



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

### VIA ELECTRONIC MAIL

August 29, 2023

Timothy M. Herbst, Esq.  
Marino, Zabel & Schellenberg, PLLC  
657 Orange Center Road  
Orange, CT 06477  
[therbst@mzslaw.com](mailto:therbst@mzslaw.com)

RE: **DOCKET NO. 516** – The United Illuminating Company (UI) application 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, Connecticut. **Request for Intervenor and CEPA Intervenor Status. Request for Additional Evidentiary Hearing.**

Dear Attorney Herbst:

The Connecticut Siting Council (Council) is in receipt of your letter of August 28, 2023, requesting Party status under Connecticut General Statutes (C.G.S.) § 4-177a and § 16-50n, for the Town of Fairfield in Docket No. 516 and the associated request for an additional evidentiary hearing.

The Council does not have a meeting scheduled at which this matter could be taken up as an order of business before the August 29, 2023 hearing date for this matter. Therefore, your request will be taken up as an order of business during the 2:00 p.m. evidentiary session of the hearing on Tuesday, August 29, 2023 via Zoom conferencing. Copies of the application are available at the Bridgeport City Clerk and Fairfield Town Clerk’s Offices. All documents filed to date are available at the Council’s office or on our website.

Enclosed please find the Council’s Information Guide to Party and Intervenor Status and August 29, 2023 Continuation of the Evidentiary Hearing Session Memorandum.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melanie A. Bachman". The signature is fluid and cursive, with the first name being the most prominent.

Melanie A. Bachman  
Executive Director

MB/MP/laf

Enclosure

c: Service List, dated July 20, 2023



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### **CONNECTICUT SITING COUNCIL INFORMATION GUIDE TO PARTY AND INTERVENOR STATUS**

The Connecticut Siting Council (Council) will name or admit as a **party** any person whose legal rights, duties or privileges will be specifically affected by the Council's decision in a docket.

The Council will name or admit as an **intervenor** any person whose participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

#### **Service List and Service Requirements**

Once a person is named or admitted as a party or intervenor, they will be added to the "Service List," which lists all of the participants in a docket that is prepared and made available to the public under the link for a specific docket on the "Pending Matters" page on the Council website. Parties and intervenors will receive documents via e-mail. If a party or intervenor prefer to have hard copies of documents via regular mail, they must notify the Council in writing. Also, documents filed with the Council must contain one original, 15 copies and an electronic version for scanning to the website via e-mail or disk. The Council, parties and intervenors must send a copy of any document filed in a docket to every person on the service list and include a certification as follows:

"I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on (date)." Signature and printed name of the sender.

#### **Conduct of the Proceedings**

- A. Pre-hearing Conference:** The Council will schedule a pre-hearing conference on procedural matters in the Council's office or by telephone. All parties and intervenors are requested to attend or participate. This is the proper venue to informally discuss the Council's procedure and ask any questions related to procedure. Failure to attend results in a lost opportunity to discuss process matters. The Council will also announce a schedule for the submission of pre-filed testimony and pre-hearing interrogatories.
- B. Pre-Filed Testimony:** The Council requires that testimony be pre-filed with the service list before the hearing to avoid direct testimony and to save the time and expense of the public at the hearing. Pre-filed testimony is the only chance for parties and intervenors to make a statement of position. Pre-filed testimony is posted on the docket webpage and is part of the record in a proceeding. Pre-filed testimony consists of allegations of fact and statements of position with exhibits attached in support of the allegations of fact and stated position. Parties and intervenors are not permitted to make statements (ex. directly testify) during the hearing.
- C. Pre-hearing Interrogatories:** The Council encourages parties and intervenors to file pre-hearing questions to the applicant and other parties and intervenors in the proceeding on any information in the record, including, but not limited to, the application, other pre-hearing questions, pre-filed testimony of the applicant or pre-filed testimony of other parties and intervenors in the proceeding. Pre-hearing questions are an opportunity for parties and intervenors to request more information. The applicant, parties and intervenors are obligated to respond to pre-hearing

questions directed to them that are filed by the Council, the applicant and any party or intervenor in the proceeding in accordance with the schedule announced by the Council.

- D. Administrative Notice:** The Council routinely develops a list of exhibits known as “Administrative Notice Items” in every docket. Administrative Notice items are generally recognized technical or scientific facts within the Council’s specialized knowledge, including, but not limited to, prior decisions of the Council, publications of federal state agencies such as the Federal Communications Commission and publications of other state agencies such as the Department of Transportation. Scientific studies or publications for which the author is not available for questioning by participants in the proceeding should be submitted as administrative notice items rather than exhibits attached to pre-filed testimony.
- E. Experts and/or Witnesses:** Experts and/or witnesses are the authors of pre-filed testimony and attached exhibits. They are the sponsors of the information contained in pre-filed testimony and are sworn in during the hearing. After the experts and/or witnesses are sworn in, they are made available for questioning by the Council and other participants in the proceeding. Experts and/or witnesses may not present new evidence or provide direct testimony. For example, if a party or intervenor presents a land survey in their pre-filed testimony, the author or engineer that prepared the land survey must be present at the hearing, sworn in and available to answer questions pertaining to the land survey that are asked by the Council and the other participants in the proceeding.
- F. Cross examination at the hearing:** The Council, applicant, parties and intervenors have an opportunity to cross-examine the witnesses appearing on behalf of the applicant or other parties and intervenors during the hearing. This means that the person conducting the cross-examination asks questions of the witnesses. The applicant and parties and intervenors submit to cross-examination from the Council, the applicant and other parties and intervenors. The order of appearances and cross examination will be governed by a hearing program developed by the Council for the proceeding. Order of appearance is determined by the order in which parties and intervenors were named or admitted by the Council. Typically, the hearing proceeds as follows:
1. Opening Statement from the Council Chairman
  2. Administrative Notice Items of the Council
  3. **Applicant’s Appearance**
    - a. Identification of Exhibits (pre-filed testimony, responses to pre-hearing interrogatories)
    - b. Swear Witnesses
    - c. Cross Examination of the Applicant by:
      - i. Council
      - ii. Party
      - iii. Intervenor

4. **Appearance by Party**
  - a. Identification of Exhibits (pre-filed testimony, responses to pre-hearing interrogatories)
  - b. Swear Witnesses
  - c. Cross Examination of Party by:
    - i. Council
    - ii. Applicant
    - iii. Intervenor
5. **Appearance by Intervenor**
  - a. Identification of Exhibits (pre-filed testimony, responses to pre-hearing interrogatories)
  - b. Swear Witnesses
  - c. Cross Examination of Intervenor by:
    - i. Council
    - ii. Applicant
    - iii. Party
6. **Oral Limited Appearance Statements/Public Comment Session**
  - this portion of the hearing is reserved for members of the public who are not parties and intervenors in the proceeding to express concerns
  - members of citizens' groups or associations that have attained party or intervenor status are represented by the group or association and may not also provide oral limited appearance statements
7. **Rebuttal by Applicant:** Limited to facts and evidence addressed during the hearing. No argument or closing statements/remarks will be allowed.

**G. Post-Hearing Procedure:** At the conclusion of the hearing, when the evidentiary record is officially closed, the Council announces a post-hearing schedule for written limited appearance statements, briefs and proposed findings of fact. No new information, no new evidence and no arguments will be considered by the Council.

**1. 30 Day Written Limited Appearance/Public Comment Period:** Written limited appearance statements from the public are accepted within 30 days after the close of the hearing. Parties and intervenors may not submit additional written statements after the close of the evidentiary record.

**2. Post Hearing Brief and Proposed Findings of Fact Schedule:** Parties and intervenors may file a brief with the Council summarizing allegations of fact and statements of position presented during the evidentiary hearing. Parties and intervenors may also submit suggestions of facts in the record for inclusion in the Council's final decision.

- 3. Draft Findings of Fact Issued by Council:** The Council will issue draft findings of fact from the record to be issued as part of the final decision. Parties and intervenors will be given an opportunity to identify errors or inconsistencies between the Council's draft findings of fact and the record.
- 4. Final Decision:** The Council will make a final decision at a regular Council meeting. The agenda for all Council meetings is published on the Council website. All parties and intervenors to a docket that is on an agenda will receive a copy of the agenda. Although regular Council meetings are open to the public, there is no opportunity for public participation during the meeting. All parties and intervenors will receive a copy of the final decision in the mail.



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VIA ELECTRONIC MAIL

July 27, 2023

TO: Service List, dated July 20, 2023

FROM: Melanie Bachman, Executive Director *NAB*

RE: **DOCKET NO. 516** – The United Illuminating Company (UI) application 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, Connecticut.

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**Continuation of Evidentiary Hearing**

The Connecticut Siting Council (Council) shall continue the evidentiary hearing for the above-referenced proceeding on **Tuesday, August 29, 2023**, via Zoom conferencing, beginning at **2:00 p.m.** A copy of the Instructions for Public Access to the Continued Evidentiary Hearing is attached.

The hearing shall commence with the appearance of the Applicant for cross examination by BJ’s Wholesale Club, Inc. and cross examination on the new exhibits by the Council followed by the appearance of BJ’s Wholesale Club, Inc. for cross examination by the Council and the Applicant.

**UI Late-Filed Exhibits**

During the July 25, 2023 evidentiary hearing session, the Council requested UI submit the following information as late-filed exhibits:

1. Cost table based on the relocation of proposed structures (and associated foundations) off of BJ’s Wholesale Club, Inc. property;
2. Update to response to Council interrogatory 3 to reflect additional contacts with the public;
3. Clarify wetland delineations and impacts as they relate to the discussion of floodplain impacts in section 6.3 of Volume 1 of the Application; and
4. Referencing Figure 2-1 on page 2-2 of Volume 1 of the Application, include line numbers on this diagram.

The Council requests these late-filed exhibits be submitted to the Council before the close of business on **August 22, 2023**.

To save the time and expense of the parties, intervenors and the public, and to conclude this proceeding in a timely fashion, the Council requests that all parties and intervenors submit additional interrogatories to the applicant and other parties and intervenors on or before **August 15, 2023**. Interrogatory responses and additional pre-filed testimony, as well as any supplemental information requested of the applicant during the July 25, 2023 hearing, should be submitted to the Council on or before **August 22, 2023**.

Any request for an extension of time to submit pre-filed testimony and responses to interrogatories shall be submitted to the Council in writing pursuant to §16-50j-22a of the Regulations of Connecticut State Agencies.

If you have any questions about Council procedures, please do not hesitate to contact me at the Council office at 860-827-2935.

Thank you.

MAB/MP/laf

Enclosures:     Schedule, dated July 27, 2023  
                      Instructions for Public Access to Docket No. 516 Remote Continued Evidentiary Hearing  
                      Session

c:       Council Members  
          BCT Reporting LLC





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### REVISED SCHEDULE

**DOCKET NO. 516** – The United Illuminating Company (UI) application 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, Connecticut.

Application received	03/17/2023
Completeness review	04/13/2023
Council Interrogatories <ul style="list-style-type: none"><li>• Set-One Filed</li><li>• Set-One responses due</li></ul>	05/10/2023 05/31/2023
Pre-hearing conference via Zoom remote conferencing - 11:00 a.m.	06/28/2023
Council Interrogatories <ul style="list-style-type: none"><li>• Set-Two Filed</li><li>• Set-Two responses due</li></ul>	07/11/2023 07/18/2023
Deadline for Exchange of Interrogatories between Parties and Intervenor	<b>07/11/2023</b>
Deadline for Pre-filed testimony and responses to interrogatories	<b>07/18/2023</b>
Deadline to request Party/Intervenor status	07/18/2023
Public Hearing 2:00 p.m. evidentiary session and 6:30 p.m. public comment session via Zoom remote conferencing <i>(refer to Hearing Information section on Docket 516 project webpage for Zoom remote conferencing log in/call in)</i>	07/25/2023
<b>Final Deadline for Exchange of Interrogatories between Parties and Intervenor</b>	<b>08/15/2023</b>
<b>Final Deadline for Pre-filed testimony, responses to interrogatories and submission of late filed exhibits</b>	<b>08/22/2023</b>
Continued Evidentiary Session	08/29/2023
Close of Evidentiary Record	08/29/2023
Close of Public Comment Period	09/28/2023
Draft Findings of Fact	10/12/2023
Draft Findings of Fact, Opinion & Decision & Order	10/26/2023
Deadline for Decision	03/17/2024

Siting Analyst: Michael Perrone



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**Instructions for Public Access to Docket No. 516 Remote Continued  
Evidentiary Hearing Session – August 29, 2023 – 2 PM**

**PLEASE NOTE:**

- Interested persons may join the continued evidentiary session to listen, but **no public comments will be received** during the continued evidentiary session. Public comments may be submitted to the Council by email at [siting.council@ct.gov](mailto:siting.council@ct.gov) or by regular mail.
- Any person may be removed from the remote continued evidentiary session at the discretion of the Council.
- All participants are requested to mute sound notifications on their computer, smartphone or tablet. Telephones are often equipped with a “do not disturb” feature for the dial-in option.

**Access to Continued Evidentiary Hearing Session**

1. Attendees can join by clicking (or entering) the following link:  
<https://us06web.zoom.us/j/86075015204?pwd=ZmhyNU9WczVZdWRoTFp5ZHBOR085dz09> from a computer, smartphone, or tablet. No prior software download is required.  
**Meeting ID: 860 7501 5204 and Passcode: HZr7w8**
2. For audio-only participation, attendees can join by dialing in at **1 (929) 205 6099 (not toll free)** and then enter the **Meeting ID: 860 7501 5204 and Passcode: 702261** from a telephone.
3. All microphones will be muted upon entry into the meeting and will be turned on in the order of party appearances and cross examination governed by the Hearing Program.
4. **No public comments will be received during the continued evidentiary hearing session.**



**SENT VIA EMAIL (Melanie.Bachman@ct.gov)**

Melanie Backman, Executive Director  
Connecticut Siting Council  
10 Frankline Square  
New Britain, CT 06051

**Re: United Illuminating Application for  
Certificate of Environmental Compatibility and Public Need  
Fairfield to Congress Railroad Transmission Line  
Docket No. 516  
Evidentiary Hearing, August 29, 2023**

August 28, 2023

Dear Ms. Backman:

As you know, this office represents the Town of Fairfield (the “Town”) before the Connecticut Siting Council (the “Council”) concerning the above referenced application by the United Illuminating Company (“UI”) as it relates to the Fairfield to Congress Railroad Transmission Line (the “Application”). Last week, the Town filed for intervenor status concerning the proposed Application.

Since that time, I have had the occasion to speak and confer with Attorney Michael Burdo, Attorney Joel Green and Attorney Christopher Russo, who are each representing various other intervenors concerning the proposed Application. Given the expanded scope of intervening parties and the intense public concern around this proposed Application, the Town plans on retaining third party experts to review and opine upon the proposed Application as well as rebut certain expert testimony and/or documents produced by the Applicant. The Town would respectfully request that in light of its recently filed application for intervenor status and the concerns articulated to me by counsel for other intervenors, if the public hearing proceeds tomorrow, our cross examination of any witnesses be reserved for a future evidentiary hearing. This will afford the Town and potentially other intervening parties with the opportunity to retain the necessary third-party engineers, consultants and professionals, which in turn will provide the Council with a more detailed body of evidence to aid in its decision-making process.

In the interests of fundamental fairness to the Town and its citizens, we would request that if the public hearing proceeds tomorrow, the Town be accorded an additional forty-five days after tomorrow to properly prepare for the next evidentiary hearing. The Town believes that any such

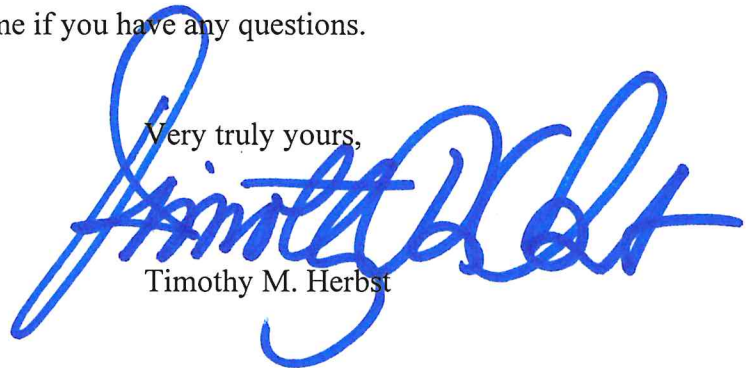
extension provided should also be extended to any other intervenors so as to assure that all parties have bene afforded a similar amount of time to present and solicit testimony.

Judicial review of administrative proceedings has long recognized that the administrative process is designed so agencies act upon evidence which is probative and reliable and also act in a manner that is fundamentally fair. *See Grimes v. Conservation Commission*, 243 Conn. 266, 273–74 (1997). Courts have also placed a tremendous emphasis on fairness and impartiality. *See Fletcher v. Planning & Zoning Commission*, 158 Conn. 497, 507 (1969).

We trust you will agree and it is our hope that counsel for UI will consent to this request. The purpose of these proceedings is to provide the Council with enough probative evidence, both pro and con, to make a reasoned and informed decision on the Application.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Timothy M. Herbst

CC: The Honorable Brenda Kupchick, First Selectwoman, Town of Fairfield  
James Baldwin, Esq., Town Attorney  
Bruce McDermott, Esq.  
Michael Burdo, Esq.  
Joel Green, Esq.  
Christopher Russo, Esq.