

SUPREME COURT OF CONNECTICUT

Not Another Power Plant v. Connecticut Siting Council

Not Another Power Plant · Decided January 18, 2022

SUMMARY

In a concurrence and dissent, Justice Ecker, joined by Justice D’Auria, agrees that the Connecticut Siting Council had authority to consider the potential environmental impact of a future gas pipeline when evaluating an electric generating facility. The dissent argues that the council abused its discretion by mistakenly believing it lacked that authority and that the case should be remanded for the council to exercise its discretion. The majority instead concluded that remand was unnecessary because the pipeline’s cumulative environmental impact would be considered in a future proceeding.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Ecker, J.; D’Auria, J.
JURISDICTION	Connecticut
DECIDED	January 18, 2022
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff appealed from a trial court judgment reviewing the Connecticut Siting Council's approval of an application by NTE Connecticut, LLC, for an electric generating facility. The concurrence and dissent agrees that the council legally erred by believing that it could not consider the environmental impact of a future interdependent gas pipeline, but would reverse and remand rather than affirm the judgment.
STANDARD OF REVIEW	Under General Statutes § 4-183 (j) (6), an agency decision is affirmed unless substantial rights have been prejudiced by findings, inferences, conclusions, or decisions that are arbitrary or capricious, constitute an abuse of discretion, or reflect a clearly unwarranted exercise of discretion. De novo review is appropriate for the agency's interpretation of the relevant statutes because that interpretation was not time-tested.
PRECEDENTIAL VALUE	Nonmajority opinion; the concurrence and partial dissent does not state the court's controlling disposition.

TOPICS

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environmental law

statutory interpretation

remedies

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remedies

QUESTIONS PRESENTED

1. Whether the Connecticut Siting Council had authority under the Public Utility Environmental Standards Act to consider the potential environmental impact of a future gas pipeline interdependent with the proposed electric generating facility.
2. Whether an agency abuses its discretion when it fails to exercise discretion because it mistakenly believes that a statute or rule leaves it no choice.
3. Whether the proper remedy for the council's failure to exercise its discretion was reversal and remand for the council to reconsider the facility application.

HOLDINGS

1. The Public Utility Environmental Standards Act did not prohibit the council from considering the environmental impact of a future interdependent gas pipeline when balancing the public benefit of the proposed electric generating facility against the environmental harm it would cause.
2. An administrative agency vested with discretion abuses that discretion when it fails to exercise it because of a mistaken belief that it lacks authority to choose among legally available courses of action.

KEY QUOTATIONS

“When an administrative agency does not recognize or exercise its discretion due to a misinterpretation of a rule or statute, it abuses that discretion.”

“The council had the discretion to choose either course, but it was not aware of its discretion and erroneously believed that it had no choice.”

“The bottom line is that the council, and not this court, possesses the information, the expertise, and the legal obligation to exercise its best judgment based on its own careful assessment of all of the pertinent considerations permitted by law—including, if it so chooses, the factor that the council mistakenly believed was off limits in the prior proceeding, namely, the environmental impact of the future gas pipeline.”

FACTUAL BACKGROUND

NTE Connecticut, LLC, sought approval for an electric generating facility whose operation would depend on a future gas pipeline. The Connecticut Siting Council refused to consider the potential environmental impact of that pipeline when balancing the proposed facility's public benefit against the environmental harm it would

cause. The council instead treated the applicable statute as prohibiting consideration of the future pipeline in the facility proceeding.

PROCEDURAL HISTORY

The Connecticut Siting Council approved NTE Connecticut, LLC's application for an electric generating facility. The trial court reviewed the agency decision and declined to order relief based on the council's refusal to consider the future gas pipeline's environmental impact. On appeal, the majority concluded that the council had proceeded under a legally erroneous interpretation of the Public Utility Environmental Standards Act but affirmed because the pipeline's cumulative environmental impact would be considered in a future proceeding. Ecker, J., joined by D'Auria, J., concurred in part and dissented in part, advocating reversal and remand to the council.

DISPOSITION

other

REMAND INSTRUCTIONS

The dissent would reverse the trial court's judgment and remand with direction to remand the matter to the Connecticut Siting Council. The council should reconsider its approval of NTE's application while recognizing its discretion to decide whether to consider the potential environmental impact of the future gas pipeline when weighing the proposed facility's public benefit against its probable environmental impact.

CASES CITED

- State v. Martin, 201 Conn. 74, 88, 513 A.2d 116 (1986)
- Meadowbrook Center, Inc. v. Buchman, 328 Conn. 586, 609, 181 A.3d 550 (2018)
- Costello v. Goldstein & Peck, P.C., 321 Conn. 244, 256, 137 A.3d 748 (2016)
- Bennington Housing Authority v. Bush, 182 Vt. 133, 139, 933 A.2d 207 (2007)
- Fisher v. Commissioner for Internal Revenue, 45 F.3d 396, 397 (10th Cir. 1995)
- United States ex rel. Adel v. Shaughnessy, 183 F.2d 371, 372 (2d Cir. 1950)
- Litterer v. Judge, 644 N.W.2d 357, 362 (Iowa 2002)
- Clark Fork Coalition v. Department of Environmental Quality, 347 Mont. 197, 209, 197 P.3d 482 (2008)
- Miami Nation of Indians of Indiana, Inc. v. United States Department of the Interior, 255 F.3d 342, 350 (7th Cir. 2001), cert. denied sub nom. Miami Nation of Indians of Indiana, Inc. v. Norton, 534 U.S. 1129, 122 S. Ct. 1067, 151 L. Ed. 2d 970 (2002)
- Davenport v. Newcomb, 820 N.W.2d 882, 892 (Iowa App. 2012)
- Commissioner of Emergency Services & Public Protection v. Freedom of Information Commission, 330 Conn. 372, 379, 194 A.3d 759 (2018)

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