

D E C I S I O N

POWER FACILITY EVALUATION COUNCIL

MOTION TO DISMISS

Docket No. 10

At the opening of the hearing on Docket No. 10 held on October 12, 1976, the Council received motions to dismiss the application of HELCO in Docket No. 10, for lack of jurisdiction.

After discussion by all parties at the hearing of October 12, 1976, on the motion to dismiss, the Council requested that written briefs be filed for their consideration of this matter. The Council also requested the advise of the Attorney General.

After due consideration the Council makes the following decision for the reasons hereinafter set forth.

1. As to the 345 kV transmission lines crossing the Connecticut River at Scovill Fock, the Council has no jurisdiction to hear or decide upon HELCO's present application.
2. As to the 115 kV transmission line crossing of the Connecticut River at Scovill Fock, the Council has jurisdiction to hear HELCO's application to underground those facilities.
3. The applicant has until December 1, 1976, to inform the Council of whether it wishes to proceed on the present application as it relates to the 115 kV lines or to withdraw that application. Should the applicant withdraw the present application, HELCO has permission

The Power Facility Evaluation Council has before it the subject matter of its Docket #10, an application by THE HARTFORD ELECTRIC LIGHT CO. for a certificate to place underground two 345 KV transmission lines and one 115 KV transmission line, said lines to be undergrounded beneath the waters of the Connecticut River between two points. Parties to the proceedings known as Docket #10 have filed various motions contesting the jurisdiction of the Council over the subject matter of the application and the Council has, in turn, sought the advice of the Office of the Attorney General on this pivotal question.

The Council is aware of the lengthy, complex and unique history which precedes this application. Any consideration of the Council's jurisdiction over the subject matter of Docket #10 must necessarily include a thorough review and understanding of that history. The decision ultimately rendered by the Council must be made with that historical perspective in mind.

Construction of two 345 KV lines at Scoville Rock was initially authorized by Certificate No. 2444 issued June 25, 1966, by the Water Resources Commission, a predecessor agency of the Department of Environmental Protection. This certificate contained the condition that the overhead lines would be removed and placed under water within five years from the date of the certificate. The Hartford Electric Light Co. (hereafter HELCO) appealed from the decision authorizing Certificate No. 2444 and, in particular, condition 2 thereof which contained the five-year limit provision. Hartford Electric Light Co. v. Water Resources Commission, 162 Conn. 89, 291 A.2d 721 (1972).

Thereafter, Public Act 71-575, known as the Public Utility Environmental Standards Act (PUESA) became law on July 1, 1971, and on October 1, 1971, the duties and powers of the Water Resources Commission were transferred to the Department of Environmental

By letter dated August 24, 1972, HELCO subsequently applied to the Commissioner of Environmental Protection for amendment and modification of Certificate No. 2444 to eliminate condition 2. By a letter dated October 25, 1972, HELCO sought a declaratory ruling regarding Certificate No. 2444, in accordance with the Administrative Procedure Act, Sec. 4-176 of the General Statutes of Connecticut, as amended. Hearings were held by the Department of Environmental Protection regarding these matters from January of 1973 to March of 1973, resulting in a Record which exceeded 2,300 pages, exclusive of exhibits.

After all parties to these hearings had submitted proposed findings of facts, conclusions of law, and decisions and briefs, the Hearing Examiner filed his report and proposed decision with the Commissioner of Environmental Protection. Opportunity was provided for oral argument, and several parties participated.

On June 29, 1973, the Commissioner of Environmental Protection issued his decision and order, which, in part, extended the time limit for the overhead 345 KV lines for another five years, and set up a time schedule which would lead to the undergrounding of those 345 KV lines at the end of the five years. HELCO has appealed from that order in The Hartford Electric Light Co. v. Douglas M. Costle, et al, Docket No. 109440, Court of Common Pleas, Hartford County, which is presently pending, but in abeyance.

The June 29, 1973 order of the Commissioner of Environmental Protection was later amended by a stipulation and agreement entered into by all parties to the HELCO appeal on March 26, 1976. The stipulation also provides that if HELCO is unable to obtain complete authorization to underground the 345 KV lines, which would of course include a certificate from the Power Facility Evaluation Council, if ~~the~~ the Commissioner of Environmental

uninterrupted jurisdiction maintained by the Water Resources Commission and its successor agency, the Department of Environmental Protection, over the two 345 KV lines. They show an order issued in 1966 to remove the overhead lines and underground them within five years, an order which was upheld by the Connecticut Supreme Court two months after the effective date of PUESA. They show HELCO, the applicant in the Power Facility Evaluation Council's Docket #10, in August and October of 1972, requesting of the Department of Environmental Protection for guidance relative to condition 2 and what it meant. They show an extensive, thorough, and lengthy hearing into the merits of undergrounding and its environmental ramifications culminating in the June 29, 1973 order.

The legislature in enacting PUESA did so with Sections 25-7b and 25-7d in mind, and must be presumed to have done so with the intention of creating one consistent body of law. Cicala v. Administrator, 161 Conn. 362, 365, 428 A.2d 66 (1971). This is particularly true when the statutes are dealt with in the same session, as here where the Department of Environmental Protection succeeded to the powers and duties of the Water Resources Commission in the same session that PUESA was enacted. Collins v. York, 159 Conn. 150, 162, 267 A.2d 668 (1970).

It is evident that at the time PUESA was enacted, the matter of undergrounding the 345 KV lines was pending before the Water Resources Commission. The jurisdiction of the Water Resources Commission and the Department of Environmental Protection to determine this pending matter was upheld in HELCO, supra.

"It is a rule of construction that statutes are not to be applied retroactively to pending actions, unless the legislature clearly

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The undersigned members of the Power Facility Evaluation Council who have signed this Decision and Order hereby certify that this is their decision.

Dated at Haddam, Connecticut, this 4th day of November, 1976.

Mary Anne Guitas )  
Mary Anne Guitas, Chairman

Joseph N. Hickey )  
Commissioner Joseph N. Gill  
Designee: Joseph Hickey

John T. Cox )  
Commissioner Albert J. Kleban  
Designee: John T. Cox  
Edward J. Clark )  
Edward L. Clark

Charles L. Doherty, Jr. )  
Charles L. Doherty, Jr.

Fred J. Doocy (Abstain) )

Mortimer A. Gelston )  
Mortimer A. Gelston

James G. Horsfall (Absent) )

Colin C. Tait )  
Colin C. Tait