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January 11, 2024

Melanie A. Bachman, Esq.  
Executive Director  
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**

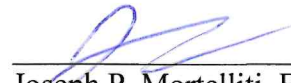
Dear Attorney Bachman:

On behalf of BJ's Wholesale Club, Inc. ("BWC"), enclosed for filing with the Connecticut Siting Council (the "Council") is a Post-Hearing Brief and Proposed Findings of Fact.

An original and fifteen (15) copies of these filings will be hand-delivered to the Council's office. A copy of this filing will also be electronically delivered to you and to the parties listed on the service list.

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

Sincerely,

  
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(203) 744-1234

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

RE: : DOCKET NO. 516  
:  
Application submitted by the United :  
Illuminating Company for a Certificate of :  
Environmental Compatibility and Public Need :  
for the Fairfield to Congress Railroad :  
Transmission Line 115-kV Rebuild Project that :  
consists of the relocation and rebuild of its :  
existing 115- kilovolt (kV) electric transmission :  
lines from the railroad catenary structures to :  
new steel monopole structures and related :  
modifications along approximately 7.3 :  
miles of the Connecticut Department of :  
Transportation’s Metro-North Railroad :  
corridor between Structure B648S located :  
east of Sasco Creek in Fairfield and UI’s :  
Congress Street Substation in Bridgeport, :  
and the rebuild of two existing 115-kV :  
transmission lines along 0.23 mile of existing :  
UI right-of-way to facilitate interconnection :  
of the rebuilt 115-kV electric transmission :  
lines at UI’s existing Ash Creek, Resco, :  
Pequonnock and Congress Street Substations :  
traversing the municipalities of Bridgeport :  
and Fairfield :

JANUARY 11, 2024

**BJ’S WHOLESALE CLUB, INC.’S POST-HEARING BRIEF**

BJ’s Wholesale Club, Inc. (“BWC”) submits this post-hearing brief in accordance with § 16-50j-31 of the Regulations of Connecticut State Agencies and the Connecticut Siting Council’s (the “Council”) schedule, dated December 12, 2023, in the above-referenced proceeding concerning the transmission line project proposed by The United Illuminating Company (“UI”).

For the reasons set forth below, BWC respectfully requests the Council to either (1) deny UI’s application for a Certificate of Environmental Compatibility and Public Need

(the "Certificate"); or (2) grant UI's application but require UI to relocate Pole P723S and Pole P724S entirely off BWC's property as a condition of approval.

## **A. INTRODUCTION**

On March 17, 2023, UI filed an application for a Certificate pursuant to C.G.S. §16-50(a) for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project (the "Project"). The Project will extend approximately 7.3 miles from Catenary Structure B648S, located within the Connecticut Department of Transportation corridor east of Sasco Creek in Fairfield, to UI's Congress Street Substation, adjacent to the west bank of the Pequonnock River in Bridgeport. (ES-1) The Project will consist of related improvements and modifications, including those necessary to remove the existing 115-kV line connections and connect the rebuilt 115-kV lines to UI's Ash Creek, RESCO, Pequonnock and Congress Street substations, along with the Eversource Energy transmission system near the border of Fairfield and Westport. (Id.)

A portion of the Project, as currently proposed in UI's application, is situated on BWC's real property located at 40 Black Rock Turnpike, Fairfield, Connecticut. BWC intervened in the Council's proceedings to protect its various interests that are adversely and unduly impacted by the Project.

## **B. STATEMENT OF FACTS**

BWC operates a large retail store in Fairfield, Connecticut to service its customer membership. The store is bounded on the north by the Metro-North Railroad and by Feroletto Steel Company, Inc. ("Feroletto") on the east. (UI Late-Filed Exhibit 2-3-1) Public access to BWC's store is from Black Rock Turnpike with a subsurface parking structure

beneath a portion of the surface parking lot. Merchandise is delivered to BWC's store at a five (5) bay loading dock located in the northeast corner of the property. (UI Late-Filed Exhibit 2-3-1) Access to and from the loading dock area is achieved through a narrow driveway located on the east side of the store. (Id.) Delivery trucks exiting to the west are limited by weight restrictions on the subsurface parking structure. Due to the unique configuration of BWC's property, truck turning movements in the loading dock utilize the entire dock. (BWC Pre-Filed Testimony, 8/22/2023, p. 2; BWC Pre-Filed Testimony, 11/1/2023, p. 2)

BWC's delivery data from July 19, 2023 through October 16, 2023 shows an average of sixteen (16) truck deliveries per day that normally arrive by way of WB-67 semi-trailer trucks. (See BWC Late-Filed Exhibit, 11/2/2023) Numerous days experienced between twenty five (25) and thirty one (31) deliveries. (Id.) Deliveries occur on a twenty-four (24) hour basis. BWC testified that logistics are an integral part of BWC's business operations, and that BWC's business model is predicated on the efficiency at which the corporation moves product from its distribution centers to its wholesale stores. (BWC Pre-Filed Testimony, 8/22/2023, p. 2) BWC further testified that its supply chain process is closely monitored, evaluated and managed to enhance efficiency. (Id.) Mr. Patrick Natreba, Director of Real Estate at BWC, testified that the timely, reliable movement and delivery of product is one of the central ways that BWC offers value to its customers. (Id.) Mr. Natreba concluded that any delays or disruptions to BWC's logistics synchronization substantially diminishes BWC's services and value as a wholesale club. (Id.)



A small but significant component of the Project involves UI's proposed installation of two monopoles on BWC's property. One of the monopoles, identified on UI's plans as Pole P723S, will be located on the north side of BWC's existing parking area adjacent to the fence along the Metro-North Railroad property. UI testified that it would cost zero dollars (\$0.00) to relocate Pole P723S from BWC's property to the Metro-North Railroad right-of-way. (Tr. 8/29/2023, p. 52) UI proposes to install another monopole, referred to as Pole P724S, in the northeast corner of BWC's property in an area contiguous to BWC's loading dock. (UI Late-Filed Exhibit 2-3-1) UI testified that notwithstanding the proposed location of Pole P724S, it could be repositioned onto the Metro-North Railroad right-of-way.<sup>1</sup> (Tr. 8/29/2023, p. 51) The estimated cost of relocating Pole P724S to the Metro-North Railroad property is between \$60,000.00 and \$72,000.00. (Tr. 8/29/2023, pp. 52, 53) Both monopoles include associated construction easements and permanent easements. BWC testified that monopole-related work in the Temporary Construction Area identified in UI's Late-Filed Exhibit 2-3-1 would adversely impact nearly twenty percent of BWC's deliveries and result in millions of dollars in lost sales. (BWC Pre-Filed Testimony, pp. 3, 4)

### **C. PROCEDURAL BACKGROUND**

On June 27, 2023, BWC filed a petition with the Council for party and/or intervenor status under C.G.S. §§ 16-50n and 4-177a, as well as §§ 16-50j-14, 16-50j-15a and 16-50j-17 of the Regulations of Connecticut State Agencies. On July 20, 2023, the Council granted BWC party status.

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<sup>1</sup> UI acknowledged that it performed a similar repositioning for Pole P725S where the monopole was moved from the Feroletto property to the Metro-North Railroad right-of-way. (Tr. 8/29/2023, pp. 51-52)

On July 25, 2023, the Council conducted an evidentiary hearing session and a public hearing session on the Project. The evidentiary hearing was continued to August 29, 2023, October 17, 2023, November 16, 2023, November 28, 2023 and December 12, 2023.

In addition to BWC and UI, twenty-six (26) other parties filed appearances in the Council's proceedings as either parties under § 16-50j-14 of the Regulations of Connecticut State Agencies, or as intervenors under § 16-50j-15a of the Regulations of Connecticut State Agencies and the Connecticut Environmental Policy Act ("CEPA"). On December 12, 2023, at the conclusion of the final evidentiary hearing, the Council ordered all parties and intervenors to file briefs and proposed findings of fact by January 11, 2024. (Tr. 12/5/2023, p. 264)

#### **D. STANDARD FOR ISSUING A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED**

C.G.S. § 16-50p sets forth various standards and criteria that must be satisfied before the Council decides whether to issue a Certificate. Under subsection (a)(1), "[i]n a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate." Subsection (a)(3) provides that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (A) ... a public need for the facility and the basis for the need ... (E) in the case of an electric or fuel transmission line, that the location of the line *will not pose an undue hazard to persons or property* along the area traversed by the line ..." (emphasis added)

Additionally, under C.G.S. § 22a-19, the Council may not approve the Project if the proposed transmission line “does or is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or natural resources of the state [and] considering all relevant surrounding circumstances and factors, there is a *feasible and prudent alternative consistent with reasonable requirements of public health, safety and welfare.*”<sup>2</sup> R. Fuller, Connecticut Land Use Law & Practice, § 32:6 (2007) (citing C.G.S. § 22a-19) (emphasis added) Given the substantial evidence in the record demonstrating the Project’s adverse impact on BWC’s property, as well as the related public safety concerns at BWC’s property, UI carries the burden of demonstrating that “considering all relevant surrounding circumstances and factors, there is no feasible and prudent alternative to the ... conduct and that such conduct is consistent with the reasonable requirements of the public health, safety and welfare.” C.G.S. § 22a-17; see also *City of Waterbury v. Town of Washington*, 260 Conn. 506, 549-51, 800 A.2d 1102 (2002).

## **E. ARGUMENT**

### 1. The Council should deny UI’s application for a Certificate of Environmental Compatibility and Public Need.

The record in this Council proceeding illustrates that key elements of the Project were predicated on a series of assumptions by UI that, throughout the evidentiary hearing sessions, proved to be either inaccurate or unsupportable. The Council should deny UI’s application because (i) the application did not consistently prioritize existing rights-of-way to avoid or minimize impacts to existing land uses; (ii) UI failed to sufficiently evaluate

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<sup>2</sup> Feasible is defined as “able to be constructed or implemented consistent with sound engineering principles.” C.G.S. § 22a-38(17). “Prudent alternatives are those which are economically reasonable in light of the social benefits derived from the activity.” *Manchester Env’tl. Coalition v. Stockton*, 184 Conn. 51, 63, 440 A.2d 810 (1981); C.G.S. § 22a-38(18).

feasible and prudent alternatives, as required by C.G.S. § 22a-19, as to the placement of Pole P723S and Pole P724S; (iii) UI did not adequately consider or investigate the regulatory process by which Pole P723S and Pole P724S can be treated as a localized cost and be relocated; and (iv) UI did not meet the statutory criteria set forth in C.G.S. § 16-50p, which are prerequisites to any Certificate approval by the Council.

- a. The Project does not prioritize the use of existing rights-of-way and does not adequately avoid or minimize impacts to existing land uses.

In response to the Council's interrogatories, UI represented that the Project is fully consistent with the guidelines published by the Federal Energy Regulatory Commission ("FERC"). (Tr. 8/29/2023, p. 22) Subsequently, on cross-examination by BWC, UI confirmed that FERC advocates and prioritizes the use of existing utility rights-of-way to avoid or minimize impacts to existing land uses and environmental resources. (Id.) UI conceded that the Council must consider effects on existing land uses, and testified that it attempted to avoid impacts to all existing land uses in preparing the Project application. (Tr. 8/29/2023, p. 23) The record contains some evidence of UI's compliance with FERC guidelines; for example, as the Project approached a multi-story apartment building on Howard Avenue in Bridgeport, UI crossed the Metro-North Railroad tracks to avoid the building. (Tr. 8/29/2023, pp. 24-25) UI acknowledged that the built environment within this "congested area" of Bridgeport, as well as more available land on the north side of the Metro-North corridor, were integral to its decision to cross the Metro-North tracks. (Tr. 8/29/2023, pp. 25-26)

Although UI's application is consistent with FERC guidelines in these respects, a closer examination of the record—specifically in the context of BWC's property—shows that UI was not uniform or consistent in its efforts to leverage utility corridors and avoid

and minimize impacts to existing land uses. For example, as to UI's proposed Temporary Equipment Access Path that traverses BWC's parking deck, BWC testified that the interior aisles of its parking deck were not structurally designed to support the heavy construction vehicles that UI would utilize to install Pole P723S and Pole P724S. (BWC Pre-Filed Testimony, 11/2/2023, p. 4) BWC's parking deck limitations are further illustrated through the placement of "goal posts" which limit the ability of commercial vehicles to cross the deck. (Id.) BWC also identified the parking deck's limitations through exhibits that accompanied BWC's pre-filed testimony from August 22, 2023. One such exhibit, Exhibit D, illustrates that none of BWC's laden and unladen commercial vehicles traverses the parking deck.

Nonetheless, UI has proposed an access easement that crosses BWC's parking deck, risks damage to the deck, and may injure BWC's customers utilizing the deck. UI's proposed Temporary Equipment Access Path leads UI's vehicles and machinery past the main entrance to BWC's retail store where customers and children are regularly entering and exiting on an hourly basis. (BWC Pre-Filed Testimony, 11/2/2023, p. 5) This proposed activity presents a public safety risk and, more broadly, is inconsistent with the existing land uses at BWC's property. And UI has not performed a structural analysis to demonstrate that BWC's parking deck can sustain vehicles and machinery that would utilize the Temporary Equipment Access Path. (BWC Pre-Filed Testimony, 11/2/2023, p. 4) In essence, UI seeks the Council's approval of the Project without requiring UI to fully examine or modify the application based on public safety concerns, as well as weight loads and limitations on portions of BWC's property. UI testified that modifications would only occur after the Council granted the Certificate and when UI was "closer to finalizing

construction activity.” (Tr. 8/29/2023, pp. 43-44) But this approach is not possible because the Council admonished UI that if the Temporary Equipment Access Path “is not a viable option because of the weight limits, then we should know that and that *an alternative needs to be resolved here.*” (Tr. 10/27/2023, p. 145) (emphasis added)

U’s position also is arbitrary and internally inconsistent. In responding to the Council’s interrogatories, UI stated that it was placing Pole P725S north of Feroletto’s property to avoid encumbering a paved area of Feroletto’s property. (Tr. 8/29/2023, p. 28) By moving Pole P725S, UI would assume responsibility for supporting the Metro-North Railroad’s signal wires at that adjusted location. (Tr. 8/29/2023, pp. 28-29) So UI is willing to move a monopole to accommodate Feroletto’s business operations, but not willing to do the same for BWC notwithstanding extensive testimony that Pole P724S would adversely impact BWC’s loading dock area. That makes no sense.

U’s decision to adjust the Project’s transmission line route for Feroletto’s benefit, and wholly ignore BWC’s concerns, is also arbitrary because UI failed to determine whether Feroletto’s paved area was even necessary for the operation of Feroletto’s business. (Tr. 8/29/2023, pp. 29-30) In fact, UI testified on cross-examination that it had not even initiated preliminary discussions with Feroletto concerning the paved area. (Tr. 8/29/2023, pp. 29-30) Rather than engage Feroletto in a discussion on the matter while the Council’s evidentiary hearing sessions continued for several months, UI, as the applicant, attempted to improperly pass the burden to BWC. (Tr. 8/29/2023, p. 45) U’s decision to locate Pole P725S north of Feroletto’s property and encumber BWC’s property with Pole P724S, notwithstanding alternative monopole locations, illustrates U’s irrational and untenable approach to adequately avoid or minimize impacts to existing land uses.

More broadly, UI's application reflects a blatant disregard of BWC's existing land uses, as well as BWC's overall business model. Mr. Natreba testified that "[o]ur business ... is based on logistics and the efficient flow of product from point A to B. If we break that, we fail." (Tr. 8/29/2023, p. 132) UI's Proposed Temporary Construction Area for Pole P724S substantially impedes BWC's logistics operations because, according to Note 3 in UI's Late-Filed Exhibit 2-3-1, work activities in the Proposed Temporary Construction Area include two (2) days of site preparation; three (3) days or nights of monopole foundation drilling and concrete pouring; one (1) day or night of monopole installation; nine (9) days or nights of OPGW and 115kV conductor installations; and four (4) days or nights of ground installation/restoration. Mr. Natreba testified that deliveries to BWC's loading dock are based on product demand, which is under a constant state of change and does not allow BWC to set aside time for UI to perform scheduled monopole installation and maintenance. (Tr. 8/29/2023, p. 132-33) BWC provided a late-filed exhibit that illustrated that between July 19, 2023 and October 16, 2023, there were between thirteen (13) and fifty-five (55) product orders per day for BWC's retail store, as well as an average of 16.3 commercial trucks per day entering and exiting the loading dock area. But the application failed to account for the dynamic and variable nature of BWC's business operations and the existing commercial land uses at BWC's property. Therefore, due to UI's inconsistent approach to its duty to avoid or minimize impacts to existing land uses relative to BWC's property, the Council should deny the application and require a new application that properly evaluates, avoids and minimizes impacts to BWC's operations.



- b. UI has not sufficiently evaluated feasible and prudent alternatives, as required by C.G.S. § 22a-19, relative to the placement of Pole P723S and Pole P724S.

The Council should deny UI's application and require a new, modified application due to UI's failure to properly consider feasible and prudent alternatives relative to the installation of Pole P723S and Pole P724S. First, UI conceded that when it filed its application with the Council, it did not consider alternative design configurations between Pole P721 and Pole P725. (Tr. 7/25/2023, p. 23; Tr. 8/29/2023, p. 27) More specifically, UI did not consider the alternative of moving Pole P724S from BWC's property to Feroletto's property or any other abutting property.<sup>3</sup> (Tr. 8/29/2023, p. 28) This oversight is significant, especially because UI acknowledged on cross-examination that the installation of Pole P724S and the maintenance easements extending into BWC's property would interfere with BWC's loading dock operations. (Tr. 8/29/2023, pp. 35-36) UI's permanent easement for Pole P724S, as currently proposed, extends eighteen (18) feet into BWC's loading dock area and would require between one half and three quarters of an acre of BWC's property. (Tr. 8/29/2023, pp. 49-50) UI was also not aware that Feroletto's loading dock operations are located on the southwest side of its property, well clear of the possible alternative location of UI's maintenance easement on Feroletto's property. (Tr. 8/29/2023, pp. 40-41) Again, this omission by UI bears noting because UI deliberately decided to encumber BWC's property without knowing whether installing Pole

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<sup>3</sup> When questioned by BWC's counsel about the appropriateness of approaching Feroletto and discussing possible easements before locating monopoles and seeking easements in BWC's loading dock area, UI objected and asserted that it did not have to "walk up and down the transmission line looking for receptive property owners that would like to have this project in their backyard." (Tr. 8/29/2023, pp. 45-46) But an exhaustive search along the entire transmission is not BWC's expectation or position; BWC is merely inquiring as to why UI would not consider an adjacent property that may not be impacted by UI's monopoles and easements when it is clear that BWC will be adversely impacted. UI's resistance to this reasonable question is not persuasive.

P724S on Feroletto's property, and imposing its associated easements, work pad and construction area, would have any notable impact on Feroletto's business operations. Conversely, BWC testified that the installation of Pole P724S in BWC's loading dock would lead to millions of dollars in lost sales. (BWC Pre-Filed Testimony, 11/2/2023, pp. 3-4)

UI not only ignored the viable alternative of locating Pole P724S on Feroletto's property, but it also failed to consider the option of moving Pole P723S and Pole P724S onto the Metro-North property. On cross-examination, UI acknowledged it was feasible to have its monopoles support Metro-North Railroad signal wires on Metro-North property at least in some locations. (Tr. 8/29/2023, p. 29) But UI failed to examine whether, as a feasible and prudent alternative, it could relocate Pole P723S and Pole P724S to the Metro-North property and support the Metro-North wires from that property. That relocation of Pole P724S is feasible; the Council's analyst, Mr. Michael Perorne, specifically asked UI whether Pole P724S could be shifted entirely onto the Metro-North Railroad right-of-way and UI's engineering expert, Matthew Parkhurst, stated that the shift was possible. (Tr. 7/25/2023, p. 22; Tr. 8/29/2023, p. 51) Mr. Parkhurst also testified that Pole P723S could be moved entirely off BWC's property, stating that "[w]e can accomplish that. We have a little bit of space to move that structure north." (Tr. 7/25/2023, p. 23)

Relocating Pole P723S and Pole P724S onto the Metro-North property is also feasible and prudent in light of the cost of moving each monopole. UI first testified that relocating Pole P723S from BWC's property to the Metro-North Railroad right-of-way would be "negligible," then subsequently testified that the relocation would cost zero (\$0.00) dollars. (Tr. 7/25/2023, p. 23; Tr. 8/29/2023, p. 52) UI also testified that the

estimated cost of relocating Pole P724S to the Metro-North Railroad property would be between \$60,000.00 and \$72,000.00. (Tr. 8/29/2023, pp. 52, 53) In comparison to the Project's total cost—an estimated \$255 million—the cost of relocating Pole P724S is de minimis (0.00028235%). (Tr. 8/29/2023, p. 54)

UI's apparent reluctance to incur the additional expense of relocating Pole P724S is not germane. Connecticut courts are clear that “[a] mere showing of expense ... will not mean that an alternative is imprudent.” *Save Old Stamford, Inc. v. St. Andrew's Protestant Episcopal Church*, Superior Court, Judicial District of Stamford-Norwalk, Docket No. CV09501394S (Jan. 20, 2010) (Brazzel-Massaró, J.); *Fromer v. Reynolds Metals Dev. Corp.*, Superior Court, Judicial District of New London, Docket No. 512967 (May 24, 1991) (Teller, J), *aff'd sub nom. Gardiner v. Conservation Comm'n of Town of Waterford*, 222 Conn. 98, 608 A.2d 672 (1992); *Manchester Env'tl. Coalition v. Stockton*, 184 Conn. 51, 63, 440 A.2d 810 (1981). See also C.G.S. § 22a-38(18) (stating that “a mere showing of expense will not necessarily mean an alternative is imprudent.”).

This minimal expense would be eliminated by BWC's funding of the relocation of Pole P724S from BWC's property to the Metro-North Railroad property. (Tr. 8/29/2023, pp. 55, 58; Tr. 10/17/2023, p. 141) BWC testified unequivocally that it is willing to pay for that relocation. But UI has not approached ISO New England to determine, under Section 12C of the Open Access Transmission Tariff whether, in the context of the Project, BWC's private funding of the cost of relocating Pole P724S qualifies as a localized or regional cost.<sup>4</sup> (Tr. 10/17/2023, pp. 138-39; 140-41) Irrespective of the absence of communication

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<sup>4</sup> Notably, if ISO New England approves BWC's funding to relocate Pole P724S as a localized cost, the approval would lead to a reduction in the rate base for UI's customers and/or the costs of the other transmission owners along the line. (Tr. 10/17/2023, p. 142)

between UI and ISO New England on this subject, BWC's desire to finance the relocation of Pole P724S qualifies the relocation as a feasible and prudent alternative. Therefore, as a matter of law, the Council should deny UI's application to the extent that UI has failed to take this feasible and prudent alternative into consideration.<sup>5</sup>

- c. Certain elements of the Project present a risk to BWC's customers and property and do not satisfy the statutory criteria set forth in C.G.S. § 16-50p.

UI not only failed to adequately consider feasible and prudent alternatives relative to the placement of Pole P723S and Pole P724S. Its application does not meet the standards UI must satisfy under C.G.S. § 16-50p to obtain a Certificate. C.G.S. § 16-50p(a)(3)(E) provides that the Council "shall not grant a certificate, either as proposed or as modified by the council, unless ... (E) in the case of an electric or fuel transmission line, that the location of the line will not pose an **undue hazard to persons or property** along the area traversed by the line. (emphasis added) "[A]n administrative agency must act strictly within its statutory authority, within constitutional limitations and in a lawful manner...." *Lepkowski v. Town of East Lyme Planning Commission*, Superior Court, Judicial District of New London, Docket No. KNL-CV-19-6038720-S, (May 13, 2022) (O'Hanlan, J.) (citing *Fedus v. Zoning and Planning Commission*, 112 Conn. App. 844, 851, 964 A.2d 549, cert. denied, 292 Conn. 904, 973 A.2d 104 (2009)). Additionally, as a matter of law, an administrative agency cannot approve an application that is not in

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<sup>5</sup> During the evidentiary hearing session on August 29, 2023, UI was asked to provide information on whether there was a regulatory procedure by which BWC could finance the relocation of Pole P723S and Pole P724S. (Tr. 10/17/2023, p. 147-49) At the next hearing, to the disappointment of BWC and the Council, UI failed to provide the information. (Id.) UI subsequently filed a late-filed exhibit and stated that ISO New England does not provide a process for private funding of a pool transmission facility. (UI Late-Filed Exhibit, 11/2/2023) Moreover, UI conceded that "ISO-NE would defer the responsibility of local cost recovery, including private funding, to the Transmission Owner..." (Id.) To date, UI has submitted no proof that private funding by BWC would be unfeasible or improper.

substantial compliance with the essential requirements of the governing statutes or regulations. See *Sofia's Plazas, LLC v. East Windsor Planning & Zoning Commission*, Superior Court, Judicial District of Hartford, Docket No. LNDCV186097131S (Jan. 8, 2020) (Berger, J.).

There is ample testimony and evidence in the record demonstrating the undue hazard and risk to BWC's property that would result from the location of Pole P723S and Pole P724S on it. With respect to Pole P723S, BWC testified that the monopole's permanent easement is proposed where BWC is designing its future gas station development. (Tr. 8/29/2023, p. 109-10) BWC further testified that Pole P723S would be "tens of feet" from the gas station development and, due to its proximity and necessary permanent easement, would adversely impact the development. (Tr. 8/29/2023, pp. 109, 110)

With respect to Pole P724S, its proposed location will conflict with and impede the turning movements of BWC's semi-trailers in the adjacent loading dock area. (BWC Pre-filed Testimony, 8/22/2023, p. 2) BWC testified that its semi-trailers require the entire loading dock area to perform truck-turning maneuvers for the loading berths. (BWC Pre-filed Testimony, 8/22/2023, p. 3 and Exhibits B through D) Any UI machinery, vehicles, personnel or equipment located in the proposed Temporary Construction Area and permanent easement area for Pole P724S would prevent BWC from utilizing its loading dock, as BWC's vehicle maneuvers would be physically impossible to achieve. (BWC Pre-Filed Testimony, 8/22/2023, p. 3) BWC also testified that the current conditions at the loading dock are such that without any additional third-party activity, BWC's semi-trailers already encroach on the vegetated area by the loading dock when a vehicle is

parked in the first loading bay. (Id.) In other words, BWC's loading dock is already severely constricted in terms of available space and is not configured to accommodate UI's monopole, permanent easement, Temporary Equipment Access Path and Temporary Construction Area. UI's Late-Filed Exhibit 2-3-1 states that UI's equipment in the proposed Temporary Equipment Access Path "will not occupy this area for any significant duration." (UI Late-Filed Exhibit 2-3-1, Note 2) But UI failed to provide testimony or evidence that defined a "significant duration." (BWC Pre-Filed Testimony, 11/2/2023, p. 3) Each of these complications demonstrate how the Project poses an undue hazard to BWC's property along the transmission line and, by operation of C.G.S. § 16-50p(a)(3)(E), bars the Council from granting the Certificate.

2. If the Council approves UI's application, the Council should require UI to relocate Pole P723S and Pole P724S off BWC's property as a condition of approval.

Notwithstanding the reasons warranting the denial and resubmission of UI's application, if the Council approves the application, it should condition approval on the relocation of Pole P723S and Pole P724S entirely off BWC's property. The Council's authority to issue conditions of approval derives from C.G.S. § 16-50p(a)(1), which states that "[i]n a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, *or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.*" (emphasis added) Conditioning approval on the relocation of Pole P723S and Pole P724S off BWC's property is necessary to ensure consistency with FERC guidelines that prioritize the use of existing utility rights-of-way to avoid or minimize impacts to existing land uses. Conditioning approval is also necessary



to account for UI's failure to sufficiently consider feasible and prudent alternatives and eliminate undue risk and harm to BWC's property and customer base.

## F. CONCLUSION

In the final analysis, BWC seeks very reasonable modifications to the Project—i.e., relocate Pole P723S and Pole P724S off BWC's property to prevent avoidable adverse impacts to BWC and its customers. Additionally, the Project must comply with C.G.S. § 16-50p, adequately avoid or minimize impacts to BWC's existing land uses, and not disproportionately harm BWC's property and business in the face of available feasible and prudent alternatives. Since the Project does not satisfy the requirements of C.G.S. § 16-50p, does not sufficiently avoid or minimize impacts to BWC's existing land uses, and does not include an adequate consideration of feasible and prudent alternatives, BWC respectfully asks the Council to either deny UI's application in its entirety, or in the alternative, require UI to relocate Pole P723S and Pole P724S entirely off BWC's property as a condition of approval.

RESPECTFULLY SUBMITTED,

BJ'S WHOLESALE CLUB, INC.

By:



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Joseph P. Mortelliti

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

RE: : DOCKET NO. 516  
:  
Application submitted by the United :  
Illuminating Company for a Certificate of :  
Environmental Compatibility and Public Need :  
for the Fairfield to Congress Railroad :  
Transmission Line 115-kV Rebuild Project that :  
consists of the relocation and rebuild of its :  
existing 115- kilovolt (kV) electric transmission :  
lines from the railroad catenary structures to :  
new steel monopole structures and related :  
modifications along approximately 7.3 :  
miles of the Connecticut Department of :  
Transportation’s Metro-North Railroad :  
corridor between Structure B648S located :  
east of Sasco Creek in Fairfield and UI’s :  
Congress Street Substation in Bridgeport, :  
and the rebuild of two existing 115-kV :  
transmission lines along 0.23 mile of existing :  
UI right-of-way to facilitate interconnection :  
of the rebuilt 115-kV electric transmission :  
lines at UI’s existing Ash Creek, Resco, :  
Pequonnock and Congress Street Substations :  
traversing the municipalities of Bridgeport :  
and Fairfield :

JANUARY 11, 2024

**POST-HEARING PROPOSED FINDINGS OF FACTS OF  
BJ’S WHOLESALE CLUB, INC.**

BJ’s Wholesale Club, Inc. (“BWC”) proposes the following findings of fact in connection with the above-referenced proceeding. Additional findings of fact are contained within the brief filed by BWC on January 11, 2023.

1. United Illuminating Company (“UI”) has filed an application with the Connecticut Siting Council to install a 115 kV transmission line generally following the route of the Connecticut Department of Transportation Metro North Railroad (“MNR”) corridor. The Project will extend approximately 7.3 miles from Catenary Structure B648S, located within the Connecticut Department of Transportation corridor east of Sasco Creek in Fairfield, to UI’s Congress Street Substation, adjacent to the west bank of the Pequonnock River in Bridgeport.

2. The Project will consist of related improvements and modifications, including those necessary to remove the existing 115-kV line connections and connect the rebuilt 115-kV lines to UI's Ash Creek, RESCO, Pequonnock and Congress Street substations, along with the Eversource Energy transmission system near the border of Fairfield and Westport.
3. BJ's Wholesale Club, Inc. ("BWC") operates a large warehouse for its membership located at 40 Black Rock Turnpike in Fairfield. The property is bounded on the north by MNR and by Feroletto Steel Company, Inc. ("Feroletto") on the east. Public access to the building is from Black Rock Turnpike with parking on between the street and the building. There is a subsurface parking structure beneath a portion of the surface parking lot.
4. Merchandise is delivered to BWC at a 5-bay loading dock located in the northeast corner of the building. Access to and from the loading dock is via a driveway located on the east side of the building. Exiting to the west is limited by weight restrictions on the subsurface parking structure.
5. Based on an analysis of deliveries between July 19, 2023 and October 16, 2023, BWC has an average of 16.3 deliveries that arrive generally in WB-67 semi-trailer trucks. Deliveries occur throughout a 24-hour period.
6. Truck turning movements in the loading area utilize the entire paved area. The loading area cannot be expanded due to property configuration in this location.
7. As shown in Volume 2 Sheet C-17 of the application, UI proposes to install two monopoles on BWC's property. Pole P723S will be located on the north side of the existing parking area adjacent to the fence that separates BWC from MNR. Pole P724S will be located in the northeast corner of the property in an area contiguous to the loading dock. Both poles will have construction and permanent easements associated with them.
8. Pole P723S will adversely impact BWC by impeding the development of the proposed gasoline facility. UI testified that this pole could be relocated onto the MNR property.
9. Pole P724S will have a significant adverse impact on the delivery operations at BWC:
  - The placement of the monopole as shown on Sheet C-17 will conflict with the turning movement of the WB-67 vehicles.

- For at least 20 working days (and possibly more due to construction conditions), deliveries to BWC will be severely disrupted by the construction vehicles installing the monopole and conductors.
- Maintenance vehicles within the permanent easement will cause delivery interruptions on an unscheduled basis.

10. During the Connecticut Siting Council hearings, UI discussed alternative locations for Pole P724S that could possibly reduce or eliminate impacts on BWC's operations. Such revisions include the placement of Pole P724S on MNR property without having any impact on BWC, placement of Pole P724S entirely in an unused area in the northwest corner of the adjacent Feroletto property, and the placement of Pole P724S on BWC's property with construction and maintenance from the adjacent Feroletto property.

## **CONCLUSION**

Based on the foregoing proposed findings of fact, as well as the arguments and facts asserted in BWC's brief, BWC respectfully asks the Council to either deny UI's application in its entirety, or in the alternative, require UI to relocate Pole P723S and Pole P724S entirely off BWC's property as a condition of approval.

RESPECTFULLY SUBMITTED,

BJ'S WHOLESALE CLUB, INC.

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