

Municipalities and Utility Infrastructure

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Issue

This report answers questions on the role of municipalities in decisions related to utility infrastructure. Questions and answers follow. The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Do municipalities participate in decisions affecting the quality, location, or appearance of electric or telecommunications infrastructure?

State and federal laws and regulations on utility infrastructure establish different requirements for electric infrastructure (generation, distribution, and transmission) and telecommunications infrastructure (e.g., cell towers, small cells as pole attachments). A municipality's ability to participate in decisions on utility infrastructure is largely case-specific, depending on the type of project and its location.

The Connecticut Siting Council has jurisdiction over siting certain electric generation projects, electric transmission lines, and telecommunications facilities, among other things. The council's procedures are generally governed by the Public Utility Environmental Standards Act ([CGS § 16-50g](#) et seq.), which includes provisions on municipal participation. For example, applicants must provide notice to municipalities for certificate and declaration proceedings, and municipalities are generally parties in those proceedings and may participate in public field reviews and evidentiary sessions. For more information on Siting Council procedures, see OLR Report [2021-R-0095](#).

For electric distribution infrastructure, Public Utilities Regulatory Authority (PURA) staff noted that municipalities may participate in PURA proceedings as participants, intervenors, or parties, to exercise their legal rights to weigh in on questions surrounding distribution infrastructure standards. These questions may arise during (1) rate proceedings, in which PURA determines applicable rates for distribution charges based on an examination of the company's infrastructure and related needs or (2) other proceedings examining specific issues. For example, PURA is currently examining reliability and resilience of utility infrastructure as part of its [Equitable Modern Grid initiative](#), Track 8, ([Docket 17-12-03RE08](#)).

There are other case-specific circumstances under which municipalities may have a more direct role. For example, PURA staff noted that when utilities seek to relocate facilities in the public right-of-way, the law requires the utility to seek consent from adjoining property owners. If a municipality is an adjoining property owner, it may withhold consent, thereby requiring the utility to seek PURA approval before relocating its facilities ([CGS § 16-234\(f\)](#)).

Additionally, for siting small cell radio antenna facilities ("small cells") on utility poles in the public right-of-way, PURA requires wireless providers to notify the municipality where the proposed project will be located. The municipality is also designated as a participant in PURA's proceeding on the project (see [June 2, 2017, Final Decision in Docket 17-02-49](#)).

According to United Illuminating (UI) staff, many municipalities may require new construction to include underground electric services (see next question). Beyond that, UI staff noted that typically municipalities do not have a role in decisions on infrastructure quality, location, or appearance for individual projects, unless the project is subject to the Siting Council's jurisdiction.

Who determines when and how wires should be buried? Are there separate considerations for areas near schools, high density areas, or commercial areas?

By law, PURA has jurisdiction over electric transmission and distribution system construction, including kind, quality, and finish of all materials, wires, poles, conductors, and fixtures used to operate the system. The law authorizes PURA to make any order necessary to exercise this power and requires system operators to comply with PURA's orders ([CGS § 16-243](#)).

In practice, decisions on placing electric lines underground depend in part on whether lines are existing or new and where they connect to other lines, rather than their proximity to schools or other areas.

Placing New Lines Underground

According to PURA staff, there is no law, regulation, or PURA order requiring utilities to build new lines underground. However, both UI and Eversource have policies generally requiring line extensions to match the existing systems where the lines connect. According to Eversource, when a developer files a request with the company to electrify a new development, the company compares the costs of overhead and underground facilities and presents the most cost-effective method to the developer. According to the company, in most cases, developers select undergrounding facilities and are responsible for certain related work (e.g., digging trenches and installing conduit).

Towns may also require utility lines serving new structures to be located underground. For example, [zoning regulations](#) in Bethel require all utilities to be located underground for projects in certain zones (e.g., planned residential development zone, educational park zone) and the town's [subdivision regulations](#) require all public utility lines or conduits to be installed underground.

Burying Existing Lines

As mentioned above, PURA's [Equitable Modern Grid Initiative](#), Track 8, seeks to evaluate the effectiveness of the electric companies' reliability and resilience programs and establish specific reliability and resilience targets and metrics. According to PURA staff, as part of this proceeding, PURA is actively exploring the topic of undergrounding existing lines. PURA's final decision in the proceeding is [tentatively scheduled](#) for August 31, 2022.

According to information provided in that docket, Eversource and UI both have policies permitting a customer to opt in to undergrounding existing overhead lines. Eversource's Residential Electric Service General Terms and Conditions provide guidelines permitting a customer to convert his or her electrical service from overhead to underground. In general, if the customer requests that their overhead lines be buried, the company treats the conversion as a new service with additional charges to cover related equipment and overhead line removal.

In [a March 2022 presentation](#) to PURA, Eversource stated that it uses outage data to target areas where undergrounding will positively impact service restoration after an outage with a focus on specific backbone circuits and laterals (slide 8). (Generally, a backbone is a section of line starting at a substation and connecting at the other end to a lateral, which is a primary voltage line located at the top of the pole and connecting to a secondary or service wire.) According to Eversource staff, requests to bury lines are subject to an engineering design process that considers:

1. the project's costs,
2. the number of outages on the circuit,
3. an evaluation of several construction options to provide the best marginal returns to customers,

4. terrain conditions,
5. easements,
6. existing underground infrastructure, and
7. areas with high tree density.

Staff also noted that burying distribution lines may be more costly (1) due to environmental permits and new easements that may be required and (2) in densely populated areas where the project requires identifying existing and old utilities (e.g., gas, water, and sewer). According to Eversource, placing some projects underground is also not feasible due to foreseeable flooding and rocky subsoil.

Towns may also seek to coordinate proposals to bury utility lines with road construction. For example, West Haven's current [Plan of Conservation and Development](#) lists goals related to revitalizing Route 1, including that the town suggest removing utility poles and burying utility wires underground as part of large roadway infrastructure projects. By law, the Department of Transportation and any municipality must notify PURA when a project to widen, improve, or otherwise change a section of state or public highway is located in a commercial area or over five miles long. If PURA determines that the project may provide an opportunity for a utility to install, replace, upgrade, or bury any water, sewer, or gas line, electric wire or cable or fiber optics, PURA must notify the company ([CGS § 13a-126d](#)).

Who assesses health risks and readiness of utility infrastructure? Can municipalities participate in this assessment?

Both the Siting Council and PURA assess various aspects related to health and safety and infrastructure readiness for projects that are subject to each agency's jurisdiction. By law, the Siting Council must consider certain health and safety issues when granting a certificate for a project, including environmental impacts and other considerations that vary by project type ([CGS § 16-50p](#)). As mentioned above, PURA has jurisdiction over electric distribution facilities and may issue orders under that authority, including on topics related to health, safety, and readiness described in more detail below.

Maintenance Plans and Inspections

The law requires that Eversource and UI annually provide PURA with their maintenance plans for their poles, wires, conduits, and other fixtures along public highway or streets ([CGS § 16-32g](#)). Regulations additionally require these plans to include procedures and schedules for inspecting, testing, and maintaining the poles, wires, conduits, or other fixtures. PURA must (1) require Eversource and UI to gather and report data PURA deems necessary to evaluate the plans' ongoing

effectiveness and cost and (2) review the plans and issue any orders necessary to ensure compliance ([Conn. State Agencies Regs. § 16-32g-1](#)). Municipalities may participate in PURA proceedings related to these plans.

UI staff noted that it assesses the condition of its assets and performs required maintenance in accordance with its inspection and maintenance plan. According to Eversource, the company maintains its distribution system infrastructure through (1) pole inspections, (2) thermographic-infrared inspections of its backbone distribution system, (3) stray voltage inspections, (4) aerial inspections, and (5) vegetation management and tree trimming. Eversource staff noted that municipalities work directly with the company on tree clearing and vegetation issues.

Outages and Storm Response

By law, public utilities must file updated Emergency Response Plans (ERP) every two years with PURA, the Department of Emergency Services and Public Protection, and each municipality in the utility's service area. The plans must include, among other things, communication and coordination measures with municipalities during a major disaster ([CGS § 16-32e](#)). ERPs for [Eversource](#) and [UI](#) describe various ways municipalities participate, including prioritizing and monitoring "make-safe" work, communicating outage information to customers with medical needs, and identifying community priorities. PURA staff noted that municipalities play an important role from the customer perspective when customers contact their towns to address slow power restoration.

Cybersecurity

State officials and utilities annually review companies' cybersecurity programs in accordance with [the Connecticut Public Utilities Cybersecurity Action Plan \(PURA Docket 14-05-12\)](#). [The 2021 report](#) discussed activities that include local government participation, such as (1) the GridEx security exercise simulating cyber and physical attacks on the electric grid, conducted every two years by the North American Electric Reliability Corporation and (2) participation in monthly meetings of the state's Connecticut Cybersecurity Committee.

Radiofrequency Emissions

Electric and telecommunications equipment that emits radiofrequency electromagnetic waves is subject to the Federal Communications Commission's limits on radiofrequency exposure. Federal law generally prohibits state and local government from restricting siting based on effects of radiofrequency emissions. Both PURA and the Siting Council require companies to submit reports with applications for certain projects to demonstrate compliance with federal standards. For more information, see OLR Report [2019-R-0081](#).

Can legislation require municipal involvement with decisions on infrastructure (e.g., location, quality, or burying lines)?

The legislature has enacted laws requiring or increasing municipal participation in Siting Council decisions and could establish additional requirements to the extent doing so is not preempted by federal law. For example, in 2012, [PA 12-165](#) increased municipal involvement in siting telecommunications towers (cell towers) by (1) requiring developers to begin consulting with affected municipalities earlier in the process and (2) allowing municipalities to reject projects near schools or daycares unless the Siting Council finds that the project does not have a substantial adverse effects on the aesthetics or scenic quality of the neighborhood. Additionally, legislation could increase municipal representation on the Siting Council, which would increase municipal participation in decisions on utility infrastructure where the council has jurisdiction. Under current law, for decisions on energy and telecommunications siting, the council consists of nine members, including:

1. the Department of Energy and Environmental Protection commissioner;
2. the PURA chairperson;
3. one member designated by the House Speaker;
4. one member designated by the Senate president pro tempore; and
5. five members of the public designated by the governor, two of which must have experience in ecology and not more than one of which can be affiliated with a utility, a utility regulatory agency, or a facility under the council's jurisdiction ([CGS § 16-50j\(f\)](#)).

Legislation could add an ad-hoc member of the municipality affected by a proposed project or a member from an organization representing municipalities.

For electric distribution infrastructure subject to PURA's jurisdiction, as mentioned above, several municipalities require electric infrastructure for new construction to be placed underground, thus it appears towns do not need authorizing legislation at the state level to set these requirements. According to Eversource staff, in many instances, the company receives feedback from municipalities before it executes projects, generally concerning affected customers during the project's execution (e.g., traffic conditions). Legislation could establish requirements for Eversource and UI to receive or consider municipal preferences for distribution infrastructure, or direct PURA to study current processes and make recommendations.

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