

CONNECTICUT SITING COUNCIL

IN RE:

| | | |
|---|---|-------------------|
| THE UNITED ILLUMINATING COMPANY (UI) | : | |
| APPLICATION FOR A CERTIFICATE OF | : | |
| ENVIRONMENTAL COMPATIBILITY AND PUBLIC | : | DOCKET NO. 516 |
| 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 MILES 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 | : | NOVEMBER 14, 2023 |
| SUBSTATIONS TRAVERSING THE | : | |
| MUNICIPALITIES OF BRIDGEPORT AND | : | |
| FAIRFIELD, CONNECTICUT | : | |

MOTION FOR ORDER TO COMPEL PRODUCTION OF DOCUMENTS

The intervenors, SASCO CREEK NEIGHBORS ENVIRONMENTAL TRUST INCORPORATED, STEPHEN OZYCK, KARIM MAHFOUZ, WILLIAM DANYLKO, DAVID PARKER, 2190 POST ROAD LLC, INVEST II, INTERNATIONAL INVESTORS, SOUTHPORT CONGREGATIONAL CHURCH, PEQUOT LIBRARY ASSOCIATION, TRINITY EPISCOPAL CHURCH AND SASQUANAUG ASSOCIATION FOR SOUTHPORT IMPROVEMENT, INC. (collectively, the "Intervenors"), hereby respectfully move the Connecticut Siting Council (the "CSC") to enter an order compelling the applicant, the UNITED

ILLUMINATING COMPANY (“UI”), to fully comply with the Intervenor’s First Set of Interrogatories, dated October 3, 2023.

I. BACKGROUND

UI objected to providing any responses and/ documents in response to twenty-two (22) of the thirty-nine (39) Interrogatories from the Intervenor. On November 8, 2023, the undersigned conducted a lengthy teleconference with UI’s counsel for the purpose of trying to resolve UI’s objections to the Interrogatories. On November 13, 2023, unfortunately UI’s counsel confirmed that it was UI’s position that the objections to the various interrogatories stand.

UI provided “UI respectfully objects to this interrogatory because it seeks information that is not relevant and not likely to lead to the discovery of admissible evidence which will assist the Council’s review of the project and approval sought by UI” in response to the following interrogatories:

2. Please identify the name, position and address of all persons who participated on behalf of UI to evaluate the reliability and resiliency of UI’s 115-kilovolt (kV) overhead transmission lines, and associated infrastructure, located between catenary structure B648S and the Congress Street Substation (the “Site”).
3. For any persons identified in Interrogatory No. 2, please describe the work those persons performed and provide copies of any documents/records/studies/plans that those persons produced on behalf of UI.
7. Please provide a copy of any document in UI’s possession (including but not limited to any and all papers, reports, records and communications, including electronic communications) provided to any expert identified by UI in response to Interrogatory No. 4 which has not been submitted to the Connecticut Siting Council (CSC) as part of the record associated with this Docket No. 516.
9. Please provide a copy of all correspondence in UI’s possession (including electronic communications) between UI and any expert identified by UI in response to Interrogatory No. 4, which pertains to this Docket No. 516.
10. Please provide a copy of all correspondence (including electronic communications) between any representative of UI (legal or otherwise) and any expert identified by UI in response to Interrogatory No. 4, which pertains to this Docket No. 516.

22. What is the performance history of UI's existing facilities at the Site within the last two (2) years? (B) Specifically, please identify all unplanned outages occurring within the last two year, including the date of the outage, the cause of the outage as determined by UI, and the duration of the outage.

32. Please provide a copy of any document in UI's possession (including but not limited to any and all papers, reports, records and communications, as well as any documents or communications in electronic form) which contain any research or analysis pertaining to the structural integrity, reliability and/or resiliency of the existing 115-kV transmission line located between catenary structure B648S and UI's Congress Street substation, and UI's associated electrical infrastructure.

39. Please provide a copy of any documents in UI's possession (including but not limited to any and all papers, reports, records and communications, including electronic) which you relied upon or referenced in order to respond to any of these interrogatories.

UI provided "UI respectfully object to this interrogatory because it seeks information that is (1) not relevant and not likely to lead to the discovery of admissible evidence which will assist the Council's review of the project and the approval sought by UI; (2) is confidential and proprietary information" in response to the following Interrogatories:

35. (A) Please identify any analysis, internal valuation, cost estimate and/or appraisal prepared by or on behalf of UI in association with, or in preparation for, its application associated with this Docket 516. (B) Please provide a copy of any analysis, internal valuation, cost estimate and/or appraisal identified in response to Subsection A of this Interrogatory.

36. (A) Please identify any analysis, internal valuation, cost estimate and/or appraisal pertaining to the feasibility of installing UI's proposed transmission facilities, including associated infrastructure, underground. (B) Please provide a copy of any analysis, internal valuation, cost estimate and/or appraisal identified in response to Subsection A of this Interrogatory.

37. (A) Please identify any analysis, internal valuation, cost estimate and/or appraisal which compares the projected cost of installing UI's proposed transmission facilities, including associated infrastructure, underground to the projected cost of replacing and rebuilding its overhead transmission facilities as proposed in the application associated with this Docket 516. (B) Please provide a copy of any analysis, internal valuation, cost estimate and/or appraisal identified in response to Subsection A of this Interrogatory.

UI provided “UI respectfully objects to this interrogatory because it seeks information that is (1) not relevant and not likely to lead to the discovery of admissible evidence which will assist the Council’s review of the project and the approval sought by UI; (2) not relevant to the need to rebuild the line based on the condition of the asset but rather is related to reliability concerns; and (3) confidential because it is Critical Electric Infrastructure Information” in response to the following Interrogatories:

16. Please identify the load rating of the existing transmission circuits located within the Site, including each circuit’s summer and winter seasonal rating.

17. Please identify the thirty (30) minute peak load of the existing transmission circuits located within the Site that were observed within the last sixty (60) months.

18. Please provide the average daily load history for the existing transmission circuits located within the Site as calculated over the last twenty-four (24) months.

19. Please identify the projected load rating for the transmission circuits proposed by UI as part of its application associated with this Docket 516, including each proposed circuit’s summer and winter seasonal rating.

34. (A) Please identify any ampacity analysis or study conducted by or on behalf of UI, which pertains to the consideration or feasibility of installing UI’s proposed transmission line and/or circuits, and/or associated electrical infrastructure underground. (B) Please provide copies of any analysis or study identified in response to Subsection A of this Interrogatory.

38. Please identify any temperature readings recorded by or on behalf of UI in the vicinity of UI’s existing 345-kV solid dielectric feeder (i.e., Norwalk to Middletown). (B) Please provide a copy of any documents (including electronic or via electronic transmission) that were identified in response to Section A of this Interrogatory.

II. ARGUMENT

A. Connecticut Law Clearly Provides Scope of Discovery is Broad

In Connecticut, the scope of discovery is broad. Kavy v. New Britain Bd. of Educ., CV99-0492921-S, 2001 WL 688622, at *3 (Conn. Super. Ct., May 21, 2001) (Shapiro, J.). Indeed, Connecticut law provides that discovery is permitted so long as “the disclosure sought would be of assistance in the prosecution or defense of the action and...can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure.” Conn. Practice Book § 13-2. This framework “facilitate[s] an intensive search for the truth through accuracy and fairness, providing procedural mechanisms designed to make a trial less a game of blindman’s bluff and more a fair contest with basic issues and facts disclosed to the fullest practical extent.” Picketts v. Int’l Playtex, Inc., 215 Conn. 490, 508 (1990); *quoting* United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958).

B. UI’s Objections Violate Due Process and Fundamental Fairness

UI cannot fairly with due process be permitted to pursue a contested application claiming that UI’s proposed alternative (i.e., permanently taking over 19 acres of private property and taking an additional 10 acres of private property on a temporary basis and constructing 102 gigantic new monopoles and connected transmission lines throughout the project area) is the best alternative and superior to the other alternatives (i.e., underground the 115-kV cable alignments or leave the existing lines as is), while simultaneously withholding from disclosure to the CSC and the parties opposing the Application the very information and documents that may further undermine UI’s claims. UI’s refusal to share information and documentation, which is critical to the Application, is blatantly unjust and, if upheld, will deny the Intervenors’ constitutional, statutory and common law rights to a fair and meaningful hearing.

C. Information Considered By Expert Witnesses

UI improperly objected to providing responses to Interrogatories 2, 3, 7, 9 and 10, which sought information and documentation that UI's experts may have considered in formulating their expert opinions. In Connecticut, an opposing party is entitled to seek this information and documentation that was considered by an expert witness. Connecticut Practice Book § 13-4(b)(3) specifically provides that "the party disclosing an expert witness shall, upon the request of an opposing party, produce to all other parties all materials obtained, created and/or relied upon by the expert in connection with his or her opinions of the case..." An opposing party "has a right to investigate the factual basis of any opinions, expressed by the expert, the nature of any facts that may have been disregarded by the expert as not being relevant to his opinion, and the nature of the request being made to the expert." Murchie v. Hurwitz, Et. Al., 1992 WL 91675 (Conn. Sup., JD of Stamford-Norwalk at Stamford, J. Rush, April 8, 1992) (attached hereto as Exhibit 1).

Interestingly, there is precedent for an applicant before the CSC to be required to disclose records and data considered by its expert witness concerning his/her opinions in support of the application. In Docket No. 448 (Application of Cellco Partnership d/b/a Version Wireless For a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a Tele-Communications Facility Located at 831 Derby Milford Road, Orange, CT), Cellco similarly refused to provide certain records and data concerning cell site performance and utilization data and traffic growth data that were relied upon by Cellco's expert witness on grounds that the same were purportedly confidential and proprietary. The intervenors filed a Motion to Compel production of the records and data on the basis that withholding of potentially material information would deprive the intervenors from having a fair hearing in violation of due process. The CSC improperly denied said motion and the intervenors appealed the CSC's approval

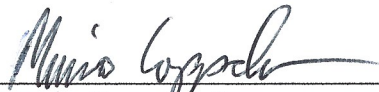
of the application; Subbloie, Albert, Et. Al v. Connecticut Siting Council, Et. Al. (Conn. Sup. JD of New Britain At New Britain, J. Levine, May 13, 2015). In Subbloie, the parties acknowledged and agreed on the record before the Court that it was improper for the CSC to have denied the motion, and that records and data considered by Cellco's experts shall be discoverable by the intervenors. The Court (Hon., J. Levine) entered an order of remand, which vacated the CSC decision, and required a new hearing (attached as Exhibit 2). A denial of this motion by the CSC would be in direct contradiction with the very same position that the CSC accepted in Subbloie, *supra*, and the Court's decision to vacate the CSC's decision and remand a new hearing.

D. Confidential Information

Many of UI's objections claimed that the information/documentation sought was confidential and proprietary. First, as set forth in Section C above, information and/or documents reviewed by any of UI's experts cannot be deemed confidential and proprietary. Second, for any information/documentation that is confidential and proprietary, the Intervenors are willing to execute a binding confidentiality agreement with UI, thereby addressing and protecting any legitimate confidentiality and proprietary concerns. Further, past precedent with the CSC provides that the withheld information may also be submitted under seal. To ignore either approach and permit UI to continue to withhold material certain information and documentation is to deprive the Intervenors from having a fair hearing in violation of due process. Accordingly, the Intervenors respectfully move for an order compelling UI to produce its withheld information and documents that it claimed is confidential and proprietary pursuant to a confidentiality order or under seal by a date certain, or have the Application denied with prejudice.

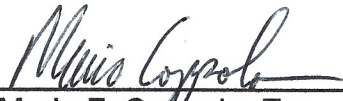
WHEREFORE, the Intervenor respectfully move the CSC for an order compelling UI to produce its withheld information/documents within five days, or have its Application denied with prejudice. The Intervenor also respectfully request the opportunity for argument on the record.

**RESPECTFULLY SUBMITTED BY:
SASCO CREEK NEIGHBORS ENVIRONMENTAL TRUST
INCORPORATED, STEPHEN OZYCK, KARIM MAHFOUZ,
WILLIAM DANYLKO, DAVID PARKER, 2190 POST ROAD LLC,
INVEST II, INTERNATIONAL INVESTORS, SOUTHPORT
CONGREGATIONAL CHURCH, PEQUOT LIBRARY
ASSOCIATION, TRINITY EPISCOPAL CHURCH AND
SASQUANAUG ASSOCIATION FOR SOUTHPORT
IMPROVEMENT, INC.**

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Their Attorneys

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was electronically mailed and/or deposited in the United States mail, first-class, postage pre-paid this 14th day of November, 2023 to the individuals on the Service List for this Docket, as of November 14, 2023.



Mario F. Coppola, Esq.

EXHIBIT 1

Murchie v. Hurwitz

Superior Court of Connecticut, Judicial District of Stamford-Norwalk, at Stamford. • April 8, 1992 • Not Reported in A.2d • 1992 WL 91675 • 6 Conn. L. Rptr. ...

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1992 WL 91675

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Stamford-Norwalk, at Stamford.

David MURCHIE
v.
Paul HURWITZ, et al.

CV88 0095623 S.

April 8, 1992.

Vertical sidebar with buttons for "Notes" and "Quick Check".

Memorandum Of Decision Re: Motion To Compel And Motion For Compliance

All Citations

MEMORANDUM OF DECISION RE: MOTION TO COMPEL AND MOTION FOR COMPLIANCE

RUSH, Judge.

*1 The plaintiff instituted the present action seeking to recover damages for personal injuries claimed to have been sustained as a result of the negligent operation of a motor vehicle by the defendant. After the institution of suit the insurance carrier for the defendant hired an expert to perform an accident reconstruction investigation. The plaintiff noticed the deposition of the expert and requested the contents of the expert's file. At the deposition, certain documents contained in the expert's file were disclosed to the attorney of the plaintiff. However, two documents were removed from that file and the plaintiff has now moved to compel disclosure of those documents and for a reconvening of the deposition. While the defendant objects to the production of the documents, and no claim is made that the expert is not a witness who will be produced at the trial of the action.

The first document, Exhibit I, contains general file information concerning identity of the parties, the insurance carrier's file number, the date of loss etc., to which the defendant asserts no objection to disclosure. Exhibit I also contains notes of defense counsel from a telephone conversation between defendant and the attorney which is not a verbatim transcript of that conversation but rather a synopsis of the discussion. The second document, Exhibit 2, was prepared by an investigator for the defendant and contains, in part, comments of the investigator concerning his opinions and conclusions with respect to a witness.

The defendant asserts that the material requested is not subject to disclosure based upon the attorney/client privilege and upon the attorney work product privilege. While privileged communications extend to communications made through agents, a witness, who is to be utilized at trial, is not regarded as an agent for these purposes. *Cokely v. Lehn and Fink Products Inc.*, 2 CSCR 929 (August 10, 1987) (Dorsey, J.). The communication of information to an expert witness who is to be used at trial would appear to be done for the purpose of providing information relevant to the opinions to be expressed by the expert. In appropriate situations, the attorney work product privilege does not prevent discovery of materials provided to such a witness. *Boring v. Keller*, 97 F.R.D. 404, 407-408 (DC Col.1983).

The plaintiff has a right to investigate the factual basis of any opinions, expressed by the expert, the nature of any facts that may have been disregarded by the expert as not being relevant to his opinion, and the nature of the request made to the expert. Accordingly, the plaintiff has a right to review any information contained in Exhibits I and 2 which constitute an assertion of fact relating to the incident, or a version of the facts relating to the incident. The plaintiff also has a right to review the nature of any request made to the expert. The defendant shall not however, be required to disclose information concerning the mental impressions, conclusions, opinions, or legal theories by a party, the attorney for a party or other representative of a party concerning the litigation. See, Practice Bk. § 219.

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*2 The request by the plaintiff that the defendant be compelled to pay the cost and expenses and any resumed deposition is denied.

Insofar as the parties may be unable to agree as to the scope of this order the parties are left to other forms of procedure including, if they so desire, an, in camera, review of the Exhibits by the court.

All Citations

Not Reported in A.2d, 1992 WL 91675, 6 Conn. L. Rptr. 300

End of Document

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Related documents

- Selected topics
- Secondary Sources
- Briefs
- Trial Court Documents

Pretrial Procedure

Depositions and Discovery

[Exclusion of Testimony of Defendant Substitute Expert Witness](#)



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EXHIBIT 2

DOCKET NO: HHBCV156028261S

SUPERIOR COURT

ORDER 409665

SUBBLOIE, ALBERT Et Al
V.
CONNECTICUT SITING COUNCIL Et Al

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

5/13/2015

ORDER

All parties present.

The following order is entered in the above matter:

ORDER:

Order of remand entered, vacating original Siting Council decision. New hearing to be held before the Siting Council, with a new decision to be issued.

409665

Judge: GEORGE LEVINE
Processed by: Stephen Goldschmidt