

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 : FEBRUARY 8, 2024  
 SUBSTATIONS TRAVERSING THE :  
 MUNICIPALITIES OF BRIDGEPORT AND :  
 FAIRFIELD, CONNECTICUT :

**SCNET INTERVENORS’ COMMENTS AND PROPOSED REVISIONS TO CONNECTICUT SITING COUNCIL’S DRAFT FINDINGS OF FACT**

The 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”), respectfully submit these comments and proposed revisions in response to the Connecticut Siting Council (“CSC”) Draft Findings of Fact, dated January 25, 2024.

The SCNET Intervenors hereby incorporate herein by reference its Proposed Findings of Fact, dated January 11, 2024, that were not included in the CSC's Draft Findings of Fact. The SCNET Intervenors also hereby fully adopt and incorporate the Town of Fairfield's Comments to Proposed Findings of Fact, dated February 8, 2024. For the reasons stated in prior submissions and based on the totality of the record, the SCNET Intervenors reiterate the Town's position that the CSC should deny UI's Application without prejudice and UI should be required to file a new Application providing the necessary details for a revised design plan that is in alignment with the Hannon-Morrisette Alternative. Furthermore, the SCNET Intervenors also reiterate the Town's alternate position that if the CSC approves UI's Application subject to a condition that the Project is to be redesigned in alignment with the Hannon-Morrisette Alternative, any such approval should be conditioned on the Project being designed primarily to remain in the existing railroad right of way and utilizing monopoles in the same locations and at the same heights as those monopoles that currently exist on the 1130 line.

The SCNET Intervenors respectfully propose the following revisions to the CSC Draft Findings of Fact:

59. On November 14, 2023, SCNET Group submitted a Motion for an Order to Compel Production of Documents requesting the Council to order UI to identify persons and produce documents requested in SCNET Group's interrogatories. **UI objected to 22 of the SCNET Intervenor's initial 39 Interrogatories and Requests for Production. (UI Ex. 20, A-SCNET 1-1 through A-SCNET 1-39).** UI objected to production of the documents on the basis that the information sought is irrelevant to the Council's evaluation of the application and is proprietary and/or confidential Critical Energy Infrastructure Information (CEII). (Record) **UI did not provide testimony or evidence to substantiate its claims that any of the withheld information, data and/or documentation was confidential, proprietary or otherwise exempt from disclosure.**
71. During the November 16, 2023 continued evidentiary hearing session, the Council also denied SCNET Group's Motion for an Order to Compel Production of Documents on the basis that UI's witness panel was available for cross examination during the hearing on topics that are relevant to the Council's evaluation of the application including, but not limited to, UI's Fairfield to New Haven Railroad Corridor Transmission Line Asset Condition Assessment, responses to Council Interrogatories Nos. 5 and 6, and publicly available asset

condition presentations on the ISO-New England, Inc. (ISO-NE) website. (Tr. 5, pp. 8-18; UI 3, responses 5 and 6; Council Administrative Notice Item Nos. 31 and 34; Council Continued Evidentiary Hearing Memorandum, dated November 17, 2023). **The Council did not review UI's objections on an interrogatory-by-interrogatory basis or review the contested documents and information under seal.**

94. On December 8, 2023, **less than two business days before the evidentiary hearing**, the Council issued a memorandum notifying the parties and intervenors that each of the 7 party/intervenor appearances listed in the Council's November 29, 2023 memorandum shall be allotted a total of one hour for cross examination by the other parties/intervenors to the proceeding and the Council. **The Council did not similarly impose any time specific limitations during the examination of the UI witness panel that occurred over the course of five hearing days.** (Record)
98. During the December 12, 2023 continued evidentiary hearing session, all 7 of the parties and intervenors identified in the Council's November 29, 2023 Memorandum Regarding the Continuation of the Evidentiary Hearing on December 12, 2023 appeared for cross examination by all other parties and intervenors and the Council in the order by which requests for status were granted by the Council. (Record; Tr. 7, pp. 15-264). **During the December 12, 2023 evidentiary hearing, the SCNET Intervenor's counsel was precluded from addressing all relevant and material lines of questioning on cross-examination due to the Council's December 8, 2023 order limiting the SCNET Intervenor's time to conduct cross examination.**
104. Prior to and during the evidentiary hearing sessions, the parties and intervenors were afforded opportunities to issue interrogatories, submit pre-filed testimony and exhibits, and cross examine all other parties and intervenors on their respective pre-filed testimony and exhibits (Hearing Notice dated April 13, 2023; Tr. 1; Tr. 2; Tr. 3; Tr. 4; Tr. 5; Tr. 6; Tr. 7; Record; Council Memoranda dated June 21, 2023; July 27, 2023; August 30, 2023; October 19, 2023; November 17, 2023; November 29, 2023) **and UI was permitted object to providing compliance with 22 of the SCNET Intervenor's initial 39 Interrogatories and Requests for Production without being required to provide any testimony or evidence to substantiate its claims that any of the withheld information, data and/or documentation was confidential, proprietary or otherwise exempt from disclosure (UI Ex. 20, A-SCNET 1-1 through A-SCNET 1-39).**
131. SHPO believes the scope of work associated with the proposed Project will have an adverse effect to historic resources and requests ~~UI to further consult with SHPO to resolve the effect.~~ **that a decision of approval by the CSC should be postponed until additional information can be provided to allow the Council to make a more informed decision. (State Historic Preservation Office Comments, 11/17/23).**

258. The estimated capital cost of the Project is:

Total Construction	\$123,500,000
Allowance for Funds Used During Construction (AFUDC) and Overhead*	\$78,200,000
Land Rights**	\$32,200,000
Materials	\$10,700,000
Engineering Design and Permitting	\$10,400,000

**Total Estimated Cost\*\*\* \$255,000,000**

\*AFUDC is a combination of actual and forecasted costs for the Project. AFUDC are accrued interested on funds invested in a utility capital project, and Overheads are costs associated with the Project for certain services including, but not limited to, labor, general construction, and fleet, which are a calculated percent against the Project value. AFUDC totals about \$31.4M, and Overhead totals approximately \$46.8M.

\*\*This is a high-level estimate of the approximately 19.3 acres of permanent easement to be acquired by UI based on the number of acres and an estimated cost per acre. A lower estimate of \$30M was also provided by UI. The higher original estimate of \$32.2M is used above to be conservative.

\*\*\*The total cost has an accuracy band of +/- 25 percent, consistent with PP4. Substation upgrades would comprise less than 1 percent of the total cost. **If you replace UI's cost estimate for land rights with Peter Vimini's estimate of ninety and one hundred and fifty million dollars (\$90,000,000 and \$150,000,000) (Tr. 12/12/23 p. 232-233), the estimated capital cost of the project is \$312,800,000 to \$372,800,000.**

261. ~~It is unknown if~~ **The cost estimates provided by SCNET Group and the Town's professional engineers are in American dollars or Canadian dollars. For this document, it is assumed the costs are in American dollars (SCNET Group 24; Town 10)**

266. **To determine the cost of acquiring easement rights it is necessary to engage in a property-by-property analysis. The Town of Fairfield's expert appraiser, Peter Vimini, MAI, confirmed that "the ordinary measure of damages is to determine the difference between the market value of the whole property as it lay before the taking or imposition of the easement and the market value of what remains of the property after the taking or the imposition of the easement." (Town Ex. 5, Pre-Filed Testimony of P. Vimini). UI did not consider any site-specific details that would be relevant to the cost of acquiring an easement, such as whether condemnation proceedings would be required or whether applicable zoning regulations would render certain properties nonconforming. The Town believes Mr. Vimini concluded that UI's cost of estimate of ~\$30M for land rights for the Project is significantly underestimated. The Town Mr. Vimini estimated that it would cost on the order of three to five times UI's cost projection for a total estimated cost of ninety and one hundred and fifty million dollars (\$90,000,000 and \$150,000,000). (Town 8, pp. 6-7; UI 23, response 16; Tr. 7, pp. 142-143, 149-150)**

350. Land use adjacent to the ROW includes urban/suburban with lawns and landscaping, low profile commercial/industrial buildings, **religious institutions, nursery schools, historic structures, historic properties, a library,** roadways, parking areas, and tidal floodplain, riparian areas, deciduous woodlands, and waterways. (UI 1, Vol. 2, 1" = 400' Maps – Mapsheets 1 through 4)

391. In Fairfield, UI estimates a total easement acreage of 8.73 acres of which approximately 0.97 acres are residential and approximately 7.76 acres are commercial. (Tr. 6, p. 76). **The estimated easements also include a permanent easement of approximately 6,800 ft over the Southport Congregational Church property that is used for multiple religious purposes (Tr. 6 at 154; Tr. 7 at 114) and a permanent easement approximately 25 ft in depth along the norther border of Trinity Episcopal Church's property at 678 Pequot Avenue (SCNET Ex. 23, p. 3)**

and a permanent easement varying in width from 22 ft to 36 ft along the northern border of Trinity's property located at 288 Center Street (SCNET Ex. 23, p. 3).

460. Temporary erosion and sedimentation (E&S) controls would be installed as practicable prior to and/or during vegetation clearing in compliance with the 2002 E&S Guidelines, the DEEP General Permit, and the SWPCP. Temporary controls include, but are not limited to, straw bales and silt fence, to be used during construction involving soil disturbance. (UI 1, Vol. 1, pp. 3-7 and 3-19). The Application does not contain adequate soil and erosion control measures. (SCNET Ex. 14, p. 3). The soils to be disturbed by UI's construction activities have not been properly assessed or characterized. Given the proximity of the Project to the CTDOT-MNR corridor, it is probable that some, if not all, of the soils will contain potentially harmful concentrations of pollutants, including PAHs, PCBs, oil-derived products, pesticides and heavy metals. (SCNET Ex. 14, p. 4). Disturbing the soils poses an undue risk to the ecosystem, including downgradient wetland and coastal resources, and to the public health. (SCNET Ex. 14).
494. None of the proposed monopoles would be located within wetlands. (UI I, Vol., p. 6-9). However, the construction and maintenance of the following monopoles, identified in UI's Application as 654S, 652S, 663S, 671S, 699S, 700S, 704S, 706S, 713S, 713ES, 713ES-1, 713ES-2, 714WS, 714WS-1, 714WS-2, 714WS-3, 716S and, 779S, will likely have an adverse effect on the nearby stream and wetland environments, ecology, and species such as mallard, teal, heron, and egret that use these habitats for nesting, resting, feeding, and rearing young. Lighting and construction noise would likely disturb many of these species, especially their young. (Town Ex. 7, p. 7).
575. A direct effect to a historic property includes the destruction of, damage to, all or part of a historic property; alteration of a historic property in a way that is not consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and applicable guidelines; or the removal of the property from its historic location. (Council Administrative Notice Item 6). UI's witness, David George testified that the project cannot have a direct impact on a historic resource unless the project is physically impairing a historic building. (Tr. 11/16/23, p. 59-60)
576. An indirect effect to a historic property changes the character of the property's use or of physical features within the property's setting that contribute to its historic significance, or introduce visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features. (Council Administrative Notice Item 6) During the Council's evidentiary hearing, UI repeatedly asserted that the Project would result in "indirect impacts" only and "[t]he Project will not cause any direct impacts to above-ground historic resources." (See e.g., UI Ex. 21, A-SCNET 2-9).
579. A Phase 1A Cultural Resources Assessment Survey was performed by Heritage Consultants (Heritage) and a report dated September 2022 (Phase IA Report). David George confirmed that he did not review the inventories cited by Wes Haynes, a historic preservationist retained by the Town of Fairfield, nor did he consult local universities, local museums, local historical societies or the Bridgeport or Fairfield Historic District Commissions prior to preparing UI's Phase IA Report. (Trans. 11/16/23 p. 34-35).

The Phase IA Survey omitted one hundred and seventy-four (174) applicable historic resources. (SCNET Ex. 17, Pre-Filed Testimony of David Scott Parker, p. 8).

The Phase IA Report did not address the “unique aggregation” of nationally significant historic and cultural landmarks located within half a mile of, and impacted by, the Project. (Town Ex. 9, Pre-Filed Testimony of W. Haynes, Ex. B, p. 7). The Project corridor is historically exceptional in that three National Historic Landmarks (“NHL”) are located within half a mile: the Birdcraft Sanctuary, located at 314 Unquowa Road, Fairfield, the Jonathan Sturges Cottage, located at 449 Mill Plain Road, Fairfield, and the Barnum Institute of Science and History, located at 820 Main Street, Bridgeport. (Town Ex. 9, Pre-Filed Testimony of W. Haynes, Ex. B, p. 7).

The Birdcraft Sanctuary is the oldest private songbird sanctuary in the United States and is listed in the NRHP and designated as a National Historic Landmark. (Town Ex. 9, Pre-Filed Testimony of W. Haynes, Ex. B, p. 7).

Within half a mile of the Project corridor, there are 647 properties locally listed or listed on the SRHP or NRHP in the City of Bridgeport, 130 properties locally listed or listed on the SRHP or NRHP in the Town of Fairfield, and 195 properties locally listed or listed on the SRHP or NRHP in the Village of Southport. (SCNET Ex. 17; Town Ex. 9; UI App. Vol. IA-Appx. D. (Table 1)).

The Phase IA Report omitted the Mary and Eliza Freeman Houses located at 352-54 and 358-60 Main Street in Bridgeport from its individual listing of NRHP and SRHP properties located within half a mile of the Project corridor. (Tr. 12/12/23, p. 244). Built in 1848, the Freeman Houses are the oldest remaining homes in the State of Connecticut built by and for free people of color. (Tr. 12/12/23, p. 244). Mr. Haynes testified that with regard to the Freeman Houses, these structures “are extremely rare...An estimated 2 to 3 percent of all properties on the National Register are associated with Black Americans and they’re even rarer in terms of properties that predate the Civil War...” (Tr. 12/12/23, p. 244). In 2018, the Freeman Houses were recognized on the National Trust for Historic Preservation’s “List of the 11 Most Endangered Places in America.” As a result, the Freeman Houses received federal funding for their preservation and restoration in September 2023 and were saved from demolition. (SCNET Ex. 17, p. 11-12). The Project proposes a one hundred and twenty-five foot (125’) tall steel monopole within three hundred and twenty feet (320’) of the Freeman Houses, and within the direct viewshed, of the Freeman Houses. (SCNET Ex. 17, Pre-Filed Testimony of David Scott Parker).

The Phase 1A Survey identified 13 properties/districts listed on the NHRP within 500 feet of the Project. All of these properties/districts are also listed on the State Register of Historic Places (SRHP), and one is listed as a Local Historic District (LHD). The 13 properties/districts are identified in the table below:

Property/District	Address/Boundary	Municipality	NRHP	SRHP	LHD
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Southport Historic District	Bounded by MNR tracks to the north, the Mill River and Southport Harbor to the south, Old South Road to the west, and	Fairfield	X	X	X
Southport Railroad Westbound and Eastbound Stations	96 Station Street and 100 Center Street	Fairfield	X	X	
Fairfield Railroad Stations	off Unquowa Road	Fairfield	X	X	
David Perry House	531 Lafayette Street	Bridgeport	X	X	
Barnum Museum	820 Main Street	Bridgeport	X	X	
United States Post Office (Bridgeport)	120 Middle Street	Bridgeport	X	X	
Connecticut Railway & Lighting Company Car Barn	55 Congress Street	Bridgeport	X	X	
Pequonnock River Railroad Bridge	Crosses Pequonnock River at Grand Street	Bridgeport	X	X	
Bridgeport Downtown South Historic District	Bounded by approximately Frontage Road to the south, Water Street to the east, and Lafayette	Bridgeport	X	X	
Bridgeport Downtown North Historic District	Bounded by approximately Water Street to the east, the south, and Congress Street to the north.	Bridgeport	X	X	
Railroad Avenue Industrial	Railroad Avenue	Bridgeport	X	X	
Division Street Historic District	Bounded by approximately State Street to the north, Iranistan Avenue to the west, Black Rock Avenue to the south,	Bridgeport	X	X	

Barnum-Palliser Historic District	Bounded by approximately Austin Street, Myrtle Avenue, Atlantic Street, and Park	Bridgeport	X	X	
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(UI 1, Vol. 1A, Appendix D, Phase IA Report, pp. 10-14)

595. SHPO reviewed the June 29, 2023 supplemental information to the Phase 1A Report and concurs that there would be an adverse effect on viewsheds, and additional consultation between UI and SHPO regarding mitigation plans should occur ~~prior to development of the Project.~~ (Tr. 1, pp. 33, 40) **and that a decision of approval by the CSC should be postponed until additional information can be provided to allow the Council to make a more informed decision. (State Historic Preservation Office Comments, 11/17/23).**
596. The adverse visual impacts would be along the edge of the railroad corridor. The dominant impacts would be close to the proposed lines, particularly in the City of Bridgeport and near the Southport Historic District **and in the direct vicinity of the Southport Congregational Church and Trinity Episcopal Church houses of worship. The Project will irreparably impair Southport Congregational Church’s worship practices, harm its ability to maintain and grow its membership and would threaten its future viability. (Whitmore PFT, p. 7-8). The Project will irreparably infringe upon Trinity Episcopal Church’s right to own, rent and use land for worship and religious exercise. (SCNET Ex. 23, p.4). The Project will substantially burden the exercise of religion by both Southport Congregational Church and Trinity Episcopal Church and burying the transmission line underground within the public right of way would eliminate the burden on Southport Congregational Church’s and Trinity Episcopal Church’s religious exercise. (Tr. 12/12/23, p. 197-198).** The impacts would be less at more distant locations such as Seaside Park, where views would be more intermittent. (Tr. 1, p. 39).


In support of the above proposed revisions to Findings of Fact No. 575 and 576, it is important for the CSC to note that during the evidentiary hearing UI’s witnesses repeatedly attempted to downplay the magnitude of the adverse impacts of the proposed transmission line on historic properties by characterizing its substantial visual impacts as “indirect.” This characterization is inconsistent with established precedent and policy. In National Parks Conservation Ass’n v. Semonite, 916 F.3d 1075 (D.C. Cir. 2019), the U.S. Court of Appeals explicitly confirmed that adverse visual impacts on historic properties are “direct,” not “indirect,” when caused by the project itself, as would be the case here. By contrast, “indirect” impacts are those caused by a reasonably foreseeable subsequent action by a third party. In fact,



the project at issue in the *Semonite* case was a new transmission line across the James River, and the adverse visual impact at issue was to a historic property two miles away. Here, there are hundreds of historic properties within just a half-mile of the proposed transmission line that would be *directly* adversely affected and caused by the project itself.


**RESPECTFULLY SUBMITTED BY:**

**SASCO CREEK NEIGHBORS ENVIRONMENTAL TRUST INC.,  
STEPHEN OZYCK, ANDREA OZYCK, KARIM MAHFOUZ,  
WILLIAM DANYLKO, DAVID PARKER, 2190 POST ROAD LLC,  
INVEST II, INTERNATIONAL INVESTORS, SOUTHPORT  
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**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 on the above date to the individuals on the Service List for this Docket, as of the above date.

  
Mario F. Coppola, Esq.