

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

APPLICATION FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR AN ELECTRIC
TRANSMISSION LINE FACILITY BETWEEN
PLUMTREE SUBSTATION, BETHEL AND
NORWALK SUBSTATION, NORWALK

DOCKET NO. 272

JULY 19, 2004

COMMENTS OF ISO NEW ENGLAND INC.
REGARDING PUBLIC ACT 04-246

Introduction

The Connecticut Siting Council (the “Council”) has requested the views of participants in the above-referenced proceeding on the impact of Connecticut Public Act 04-246, *An Act Concerning Electric Transmission Line Siting Criteria* (the “Act”), on the proceeding both through requests made during the hearings¹ and in an interrogatory issued by Council staff.² ISO New England Inc. (“ISO”) appreciates the opportunity to address those areas of interest to the Council which are relevant to ISO’s mission as the operator of the New England bulk power system.

General Comments Regarding the Act

The Act involves the protection of designated areas and facilities from electromagnetic fields (“EMFs”). The areas and facilities specified by the Act for such

¹ See, e.g., 6/1/04 Tr. at p. 8; 6/15/04 Tr. at p. 197-99.

² See July 1, 2004 Memo from Mr. Phelps to Participants, setting forth the following interrogatory:

Provide a description of “buffer zone” for the proposed 345-kV transmission line including but not limited to the following criteria: maximum specific milliguass, minimum specific distance, and maximum specific tower height pursuant to Public Act 04-246, An Act Concerning Electric Transmission Line Siting Criteria.

protection are residential areas, private or public schools, licensed child day care facilities, licensed youth camps or public playgrounds (“Protected Areas”).³ The protection afforded these Protected Areas by the Act is essentially twofold: (1) the overhead portions of an electric transmission line shall be contained within a “buffer zone” that protects the public health and safety, taking into consideration Protected Areas adjacent to the proposed overhead transmission route and the proposed voltage level of such overhead transmission line;⁴ and (2) overhead transmission of 345-kV or greater adjacent to Protected Areas is presumed to be inconsistent with the Public Utility Environmental Standards Act (“PUESA”)⁵ unless it can be demonstrated that it would be technologically infeasible, based on the reliability and operability⁶ of Connecticut’s electric transmission system, to bury the transmission facility.⁷

³ See, e.g., Sec 1(a)(1)(C) of the Act.

⁴Section 3(a)(4)(C) of the Act, amending Section 16-50p of the Connecticut General Statutes (“CGS”), requires the following determination by the Council in certifying a proposed transmission facility (new language added by the Act is underlined):

(C) that the overhead portions, if any, of the facility, or a feasible and prudent alternative provided to the council by a party or intervenor, are cost effective and the most appropriate alternative based on a life-cycle cost analysis of the facility and underground alternatives to such facility, are consistent with the purposes of this chapter, with such regulations or standards as the council may adopt pursuant to section 16-50t, including, but not limited to, the council's best management practices for electric and magnetic fields for electric transmission lines and with the Federal Power Commission "Guidelines for the Protection of Natural Historic Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" or any successor guidelines and any other applicable federal guidelines and 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;

⁵ CGS Chapter 277a.

⁶ The legislative intent in passing HB 5418 (Public Act 04-246) was that reliability was synonymous with operability. See f.n. 9, *supra*, and related text.

⁷ See Sec. 7 of the Act, amending CGS Section 16-50p by adding a new subsection (h) as follows:

The Act also requires that a certification proceeding for a proposed electric transmission facility include information, assessments and findings regarding EMFs to be produced by the proposed transmission line, and the Act requires overhead transmission portions of a proposed transmission facility to be consistent with best management practices to be adopted by the Council⁸ for EMFs for electric transmission lines.

Buffer Zone and Underground Transmission Requirements of the Act

In the context of this proceeding, ISO interprets the Act as requiring that the Middletown-Norwalk transmission facility be placed underground in areas adjacent to Protected Areas, if technologically feasible to do so. If underground placement in areas adjacent to Protected Areas is technologically infeasible, based on the impact such underground placement would have on the reliability and operability of the power grid, then overhead portions of the transmission line adjacent to Protected Areas would have to be placed in an appropriate buffer zone.

Other than stating that the existing right-of-way shall be the minimum buffer zone, the Act does not contain specific qualitative or quantitative criteria that indicate how far overhead transmission must be from Protected Areas, leaving this matter to the Council's consideration and to best management practices for EMFs to be adopted by the

(h) 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 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.

⁸ See Sec. 10(c) of the Act, amending CGS Section 16-50t.

Council. As a result, the Siting Council will have to use its discretion to determine what portions of the transmission facility would be considered “adjacent to” Protected Areas for purposes of either applying the Act’s presumption against overhead transmission with respect to Protected Areas or determining its buffer zone requirement. ISO does not take a position with respect to the determination of an appropriate buffer zone or to EMF assessments and determinations, but instead believes that the Applicants and other parties will address such issues.

Except as set forth above, particularly with respect to buffer zones and the rebuttable presumption against siting overhead 345-kV transmission adjacent to Protected Areas, the Act contains no new underground transmission mandates and sets forth no absolute requirement of underground transmission. Therefore, except where a Protected Area would be subject to an unrebutted presumption against overhead transmission, the Act introduces no new or further requirement of underground transmission if EMF concerns are met by an appropriate buffer zone.

Underground Transmission Feasibility and Reliability Considerations in the Act

ISO believes the Act is appropriately mindful of the limitations that system operating concerns may place on the use of underground transmission and of the need to avoid threatening the reliability of the bulk power grid. Therefore, the Act directs the Council to consider the impact of burying the facility on the reliability of the bulk power system, and if such a proposal is technologically infeasible from this perspective, the presumption that a proposal for overhead 345-kV transmission adjacent to Protected Areas is inconsistent with PUESA may be overcome.

In this regard, the legislature intended the reliability standards utilized by ISO in operating the system to apply to the issue of feasibility. During debate on the proposed legislation, discussion involving Representative Backer, Co-Chair of the Energy and Technology Committee, and Representative DelGobbo, Ranking Member of that Committee, indicated that “reliability” as used in the bill meant a system that would function in accordance with ISO standards and technical feasibility, and ISO’s operability of the transmission system was referred to as a common standard for reliability.⁹

Finally, the Act did not amend CGS Section 16-50t(a), a provision of pre-existing law which deals with the establishment of regulations and standards, as it pertains to the gradual elimination of overhead electric transmission and distribution lines in accordance with existing applicable technology and the need to provide electric service at the lowest reasonable cost to consumers.¹⁰ ISO believes that this signals a further intention by the

⁹ Pertinent excerpts from the discussion between Representatives Backer and DelGobbo during floor debate are as follows:

Rep. Backer: (121st)

... When we speak of reliability in the bill we obviously are speaking to a system that would function. That it would function in accordance with the standards of ISO and what is technically feasible. So I think the simple answer to that question is yes. Reliability and operability are very much one in the same. You can’t have something that is operable if it’s not reliable. (5/3/04 House of Representatives Session Tr. at p. 238).

...

Rep. DelGobbo: (70th)

...we go through so many arcane elements of this issue that in fact the term about reliability in my understanding refers to the independent system operators operability of the electric transmission system. That is sort of a common standard. Is that your understanding?

...

Rep. Backer: (121st)

... the answer is yes that is exactly what I mean. (5/3/04 House of Representatives Session Tr. at pp. 238-39).

¹⁰See CGS 16-50t(a), which provides in pertinent part as follows:

- (a) The council shall prescribe and establish such reasonable regulations and standards in accordance with the provisions of chapter 54 as it deems necessary and in the public interest

legislature to assure that underground placement of transmission does not outpace technological advances so as to impair reliable operation of the bulk power system.

Cost Considerations

Insofar as the Act did not change CGS Section 16-50t(a)(3),¹¹ cost considerations are still relevant. That subsection continues to indicate that the elimination of overhead transmission and distribution lines should be in accordance not only with existing applicable technology, but also with the need to provide electric service at reasonable cost to consumers. It would therefore be appropriate for the Council to take into consideration any significant cost difference between underground and overhead transmission alternatives for the Middletown-Norwalk transmission line.

Respectfully submitted,

ISO NEW ENGLAND INC.

By s/Anthony M. Macleod

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Its Attorneys

with respect to ... siting of facilities and environmental standards applicable to facilities, including, but not limited to, regulations or standards relating to: (1) Reliability, effluents, thermal effects, air and water emissions, protection of fish and wildlife and other environmental factors; (2) the methodical upgrading or elimination of facilities over appropriate periods of time to meet the standards established pursuant to this subsection or other applicable laws, standards or regulations; and (3) the elimination of overhead electric transmission and distribution lines over appropriate periods of time in accordance with existing applicable technology and the need to provide electric service at the lowest reasonable cost to consumers.

¹¹ *Ibid.*

CERTIFICATION

I hereby certify that a copy of the foregoing was hand delivered or sent via email or first class mail postage prepaid, on July 19, 2004 to all parties and intervenors of record as shown on the attached service list.

s/Anthony M. Macleod
Anthony M. Macleod
Commissioner of the Superior Court

SERVICE LIST

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| Applicant | Northeast Utilities Service Company | Anthony M. Fitzgerald, Esq. Brian T. Henebry, Esq. Carmody & Torrance LLP 50 Leavenworth St., P.O. Box 1110 Waterbury, CT 06721-1110 (203) 573-1200 (203) 575-2600 - fax afitzgerald@carmodylaw.com bhenebry@carmodylaw.com tranmn345docket272@nu.com |
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| <p style="text-align: center;">Intervenor (approved 2/18/04)</p> | <p>Honorable William A. Aniskovich State Senate – 12th District 15 Grove Avenue Branford, CT 06405 (860) 240-0596 William.A.Aniskovich@po.state.ct.us</p> | |
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| <p style="text-align: center;">Party (approved 3/17/04)</p> | <p>Woodbridge Jewish Organizations <i>(Ezra Academy, B’Nai Jacob, the Jewish Community Center of Greater New Haven, the Jewish Federation of Greater New Haven, and the Department of Jewish Education).</i></p> | <p>David R. Schaefer, Esq. Brenner Saltzman & Wallman, LLP 271 Whitney Avenue New Haven, CT 06511 (203) 772-2600 (203) 562-2098 fax dschaefer@bswlaw.com</p> |

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| <p>Intervenor (approved 3/23/04)</p> | <p>First District Water Department</p> | <p>Franco Chieffalo General Supervisor First District Water Department P.O. Box 27 Norwalk, CT 06852 (203) 847-7387 (203) 846-3482 fax fchieffalo@norwalkfdwd.org</p> |
| <p>Intervenor (approved 4/15/04)</p> | <p>Honorable Leonard A. Fasano State Senator – 34th District 7 Sycamore Lane North Haven, CT 06473</p> | |
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| Party (approved 07/13/04) | Town of Branford | Honorable John E. Opie, First Selectman Branford Town Hall P.O. Box 150, Town Hall Branford, CT 06405 |