN AND
THE JEWISH FEDERATION OF GREATER NEW HAVEN**

I. Introduction

Ezra Academy, Congregation B’nai Jacob, The Jewish Community Center of Greater New Haven and The Jewish Federation of Greater New Haven (the “Woodbridge Organizations”) submit this post-hearing memorandum to the Connecticut

Siting Council (the “Siting Council”), addressing issues of specific concern to the Woodbridge Organizations that have not been thoroughly briefed by other parties.

The Woodbridge Organizations adopt and incorporate by reference herein the Joint Brief on Selected Issues dated March 16, 2005 filed by the Towns of Cheshire, Durham, Wallingford and Woodbridge and the City of Milford (the “Towns’ Joint Brief”). The Towns’ Joint Brief addresses certain critical issues¹ in a comprehensive and persuasive manner and the Woodbridge Organizations will not repeat those arguments. The Woodbridge Organizations further adopt and incorporate by reference herein the Town of Woodbridge Post-Hearing Brief dated March 16, 2005 (the “Woodbridge Brief”) which comprehensively and persuasively demonstrates that a 3.4 mile porpoise in Woodbridge is technologically feasible and that a 3.4 mile porpoise will avoid unacceptable EMF exposure levels for children at the B’nai Jacob Ezra/Academy Campus and the Jewish Community Center campus,

In this Brief, rather than cover matters comprehensively addressed in the Towns’ Joint Brief and the Woodbridge Brief, the Woodbridge Organizations will address the

¹ The Woodbridge Organizations bring to the Siting Council’s attention the portions of the Towns’ Joint Brief which set forth why the proceedings before the Siting Council have not complied with the provisions of P.A. 04-246 and the portions dealing with the failure to update the Vintage BMP in the manner required by P.A. 04-246. The Woodbridge Organizations especially bring to the Council’s attention the portions of the Towns’ Joint Brief dealing with issues concerning EMF, including that the Council must use a 3mG threshold exposure level, that the 15 GW “case” should not be the basis on which the Council considers EMF, that split phasing should not be viewed as a “miracle cure”, that a “no net increase” standard would violate P.A. 04-256, that the Vermont siting decision is irrelevant to the proceedings before the Siting Council, that the Siting Council must establish buffer zones for overhead lines which protect the public health, safety and welfare from the effects of EMF, that the Siting Council is prohibited from considering costs in determining whether to order portions of the proposed line adjacent to Statutory Facilities to be underground and that P.A. 04-246 requires the Applicants to demonstrate that it is “technologically infeasible” to bury portions of the line.

fact that the entire manner in which the Applicants have addressed whether undergrounding is technologically feasible in the areas of the Woodbridge Organizations Statutory Facilities has been flawed. More specifically, the Woodbridge Organizations submit that the Applicants have not satisfied the requirement of P.A. 04-246 to maximize the amount of underground construction adjacent to “Statutory Facilities” that is technologically feasible.

II. P.A. 04-246 Requires That The Council Maximize The Amount Of Undergrounding Adjacent To Statutory Facilities.

A. It is improper to evaluate the feasibility of undergrounding near the Woodbridge Organizations Statutory Facilities on the assumption that the 24 miles in Fairfield County will be underground.

Section 7 of P.A. 04-246, now codified as Section 16-50p(h) of the General Statutes, provides as follows:

For 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 daycare 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.

The Legislature, in enacting the above provision, made a finding that placing overhead portions of a 345-kV facility adjacent to a school, licensed daycare facility, licensed youth camp or public playground is inconsistent with the purposes of the chapter—namely, to protect the health and safety of all citizens of the State of Connecticut, but particularly of the children of the State of Connecticut. The statutory ability to rebut this

presumption can only be accomplished by demonstrating that it will be technologically infeasible to bury the facility in the areas adjacent to Statutory Facilities. Nowhere in the statute does it say that, after assuming that the proposed transmission lines will be buried in certain locations for cost, right-of-way width, esthetics, political or other considerations, that the Applicants and/or the Siting Council should determine if any additional undergrounding adjacent to Statutory Facilities is technologically feasible.

Even in the view of the Applicants (as confirmed in the ROC Report and by KEMA), a minimum of 24 miles of the proposed transmission lines can be constructed underground. The Applicants would have the Siting Council believe that those 24 miles of undergrounding must be between Norwalk and East Devon as initially proposed by the Applicants. The studies and analyses done by the Applicants and their consultants and sister organization, ISO-New England, all studied whether or not the 24 miles of undergrounding proposed in Fairfield County was technologically feasible and then whether any additional miles of undergrounding were technologically feasible in light of the 24 miles to be undergrounded in Fairfield County. This is not a methodology that is consistent with or in compliance with P.A. 04-246.

The 24 miles of undergrounding in Fairfield County were not approved in some prior proceeding of the Siting Council. That location of the underground portion of the proposed lines is not a given, regardless of the preferences of the Applicants or the political difficulty in obtaining approval of the proposed 345-kV transmission facility if portions of it are overhead in Fairfield County. This new transmission facility, which will primarily benefit southwestern Connecticut, need not be constructed in a manner that imposes the smallest burden, political or otherwise, on southwestern Connecticut and

yet creates avoidable significant health risks to large numbers of children along other portions of the proposed route.

B. The Applicants have failed to examine or test the feasibility of undergrounding adjacent to Statutory Facilities.

P.A. 04-246 requires that the proposed transmission lines be constructed underground in the area of Statutory Facilities to the maximum extent technologically feasible. Given such a mandate, the logical and necessary manner of analysis with which the Applicants must comply, as must the Siting Council, is to first identify those Statutory Facilities along the route of the transmission line if the route was entirely overhead. Next, the analysis must determine whether it is technologically feasible to construct the transmission facility underground in the area of all the Statutory Facilities or the largest number of the most sensitive of the Statutory Facilities. The Applicants and Siting Council can then analyze what additional undergrounding is technologically feasible to avoid acquiring additional property and to minimize other impacts of the proposed transmission lines. This analysis has never been done by the Applicants or the Siting Council.

To the knowledge of the Woodbridge Organizations, there is no information in the record identifying the undergrounding that would be necessary (along a proposed overhead route of the entire transmission line) in order to construct the transmission line underground near all Statutory Facilities. The Woodbridge Organizations believe, based upon the facts developed in the record, that 24 miles of undergrounding would be

more than enough to underground the transmission line next to all Statutory Facilities. If this can be done, P.A. 04-246 mandates that it be done.²

- C. It is not technologically infeasible to underground the portion of the proposed transmission lines near the Woodbridge Organizations' Statutory Facilities.

As demonstrated in the Woodbridge Brief, a 3.4 mile porpoise in Woodbridge is technologically feasible. Such a configuration would avoid overhead lines at the B'nai Jacob/Ezra Academy Campus and the Jewish Community Center Campus. The Applicants have conceded that this underground route could be constructed. KEMA testified that a porpoise configuration does not weaken the system and, in fact, there are some advantages to porpoising from a resonance and TOV point of view. The Siting Council has recently approved porpoising of underground lines in its Docket 217.

The B'nai Jacob/Ezra Academy Campus and the Jewish Community Center Campus contain a school, a day camp, day care centers, and playgrounds. Hundreds of children spend significant hours per day at these facilities. They are the most significant³ of the Statutory Facilities that have been identified in this Docket. Construction of the proposed line will expose the children who spend time at these institutions to unacceptable levels of EMF. The Legislature in P.A. 04-246 has mandated a solution, that is, undergrounding unless it is technologically infeasible to do

² This is not to say that the Woodbridge Organizations do not believe that it has been shown that more than 24 miles of undergrounding is not technologically feasible, but rather that even the amount of undergrounding that the Applicants, ISO-New England and all the consultants agree can feasibility be underground, if priority is given to undergrounding near Statutory Facilities, would result in undergrounding in the area of the facilities operated by the Woodbridge Organizations.

³ In this context, the term significant is used with respect to the number of children that use the facilities for extended hours daily.

so near these Statutory Facilities. The Applicants have failed to comply with the statutory mandate in both their Application and the expert studies and information they provided to the Siting Council. The Siting Council must reject the Application until it meets the statutory requirement of undergrounding the proposed transmission lines in the areas adjacent to Statutory Facilities, as required by law.

While the routes proposed by the Applicants are not exhaustive of all proposed routes for the transmission line, it is interesting to look at those routes in light of the requirements of P.A. 04-246. The Applicants describe a route labeled Alternative A which would have a portion of the 345-kV facility in Fairfield County overhead and a portion underground. Alternative A would have approximately 13 miles of underground construction in Fairfield County rather than the Applicants' proposal of 24 miles. Under Alternative A, no Statutory Facilities have been identified by the Applicants along miles of overhead construction in Fairfield County. Certainly no schools or camps have been identified adjacent to the overhead portions of the line in Fairfield County proposed in Alternative A. To the extent Alternative A would have overhead lines adjacent to any residential areas, the Applicants' proposal for total overhead construction north of Singer Station in Milford also passes through many residential areas.

It is not permissible under the provisions of P.A. 04-246 to "assume" that 24 miles of undergrounding will be located in Fairfield County and then look to see if additional undergrounding is technologically feasible. There may be very good reasons to underground the proposed 345-kV facility in Fairfield County. It will clearly result in lower EMF emissions. It will clearly eliminate the need for tall transmission towers that will scar the landscape. It will clearly reduce the amount of land that may have to be

cleared or the need to require some additional land to widen the existing right of way in some locations. It may even be cheaper to place all the undergrounding in one continuous run in Fairfield County rather than porpoising the undergrounding along the entire route of the proposed transmission lines. However, these considerations cannot be used as priorities by the Applicants or the Siting Council in order then to justify a finding that it is technologically infeasible to porpoise the proposed facility underground in the area of the Statutory Facilities at other locations along the proposed route, especially in the area of the B'nai Jacob/Ezra Academy Campus and the Jewish Community Center Campus.

While Applicants have not developed the record to the extent necessary to determine if undergrounding adjacent to all Statutory Facilities is technologically feasible, the Woodbridge Organizations believe that it would be. However, if in fact undergrounding is not possible adjacent to all Statutory Facilities, the Woodbridge Organizations submit that the undergrounding should be placed adjacent to the Statutory Facilities that are closest to the proposed power lines and that result in the exposure to the largest number of children. Using such criteria, since the proposed overhead power lines pass through the B'nai Jacob/Ezra Academy Campus and through the Jewish Community Center Campus, there are no Statutory Facilities closer to the proposed overhead lines than those facilities. Further, to the knowledge of the Woodbridge Organizations, there are no impacted Statutory Facilities which are used regularly by the hundreds of children who attend the Woodbridge Organizations. Thus, if it is necessary to prioritize among Statutory Facilities, those of the Woodbridge Organizations would be the highest priority or one of the highest priorities in light of the

statutory mandate of P.A. 04-246 to protect the public health and safety, especially of vulnerable children.

III. The Council Should Bypass The North Side Of The B'nai Jacob/Ezra Academy Campus On the Reis Parcel.

In the event that the proposed 345-kV transmission line is not undergrounded in the area of the B'nai Jacob/Ezra Academy Campus, it is critical that the Siting Council order that the overhead route on the north side of that Campus "bypass" the Campus on the undeveloped adjacent land currently owned by David Reis (the "Reis Parcel").

It has been recognized by all parties to this Docket that distance is the best means of reducing EMF levels to safe or background levels. On the north side of the B'nai Jacob/Ezra Academy Campus, there is an undeveloped parcel of land owned by David Reis. The Reis Parcel is already encumbered by the right-of-way of the existing 115-kV power lines. These are the same power lines which currently cross the B'nai Jacob/Ezra Academy Campus. By placing the proposed 345-kV transmission line on the Reis Parcel on the north side of the Campus, the proposed power line could be placed a safe distance from the Statutory Facilities on the B'nai Jacob/Ezra Academy Campus.

The Siting Council is appropriately considering a bypass onto undeveloped land to move the proposed 345-kV power lines a safe distance from the Royal Oak subdivision. Similarly, the Siting Council should order a "bypass" of the north side of the B'nai Jacob/Ezra Academy Campus by locating the proposed transmission lines on the undeveloped Reis Parcel. If such a bypass is ordered, the power lines in that area will be a safe distance from the Statutory Facilities on the B'nai Jacob/Ezra Academy

Campus. These are facilities used by hundreds of children each day. The Reis Parcel is undeveloped and is already encumbered by the same electric utility right-of-way. The proposed 345-kV transmission line, if placed overhead, will go over the Reis Parcel. Ordering the Applicants to bypass the northern portion of the B'nai Jacob/Ezra Academy Campus by use of the Reis Parcel will simply relocate a portion of the utility right-of-way on the Reis Parcel. It will not impact on any developed residential area. There is simply no principled reason why the route of the proposed 345-kV line should not bypass the north side of the B'nai Jacob/Ezra Academy Campus on the Reis Parcel in order to protect the health, welfare and safety of the hundreds of children using the B'nai Jacob/Ezra Academy Campus daily.

IV. Conclusion

The Applicants told the Siting Council, orally and in their prior written submissions, that P.A. 04-246 did not change the law applicable to the Siting Council's consideration of the current application. The Applicants proceeded on that assumption, which assumption is clearly wrong. P.A. 02-246 applies to this proceeding and upon enactment, it required the Applicants to go back and re-think their application and to identify a route that would maximize to the extent technologically feasible the undergrounding of the proposed transmission lines adjacent to Statutory Facilities. The Applicants have failed to do so. The Siting Council has failed to require the Applicants to do so. The Siting Council must reject the Application or, at a minimum, require the Applicants to come back to the Siting Council with a proposed route that maximizes undergrounding adjacent to Statutory Facilities. The Woodbridge Organizations submit that any such fair analysis and compliance with P.A. 04-246 will include porpoising of

the proposed facility underground for 3.4 miles in Woodbridge, thereby eliminating overhead transmission lines which pass over and through the B'nai Jacob/Ezra Academy Campus and the Jewish Community Center Campus.

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