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August 28, 2023

Melanie A. Bachman, Esq.  
Executive Director/Staff Attorney  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

Re: Docket No. 516 – The United Illuminating Company Application for a Certificate of Environmental Compatibility and Public Need for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project

Dear Ms. Bachman:

Enclosed for filing with the Connecticut Siting Council (“Council”) is The United Illuminating Company’s Objection to Requests for Intervenor Status.

An original and fifteen (15) copies of this filing will be hand-delivered to the Council today.

Should the Council have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,



Bruce L. McDermott

Enclosures

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STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

The United Illuminating Company Application for a : Docket No. 516  
Certificate of Environmental Compatibility and Public :  
Need for the Fairfield to Congress Railroad :  
Transmission Line 115-kV Rebuild Project : August 28, 2023

**OBJECTION OF THE UNITED ILLUMINATING COMPANY  
TO REQUESTS FOR INTERVENOR STATUS**

I. Introduction

The United Illuminating Company (“UI” or the “Company”) hereby respectfully objects to the requests for intervenor status of Sasco Creek Neighborhood Environmental Trust Incorporated; Stephen Ozyck; Andrea Ozyck; Karim Mahfouz; William Danylko and David Parker (collectively, the “Sasco Creek Neighbors”), dated August 22, 2023, the requests of International Investors, 1916 Post Road Associates, LLC; Pequot Realty, LLC; SG Pequot 200, LLC; SF Station Street, LLC; Metro Holding Company LLC; Maura J. Garych, as Trustee under The Maura J. Garych Revocable Trust Agreement, dated May 23, 2002; Paci Restaurant; 461 Broad Street, LLC; Bridgeport 11823 LLC; Invest II and 2190 Post Road, LLC (collectively, the “Property Owners”), dated August 24, 2023, and the request of Fairfield Station Lofts, LLC, (“FSL”) dated August 28, 2023 (all requests for intervenor status collectively hereafter referred to as the “Intervenor Request”), on the grounds that the Intervenor Request does not meet the statutory requirements of Connecticut General Statutes (“Conn. Gen. Stat.”) §§ 4-177a and 22a-19 and the Siting Council’s own schedule. Specifically, the Intervenor Request is untimely and fails to state specific factual allegations of environmental harm that are within the Connecticut Siting Council’s (the “Council”) jurisdiction. Accordingly, the Council should not afford the Sasco

Creek Neighbors, FSL and the Property Owners intervenor status under any of these provisions. The Company also respectfully requests that should the Council grant intervenor status to the Property Owners, that the Property Owners be grouped in accordance with Conn. Gen. Stat. §16-50n(c), to facilitate the evidentiary process.

## II. Background

On March 17, 2023, the Company filed an application with the Council for a Certificate of Environmental Compatibility and Public Need in connection with the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project<sup>1</sup> (the “Application”). As part of the Application process, the Company was required to provide notice to each abutting property owner and appropriate municipal officials and government agencies of the filing of the Application on or before the filing of the same. See Docket No. 516, Application, Volume IA, Appendix F. The notification letter explained that the Council will consider input from interested stakeholders about the project including comments at a local public hearing. See *Id.*

On April 13, 2023, the Council published a docket schedule setting forth a deadline of July 18, 2023 for interested individuals to request party/intervenor status and a public hearing for July 25, 2023. See Docket No. 516, Schedule April 13, 2023. Thus, interested individuals were provided a little over three months to file their party/intervenor status requests. One of these interested entities was BJ’s Wholesale Club, Inc. (“BWC”) that

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<sup>1</sup> The project consists of the rebuild of the existing 115-kilovolt (“kV”) overhead lines that extend for approximately 7.3 miles southwest-northeast along and/or parallel to the Connecticut Department of Transportation’s (“CT DOT”) Metro-North Railroad corridor in the Town of Fairfield and the City of Bridgeport, Fairfield County, Connecticut. The project also entails the rebuild of two 115-kV transmission lines along a 0.23 mile existing UI right-of-way that extends from the CT DOT corridor in Fairfield to UI’s Ash Creek Substation and other related project improvements and modifications, including those necessary to connect the rebuilt 115-kV lines to the appropriate UI substations.

filed a timely petition for intervenor status on June 27, 2023 that the Council granted on July 20, 2023. See Docket No. 516, BWC Request for Party or Intervenor Status, June 27, 2023; Council Decision on BJ's Wholesale Club, Inc. Request for Party and/or Intervenor Status, 0July 20, 2023.

Two weeks prior to the July public hearing, as required by the Council regulations, UI posted notice signs across different locations along the project route, informing the public of the upcoming public hearing. See Docket No. 516, UI's Affidavit of Sign Posting, July 18, 2023. At the conclusion of the July 25, 2023 public hearing, the Council stated that the evidentiary session will resume on August 29, 2023, at which time, BWC will have an opportunity to cross-examine the Company. See Docket No. 516, Public Session Transcript, July 25, 2023. On August 24, 2023, approximately five months after the Application was filed and more than a month after the deadline to request party/intervenor status had passed, the Sasco Creek Neighbors and the Property Owners filed requests for intervenor status with the Council. Then on August 28, 2023, *one day prior to the hearing*, FSL filed its request for intervenor status.

Although the Intervenor Request was submitted in various filings by different individuals/entities, the Property Owners listed the same interest - "The purpose of this intervention is to participate in these proceedings so as to prevent unreasonable impacts to the natural resources of the Town, State and the Site, including, but not limited to: scenic vistas...and operations that will affect the use, operation and enjoyment of the

Site.”<sup>2</sup> See Docket No. 516, (Property Owners) Intervenor Request at 1, August 24, 2023. Further, all Property Owners are represented by the same legal counsel.

### III. Legal Standard

Pursuant to Conn. Gen. Stat. § 4-177a(b), a presiding officer over an administrative proceeding may grant a person status as an intervenor if “(1) Such person has submitted a written petition to the agency and mailed copies to all parties, *at least five days before the date of hearing...*” (emphasis added.) The five day filing requirement may be waived upon a showing of good cause. See Conn. Gen. Stat. § 4-177a(c); Conn. Agencies Regs. § 16-50j-15(a).

A person may also intervene as a party over an administrative proceeding on the filing of a verified pleading asserting that the proceeding “involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.” See Conn. Gen. Stat. § 22a-19(a)(1). (emphasis added.)

The verified pleading shall contain *specific factual allegations* setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates *an issue within the reviewing authority's jurisdiction*.

See Conn. Gen. Stat. § 22a-19(a)(2). (emphasis added.)

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<sup>2</sup> The Sasco Creek Neighbors and FSL's requests also listed similar interests. “The construction and existence of UI's Towers will have a severe negative impact on this very sensitive environmental area, public water sources, inland wetlands, scenic vistas, neighboring property values...The Proposed Intervenor's seek to intervene in the above proceedings for the purpose of submitting testimony, briefs and other evidence.” See Docket No. 516, (Sasco Creek Neighbors) Intervenor Request at Paragraph 3, August 24, 2023. See also Docket No. 516, (FSL) Intervenor Request at 2 (“...FSL wishes to participate in the Docket No. 516 proceedings to ... ensure all reasonable alternatives to the currently proposed Project have been evaluated in order to avoid unnecessary and unreasonable property damage, unsafe conditions, and actions that would impair FSL's ability to comply with the regulations of the Town of Fairfield.”).

“A [verified pleading] does not sufficiently allege standing by merely reciting the provisions of § [22a-19], but must set forth facts to support an inference that unreasonable pollution, impairment or destruction of a natural resource will probably result from the challenged activities unless remedial measures are taken.” See *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 35 (2008).

Lastly, in accordance with Conn. Gen. Stat. § 16-50n(c) and Conn. Agencies Regs. § 16-50j-16a, the Council may, in its discretion, “provide for the grouping of parties and intervenors with the same interests.”

#### IV. Discussion

##### A. The Intervenor Request does not meet the Statutory Requirements of Conn. Gen. Stat. § 4-177a and There is no good Cause for a Waiver

The Intervenor Request does not meet the statutory requirements of Conn. Gen. Stat. § 4-177a because it was filed a month after the date of the hearing. Conn. Gen. Stat. § 4-177a provides that one of the requirements for a presiding officer to possibly grant a person status as an intervenor is that the person file a written petition with the Council at least five days before the date of the hearing. The hearing was held on July 25, 2023. Consequently, the requests filed on August 22, 2023, August 24, 2023 and August 28, 2023, do not meet the statutory deadline.

The continuation of the evidentiary hearings scheduled for August 2023 did not change the five-day deadline. In April, when the docket schedule was first published, the Council set the deadline for requesting party/intervenor status to July 18, 2023 - five business days prior to the scheduled July 25<sup>th</sup> hearing. Throughout the instant proceeding, the Council has updated the docket schedule multiple times. All of these

updates, including the most recent one published on August 1, 2023, list July 18<sup>th</sup> as the deadline to request party/intervenor status. Therefore, the scheduling of a hearing continuation did not extend the statutory deadline in any manner that would make the Intervenor Request timely.

Although Conn. Gen. Stat. § 4-177a(c) and Conn. Agencies Regs. § 16-50j-15(a) provide that the Council has the discretion to waive the five-day filing requirement upon a showing of good cause, the Intervenor Request did not present any evidence that there is good cause for a waiver other than mentioning the “expedited nature of these proceedings”. See (Property Owners) Intervenor Request at 3.<sup>3</sup> However, as the record shows, the Council developed a proceeding schedule that provided interested individuals various opportunities to participate in the docketed proceeding, including availing themselves of the opportunity to request intervenor status at any time within a three-month period. Further, from the time the Application was filed in March 2023 up to the hearing in July 2023, the public, including abutting property owners, had been informed about the filing of the Application and of the opportunities to actively participate in the proceeding, e.g., filing comments, testifying during the public session, etc. For this reason, it is unlikely that FSL, the Property Owners and the Sasco Creek Neighbors were unaware of the July 18<sup>th</sup> deadline, particularly, because BWC had already requested and had been granted intervenor status prior to the July 2023 hearing. Thus, the record demonstrates that FSL, the Property Owners and the Sasco Creek Neighbors had ample

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<sup>3</sup> The Sasco Creek Neighbors and FSL’s requests also did not show that there is good cause for a waiver. FSL indicated that “it has monitored the information submitted by UI to date and had hoped that information would resolve FSL’s concerns; however, it has only created more concerns.” See Docket No. 516, (FSL) Intervenor Request at 6. Yet, prior to filing its request for intervenor status, FSL has not communicated to the Company or the Council any of these alleged concerns and/or attempted to have UI address these concerns. Further, FSL confirms that it has been monitoring the proceeding, however, it fails to explain why it could not meet the filing deadline.

time to file a request for intervenor status prior to the filing deadline, and as such, there is no good cause for granting a waiver. Accordingly, because the Intervenor Request does not meet the statutory requirements of Conn. Gen. Stat. § 4-177a and there is no good cause for a waiver, the Intervenor Request should be denied.

B. The Intervenor Request Does not Contain Specific Factual Allegations of Environmental Harm that are Within the Council's Jurisdiction

The Intervenor Request does not meet the statutory requirements of Conn. Gen. Stat. § 22a-19(a) because it does not contain specific factual allegations setting forth the nature of the alleged project environmental impacts that are within the Council's jurisdiction. Court precedent dictates that mere recitations of the statutory requirements of Conn. Gen. Stat. § 22a-19 are not enough, a request must set forth facts to support an inference that environmental harm will probably result from the challenged activities. The Intervenor Request fails to meet this threshold. In their request, the Property Owners indicate that they will present evidence and testimony that will show "that the proposed activity for which UI seeks a certificate is likely to unreasonably harm the public trust in the air, water or other natural resources of the State of Connecticut" and how the project's design "fails to fully consider impacts to property owners, natural habitats, neighboring property uses, and nearby homes, businesses and municipalities." See Docket No. 516, (Property Owners) Intervenor Request at 2-3. In a similar manner, the Sasco Creek Neighbors state that the project if approved "will unreasonably impact inland wetlands, public water sources...and the visual quality of the environment in a residential area." See Docket No. 516, (Sasco Creek Neighbors) Intervenor Request at paragraph 6. However, the Intervenor Request fails to discuss how the project will

allegedly unreasonably harm the state's natural resources or how its design will be impacting property owners and natural habitats. Further, the Intervenor Request delves into zoning matters and other issues that are not within the purview of the Council's jurisdiction. Consequently, the Intervenor Request does not meet the pleading standards of Conn. Gen. Stat. § 22a-19(a) and the Council should not afford FSL,<sup>4</sup> the Sasco Creek Neighbors and the Property Owners intervenor status.

C. If the Property Owners are Granted Intervenor Status, they Should be Grouped in Accordance with Applicable Regulatory and Statutory Requirements

Conn. Gen. Stat. § 16-50n(c) and Conn. Agencies Regs. § 16-50j-16a provide that the Council at its discretion may group intervenors with the same interests. In the past, the Council has grouped parties or intervenors that share the same interests and/or to facilitate the evidentiary hearing process. See Petition Nos. 983 and 984: Granting of Party Requests and Grouping of Parties at 2 ("The Council voted to group Susan Wagner with FairwindCT, Inc. (Fairwind) and the Somers' on the basis that all three parties have the same interests in that each filed for party status to protect the use and enjoyment and natural beauty of property in proximity to the proposed project, as well as to protect area property values, tourism and commercial viability...All of the parties are also represented by the same counsel."); See *a/so*, Docket No. 424, CSC Correspondence Grouping Victor and Richard Cive as a Party June 5, 2012 ("...the Council grouped the parties, Victor

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<sup>4</sup> Although FSL does not presently seek to intervene pursuant to Conn. Gen. Stat. § 22a-19, FSL reserves the right to intervene as it further understands "potential unreasonable impacts to the natural resources proximate to its property...". See Docket No. 516, (FSL) Intervenor Request at 1. Consequently, to an extent, FSL acknowledges that it is unaware if and/or how the project would unreasonably harm the state's natural resources.

Civie and Richard Civie, consistent with Connecticut General Statutes section 16-50n(c) to facilitate the evidentiary hearing process.”).

As previously discussed, in their requests, the Property Owners listed the same interests and/or reasons for seeking intervenor status, and all of the individuals are represented by the same counsel. Due to the number of individuals requesting intervenor status, if the Council were to grant them intervenor status, a grouping of the intervenors would facilitate the hearing process. For this reason, under the circumstances, should the individuals be granted intervenor status, a grouping of the intervenors would be consistent with Council precedent.

V. Conclusion

For the foregoing reasons, UI respectfully requests that the Council deny FSL, the Property Owners and the Sasco Creek Neighbors' requests for intervenor status. Nonetheless, should the Council decide to grant them intervenor status, then the Company respectfully requests that the Property Owners be grouped pursuant to Conn. Gen. Stat. § 16-50n(c) and Conn. Agencies Regs. § 16-50j-16a to facilitate the evidentiary process.

Respectfully submitted,

The United Illuminating Company



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