

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,	:	DECEMBER 12, 2023
PEQUONNOCK AND CONGRESS STREET	:	
SUBSTATIONS TRAVERSING THE	:	
MUNICIPALITIES OF BRIDGEPORT AND	:	
FAIRFIELD, CONNECTICUT	:	

JOINT MOTION IN OPPOSITION TO
SITING COUNCIL’S ORDER DATED DECEMBER 8, 2023

The party/intervenors, SASCO CREEK NEIGHBORS ENVIRONMENTAL TRUST INCORPORATED, STEPHEN OZYCK, ANDREA 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 “SCNET Intervenors”), the

TOWN OF FAIRFIELD (the “Town”)¹ and PEQUOT REALTY, LLC, 1916 POST ROAD ASSOCIATES, LLC, SF STATION STREET, LLC, MAURA J. GARYCH, METRO HOLDING COMPANY, LLC, SG PEQUOT 200, LLC, 516 PACI RESTAURANT, 461 BROAD STREET, LLC, BRIDGEPORT 11823, LLC, STEPHEN BOCCAROSSA, JAMES SHERWOOD BOK, JACQUELYN THUNFORS, SEAN COWAN and THE NATIONAL TRUST FOR HISTORIC PRESERVATION (the “Grouped Intervenors”) collectively object to the Connecticut Siting Council’s (the “Council”) December 8, 2023 order allotting “a total of one hour for cross examination by the other parties/intervenors to the proceedings and the Council.” (Emphasis in original) (the “Order”). The Order impermissibly and arbitrarily restricts the right to cross-examination and, in turn, deprives the parties of their right to a fundamentally fair and unbiased proceeding.

Per the Order, the Council has elected to allot a total of one hour for the cross-examination of each of the remaining seven party/intervenors, i.e. the SCNET Intervenors, the Town, the Grouped Intervenors, BJ’s Wholesale Club, Inc. (“BWC”), Fairfield Station Lofts, LLC (“FSL”), Superior Plating Company (“SPC”) and the City of Bridgeport (the “City”). The Order clarifies that “[s]hould any party/intervenor appearance for cross examination conclude earlier than the allotted one hour, the remaining time cannot be transferred and/or added to another party/intervenor appearance.” Therefore, if the applicant, The United Illuminating Company (“UI”) elects to cross-examine the SCNET Intervenor’s panel for forty-five minutes, which it is entitled to do, the remaining six party/intervenors and the Council will be allotted a total of *fifteen minutes* (or just over two minutes each) to complete their respective cross-

¹ At the August 29, 2023 public hearing, pursuant to Conn. Gen. Stat. § 16-50n and § 4-177a, the CSC granted Party status to the Town of Fairfield. Moreover, the Town is a “municipality” under Conn. Gen. Stat. § 16-50i(b) and a “party” pursuant to Conn. Gen. Stat. § 16-50n(a)(2).

examinations. In practice, the Order permits a single participant (i.e., the applicant) to deprive the others of the opportunity, or a meaningful opportunity, to exercise their right of cross-examination.

I. The Right to Cross-Examination is Guaranteed by the UAPA

As the Council is aware, this proceeding is governed by the Connecticut Uniform Administrative Procedure Act, Conn. Gen. Stat. § 4-166 et seq. (“UAPA”) and the Council’s rules of practice, Regs., Conn. State Agencies § 16-50j-1 et seq. It is well established that “[h]earings before administrative agencies...although informal and conducted without regard to the strict rules of evidence, must be conducted so as not to violate the fundamental rules of natural justice...Due process of law requires not only that there be due notice of the hearing but that at the hearing the parties involved have a right to produce relevant evidence, and an opportunity to know the facts on which the agency is asked to act, *to cross-examine witnesses and to offer rebuttal evidence.*” (Emphasis added; citations omitted; internal quotation marks omitted) Giaino v. New Haven, 257 Conn. 481, 512-13, 778 A.2d 33 (2001).

The UAPA unambiguously provides that parties in a contested case are afforded “the opportunity...at a hearing, to respond, *to cross-examine other parties, intervenors, and witnesses*, and to present evidence and argument on all issues involved.” Conn. Gen. Stat. § 4-177c(a)(2) (emphasis added). Connecticut General Statutes § 4-178 defines the scope of cross-examination required in a contested case under the UAPA as that “required for a *full and true disclosure of the facts.*” Conn. Gen. Stat. § 4-178(5) (emphasis added); see also Regs. Conn. State Agencies § 16-50j-28(c). See also, e.g., Etheridge v. Goldberg, 8 Conn. L. Rptr. 298, 1993 WL 44346, at *2 (Super. Ct. Jan. 25, 1993) (reversing decision of administrative agency in contested case because party was denied right of cross examination).

The Connecticut Supreme Court has recognized that “[t]he right of cross-examination is not a privilege but is an absolute right...” Gordon v. Indusco Management Corp., 164 Conn. 262, 271, 320 A.2d 811 (1973). The denial of the right to cross-examination implicates the due process rights of a party. Pizzola v. Planning & Zoning Commission, 167 Conn. 202, 207, 355 A.2d 21 (1974); Balch Pontiac-Buick, Inc. v. Commissioner of Motor Vehicles, 165 Conn. 559, 569, 345 A.2d 520 (1973); Welch v. Zoning Board of Appeals, 158 Conn. 208, 212-13, 257 A.2d 795 (1969).

II. It is Improper to Impose Arbitrary Time Limits on Cross-Examination

The parties acknowledge that the Council has the authority to exclude “irrelevant, immaterial or unduly repetitious evidence.” Conn. Gen. Stat. § 4-178(1). The Order, however, does not impose content specific limitations. Rather, it imposes a *time specific* limitation. “Although time, per se, does not reflect the adequacy of cross-examination, it is one factor to consider in determining whether the [parties’] right to cross-examination was violated.” Pet v. Department of Health Services, 228 Conn. 651, 663 (1994). Only “[w]hen the absolute right of cross examination has been fully and fairly exercised, [does] its extent become subject to the sound discretion of the [presiding official who] may exercise a reasonable judgment in determining when the line of inquiry has been exhausted... The [presiding official] has broad discretion in deciding the *relevancy of evidence* as it pertains to cross-examination...” Id. (citing State v. Jones, 167 Conn. 228, 232-33 (1974)); see also Pet v. Department of Health Services, 228 Conn. 651, 688-89 (1994) (Berdon, J. Dissenting) (explaining that presiding official or judge “has wide discretionary control over the *extent* of cross-examination upon particular topics, but the denial of cross-examinations altogether, or its *arbitrary curtailment* upon a proper subject of cross-examination will be ground for reversal.”) (Emphasis in original).

The Order exceeds the authority of the Council and violates the UAPA by imposing an arbitrary and unreasonable time limit on the cross-examination of the party/intervenors' panels. As previously noted, per the Order, the Applicant, the Council and party/intervenors will be allotted *a total of one hour* to complete their cross-examination of "each of the 7 listed party/intervenor appearances..." Each of the party/intervenor panels includes multiple fact witnesses and expert witnesses who submitted pre-filed testimony and/or written reports. These witnesses include, *inter alia*, electrical and professional engineers, historians and historical preservationists, wetland and soil scientists, directly impacted property owners and adversely affected religious institutions. Affording all parties and the Council a total of one hour per group is woefully insufficient, prejudicial and an arbitrary constraint on the participants' absolute right to full and fair cross-examination.

III. It is Improper, Unreasonable and Fundamentally Unfair to Impose New Time Limitations at this Stage of the Public Hearing.

The Council emailed a copy of the Order to party/intervenors on the service list at approximately 4:28 P.M. on Friday, December 8, 2023, less than two full business days prior to the Council's continued evidentiary hearing. The undersigned had already devoted significant time and resources to preparing their cross-examination and their witnesses, several of whom are presently out of the country. It is fundamentally unfair to impose significant, arbitrary and inequitable time limitations on the eve of the continued evidentiary hearing.

The party/intervenors are cognizant of the Council's statutory twelve-month deadline imposed by Conn. Gen. Stat. § 16-50p. However, that deadline does not justify treating the witnesses of the party/intervenors differently than UI's by imposing last-second arbitrary time limits in the middle of a hearing. Indeed, while the Council imposed content-based limits on the cross-examination of UI's witnesses, the Council did not impose an arbitrary time limit on UI's

witnesses' ability to provide testimony through cross examination. This disparate treatment underscores the necessity of affording the party/intervenors' witnesses a meaningful opportunity to also respond to inquiries from other party/intervenors and the Council in a full, fair and transparent manner.

Concerns related to expediency or efficiency should not outweigh the fundamental importance of cross-examination in this contested case. This is a consequential application. UI's proposed high-voltage transmission line project, for which it has neither demonstrated need based on asset condition or projected load, will adversely impact Southport, Fairfield and Bridgeport; will compromise the integrity of historical and cultural resources (including resources listed on the National and State Registers of Historic Places); will result in the degradation or loss of environmental and water resources; and will result in the loss of private property rights and diminished property values.

The need to expedite and close the evidentiary hearing does not justify the Order. Imposition of the Order will have an unduly prejudicial effect on the party/intervenors and will render the Council's proceeding fundamentally unfair.

WHEREFORE, the SCNET Intervenors, Town and the Grouped Intervenors collectively object to the Council's Order and respectfully request the opportunity for argument on the record.

RESPECTFULLY SUBMITTED BY:

THE SCNET INTERVENORS

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was electronically mailed this 11th day of December, 2023 to the individuals on the Service List for this Docket as of this date, and the original and 15 additional hard copies shall be hand-delivered next day to the CSC office.

/s/ Mario F. Coppola
Mario F. Coppola, Esq.