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September 15, 2022

To: Operations Committee, Board of Representatives
From: Burt Rosenberg, Asst. Corporation Counsel
Re: Authority of the City to Require Utilities to Install
Electric Lines Underground
File No. A22-0492

This memorandum is in response to the request of the committee chairperson, Rep. de la Cruz, for a legal opinion regarding the ability of the City to require that electric utilities install electric power lines underground.

For the reasons explained herein, the City does not have the legal authority to impose such a requirement because it falls within the exclusive jurisdiction of the Public Utilities Regulatory Authority (PURA).

There are two relevant State of Connecticut statutes. Connecticut General Statutes Section 16-243 gives PURA exclusive jurisdiction over the transmission and distribution of electricity:

Sec. 16-243. Jurisdiction of authority over electricity transmission lines. The Public Utilities Regulatory Authority shall have exclusive jurisdiction and direction over the method of construction or reconstruction in whole or in part of each system used for the transmission or distribution of electricity, with the kind, quality and finish of all materials, wires, poles, conductors and fixtures to be used in the construction and operation thereof, and the method of their use, including all plants and apparatus used for generating electricity located upon private property upon which there are conductors capable of transmitting electricity to other premises in such manner as to endanger any person or property. The authority may make any order necessary to the exercise of such power and direction, which order shall be in writing and entered in the records of the authority. Each person or corporation operating any such system or generating plant shall, at its expense, comply with such order. Any person violating any provision of any such order shall be subject to the penalty prescribed in section 16-41.

CGS Section 16-235 gives municipalities limited control over utilities, *except as provided in Section 16-243*:

Section 16-235. Control by local authorities. Orders. Appeals.

Except as provided in section 16-243, the selectmen of any town, the common council of any city and the warden and burgesses of any borough shall, subject to the provisions of section 16-234, within their respective jurisdictions, have full direction and control over the placing, erection and maintenance of any such wires, conductors, fixtures, structures or apparatus, including the relocation or removal of the same and the power of designating the kind, quality and finish thereof, but no authority granted to any city or borough or a town planning, zoning, inland wetland, historic district, building, gas, water or electrical board, commission or committee created under authority of the general statutes or by virtue of any special act, shall be construed to apply to so much of the operations, plant, building, structures or equipment of any public service company as is under the jurisdiction of the Public Utilities Regulatory Authority, or the Connecticut Siting Council, but zoning commissions and inland wetland agencies may, within their respective municipalities, regulate and restrict the proposed location of any steam plant, gas plant, gas tank or holder, water tank, electric substation, antenna, tower or earth station receiver of any public service company not subject to the jurisdiction of the Connecticut Siting Council. Any local body mentioned in this section and the appellate body, if any, may make all orders necessary to the exercise of such power, direction or control, which orders shall be made within thirty days of any application and shall be in writing and recorded in the records of their respective communities, and written notice of any order shall be given to each party affected thereby. Each such order shall be subject to the right of appeal within thirty days from the giving of such notice by any party aggrieved to the Public Utilities Regulatory Authority, which, after rehearing, upon notice to all parties in interest, shall as speedily as possible determine the matter in question and shall have jurisdiction to affirm or modify or revoke such orders or make any orders in substitution thereof.

Connecticut courts have expounded upon the exclusive jurisdiction of PURA under CGS Section 16-243. Title 16 of the General Statutes gives the PURA broad powers, the scope of which has been recognized by the court. In *Connecticut Co. v. Norwalk*, 89 Conn. 528, 533, the court, stated that the Public Utilities Act was “broad in its sweep, extensive in the jurisdiction conferred, and far-reaching in the supervision of public service corporations and the control over public and private interests.” See also *Jennings v. Connecticut Light & Power Co.*, 140 Conn. 650, 661.

Additionally, the court has recognized that the transmission of electricity, especially the underground construction of transmission lines, is highly technical, so that the control of plants and lines should be under the supervision of a statewide agency. *Jennings v. Connecticut Light & Power Co.*, supra, 660. “In delegating exclusive jurisdiction over the construction and reconstruction of facilities for the transmission of electricity to the public utilities commission (§16-243), the General Assembly obviously recognized the desirability that an agency with statewide jurisdiction and with expertise in the field have exclusive power and responsibility in such area.” *Gimbel v. Loughlin*, 28 Conn. Sup. 72, 78 (*FitzGerald, J.*).

The Court has also commented on the authority of municipalities pursuant to Section 16-235, observing that while the provision confers some measure of local control over the location of structures and apparatus of public service companies, PURA retains appellate jurisdiction “to affirm or modify or revoke” orders of local authorities. *Hartford Electric Light Company v. Water Resources Commission*, 162 Conn. 89 (1972). The court has held that “as between state control and local control of a public utility . . . the local municipal authorities should play a secondary role where a clash of authority appears to exist.” *Jennings v. Connecticut Light & Power Co.*, supra, 663. Municipal control of electric utilities pursuant to Section 16-235 has largely been limited to zoning issues.

Based upon the foregoing statutory framework and case law, we must conclude that the City has no authority to require utilities to install power lines underground. Rather, PURA has exclusive jurisdiction in this area. Therefore, the Board of Representatives is precluded from enacting legislation to require underground utility installations.

We do wish to bring to the attention of the Operations Committee a recent PURA Decision dated August 2, 2022 in Docket No. 17-12RE08, captioned “PURA Investigation Into Distribution System Planning of the Electric Distribution Companies – Resilience and Reliability Standards and Programs.”

Beginning on page 75 of the Decision is a discussion entitled “Long-Range Undergrounding Strategy.” I have set forth below the entire discussion. Significantly, PURA notes that, in establishing a long-term, statewide undergrounding strategy, there should be “enhanced coordination across state and local governmental entities, public service companies, and potential providers.”

I will be happy to respond any questions of the Operations Committee members concerning this matter at the Committee’s next meeting.

C: D. Dalena, Director of Legal Affairs
 M. Quinones, Director of Operations
 V. Rosenson, BOR Clerk

STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 17-12-03RE08 PURA INVESTIGATION INTO DISTRIBUTION
SYSTEM PLANNING OF THE ELECTRIC
DISTRIBUTION COMPANIES – RESILIENCE AND
RELIABILITY STANDARDS AND PROGRAMS

August 3, 2022

By the following Commissioners:

Marissa P. Gillett
John W. Betkoski, III
Michael A. Caro

PROPOSED FINAL DECISION

[Beginning at Page75]

9. Long-Term Undergrounding Strategy

The record in this proceeding reflects a sustained interest in a long-term undergrounding strategy, made more urgent by a combination of increased frequency and duration of climate change events coupled with the state’s trend toward increased electrification.⁶² However, undergrounding remains a costly mitigation measure, particularly when factoring in the percentage of each EDC’s existing systems served by overhead three-phase backbones, three-phase laterals, and single-phase laterals. See, Eversource and UI Responses to Interrogatories RSR-103 – 105. The Authority sought to understand through this proceeding whether the costs of undergrounding are outweighed or mitigated by either the costs attributable to other reliability and resilience measures, long-term O&M savings, and/or the benefits that accrue to customers and society from reduced frequency and duration of outages.

In short, such a detailed inquiry applicable on a statewide basis requires more dedicated resources than the instant proceeding envisioned; although, the Authority is confident that the Reliability and Resilience Frameworks established herein are designed to cement the consideration of undergrounding as a viable mitigation measure. Therefore, if a statewide strategy for undergrounding is to be considered or drafted, subsequent action is required. Some such actions may lie within the Authority’s existing jurisdiction; while others may require, or may benefit from, additional legislative guidance or enabling legislation. For example, several state legislatures have adopted requirements, in place since the 1960s and 70s, that new electric service connections be placed underground. Moreover, some jurisdictions, such as the District of Columbia, have acted to enable unique financing mechanisms to support extensive undergrounding projects.

On the regulatory commission side of the equation, some jurisdictions have crafted programs that specify financing provisions for the undergrounding of existing electric distribution lines. On the west coast, for example, the California Public Utilities Commission (CPUC) adopted its Rule 20 in 1967, which is designed to facilitate primarily municipality-driven and private applicant-driven underground conversion projects. CPUC Rule 20. In its current form, the Rule is divided into four subprograms that provide diminishing levels of ratepayer contributions to projects, with its third component (requiring an individual property owner or developer to fully fund the cost of undergrounding) largely mirroring policies encompassed in each Connecticut EDC's Electric Service General Terms and Conditions.

With this backdrop, the Authority finds that it is appropriate to take a multi-part approach to next steps in formulating a statewide strategy to undergrounding. First, the Authority will solicit and compile stakeholder recommendations that may benefit from legislative guidance, and second, the Authority will direct interested stakeholders, to submit, for Authority review and approval, a proposal commensurate to the CPUC Rule 20 program discussed herein.

Regarding the first action, the Authority will invite proposals from stakeholders related to any undergrounding matters, and comments thereto, that may benefit from the General Assembly's consideration in a subsequent legislative session. The initial set of recommendations shall be filed with the Authority in the instant docket no later than September 15, 2022; reply comments will be solicited thereto no later than October 3, 2022, and the Authority may consider hosting a public meeting if necessary and appropriate.

Regarding the second action, the Authority notes that while not all circumstances that led to the creation and modification over time of the CPUC Rule 20 may apply to the Connecticut landscape, the program parameters and structure seem generally conducive to replication. As such, the Authority encourages the stakeholders to reference the CPUC Rule 20 program, or other duly-enacted programs from other jurisdictions, as a model for their efforts in Connecticut. To assist in such discussions, the Authority will establish a limited-purpose working group (Rule 20 Working Group), and will designate its Office of Education, Outreach, and Enforcement (EOE) to facilitate such discussions. The Authority directs EOE to file its recommendations as a motion, with supporting analysis appended in the form of a report, no later than December 5, 2022, after convening the Rule 20 Working Group. While EOE is encouraged to pursue consensus on its recommended program structure, consensus is not a prerequisite to the required December 5, 2022 submission. Following submission of the EOE Rule 20 Working Group Report, stakeholders will be permitted an additional opportunity to comment on the motion prior to issuance of an Authority ruling.

A third component of the multi-part approach to establishing a long-term, statewide undergrounding strategy is ensuring that we are appropriately utilizing already codified statutory provisions targeted at enhanced coordination across state and local governmental entities, public service companies, and potential providers. For example, Conn Gen. Stat. § 13a-126d requires that: "The Department of Transportation and any municipality shall notify the Public Utilities Regulatory Authority of any pending project involving the construction, alteration, reconstruction, improvement, relocation, widening or changing of the grade of a section of any state highway or any other public highway, that is greater than five miles long or located in a commercial area. The authority, upon determination that such project may provide an opportunity for any public service company, as defined in section 16-1, to install, replace, upgrade or bury any water, sewer or gas line, electric wire or cable or fiber optics, shall notify such company of such project."

Moreover, the recently codified Public Act 21-159, An Act Concerning Equitable Access to Broadband, requires the Authority to develop a process for the construction of facilities in the public highways, streets or other public rights-of-way to ensure timely and nondiscriminatory

procedures that accomplish conduit excavations for telecommunications service providers and broadband Internet access service providers. Indeed, in the resulting Docket No. 21-12-21, PURA Implementation of Process and Procedures for Conduit Excavations for Telecommunications Service Providers and Broadband Internet Access Service Providers, the Authority issued a Notice of Request for Written Comments, dated April 8, 2022, through which, inter alia, the Authority sought input on notification processes for existing providers so as to reduce the potential for future street excavations (and thus, costs). Accordingly, the Authority will place a renewed emphasis on planning and coordination moving forward so as to reduce both the disruptions within our communities and the costs borne by ratepayers. To this end, the Authority directs the attention of all interested stakeholders to the processes already publicly noticed for its Docket No. 21- 12-21, including the aforementioned request for written comments, as the intended venue for discussing potential “dig once” policies and the feedback loop of any such policies into the undergrounding programs contemplated herein.

Finally, the Authority also wishes to direct the attention of all stakeholders to another tenet of its Equitable Modern Grid Initiative; specifically, the recently established Innovative Energy Solutions Program, approved through the Decision dated March 30, 2022, in Docket No. 17-12-03RE05, PURA Investigation into Distribution Planning of the Electric Distribution Companies – Innovative Technology Applications and Programs. With a request for concept proposal tentatively scheduled for January 2023, potential innovators, particularly those interested in collaborating directly with Eversource and/or UI, may find that the Innovation Energy Solutions Program offers a viable pathway toward addressing unique undergrounding challenges encountered in certain areas of the distribution grid.