

STATE OF CONNECTICUT
SITING COUNCIL

PETITION NO. 1154 –

Eversource Energy petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed modifications to the existing Haddam Substation and associated 345-kV and 115-kV transmission lines Located at 1384 Saybrook Road, Haddam, Connecticut.

JUNE 8, 2015

PETITION TO INTERVENE UNDER CEPA, §4-177a AND §16-50j-14 AS A PARTY

BY FRITZ DAHLGREN

Comes now, Fritz Dahlgren, ("Mr. Dahlgren") and submits the following petition to intervene as a party in this Petition proceeding seeking a declaratory ruling that no certificate of public need and environmental compatibility is required for Eversource to modify its substation Facility in Haddam, Connecticut. The purpose of the intervention is to participate in these proceedings to prevent unreasonable impact to the natural resources of the State including wetlands, wildlife habitat and scenic vistas so that evidence of alternative configurations and mitigation may be entered into the record.

Pursuant to Conn.Gen.Stat. §22a-19 ("CEPA"), R.C.S.A §16-50j-14 and C.G.S §4-177a, Mr. Dahlgren is a resident of the Town of Haddam whose home abuts the Facility which is the subject of this Petition. Mr. Dahlgren has a direct interest in the proceedings – *his home* - which will be specifically and substantially affected as he has spent decades beautifying his property with landscaping and nurturing of the natural resources found on his property including the wetlands and nearby wildlife habitat; all of which will be exposed to large industrial scale energy infrastructure by virtue of the proposed tree clearing and terraforming by the Petitioner. He is likely to suffer property

value loss different from and greater than that of the public in general due to the proximity of and visual exposure (loss of buffer) to the facility. As a result, the Council is being requested to render a decision which will likely impact substantial rights of the members of Mr. Dahlgren.

Intervenor seeks party status in the above proceedings for the purpose of submitting testimony, briefs and other evidence relevant to the consideration of the application under consideration; specifically the mitigation of environmental impact to wetlands, habitat and rustic views.

Intervenor's participation will be in the interests of justice and is proper under CEPA in that the evidence and testimony to be given will tend to show that the proposed activity for which Applicant seeks a certificate is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut in that, if granted, the proposed facility will, inter alia, unreasonably impair the quality of wetlands and the scenic setting of the environment in and about the Beckwith Road area.

In support of this application, the movant states the following:

1. Mr. Fritz Dahlgren is a resident and owner of 14 Beckwith Road, Haddam, Connecticut and an abutter to the Haddam substation.
2. The proposed tower will have a negative impact on the scenic vistas in Haddam and specifically off Beckwith Road as well as destroy wetlands and disturb wildlife including birds, otters, deer, Bald eagles and various mammals and birds.
3. There exists an alternative means of engaging in the proposed activity without clearing and filling of wetlands and there exist mitigation techniques for screening or re-routing transmission lines which will minimize needless property value loss.

4. The Intervenor intends to submit evidence to the record in the form of expert and fact witness testimony which will substantiate the feasibility of available alternatives to the proposed facility of lesser visual impact which will assist the Council in complying with its mandate to consider impact to residential areas as required by C.G.S §16-50g and 16-50p(3)(D).

5. Due to the expedited nature of these petition proceedings, Intervenor was unable to make this application any earlier than this time, so Intervenor requests that good cause exists for the timing of the filing of this application to intervene.

DISCUSSION OF LAW

The Council must be mindful of the statutory requirements which apply to interventions under its own regulations and under the Administrative Procedures Act, but especially so for CEPA. The bar is quite low for filing an intervention and thus §22a-19 applications should not be lightly rejected. *Finley v. Town of Orange*, 289 Conn. 12 (2008) (an application need only allege a colorable claim to survive a motion to dismiss) citing *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007).

CEPA clearly and in the broadest terms indicates that any legal entity may intervene. This includes municipal officials, *Avalon Bay Communities v. Zoning Commission*, 87 Conn. App. 537, 867 A.2d 37 (2005).

An allegation of facts that the proposed activity at issue in the proceeding is likely to unreasonably impair the public trust in natural resources of the State is sufficient. See, *Cannata v. Dept. Of Environmental Protection, et al*, 239 Conn. 124 (1996)(alleging harm to floodplain forest resources).

The Connecticut Appellate Court has noted that statutes "such as the EPA are remedial in nature and should be liberally construed to accomplish their purpose." *Avalon Bay Communities, Inc. v. Zoning Commission of the Town of Stratford*, 87 Conn.App.537 (2005); *Keeney v. Fairfield Resources, Inc.*, 41 Conn. App. 120, 132-33, 674 A.2d1349 (1996). In *Red Hill Coalition, Inc. v. Town Planning & Zoning Commission*, 212 Conn. 727, 734, 563 A.2d 1347 (1989) ("section 22a-19[a]makes intervention a matter of right once a verified pleading is filed complying with the statute, whether or not those allegations ultimately prove to be unfounded"); *Polymer Resources, Ltd. v. Keeney*, 32 Conn. App. 340, 348-49, 629 A.2d 447 (1993) ("[Section] 22a-19[a] compels a trial court to permit intervention in an administrative proceeding or judicial review of such a proceeding by a party seeking to raise environmental issues upon the filing of a verified complaint. The statute is therefore not discretionary.") See Also, *Connecticut Fund for the Environment, Inc. v. Stamford*, 192 Conn. 247, 248 n.2, 470 A.2d 1214 (1984).

In *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483, 490, 400 A.2d 726 (1978), the Supreme Court concluded that one who filed a verified pleading under § 22a-19 became a party to an administrative proceeding upon doing so and had "statutory standing to appeal for the limited purpose of raising environmental issues." "It is clear that one basic purpose of the act is to give persons standing to bring actions to protect the environment." *Belford v. New Haven*, 170 Conn. 46, 53-54, 364 A.2d 194 (1975).

The Intervenor is entitled to participate as a §22a-19 intervenor which allows for a right of appeal under that statute. *Committee to Save Guilford Shoreline, Inc. v. Guilford Planning & Zoning Commission*, 48 Conn. Sup. 594, 853 A.2d 654(2004) once any entity has filed for intervention in an administrative proceeding, it has established the right to appeal from that decision independent of any other party. *Mystic Marinelife Aquarium v. Gill*, 175 Conn. 483 (1978) stated


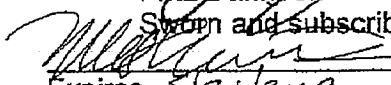
quite clearly that "one who files a §22a-19 application becomes a party with statutory standing to appeal." *Branhaven Plaza, LLC v Inland Wetlands Commission of the Town of Branford*, 251 Conn. 269, 276, n.9 (1999) held that a party who intervenes in a municipal land use proceeding pursuant to §22a-19 has standing to appeal the administrative agency's decision to the Superior Court. The Court cited as support for this proposition, *Red Hill Coalition, Inc. v. Conservation Commission*, 212 Conn. 710, 715, 563 A.2d 1339 (1989)("because the [appellants] filed a notice of intervention at the commission hearing in accordance with §22a-19(a), it doubtless had statutory standing to appeal from the commission's decision for that limited purpose.")

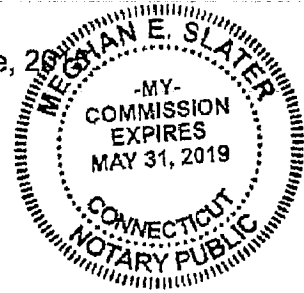
In *Keiser v. Zoning Commission*, 62 Conn. App. 600, 603-604 (2001) our Appellate Court stated that the *Branhaven Plaza* case is directly on point and held "the plaintiff in the present case properly filed a notice of intervention at the zoning commission hearing in accordance with §22a-19(a). Accordingly, we conclude that he has standing to appeal environmental issues related to the zoning commission's decision."

The rights conveyed by CEPA are so important and fundamental to matters of public trust that the denial of a 22a-19 intervention itself is appealable. See, *CT Post Limited Partnership v. New Haven City Planning Commission*, 2000 WL 1161131 Conn. Super. (Hodgson, J. 2000)(§22a-19 intervenors may file an original appeal for improper denial of intervenor status).

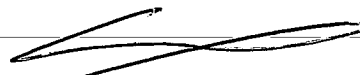
Intervenors' application for intervenor status should be granted so that it may participate by presenting evidence for the record and meaningfully assist the Siting Council in reaching a decision which minimizes impact to natural resources of the state while providing for upgrades to energy transmission Facilities.

knowledge and belief.


Fritz Dahlgren
Sworn and subscribed before me this 8 th day of June, 2018
 Notary Public; My Commission
Expires 5/31/2019



Respectfully Submitted,

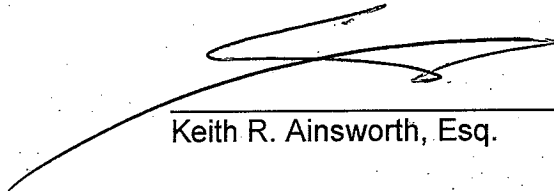
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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 8th day of June, 2015 and addressed to:

Ms. Melanie Bachman, Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

Eversource, c/o John Morrisette, Project Manager, 56 Prospect Street, P.O. Box 270, Hartford, CT 06103



Keith R. Ainsworth, Esq.

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JUNE 8, 2015

LIMITED APPEARANCE STATEMENT

OF FRITZ DAHLGREN

The undersigned counsel, on behalf of a Haddam resident and abutter to the Facility that is the subject of this petition, Fritz Dahlgren, (“Mr. Dahlgren”) submits the following statement for the Council’s consideration. Mr. Dahlgren has resided at his home located at 14 Beckwith Road, Haddam, Connecticut for many decades. Mr. Dahlgren requests that the Siting Council deny Petition No. 1154, which Eversource filed on April 20, 2015. Eversource’s petition seeks a declaratory ruling that a certificate of environmental compatibility and public need is not required for a significant modification which goes outside of its existing fence line and impacts thousands of square feet of wetlands in an area with a diverse wildlife population in Haddam, Connecticut.

Eversource's petition should be denied for the following reasons:

- 1. CSC Regulations Include a Presumption that Energy Facilities Have “Substantial Adverse Environmental Effects” and Eversource Fails To Satisfy Any of the Exceptions to that Presumption in its Petition**

Pursuant to Regulations of Connecticut State Agencies § 16-50j-56, the Siting Council has found in relevant part:

the Council finds that each energy site and its associated equipment except

as specified in Section 16-50j-57 of the Regulations of Connecticut State Agencies may have a substantial adverse environmental effect and therefore is a facility, and any modification, as defined in section 16-50j-2a(m) of the Regulations of Connecticut State Agencies, to an existing energy site, except as specified in Section 16-50j-57 of the Regulations of Connecticut State Agencies may have a substantial adverse environmental effect.

None of the exceptions to this presumption apply to the proposed facility, therefore Eversource should be required to file an application for a certificate pursuant to General Statutes § 16-50k et seq. and a public hearing should be held at which cross examination and additional evidence of the habitat values of the wetlands, stormwater runoff impacts from the 40 foot by 100 foot retaining wall can be evaluated, the viewshed impacts to neighboring properties and other substantial impacts can be properly vetted.

2. The Proposed Site is a Hill Adjacent to a Residential Neighborhood and Will Have a Significant Visual Impact on the Scenic Vistas

The proposed facility is located immediately to a residential neighborhood, a fact which would not be evident from the petition materials which utilize a map that minimizes the existence of neighboring properties. As such, the new facilities, while not higher than the highest existing equipment at the substation, will be significantly higher than most equipment at the site and will have a significant visual impact both for the families who live in the area and especially for abutting property homeowners.

3. No Alternatives Have Been Explored or Offered

Eversource has not presented to the Council any alternatives to the proposed modifications which would have less of an environmental impact. Eversource has simply declared in conclusory language that there are no significant environmental impacts. For example, its 'desktop' cultural resources review is a nothing more than a lazy way of avoiding a site visit to truly assess field conditions.

I. INTRODUCTION

On April 20, 2015, Eversource filed a petition seeking a declaratory ruling that a certificate of environmental compatibility and public need was not required for a proposed modification to its

substation Facility in Haddam. The petition was presented so as to suggest that the proposed Facility would be meet all the exemptions while downplaying the fact that it would be extending the Facility beyond the boundaries of its existing fenced compound. This aspect of the proposed activity takes the facility out of the exemption set forth in R.C.S.A §16-50j-57(b)(2)(A).

More importantly, it appears that the Applicant is attempting to circumvent the full certificate process by making it appear that it meets the exemptions when in fact it does not. Such a calculated maneuver appears to be an abuse of the Council regulations.

The Applicant never explains that significant work is being done on Mr. Dahlgren's property where he resides. While it is certainly true that Eversource holds an easement over a portion of Mr. Dahlgren's property, the only contact Mr. Dahlgren has had with Eversource was the statutory notice or an expedited proceeding. That Mr. Dahlgren has significant resources and time invested in landscaping his property is absent from the considerations in this petition. Currently Mr. Dahlgren cannot see the Facility. When it is completed the hill behind his house will bear the scars of a 40 foot high concrete footing over 100ft long and he will have a view of 4 100 foot structures with 345kV lines strung from them.

In addition, over 3000 square feet of wetlands on his property will be disturbed. Precisely no wetlands impact analysis has been conducted, except more conclusions that Eversource assures us that there will be none.

This petition, whether tactic or negligence, should not come at the expense of public participation.

II. ARGUMENT

A. EVERSOURCE ATTEMPTS TO SIDESTEP THE REGULATORY PRESUMPTION THAT POWER FACILITIES HAVE "A SUBSTANTIAL ADVERSE ENVIRONMENTAL EFFECT" BY SUGGESTING THAT THEY QUALIFY FOR ANY EXEMPTION UNDER CSC RULES

Siting Council regulations state that there is a presumption that energy facilities have "a substantial adverse environmental effect," unless one of several exceptions apply. See Reg. Conn. State Agencies § 16-50j-57(a) [replacement of circuit breakers, transformers and buses], 16-50j-57(1)(A) [damaged equipment replacement], and 16-50j-57(a)(1)(D)(b)(1) [routine

maintenance of 1 to 1 change out], 16-50j-57(a)(1)(F)(6)(d) [temporary energy equipment to serve after a disaster] . If no exception applies, then an energy provider must file an application for a certificate of environmental compatibility and public need. See Conn. Gen. Stat. § 16-50k(a).

The Council's rules require that a petitioner state which statutes or regulations the petitioner seeks a declaratory ruling on. See Conn. Reg. State Agencies § 16-50j-39. Eversource did not do that, but instead attempted, by sleight of hand, to suggest that this petition falls into an exemption. Because no exception applies, the presumption of a substantial adverse environmental effect contained in Sections 16-50j-56 does apply. Because that presumption applies, Eversource should be required to file an application for a certificate pursuant to General Statutes § 16-50k et seq. instead of a petition for declaratory ruling.

B. EVERSOURCE'S PETITION SHOULD BE DENIED BECAUSE OF THE "SCENIC, NATURAL, HISTORIC, AND RECREATIONAL CHARACTERISTICS" OF THE NEIGHBORHOOD

Among its many deficiencies, Eversource's petition does not adequately address "the scenic, natural, historic, and recreational characteristics of the proposed site and surrounding area." See Conn. Reg. State Agencies § 16-50j-59(5)(B)(7)-(8). Due to the expedited nature of these proceedings, Mr. Dahlgren has had insufficient time to develop and prepare the evidence of this aspect of it case and requests an opportunity to do so. (See, Petition to Intervene in this petition docket)

C. THE PETITION IS INCOMPLETE

The petition fails to set forth in sufficient detail, or at all, certain explicit requirements of a certificate as set forth in § 16-50j-59. While this petition is intended not to be a certificate, in order to

know whether a certificate can be dispensed with, the petitioner should provide sufficient background information upon which the Council may make that determination. It would be irrational for the Council not to require more than merely what the petitioner thinks is relevant. It would also be illegal under the rule set forth in *Finely v. Inland Wetlands Commission of the Town of Orange*, 289 Conn. 12 (2008) (Commission cannot determine the legality of an application based on information to be supplied later).

The Council should exercise its authority to request additional information under §16-50-39(8).

That information should include at a minimum the following items expressly required under §16-50j-59:

(2) A statement of the need for the proposed facility and associated equipment, or modification of an existing facility and associated equipment with as much specific information as is practicable to demonstrate the need;

(3) A statement of the benefits expected from the proposed facility and associated equipment, or modification of an existing facility and associated equipment with as much specific information as is practicable;

(4) (A) The most recent U.S.G.S. topographic quadrangle map (scale 1 inch = 2000 feet) marked to show the approximate site of the facility and associated equipment, or modification of an existing facility and associated equipment and any significant changes within a one mile radius of the site; and

(B) a map (scale 1 inch = 200 feet or less) of the lot or tract on which the facility and associated equipment, or modification of an existing facility and associated equipment is proposed to be located showing the acreage and dimensions of such site, the name and location of adjoining public roads or the nearest public road, and ***the names of abutting owners and the portions of their lands abutting the site.***

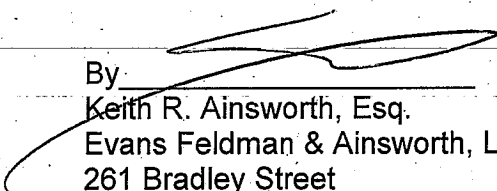
(14) A listing of any federal, state, regional, district, and municipal agencies with which reviews were conducted concerning the facility or modification of an existing facility, including a copy of any state and municipal agency position or decision with respect to the facility or modification of an existing facility;

(16) A description of technological alternatives and a statement containing justification for the proposed facility;

III. CONCLUSION

For the foregoing reasons, Mr. Dahlgren urges the Siting Council to deny Eversource's petition for a declaratory ruling and to require that Eversource file an application for a certificate pursuant to General Statutes § 16-50k.

Respectfully Submitted,

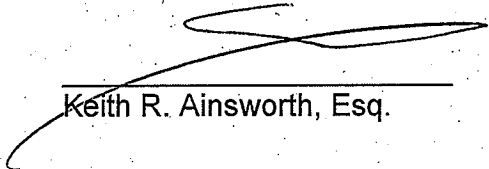

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