MURTHA

ANDREW W. LORD
860.240.6180 DIRECT TELEPHONE
860.240.5723 DIRECT FACSIMILE
ALORD@MURTHALAW.COM

May 20, 2013

VIA HAND DELIVERY & E-MAIL

Melanie Bachman, Esq.
Acting Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Docket No. 190B;
Consideration of Changed Conditions and a Decommissioning Plan

Dear Attorney Bachman:

I am writing on behalf of NRG Energy, Inc. to provide you with a Motion of Meriden Gas Turbines, LLC to Clarify or Limit Scope of Proceeding in the above-referenced docket. An original and 20 copies are enclosed for your convenience

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Andrew W. Lord

Enclosure

cc: Service list

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW Combined Cycle Generating Plant in Meriden, Connecticut. Reopening of this Docket Pursuant to Connecticut General Statutes § 4-181a(b) Limited to Council Consideration of Changed Conditions and a Decommissioning Plan	:	Docket No. 190B May 20, 2013

MOTION OF MERIDEN GAS TURBINES, LLC TO CLARIFY
OR LIMIT SCOPE OF PROCEEDING[1]

As the Connecticut Siting Council (the "Council") is aware from Meriden Gas Turbine, LLC's ("MGT") written comments in this docket dated April 5, 2013, MGT does not believe that the Siting Council has any jurisdiction to reopen this docket as MGT's property in Meriden is not a "facility." MGT has appealed the Council's decision in Superior Court and will be seeking an order to stay the administrative proceeding. The Council should take no further action until the jurisdictional issue is resolved by the Court. However, if the Council decides to move forward with the administrative proceeding, MGT respectfully requests that pursuant to a significant body of Council precedent regarding limited proceedings under Section 4-181a(b) of the Connecticut General Statutes, the Council:

1. clarify or limit the scope of this proceeding to first consider whether the City of Meriden ("Meriden" or the "City") has met its burden and presented

[1] As the Council is aware from MGT's written comments, dated April 5, 2013, MGT does not believe that the Siting Council has any jurisdiction over MGT's property in Meriden as it is not a facility as defined in Conn. Gen. Stat. § 16-50i(a)(3). Accordingly, MGT objected to the reopening of this limited proceeding in its Comments on grounds of lack of jurisdiction. Without waiving those objections, MGT is participating in this proceeding under protest. MGT has appealed the Council's assertion of jurisdiction over MGT's property in Superior Court.

substantial evidence on the record that demonstrates "changed conditions" pursuant to Conn. Gen. Stat. § 4-181a(b);

2. re-caption this limited proceeding as "Docket No. 190MR, Motion to Reopen–Limited Proceeding pursuant to Connecticut General Statutes § 4-181a(b);" and

3. limit the scope of evidence admissible in this proceeding to evidence relevant to "changed conditions."

As explained further below, while not yet fully defined, the Council's (and the City of Meriden's) indications of the current scope of this limited proceeding fails to comport with past Council proceedings pursuant to Conn. Gen. Stat. § 4-181a(b), where parties contested whether "changed conditions" exist that merit the reopening of a prior Council decision. Accordingly, for the reasons set forth herein, MGT respectfully requests the Council follow the precedent established in these prior cases, apply the procedural processes adopted in those proceedings, and thus limit or clarify the scope of this proceeding to address solely the issue of whether Meriden has met its burden and substantially demonstrated "changed conditions." Once the Council holds such a proceeding and determines on the record that the City has substantially put forth evidence meeting its burden to demonstrate "changed conditions," the Council may then hold further proceedings to determine the scope and terms of a decommissioning plan. MGT makes this request in accordance with a significant body of prior Council precedent that clearly justifies the merits of MGT's requests. MGT explains this precedent below.

BACKGROUND

On March 18, 2013, the City of Meriden requested party status, and filed pursuant to Conn. Gen. Stat. § 4-181a(b), a Motion to Reopen Docket 190, alleging

changed conditions. At that time, the City of Meriden was not a party to Docket No. 190. On April 5, 2013, MGT filed limited comments in response to the March 22, 2013 Council Request for Comments. Prior to the Council's granting of party status, and despite this lack of party status, the City of Meriden similarly filed comments in response to the Council's March 22nd request. On April 19, 2013, without the submission of pre-filed testimony, discovery, a public hearing, or otherwise developing a record, the Council granted Meriden party status and "...voted to reopen the Docket No. 190 proceeding pursuant to C.G.S. § 4-181a(b)." The Council captioned this new limited proceeding as "Docket 190B" and in its April 19th memorandum, the Council stated that "[t]he reopened proceeding shall be specifically limited to Council consideration of changed conditions ***and a Decommissioning Plan***." (Emphasis added).

In a May 2, 2013 memorandum, the Council stated "[a]ll service and filling requirements pursuant to General Statutes § 4-181a(b) have been fulfilled." Further, in its May 9th Motion to Compel Immediate Access for Site Inspection, the City of Meriden alleges that "...the Council opened this docket for the purpose of evaluating the environmental scenic, health and safety impacts of MGT's decision to abandon the Project in order to determine the scope and terms of a decommissioning plan." Pg. 3.

During the May 5, 2013 Pre-Hearing Conference, Counsel for MGT raised the issue that certain communications from both the Council and the City appear to mischaracterize the proper scope of this proceeding. Counsel further noted that this characterization was in conflict with the procedural precedent established in prior Council rulings. After raising this potential procedural issue, and requesting either

clarification and/or a limiting of the scope of the proceeding, Council Staff suggested MGT file a Motion outlining its objections. In response to Council Staff's request, MGT provides the following.

I. Council Precedent Establishes that the Council Must First Hold a Proceeding to Gather Substantial Evidence of Changed Conditions Before Holding Further Proceedings

While the procedural posture of this case—and the issues to be addressed—are yet to fully be made clear by the Council, one thing is clear: a significant body of Council precedent establishes that the Council must first address, on the record, that a movant has adequately demonstrated "changed conditions" before the Council may hold further proceedings pursuant to Conn. Gen. Stat. § 4-181a(b). Moreover, the burden to demonstrate "changed conditions" is on the party requesting the Motion to Reopen.

In the Council's decision on the Motion to Reopen Petition No. 784 (attached as Exhibit A), the Council restated its general procedural standard regarding proceedings pursuant to Conn. Gen. Stat. § 4-181a(b):

> Under Connecticut General Statutes § 4-181a(b), the Council ***must first*** consider whether changed conditions, subsequent to the Council's decision, exist, and, if so, whether such conditions constitute a basis sufficient ***to hold further proceedings*** to consider whether such changes, if any justify reversing or otherwise modifying the Council's original decision rendered...

Determination dated October 30, 2008, Petition No. 784MR—*Limited Proceeding pursuant to Connecticut General Statutes § 4-181a(b)*. (Emphasis added).

Likewise, the Council must first hold "***a hearing*** to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings." Petition 784MR, Limited Proceeding Findings of Fact ¶ 7. (Emphasis added).

In the Council's determination on the Motion to Reopen Petition No. 784, on May 28, 2008, the Friends of the Quinebaug River ("FQR") filed with the Council a Motion to Reopen, claiming changed conditions pursuant to Conn. Gen. Stat. § 4-181a(b). Responding to FQR's Motion to Reopen, the Council opened a limited proceeding entitled "Petition No. 784MR – Limited Proceeding pursuant to Connecticut General Statutes § 4-181a(b)," to review FQR's motion. In addressing FQR's Motion to Reopen, the Council repeatedly clarified that the "....hearing [was] being held pursuant to Connecticut General Statutes § 4-181 a(b) to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings to examine whether its original decision should be reversed or modified." Notice of Public Hearing on Petition 784MR, dated July 14, 2008; *see also* Correspondence dated August 6 and August 8, 2008.

After the development of a full and complete record, during an eleven month long proceeding which included an extensive discovery and hearing process, held solely to address whether FQR had met its burden and adequately demonstrated "changed conditions," on October 30, 2008 the Council issued a both a Finding of Fact and Determination that concluded FQR had not adequately demonstrated changed conditions in accordance with Conn. Gen. Stat. § 4-181a(b). Notably, nowhere in the Council's communications in that limited proceeding mention the admission of evidence addressing substantive issues (e.g. a decommissioning plan), nor in that proceeding did the Council classify the limited proceeding as anything other than a limited proceeding on FQR's "Motion to Reopen." The Council captioned the limited proceeding with the

designation "MR". The Council did not open the docket with a new classification of "A" or "B" or include in the caption the substantive issues to be addressed.

The Council's determination on the Motion to Reopen Petition No. 784 is not the only precedent that establishes this procedure. In deciding upon motions to reopen Dockets No. 198 and 141 (attached as Exhibits B and C, respectively), the Council similarly followed this same procedural posture. (The Motions to Reopen Dockets No. 198 and 141 were also the subject of the following court cases: *Sielman v. Connecticut Siting Council*, No. CV020517272S, 2004 WL 203046 and *Town of Fairfield v. Connecticut Siting Council*, 238 Conn. 361 370 (1996), respectively). In Docket No. 198, the Council determined that "[t]he Council's April 25, 2002 hearing on [the] request for reconsideration ***was limited to evidence*** that the Nextel tower on Honey Hill Road and a proposed tower on Mt. Parnassus Road ***are a change in conditions***...[h]owever, the proceeding ***was not reopened to reconsider those issues already covered*** in the Docket No. 198 case." Docket 198, Reconsideration Opinion, September 5, 2002. Again, "after questioning the parties and intervenors in this reconsideration and reviewing the exhibits presented" the Council determined it saw no evidence of changed conditions. *Id.* In Docket No. 141, the Council similarly held a proceeding and hearing limited to the determination of "changed conditions." The Council ultimately determined "[a]fter considering each and every motion, request, and contention, we find no such changed conditions..." Docket No. 141 Motion to Reopen p. 6.

Therefore, the Council's prior precedent in Conn. Gen. Stat. § 4-181a(b) proceedings clearly establishes two irrefutable precedents; (1) the Council must ***first***

consider changed conditions before holding further proceedings; and (2) the Council ***must hold a full evidentiary proceeding and hearing*** that solely addresses the changed conditions issue.

At this stage in this proceeding, the Council has held no hearing, issued no decision, order or finding of fact with respect to the issue of whether the City has demonstrated that "changed conditions" merit the reopening of the decision rendered in Docket No. 190. From the limited amount of correspondence from the Council, and the allegations made by the City, it appears the assumption has been formed that the City has already met is burden to demonstrate changed conditions, despite the fact the Council has yet to hold a proceeding or issue a decision with respect to this issue. To be clear, ***the burden here is the City of Meriden's, not MGT's***. This burden also is not a light burden, as it is well established that the Council (and courts) favor finality in judicial decisions. *See* Decision on Motion to Reopen Docket No. 141 ("Because of a ***legal expectation of finality of a decision***, we must find a showing of changed conditions or a compelling reason to reopen..."); *see also Sielman v. Connecticut Siting Council*, No. CV020517272S, 2004 WL 203046 at 5 (Appealing the Council decision on the Motion to Reopen Docket No. 198). Accordingly, to comport procedurally with past considerations of motions to reopen by the Council, the Council should clarify that the scope of this limited proceeding is only to hear evidence, establish a record and make a determination as to "whether there [is] sufficient reason to entertain reconsideration of its prior decision." *Town of Fairfield v. Connecticut Siting Council*, 238 Conn. 361 370 (1996) (Appealing the Council decision on the Motion to Reopen Docket No. 141).

Likewise, the Council should reclassify this limited proceeding as "Docket 190MR—Limited Proceeding pursuant to Connecticut General Statutes § 4-181a(b)."

II. The Council Should Limit The Scope Of Admissible Evidence In This Proceeding In Accordance With Specific Council Standards Regarding Changed Conditions

Just as prior Council rulings address the procedural posture and process due in Council cases pursuant to Conn. Gen. Stat. § 4-181a(b), prior Council rulings similarly establish specific standards for the relevance of evidence in "changed conditions" cases.

In the decision on the Motion to Reopen Docket No. 141, the Council established the general standard for evidence in changed conditions cases as: (1) "new information or facts that were not available at the time that would compel [the Council] to reopen th[e] case;"(2) "unknown or unforeseen events or any relevant circumstances that would compel [the Council] to reopen the[e] case;" or (3) "scientific or technological breakthroughs that would have altered [the Council's] analysis." Decision on Motion to Reopen Docket No. 141, dated July 30, 1993 at 6; s*ee also Town of Fairfield*, 238 Conn. at 372 (quoting Council's memorandum of decision not to reopen Docket No. 141.)

Furthermore, in the Decision on the Motion to Reopen Docket No. 198, the Council further elaborated that ***evidence of changed conditions does not include "issues already covered" in the underlying docket or decision***. Reconsideration Opinion on Motion to Reopen Docket No. 198 (Sept. 9, 2002). In the Council's Decision on the Motion to Reopen Docket 198, the Council refused to hear evidence about characteristics of a neighborhood, as this issue was already covered in the original proceeding on Docket No. 198, and thus was not evidence of changed conditions. *Id.*

Here, as MGT seeks to show, the possibility of the Meriden project not going forward was both considered and discussed in original proceeding on Docket No. 190. For example, during the hearing for Docket No. 190, the Council specifically and explicitly discussed the possibility of the project not being economically viable and the steps that would be taken to decommission the plant in such an event. The Council could have imposed a decommissioning condition in its Decision and Order, but ultimately chose not to include such a provision in the Final Decision. *See* transcript, Docket No. 190, January 26, 1999 (11:00 A.M.), pp. 59-61. As such, MGT believes a significant record must first be established that substantially proves "changed conditions," and that evidence in this proceeding should be limited in accordance to the relevance of that issue, as guided by prior Council decisions. At this point in the proceeding, it appears much of the evidence Meriden seeks to admit (including Meriden's requested Site Visit) aims to prove ***the need*** for a decommissioning plan, and is ***irrelevant*** to demonstrating whether that factor was (or was not) considered in the original proceeding on Docket No. 190. Denying MGT's request regarding the relevancy of evidence will ignore Council precedent and irreparably prejudice the record in this limited proceeding.

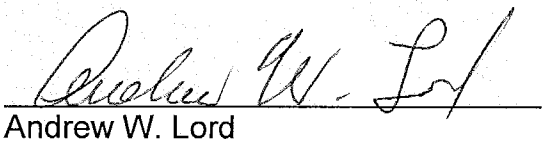
CONCLUSION

WHEREFORE, for the foregoing reasons, in accordance with precedent established herein, MGT respectfully requests the Council clarify or limit the scope of the current proceeding to the sole issue of whether Meriden has adequately and substantially demonstrated on the record "changed conditions" that merit further proceedings. MGT requests the Council first issue a decision and order with respect

this issue, before taking evidence with respect to a decommissioning plan. Moreover, MGT requests the Council reclassify this Docket as Docket No. 190 Motion to Reopen (MR), as the Council has not yet developed a record, issued a Finding of Fact, or Determination with respect to Meriden's burden to demonstrate changed conditions, as the Council has done in prior motion to reopen cases. Finally, in accordance with specific Council evidentiary standards developed concerning changed conditions cases, MGT requests the Council limit the admissibility of evidence as espoused in the Council's decisions establishing such standards.

Respectfully submitted,

MERIDEN GAS TURBINES, LLC

By: 

Andrew W. Lord
Graham T. Coates

Murtha Cullina LLP
CityPlace I, 29th Floor
185 Asylum Street
Hartford, CT 06103
(860) 240-6000
Its Attorneys

EXHIBIT A

PETITION NO. 784MR – Plainfield Renewable Energy, LLC's declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project, Plainfield, Connecticut. Limited Proceeding pursuant to Connecticut General Statutes § 4-181a(b).	Connecticut Siting Council October 30, 2008

Limited Proceeding Findings of Fact

Introduction

1. On August 14, 2006, Plainfield Renewable Energy LLC (PRE) submitted a petition to the Connecticut Siting Council (Council) for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 37.5 MW (net) wood biomass fueled electric generating facility in the Town of Plainfield, Connecticut. The project includes a cooling water intake facility (know as "water diversion facility") in the Town of Canterbury. (Record)

2. On November 16, 2006, the Council held a public hearing in the Town of Plainfield. The hearing included a site visit to both the power plant and water intake location. (Record)

3. The party to the initial proceeding was PRE. The Connecticut Light and Power Company intervened on November 14, 2006. (Record)

4. The Council approved the petition on June 7, 2007. PRE has not yet submitted a Development and Management Plan for the project. (Record)

5. On May 28, 2008, The Friends of the Quinebaug River (FQR) filed a Motion to Reopen with the Council contending that the record is incomplete in regards to the following:
   a) the water diversion facility is on a parcel of land that abuts and is downstream of property that contains a Superfund site;
   b) the water diversion facility is near a recently constructed boat launch;
   c) the location of the water diversion facility was not made generally known to the public; and
   d) construction of the water diversion facility would allow industrial zoning on a residentially zoned parcel.

   FQR made an additional claim of changed conditions on August 14, 2008, stating that the affected section of the Quinebaug River is in the process of being designated as an impaired waterway by the DEP.
   (Record; Transcript 1 – August 14, 2008, 1:00 p.m. [Tr. 1] p. 142)

6. On June 26, 2008, the Council moved to hold a hearing in accordance with Connecticut General Statues § 4-181a(b) on whether to reopen the proceeding. Under Connecticut General Statues § 4-181a(b), the Council must first consider whether changed conditions, subsequent to the Council's decision, exist, and, if so, whether such conditions constitute a basis sufficient to hold further proceedings to consider whether such changes, if any, justify reversing or otherwise modifying the Council's original decision rendered on June 7, 2007. (Record)

7. On August 14, 2008, the Council held a hearing to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings. No member of the public who wished to participate in the subject limited proceeding was denied the opportunity to present evidence

and witnesses and to question witnesses. All parties and intervenors to the original proceeding were considered participants in the subject limited proceeding. All participants who requested participation in the subject limited proceeding were permitted to so participate. (Tr. 1, p. 4, Record)

8. The participants to the limited the proceeding are, PRE, CL&P, FQR and Margret Miner of the Rivers Alliance of Connecticut. (Tr. 1, pp. 4-5)

9. Notice of the limited proceeding was published by PRE on August 6, 2008 in *The Turnpike Buyer* and by the Council on July 16, 2008, in the *Norwich Bulletin*. (Record)

10. On July 30, 2008, PRE installed a two-foot by three-foot sign at the water diversion facility property that noticed the public hearing. (PRE 3)

11. PRE sent notice of the hearing and a brief description of the project by certified mail to abutters of the power plant, water diversion facility, and pipeline. (PRE 3)

12. No abutter provided comment to the Council. (Record)

Water Diversion Facility – Background Information

13. The original location of the water diversion facility, identified in the Petition dated August 14, 2006, was located on the Quinebaug Valley property on Packer Road in Canterbury. (Record; PRE 1, Q. 4)

14. The Quinebaug Valley property contains the Yaworski Lagoon Federal Superfund Site and the Yaworski Landfill State Superfund site. (PRE 1, Exhibit H)

15. PRE met with the First Selectman of Canterbury, Neil Dupont, in the summer of 2006 to discuss the river intake parcel. The town did not hold a public hearing on the matter. (Tr. 1, pp. 109-110)

16. The petition was filed with the Council on August 14, 2006 with copies provided to the following Town of Canterbury officials or departments: Neil Dupont, First Selectman; Steven Sadlowski, Town Planner/Zoning Enforcement/ Inland Wetlands official; David Norrell, Planning and Zoning Chairman; John Tetreault, Inland Wetlands and Watercourse Commission Chairman; Canterbury Public Library. (Record; PRE 1, Q. 3)

17. In early November 2006, PRE met with First Selectman Dupont to discuss the change in location of the water diversion facility. The town did not hold a public hearing on the matter. (PRE 1, Q. 4; Tr. 1, pp. 109-110)

18. PRE submitted a revised location for the water diversion facility to the Council on November 3, 2006, prior to the Council's public hearing on November 16, 2008. (Record)

19. The relocation was necessary due to tax liens that prevented PRE from completing a transaction for use of the Quinebaug Valley property. (Record, Tr. 1, pp. 124-125)

20. PRE discussed the water diversion facility and related pipeline with town officials in December 2006, January 2007, and February 2007. (PRE 1, Q. 4)

21. The water diversion facility will require a DEP water diversion permit. The permit was filed with the DEP in December of 2006. (Record, Tr. 1, pp 127-129)

22. PRE is required to publish notice of the permit in a local newspaper and notify the chief elected official of the affected community. PRE published notice of the permit filing in the *Norwich Bulletin* on December 26, 2007 and provided notice to the First Selectmen of both Canterbury and Plainfield. (PRE 1, Q. 6)

23. On April 7, 2008, the DEP issued a tentative determination to approve the water division permit. The final decision is still pending. The permit included provisions on the amount of water to be used and the amount of wetlands to be impacted, among others. (PRE Administrative Notice Item No. 1)

24. DEP regulations require a public hearing before a water diversion permit is finalized. DEP provided public notice regarding a public hearing and site visit for the PRE water permit. The hearing was held on August 13, 2008. (PRE 1, Q. 6)

Water Diversion Facility - Description

25. PRE intends to use wet cooling technology that would require up to 893,000 gallons of water per day, obtained from the Quinebaug River in Canterbury. According to the tentative water diversion permit, the annual average daily withdrawal cannot exceed 656,000 gallons of water. The maximum daily withdrawal shall not exceed 893,000 gallons. Approximately 126,000 to 194,000 gallons of non-contact cooling water would be returned to the river each day. (Record; PRE Administrative Notice Item No. 1, No. 55)

26. Infrastructure associated with the water diversion facility includes a water intake structure, intake piping, discharge piping, and a pump station. Piping includes segments from the river intake structure to the pump station and from the pump station to the power plant. (Record)

27. The pump station and river intake and discharge points are located on a 15-acre parcel in Canterbury owned by Man-Burch LLC. The property is on the west side of Packer Road and is identified in town tax records as Map 62, Lot 12B. (FQR 2)

28. The pump station is a 10-foot by 30-foot building that contains the pump equipment. PRE would construct a new, 260-foot long driveway extending from Packer Road. (PRE 1, Q. 1, Tr. 1, pp. 110-111)

29. The river intake location is at the top end of Aspinook Pond, an impoundment on the Quinebaug River. The river is approximately 12 feet deep and 200 feet wide at the intake location. The river depth fluctuates by a few feet depending on seasonal conditions. (PRE 1, Exhibit 1; PRE 2, Q. 11; Tr. 1, pp. 101-106)

30. The intake structure, a cylindrical screen 18-inches in length, would be mounted on a six-inch diameter pipe that extends off the bottom of the riverbed by one foot. The top of the screen would extend off the bottom by approximately 2.5 feet. (Tr. 1, pp. 98-99, 104)

31. The screen would be periodically cleared of debris by using a three to four second blast of air to force objects off it. (Tr. 1, pp. 131-132)

32. The intake and discharge pipelines would be installed within a four-foot wide trench located within the shoulder and roadway of Packer Road in Canterbury, and Lillibridge and Mill Brook roads in Plainfield. The pipelines would extend approximately 2.3 miles from the pump station to the power plant. (Record; PRE 2, Q. 17; Tr. 1, p. 112)

33. The Mann-Burch property is undeveloped and zoned Rural District, RD. (FQR 2, FQR 3)

34. The RD zone description does not include pump stations as a permitted use. The General Provisions section of the zoning regulations states a pump station can be constructed within 25 feet of any waterbody, watercourse or wetland or, if the area is subject to flooding, within 25 feet of the highest flood line. (PRE 1, Q. 5; Town of Canterbury Zoning Regulations, March 4, 2008)

35. Fourteen acres of the property would be placed into a conservation easement to prevent future development on the property. An invasive species management plan would also be implemented. (Tr. 1, pp. 133-134)

Water Diversion Facility – Post Decision Modifications

36. Various portions of the water diversion facility have changed since the Council's June 7, 2007 decision, as follows:

    a. The pump station has been relocated from an embankment adjacent to the south property line to a central location on the property. The relocation was at the request of the DEP to avoid potential habitat for the eastern spadefoot toad, a state endangered species. 95-97)

    b. PRE intends to install piping from the pump house to the river intake and discharge locations using horizontal directional drilling rather than open trenching, as originally proposed. By use of horizontal directional drilling, wetland impacts were reduced by approximately 3,000 square feet. The DEP's tentative water diversion permit allows up to 3,397 square feet of permanent wetland impact and 6,098 square feet of temporary wetland impact.

(PRE Administrative Notice Item No. 5; PRE 1, Q. 1; Tr. 1, pp. 95-97)

Water Diversion Facility – Environmental Considerations

37. The Man-Burch property is immediately south and downstream of the Yaworski superfund sites. A plume of contaminated groundwater extends west from the superfund sites and under the Quinebaug River. (PRE 1, Q. 7; Tr. 1, pp. 89-90)

38. The river intake location is 7,000 feet downstream of the Yaworski lagoon and 2,900 feet downstream of the Yaworski landfill. The straight-line distance to the intake location from the lagoon is 2,400 feet and the straight-line distance to the intake location from the landfill is 800 feet. (PRE 1, Q. 7)

39. Operation of the water diversion facility would have no effect on the groundwater plume. (PRE 1, Q. 1)

40. Surface water samples collected downstream from the landfill and lagoon were reviewed as part of the water permit process. No significant contaminants attributed to these or other sources were identified. (PRE 1, Q. 7)

41. There is no evidence that contaminants from the Yaworski landfill or lagoon have migrated onto the Man-Burch property. (PRE 1, Q. 7; PRE 2, Q. 1)

42. The DEP Remediation Division reviewed the water diversion permit application and determined the project would have a negligible effect on the Division's program interests. The Remediation Division plans no further review. (PRE 1, Q. 7; Tr. 1, pp. 46-47)

43. Fish species that inhabit this portion of the Quinebaug River consist mainly of warm water pond species (sunfish, perch, large and smallmouth bass, chain pickerel, bluegill, white sucker and bullhead) that construct nests along shallow, shoreline habitats and are not likely to encounter the water intake screen. The water intake would not result in significant impingement or entrainment losses on these resident species. (PRE 1, Exhibit 1)

44. Some diadromous fish species (e.g. river herring, shad.) have been reintroduced by the DEP into the Quinebaug River near the location of the planned water diversion facility. These fish release their eggs in the water column, and the eggs could be drawn into the water intake. To reduce the intake velocity and thus minimize the threat of impingement and entrainment, the diameter of the screen was increased from 13-inches to 18-inches. (PRE 1, Q. 1, Exhibit 1; Tr. 1, pp. 120-123)

45. The DEP Fisheries Division recommended that any unconfined instream work be restricted to the period of June 1 to September 30 to avoid fish spawning and fry development, seasonal migratory behaviors, and historic seasonal low water levels. (PRE 1, Exhibit 1)

46. PRE's plume model assumed a discharge temperature of 90 degrees. The actual discharge temperature would be less since the water would be pumped 2.3 miles from the power plant to the river with resulting heat loss. Fishery resources would not be adversely affected by the thermal discharge. (PRE 1, Exhibit 1; Tr. 1, pp. 134-135)

47. The water diversion amount would have a negligible effect on the river volume and would not result in significant loss of instream habitats. (PRE 1, Exhibit 1)

48. The DEP issued a draft State of Connecticut Integrated Water Quality Report, 2008, that lists the Quinebaug River in Canterbury as impaired due to *Escherichia coli* contamination. (PRE 2, Q. 13; FQR 27; Tr. 1, pp. 63-66)

49. PRE would pretreat the intake water with chlorine to eliminate *E. coli* prior to use. The discharge water would be neutralized by removing the chlorine prior to release into the river. (Tr. 1, pp. 63-66, 74-74, 114-115, 118-121)

Water Diversion Facility – Recreational Considerations

50. A boat launch is located on Aspinook Pond, approximately three quarters of a mile downstream of the intake location. Operation of the river intake would have no effect on the boat launch. (Tr. 1, pp. 69-73)

51. PRE intends to install navigational markers to alert boaters to the presence of the intake screen. PRE would consult with the DEP regarding the form of the markers prior to installation. (Tr. 1, pp. 108-109)

52. PRE would install bollards upstream of the intake structure to protect it from large debris. The bollards would be six to ten inches in diameter and approximately three feet high. The top of the bollards would be nine to ten feet (plus or minus a few feet depending on seasonal conditions) below the river surface. (Tr. 1, Tr. 1, pp. 101-107)

PETITION NO. 784MR – Plainfield Renewable Energy, LLC's declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project, Plainfield, Connecticut. Limited Proceeding pursuant to Connecticut General Statutes § 4-181a(b).	}	Connecticut
	}	Siting
	}	Council
		October 30, 2008

Determination

On August 14, 2006, Plainfield Renewable Energy LLC (PRE) submitted a petition to the Connecticut Siting Council (Council) for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 37.5 MW (net) wood biomass fueled electric generating facility in the Town of Plainfield, Connecticut. The project includes a cooling water intake facility (a.k.a. "water diversion facility") in the Town of Canterbury. The Council approved the petition on June 7, 2007.

On May 28, 2008, The Friends of the Quinebaug River (FQR) filed a Motion to Reopen with the Council contending that the Petition 784 record is incomplete in regards to the following:

a) the water diversion facility is on a parcel of land that abuts and is downstream of property that contains a Superfund site;
b) the water diversion facility is near a recently constructed boat launch;
c) the location of the water diversion facility was not made generally known to the public; and
d) construction of the water diversion facility would allow industrial zoning on a residentially zoned parcel.

FQR made two additional claims of changed conditions on August 14, 2008, as follows:

e) the Quinebaug River in Canterbury is in the process of being designated as an impaired waterway by the DEP; and
f) relations between the affected communities and PRE had deteriorated.

On June 26, 2008, the Council moved to hold a limited hearing in accordance with Connecticut General Statues § 4-181a(b) on whether to reopen the proceeding. Under Connecticut General Statues § 4-181a(b), the Council must first consider whether changed conditions, subsequent to the Council's decision exist, and, if so, whether such conditions constitute a basis sufficient to hold further proceedings to consider whether such changes justify reversing or otherwise modifying the Council's original decision.

On August 14, 2008, the Council held a limited proceeding to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings. Based on the evidence and testimony presented during the proceeding, the Council hereby comments on each of FQR's claims of changed conditions as follows:

a) the Council finds that the presence of a Superfund site on an adjacent parcel has no bearing on the Council's approval. No evidence of existing contamination of the Mann-Burch property from the Superfund site or any nearby landfill was presented. Furthermore, the DEP's Remediation Division, which oversees the cleanup of contaminated sites in Connecticut, reviewed the water diversion permit application filed for this project and determined the project would have a negligible effect on the Division's program interests and no further review by the division is warranted.

b) the Council finds the presence of the water intake structure would have no effect on recreational use of the Quinebaug River. The Council notes the intake location is at the north end of Aspinook Pond, an impoundment on the Quinebaug River. A boat launch is located on Aspinook Pond, approximately three-quarters of a mile downstream of the intake location. The Council finds that the river intake structure and associated protective bollards would extend off the river bottom by no more than three feet in an area where the river depth is 12 feet. Thus recreational users would be unlikely to encounter the intake structure. Additionally, the intake structure would be marked by navigational markers to alert boaters of its presence. The velocity of the intake would be at such a low rate that it is unlikely to draw fish onto the intake screen. The volume of water used for power plant operations would have no effect on the river depth at the river intake location.

c) The Council finds that public notice as to part of the project affecting Canterbury residents was adequate. PRE notified and discussed the proposed water diversion facility with the Town of Canterbury prior to the filing of the petition with the Council. When PRE changed the location of the water diversion facility to the Man-Burch property, PRE discussed the change with Town of Canterbury officials. The Council held a publicly noticed hearing in Plainfield on November 16, 2006 that included a site visit to both the power plant and new water intake location. The change in location of the water diversion facility occurred before the Council's public hearing on this matter and was indicated in publicly available documents. The Town of Canterbury did not elect to hold town meetings regarding the water diversion facility and did not comment on the proposal to the Council either at the public hearing or in writing prior to the Council rendering its decision on June 7, 2007.

   Prior to the Council's limited proceeding (Petition 784MR), the Council published public notice in an area newspaper that specifically mentioned the location of the water diversion facility and the nature of the limited proceeding. Additionally, prior to the limited proceeding, PRE provided written notice of the proposed project, including the water diversion facility, power plant, and pipeline, to all abutters of the project, published a public notice of the limited proceeding in an area newspaper, and installed a sign on the host property describing the proposed project. No abutter to any portion of the project provided written comment or sought to become a participant to the limited proceeding.

d) the Council, in accordance with Connecticut General Statute § 16-50x, has exclusive jurisdiction to site facilities such as power plants and associated infrastructure. The Council notes the 10-foot by 30-foot pump station is located toward the center of a wooded, 15-acre parcel. The pump station would not be obtrusive to neighboring properties.

e) the Council finds the DEP has issued a draft water quality report that lists the Quinebaug River in Canterbury as impaired due to *Escherichia coli* contamination. This listing, however, would have no effect on power plant operations or river quality and is not material to the Council's decision.

f) The Council considers that while community relations between an applicant and its host community are important, such relations do not constitute one of the statutory factors that the Council takes into account when approving an electric generating facility, whether by a petition for a declaratory ruling (as in the instant case), or by an application for a certificate.

Based on the evidence and testimony presented during the proceeding, the Council determines there is not sufficient evidence of changed conditions to cause the reopening of Petition 784 or to reconsider the Council's decision rendered on June 7, 2007.

CERTIFICATION

The undersigned members of the Connecticut Siting Council (Council) hereby certify that they have heard this case, or read the record thereof, in **PETITION NO. 784MR - Limited Proceeding Pursuant to Connecticut General Statutes § 4-181a(b)** – Plainfield Renewable Energy, LLC's declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project in Plainfield, Connecticut, and voted as follows to deny The Friends of Quinebaug River's Motion to Reopen:

Council Members	Vote Cast
Daniel F. Caruso, Chairman	Yes
Colin C. Tait, Vice Chairman	Yes
Commissioner Donald W. Downes Designee: Gerald J. Heffernan	Absent
Commissioner Gina McCarthy Designee: Brian Golembiewski	Absent
Philip T. Ashton	Yes
Daniel P. Lynch, Jr.	Abstain
James J. Murphy, Jr.	Yes
Dr. Barbara Currier Bell	Yes
Edward S. Wilensky	Yes

Dated at New Britain, Connecticut, October 30, 2008.

Date: August 13, 2008

LIST OF PARTICIPANTS

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant PE784	Plainfield Renewable Energy LLC	Daniel Donovan, Vice President Plainfield Renewable Energy LLC 20 Marshall Street, Suite 300 Norwalk, CT 06854 (203) 354-1529 (203) 549-0596 fax ddonovan@prellc.net Bruce L. McDermott Wiggin and Dana LLP One Century Tower New Haven, CT 06508-1832 (203) 498-4400 (203) 782-2889 fax bmcdermott@wiggin.com
Intervenor (granted 11/14/06) PE784	The Connecticut Light and Power Company (CL&P)	Paul Sousa Senior Engineer – Transmission Interconnections Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2481 sousapm@nu.com Stephen Gibelli Associate Counsel Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5513 Gibels@nu.com Anthony M. Fitzgerald, Esq. Carmody& Torrance LLP P.O. Box 1950 New Haven, CT 06509-1950 (203) 777-5501 (203) 784-3199 afitzgerald@carmodylaw.com Robert S. Golden, Jr. Carmody & Torrance LLP P.O. Box 1110 Waterbury, CT 06721-1110 rgolden@carmodylaw.com

LIST OF PARTICIPANTS

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
	CL&P continued...	John R. Morisette Manager- Transmission Siting and Permitting Northeast Utilities Service Company 107 Selden Street Berlin, CT 06037 860-665-2036 morisjr@nu.com Jeffery D. Cochran Senior Counsel Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 860-665-3548 cochrjd@nu.com Corey P. Saunders, Esq. Carmody & Torrance LLP P.O. Box 1110 Waterbury, CT 06721-1110 203-578-4254 csaunders@carmodylaw.com Vincent Pace Senior Counsel P.O. Box 270 Hartford, CT 06141-0270 860-665-5426 860-665-5504 pacevp@nu.com
Participant PE784MR		Steven Orlomoski Friends of the Quinebaug River 145 North Society Road Canterbury, CT 06331 sorlomoski@charter.net
Participant PE784MR		Margaret Miner Executive Director Rivers Alliance of Connecticut P.O. Box 1797 Litchfield, CT 06759 rivers@riversalliance.org

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
Internet: ct.gov/csc

Daniel F. Caruso
Chairman

May 29, 2008

TO: Parties & Intervenors

FROM: S. Derek Phelps, Executive Director

RE: **PETITION NO. 784** – Plainfield Renewable Energy, LLC petition for a declaratory ruling no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project, Plainfield, Connecticut.

Attached please find a Motion to Reopen filed with the Connecticut Siting Council (Council) in connection with the above referenced proceeding. This motion was provided to the Council on May 28, 2008. This motion is anticipated to be on the June 5, 2008, Council agenda.

Please advise the Council no later that 12:00 p.m. on June 4, 2008, of any comments. We thank you for your attention to this matter.

SDP/cm

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

Internet: ct.gov/csc

Daniel F. Caruso
Chairman

DATE: July 16, 2008

TO: Council Members

FROM: S. Derek Phelps, Executive Director

RE: **PETITION NO. 784MR** – Plainfield Renewable Energy, LLC's declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project, Plainfield, Connecticut.

I. Introduction

On June 7, 2007, the Council issued a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 megawatt wood biomass electric generating facility in Plainfield, Connecticut. On June 26, 2008, the Council moved to convene a hearing pursuant to Connecticut General Statues § 4-181a(b) to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings to examine whether its original decision should be reversed or modified.

This hearing session will provide the applicant, parties, and intervenors and any additional participants an opportunity to submit testimony, evidence and to cross-examine positions and present legal arguments. The applicant will be allowed a final rebuttal. Arguments will also be entertained in writing after the close of the last hearing session.

II. Proposed Schedule

Pre-hearing conference (10:00 a.m.)	07/28/08
Pre-filed testimony due	08/07/08
Deadline to request hearing participant status	08/07/08
Hearing (1:00 p.m.)	08/14/08
Close of hearing record	09/15/08

Robert D. Mercier
Siting Analyst

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
Internet: ct.gov/csc

Daniel F. Caruso
Chairman

August 6, 2008

John W. Olsen, President
Connecticut AFL-CIO
56 Town Line Road
Rocky Hill, CT 06067

RE: **PETITION NO. 784MR** – Plainfield Renewable Energy, LLC's declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project, Plainfield, Connecticut.

Dear Mr. Olsen:

The Connecticut Siting Council is in receipt of your recent correspondence concerning Petition 784MR.

This proceeding is being held pursuant to Connecticut General Statues § 4-181a(b) to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings to examine whether its original decision should be reversed or modified.

Before making its decision, the Council will carefully consider all the facts of the record. The record is developed by the Council; the petitioner, parties and intervenors, participants in the proceeding; and members of the public who submit written statements to the Council. The Council is guided by its jurisdiction under Connecticut State Law and endeavors to hold all proceedings fairly and open to the public.

Thank you for your interest and concern in this very important matter. Your letter will be entered in the public comment file related to this proceeding.

Very truly yours,

S. Derek Phelps
Executive Director

SDP/cm

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
Internet: ct.gov/csc

Daniel F. Caruso
Chairman

August 8, 2008

Randy Stilwell
Concerned Citizens of Plainfield
97 Kate Downing Road
Plainfield, CT 06374

RE: **PETITION NO. 784MR** – Plainfield Renewable Energy, LLC's declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 37.5 MW Wood Biomass Generating Project, Plainfield, Connecticut.

Dear Mr. Stilwell:

The Connecticut Siting Council is in receipt of your recent correspondence concerning Petition 784MR.

This proceeding is being held pursuant to Connecticut General Statues § 4-181a(b) to hear evidence as to whether conditions have changed such that the Council should conduct further proceedings to examine whether its original decision should be reversed or modified.

Before making its decision, the Council will carefully consider all the facts of the record. The record is developed by the Council; the petitioner, parties and intervenors, participants in the proceeding; and members of the public who submit written statements to the Council. The Council is guided by its jurisdiction under Connecticut State Law and endeavors to hold all proceedings fairly and open to the public.

Thank you for your interest and concern in this very important matter. Your letter will be entered in the public comment file related to this proceeding.

Very truly yours,

S. Derek Phelps
Executive Director

SDP/RDM/cm

EXHIBIT B

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@po.state.ct.us
Web Site: www.state.ct.us/csc/index.htm

September 9, 2002

TO: Parties and Intervenors

FROM: S. Derek Phelps, Executive Director

RE: **DOCKET NO. 198** - Crown Atlantic Company LLC and Cellco Partnership /b/a Verizon Wireless Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a cellular telecommunications facility in the Town of Salem.

By its Decision and Order dated July 25, 2001, the Connecticut Siting Council (Council) granted a Certificate of Environmental Compatibility and Public Need (Certificate) for construction, maintenance, and operation of a cellular telecommunications facility at the prime site located at 399 West Street, Salem, Connecticut. The Decision and Order dated September 5, 2002 affirms this decision.

Enclosed are the Council's Findings of Fact, Opinion, and Decision and Order, dated September 5, 2002.

SDP/laf

Enclosures (4)

c: Albert Palko, State Documents Librarian
Council Members

DOCKET NO. 198 - Crown Atlantic Company LLC and Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a cellular telecommunications facility at one of two locations in the Town of Salem.	}	Connecticut
	}	Siting
	}	Council
	}	September 5, 2002

Reconsideration Findings of Fact
Introduction

1. On July 21, 2000, Crown Atlantic Company LLC (Crown) and Cellco Partnership (Cellco) d/b/a Verizon (collectively, the applicant) applied to the Connecticut Siting Council (Council) for the construction maintenance and operation of a telecommunications tower at 399 West Road or 329 West Road, Salem, Connecticut. The purpose of the facility is to provide cellular coverage to existing coverage gaps in the Salem area along Routes 11, 82, 85, and local roads and to meet demand beyond the capacity of existing facilities. (Docket No. 198 Findings of Fact, July 25, 2001, Finding No. 1)

2. On March 15, 2001, the Council denied both of the proposed Salem sites without prejudice. The Council reopened this docket at the request of the applicant and held a hearing on May 23, 2001. On July 25, 2001, the Council voted to approve the proposed Salem site at 399 West Road, Salem, and deny the site at 329 West Road, Salem, Connecticut. (Docket No. 198, Opinion, July 25, 2001, p. 1)

3. On August 10, 2001, the Town of Salem, an intervenor in this proceeding, Peter F. Sielman, and the Town of East Haddam (collectively, the Petitioners) petitioned the Council to reconsider its July 25, 2001, approval of the 399 West Road Salem site. (Petitioners Ex. 2, Tab1, Tab 2, letters dated August 10, 2001)

4. At a meeting held on August 29, 2001, the Council denied the request for reconsideration by the Petitioners. Pursuant to Connecticut General Statutes § 4-181 a(a), the Town of Salem was not at that time a party to this proceeding, and the Council found no reasons to reopen because of an error of fact or law, no new evidence had been discovered which materially affected the merits of the case, and no other good cause of reconsideration had been shown; and pursuant to Connecticut General Statutes § 4-181a(b), no person made an adequate showing of changed conditions. (Petitioners Ex. 2, Tab 4, p. 1)

5. On February 14, 2002, the Town of Salem, Peter F. Sielman, and the Town of East Haddam filed a joint Petition for Reconsideration of the approval of the 399 West Road site with the Council and formally requested party status in this matter. The basis for the change in conditions is described by the petitioners as follows: "...that the Siting Council was unaware the area to be served by the proposed tower has no major roadways, a population of fifty homes and is surrounded by wetlands making future growth unlikely. In addition, the recent approval of a proposed tower in East Haddam for Nextel at a location known as Honey Hill Road and notification to East Haddam of a proposed telecommunications tower on Mt. Parnassus Road are evidence of a change in conditions, and refute Verizon's claim that the proposed tower in Salem meets a Public Need." On March 7, 2002, the Council granted the request of the joint petitioners to reconsider its July 25, 2001 decision and reopened the hearing, limited to evidence that the recent approval of a proposed tower in East Haddam for Nextel at a location known as Honey Hill Road and notification to East Haddam of a proposed telecommunications tower on Mr. Parnassus Road are a change in conditions under Section 4-181a(b) of the Connecticut General Statutes. (Petitioners Ex.2, p. 1, p. 4; Tr., 4/25/02 p.4)

6. The Town of East Haddam, the Town of Salem and Peter Sielman were granted party status and Attorney General Richard Blumenthal was granted intervenor status in this proceeding. The hearing

on the request for reconsideration was held April 25, 2002 at 10 Franklin Square, New Britain, Connecticut, beginning at 3:10 p.m. (Tr. 4/25/02, pp. 3-5)

7. The hearing was limited to evidence that the recent approval of a proposed tower in East Haddam for Nextel at a location known as Honey Hill Road and notification to East Haddam of a proposed telecommunications tower on Mt. Parnassus Road are a change in conditions. (Tr. 4/25/02, p. 4)

The Nextel Tower

8. On July 10, 2001, the Town of East Haddam Planning and Zoning Commission approved the application of Nextel Communications of the Mid-Atlantic, Inc. to construct a 150-foot monopole at 135 Honey Hill Road, East Haddam. The base of the tower would be constructed to be capable of holding six carriers. (Petitioners Ex.2, Tab 6, Town of East Haddam Planning and Zoning Commission, Memorandum of Decision, July 11, 2001)

9. Cellco plans to attach its antennas on the Honey Hill Road Nextel tower to complement its coverage in the Salem area. This site is planned to operate in conjunction with the approved West Road tower in Salem, Connecticut. (Tr. 4/25/02, pp. 89-90)

10. Use of the Nextel tower on Honey Hill Road in East Haddam would replace Cellco's previous need for a site in the North Lyme area. Cellco is currently negotiating lease terms to share Nextel's Honey Hill Road tower. (Cellco 11, Pre-filed testimony of David A. Crotty, Radio Frequency Engineer, Verizon Wireless, April 15, 2002; Docket No. 198, Findings of Fact, Finding #53)

Proposed East Haddam Towers

11. Message Center Management (MCM) is investigating two tower sites in the Town of East Haddam. One site would be located near the intersection of Nicholas Road and Route 149 at the Town-owned transfer station. MCM and the Town of East Haddam have concluded lease negotiations, and a lease for this site was approved at a Town meeting. A 190-foot tower would be constructed at this site. A second tower site would be proposed at 126 Parker Road, also known as the Mount Parnassus site. A lease has been executed for this site. A 190-foot tower would be constructed at this site. (Petitioners Ex. 3, Tab 2, Levy and Droney letter of April 18, 2002; Tr. 4/25/02, p. 43)

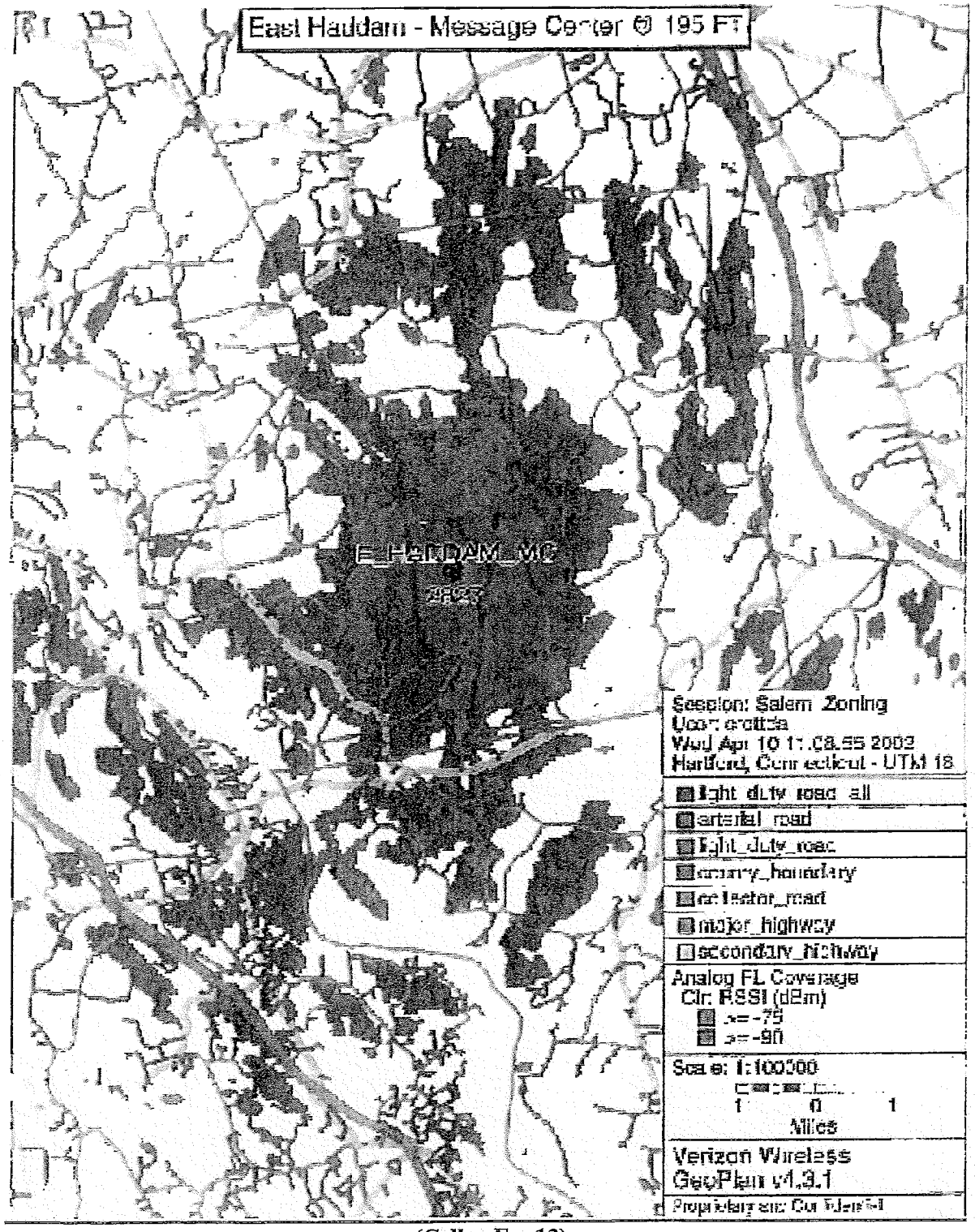
12. The proposed Mount Parnassus tower would be located approximately 500 to 600 feet from an existing 300-foot Century Cable tower, and approximately four miles from the approved West Road tower site in Salem. (Tr. 4/25/02, p. 42, p.46; Cellco Ex. 11, p.3)

13. The ridge on which the approved West Road Salem tower would be constructed acts as an impediment to coverage from the existing Century Cable tower and the proposed Mount Parnassus site to roadways to the east in Salem, including Routes 11 and 85. (Tr. 4/25/02, p. 91; Cellco Ex. 12, propagation coverage map of Message Center tower at 195 feet; Cellco Ex.13, propagation map of Century Cable tower at 120 feet)

14. The proposed Mount Parnassus tower would not provide coverage to Route 85, Route 11, West Road, or the portion of Route 82 southwest of Route 11. The tower would be expected to provide coverage to the central portions of East Haddam surrounding Mount Parnassus Road. (Cellco 12, propagation coverage map of Message Center tower at 195 feet; Tr. 4/25/02 pp. 85-87)

15. The proposed Mount Parnassus tower is expected to be filed first with the Town of East Haddam, and after a period of 60 days, filed with the Siting Council. (Tr. 4/25/02, pp.40-41; Petitioners Ex. 3, Tab 2, Levy and Droney letter of April 18, 2002)

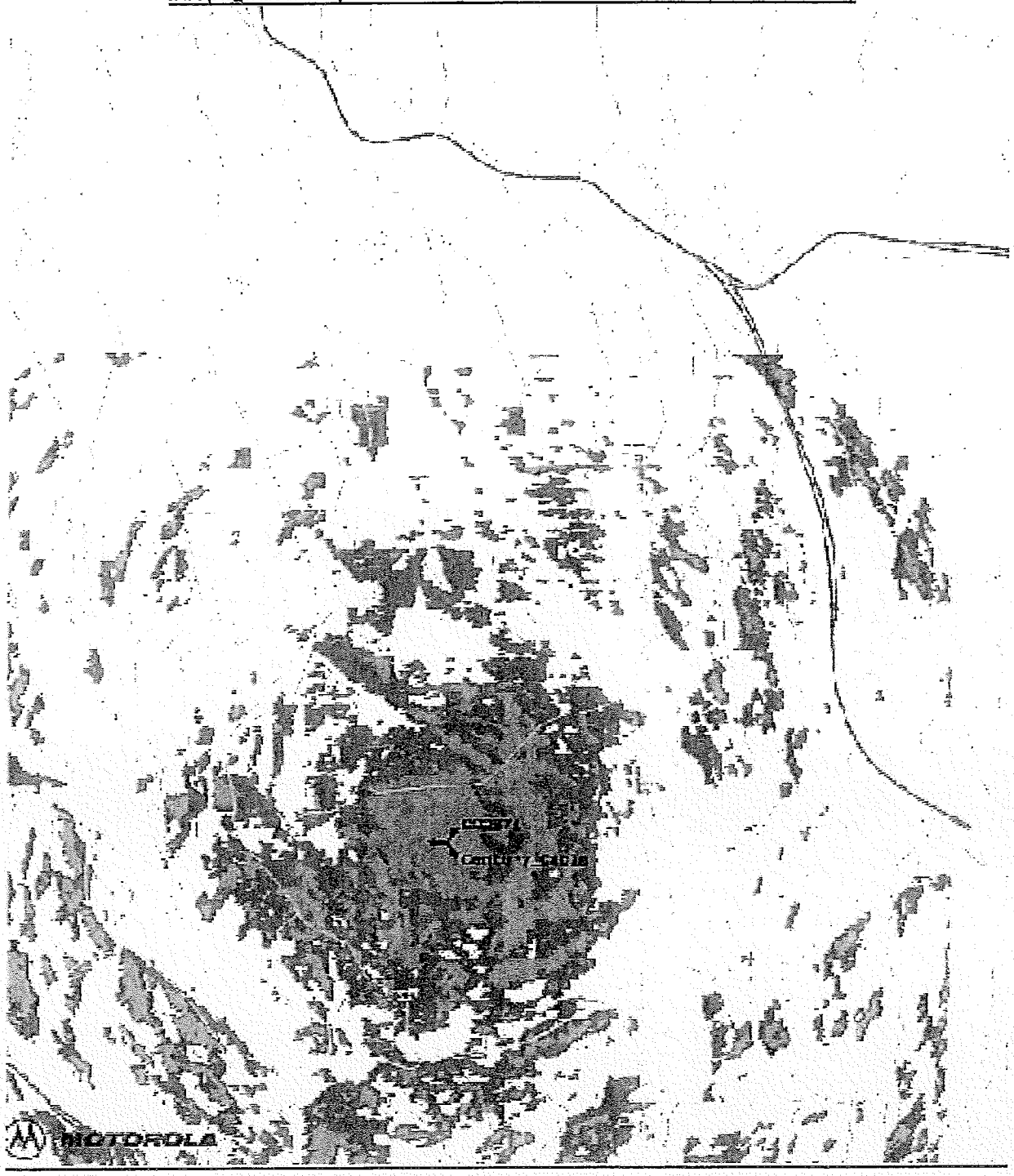
APPENDIX A



(Cellco Ex. 13)

APPENDIX B

Propagation map of Century Cable tower at 120 ft. (Cellco Ex. 13)



DOCKET NO. 198 - Crown Atlantic Company LLC and Cellco Partnership d/b/a Verizon Wireless Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a cellular telecommunications facility in the Town of Salem.	}	Connecticut
	}	Siting
	}	Council
	}	September 5, 2002

Reconsideration Opinion

On March 7, 2002, the Connecticut Siting Council (Council) granted the request of the Town of Salem, Peter F. Sielman, and the Town of East Haddam to reconsider the Council's decision in this docket which had granted approval for the construction of a telecommunications tower at 399 West Road, Salem, Connecticut by Crown Atlantic Company LLC (Crown) and Cellco Partnership (Cellco) on July 25, 2001. The reconsideration request is based on contentions by the petitioners that a change in conditions has occurred under Connecticut General Statutes §§ 4-181a(b). The petitioners described the change in conditions as follows: "...that the Siting Council was unaware the area to be served by the proposed tower has no major roadways, a population of 50 homes and is surrounded by wetlands making future growth unlikely. In addition, the recent approval of a proposed tower in East Haddam for Nextel at a location known as Honey Hill Road and notification to East Haddam of a proposed telecommunication tower on Mt. Parnassus Road are evidence of a change in conditions, and refute Verizon's claim that the proposed tower in Salem meets a Public Need".

The Council's April 25, 2002 hearing on this request for reconsideration was limited to evidence that the Nextel tower on Honey Hill Road and a proposed tower on Mt. Parnassus Road are a change in conditions. Cellco plans to attach its antennas on the Honey Hill Road Nextel tower to complement its coverage in the Salem area. This site is planned to operate in conjunction with the approved West Road tower in Salem. However, the proceeding was not reopened to reconsider those issues already covered in the Docket No. 198 case.

In effect, the petitioners are asking the Council to rescind the Certificate granted to Crown and Cellco based on a proposed tower which has not yet been certificated and in fact might never be certificated. After questioning the parties and intervenors in this reconsideration and reviewing the exhibits presented, the Council sees no evidence of a change in conditions and therefore will affirm its decision of July 25, 2001, approving a telecommunications tower at 399 West Road, Salem, Connecticut.

DOCKET NO. 198 - Crown Atlantic Company LLC and Cellco Partnership d/b/a Verizon Wireless Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a cellular telecommunications facility in the Town of Salem.	}	Connecticut Siting Council
	}	September 5, 2002

Decision and Order

After holding a hearing in April 25, 2002, and reviewing the record in this matter, the Connecticut Siting Council finds no evidence of a change of conditions in this docket and therefore hereby affirms its Decision and Order of July 25, 2001, approving construction of a telecommunications tower at 399 West Road, Salem, Connecticut.

The parties and intervenors to this proceeding are:

		Its Representative
Applicant	Crown Atlantic Company LLC and Cellco Partnership d/b/a Verizon Wireless	James Valeriani, Program Manager Crown Atlantic Company LLC 500 West Cummings Park Suite 6500 Woburn, MA 01801 Kenneth C. Baldwin, Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597
Party	Town of Salem	Melanie J. Howlett MJH, LLC 700 Canal Street, 3rd floor Stamford, CT 06902
Party	Town of East Haddam	Susan D. Merrow, First Selectman East Haddam Town Office Building P.O. Box K East Haddam, CT 06423 James Venturas, Land Use Administrator East Haddam Land Use Office P.O. Box K East Haddam, CT 06423
Party	Peter Sielman	Melanie J. Howlett MJH, LLC 700 Canal Street, 3rd floor Stamford, CT 06902
Intervenor	Attorney General Richard Blumenthal	Mee Carolyn Wong Assistant Attorney General Mackenzie Hall 110 Sherman Street Hartford, CT 06105

CERTIFICATION

The undersigned members of the Connecticut Siting Council (Council) hereby certify that they have heard this case, or read the record thereof, in the reconsideration of Docket No. 198- Crown Atlantic Company LLC and Cellco Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a cellular telecommunication facility at 399 West Road, Salem, Connecticut, and voted as follows to affirm the approval of the prime site:

Council Members	Vote Cast
Mortimer A. Gelston, Chairman	Yes
Commissioner Donald W. Downes Designee: Gerald J. Heffernan	Absent
Commissioner Arthur J. Rocque, Jr. Designee: Brian J. Emerick	Yes
Philip Ashton	Yes
Pamela B. Katz	Yes
Daniel P. Lynch, Jr.	Yes
Brian O'Neill	Abstain
Colin C. Tait	Yes
Edward S. Wilensky	Yes

Dated at New Britain, Connecticut September 5, 2002.

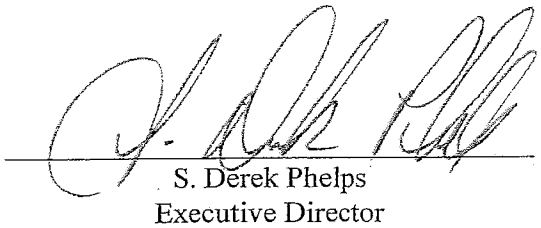
STATE OF CONNECTICUT)

ss. New Britain, Connecticut :

COUNTY OF HARTFORD)

I hereby certify that the foregoing is a true and correct copy of the Findings of Fact, Opinion, and Decision and Order issued by the Connecticut Siting Council, State of Connecticut.

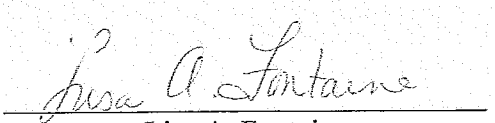
ATTEST:



S. Derek Phelps
Executive Director
Connecticut Siting Council

I certify that a copy of the Findings of Fact, Opinion, and Decision and Order in Docket No. 198 has been forwarded by Certified First Class Return Receipt Requested mail on September 9, 2002, to all parties and intervenors of record as listed on the attached service list, dated March 21, 2002.

ATTEST:



Lisa A. Fontaine
Administrative Assistant
Connecticut Siting Council

March 21, 2002

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	Crown Atlantic Company LLC and Cellco Partnership d/b/a Verizon Wireless	James Valeriani, Program Manager Crown Atlantic Company LLC 500 West Cummings Park Suite 6500 Woburn, MA 01801 Kenneth C. Baldwin, Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 (860) 275-8200
Party	Town of Salem	Melanie J. Howlett MJH, LLC 700 Canal Street, 3rd floor Stamford, CT 06902 (203) 328-3737 (203) 328-3738 - fax (203) 576-7647 - office
Party	Town of East Haddam	Susan D. Merrow, First Selectman East Haddam Town Office Building P.O. Box K East Haddam, CT 06423 (860) 873-5027 (860) 873-5025 - fax James Venturas, Land Use Administrator East Haddam Land Use Office P.O. Box K East Haddam, CT 06423 (860) 873-5025 (860) 873-5031 - fax
Party	Peter Sielman	Melanie J. Howlett MJH, LLC 700 Canal Street, 3rd floor Stamford, CT 06902 (203) 328-3737 (203) 328-3738 - fax (203) 576-7647 - office

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Intervenor	Attorney General Richard Blumenthal	Mee Carolyn Wong Assistant Attorney General Mackenzie Hall 110 Sherman Street Hartford, CT 06105 (860) 808-5400 (860) 808-5593 - fax

EXHIBIT C

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

136 Main Street, Suite 401
New Britain, Connecticut 06051-4225
Phone: 827-7682

Motion to Reopen
July 30, 1993

DECISION

RE: DOCKET NO. 141 - A joint Certificate of the Connecticut Light and Power Company and the United Illuminating Company for the construction of a 115kV electric transmission line and relate telecommunications equipment between the United Illuminating Company's Pequonnock Substation in Bridgeport and the Connecticut Light and Power Company's Ely Avenue Junction in Norwalk, Connecticut.

Motions and Requests to Reopen Docket No. 141

On July 30, 1993, the Connecticut Siting Council ("Council") considered motions and requests to reopen, stop work, reconsider, revoke or amend the Certificate, and to modify the construction of this 115kV transmission line facility. These motions and requests were filed by Jacquelyn C. Durrell - Town of Fairfield First Selectman; Linda Chandler - Fairfield PTA Council; Frederick S. and Nancy E. Phillips; Margaret Mary Fitzgerald - Principal of Fairfield's Tomlinson Middle School; Steven Stout; Carol Harrington - Superintendent of Fairfield Schools; Karen Adams - Alliance to Limit Electromagnetic Radiation Today ("ALERT"); Coralee and David Reiss; State Representative Gene Gavin; Phillip Halligan and Ellen Moore - Fairfield's Tomlinson Middle School PTA. The persons filing these motions and requests contend that the proposed facility project would create potential health effects associated with electric and magnetic fields; would have negative effects on the Southport Historic District; and that certain project alternatives would reduce health effects, better preserve scenic quality and aesthetic values, and protect property values. Relief sought included stoppage of the project, use of alternative routes, and undergrounding the line.

Several persons also contend that inadequate or improper notice of this proposed project was provided to the public.

On May 6, 1993, the Council considered motions and requests to stop work, reopen, and investigate alternatives for the construction of this facility. These motions and requests also contended that the proposed facility would create potential health effects associated with electric and magnetic fields; would have negative effects on the Southport Historic District; that certain project alternatives would reduce health effects, better preserve scenic quality and aesthetic values,

and protect property values; and that inadequate notice of the proposed project was provided to the public.

On May 6, 1993, the Council denied these motions and requests stating:

> "... that the subject matter of all motions, requests, and contentions to re-evaluate this case and reinvestigate issues, has already been carefully considered by the Council in deciding this application nearly two years ago, on September 18, 1991. No one has introduced new information or facts that were not available at that time.
>
> "Because of a legal expectation of finality of a decision, we must find a compelling reason to reverse our decision or reopen this proceeding. After considering each and every motion, request, and contention, we find no such compelling reason."

The motions before us now claim that there are changed conditions, new information, new technology, and technological breakthroughs that have occurred since the Council made its decision on the application on September 18, 1991.

On June 29, 1993, the Council announced that it would conduct a public hearing on the motions to reopen and reconsider the construction of the facility. This hearing was held on July 13, 1993, beginning at 7:00 P.M. at the Fairfield High School Auditorium in Fairfield, Connecticut.

After announcing the public hearing on the motions to reopen, the Council solicited written comments and consultation from the Connecticut State Departments of Environmental Protection, Health Services, Public Utility Control, Economic Development, Transportation, the State Council on Environmental Quality, and the State Office of Policy and Management.

Introduction

This facility was proposed to the Council by the Connecticut Light and Power Company and the United Illuminating Company on January 25, 1991, and approved by the Council on September 18, 1991. The facility consists of a new 15.3 mile, 115kV transmission line within an existing railroad right-of-way. The overhead line will be adjacent to existing electric distribution lines and an existing 115kV transmission line located on the opposite side of the railroad right-of-way. The line will run through Bridgeport, Fairfield, Westport, and Norwalk. In relying on the Certificate of Environmental Compatibility and Public Need granted by the Council, the utilities have completed a substantial portion of the project.

The application was served on the chief executive officer of each affected municipality, all zoning commissions, planning commissions, planning and zoning commissions, conservation

commissions, and inland wetland agencies of each municipality, the regional planning agencies which encompass the municipalities, the State Attorney General, each member of the legislature in whose assembly or senate district the facility was proposed for, and the State Department of Environmental Protection, the Department of Health Services, the Council on Environmental Quality, the Department of Public Utility Control, the Office of Policy and Management, the Department of Economic Development, and the Department of Transportation. In addition, a technical description of the project was served on the chief elected officials of each municipality affected by the proposed project 60 days prior to the application.

Notice of the application was given to the general public by publication in the Bridgeport Telegram-Bridgeport Post on January 18, 1991, the Hartford Courant on January 18, 1991, the Fairfield Citizen-News on January 18, 1991, the Westport News on January 18, 1991, and the Norwalk Hour on January 22, 1991.

Parties and intervenors to the proceeding included the United Illuminating Company, the Connecticut Light and Power Company, the Office of Consumer Counsel, Starrett Housing Corporation, the City of Norwalk, the Town of Westport, the Connecticut Municipal Electric Energy Cooperative, and the Railroad Neighbor's Association.

The Office of Consumer Counsel, the Department of Health Services, the Department of Environmental Protection, and the State Historic Preservation Office of the Connecticut Historic Commission submitted written comments into the record.

The Council, after giving public notice, held a public hearing on this application on April 29, 1991, beginning at 1:00 P.M. and continuing at 7:00 P.M. in the auditorium of the Westport Town Hall. Notice of this public hearing was provided in ten point print in the Fairfield Citizen-News on March 6, 1991, the Norwalk Hour on March 5, 1991, the Hartford Courant on March 5, 1991, and the Bridgeport Telegram-Bridgeport Post on March 6, 1991.

Members of the Council and its staff conducted a public field inspection of the proposed and alternative line routes on April 29, 1991.

On September 18, 1991, the Council approved this proposed facility issuing a Certificate of Environmental Compatibility and Public Need as provided by section 16-50k of the Connecticut General Statutes, with conditions limiting the construction and operation of the proposed transmission line. No appeal was taken from this decision.

Decision

In deciding these motions and requests to reopen, we acted under Connecticut General Statutes section 4-181a (b) which

allows us to reverse or modify a final decision on a showing of changed conditions.

On the question of whether the Council considered the potential health effects associated with electric and magnetic fields: the Council did consider existing and future levels of exposure from electric and magnetic fields and potential health effects from such exposure. In its decision, the Council established maximum operation levels, and required the use of compact spacing and reverse phasing of conductors to reduce exposure levels. In addition, the Council required both pre-construction and post-construction measurements of exposure levels. Furthermore, although the Council acknowledged that no State or federal standards had been developed limiting electric or magnetic fields, the Council ordered the Certificate holders to comply with all future electric and magnetic field standards promulgated by State or federal regulatory agencies. Upon the establishment of any such standards, the transmission line granted by the decision and order would be brought into compliance with such standards as soon as practical.

In response to the Council's solicitation of comments from state agencies, on July 20, 1993, the Department of Public Health, now called the Department of Public Health and Addiction Services ("DPHAS"), stated:

> "DPHAS is cognizant of the Karolinska Institute report Magnetic Fields and Cancer in People Residing Near Swedish High Voltage Power Lines, June 1992, submitted to the Council in support of the motion to reopen. This may be regarded as another study supportive of the hypothesis that exposure to magnetic fields from high voltage power lines and electric equipment can increase the risks for certain types of cancer. There are however also a number of facts and studies that contradict this hypothesis.
>
> "However at this time we do not feel that the Swedish study has established a definitive link between EMF and adverse effects and is therefore not sufficient reason to reopen a hearing on siting of an EMF source. As stated in our response to the legislature, the DPHAS does not feel that any mandated changes to our electrical distribution system because of EMF are warranted at this time. DPHAS will continue to monitor the current science and all relevant studies, and will update this position on an as needed basis."

Public Act 91-317, An Act Concerning Experts to Assist the Interagency Task Force Studying Electric and Magnetic Fields ("Interagency Task Force") (Connecticut General Statutes section 16-261a(a)(b)) was enacted to study potential problems associated with electric and magnetic fields. In March 1993, the Interagency Task Force issued a position stating:

"No definitive cause and effect relationship between exposure to EMF and an increase in health risk has been established. ....

"We are not recommending specific Voluntary Exposure Control advice for any population group, nor are we recommending changes to the electric supply systems ....

"... We will continue to study and research this issue and modify our recommendations, if necessary, as new information becomes available."

Although this is a controversial issue of global magnitude, we do not believe there has been a showing of changed conditions or new scientific knowledge to warrant the reopening of this proceeding on grounds that electric and magnetic fields from this transmission line may pose a health risk.

In reviewing the claims that the project would affect historic resources: the Council did consider and was provided documentation which identified the locations of areas of historic significance along the railroad, including the Southport Historic District. Furthermore, the State Historic Preservation Office of the Connecticut Historic Commission reviewed the application and did not identify the proposal as a project that would adversely affect historic resources. We do not find any changed conditions on this subject to reopen this proceeding.

On the claim that certain project alternatives would reduce health effects, better preserve scenic quality and aesthetic values, and protect property values, the Council considered the following alternatives before approving the proposed line:

- Increasing the capacity of the existing transmission line located south of the existing railroad line.
- Placement of the proposed line on double circuit structures on the south side of the railroad.
- Placement of the proposed line on the existing railroad catenary system.
- Undergrounding the proposed line within the existing railroad right-of-way using both pipe-type and solid dielectric type cables.
- Undergrounding the proposed line within a new right-of-way using both pipe-type and solid dielectric type cables.
- Use of system alternatives by re-routing electric energy through other existing transmission lines serving the Connecticut grid.

- Construction of a new transmission line within other existing transmission line rights-of-way.
- Construction of a new transmission line within a new transmission line right-of-way.
- Development of additional electric generation in southwest Connecticut.

The Council considered all reasonable alternatives including the undergrounding of the proposed line and concluded that the proposed project was needed and was the best alternative to meet the identified need.

In weighing these alternatives the Council considered scenic quality, aesthetic values, potential health risks, and environmental impacts. No new information was offered on this subject to justify reopening this proceeding.

In response to claims that the proceeding was inadequately noticed: this is not a changed condition that would justify a reopening of the proceeding. Nonetheless, 60-day pre-application reviews with municipal officials; public notice of the application; service of the application to town officials, State legislators, and State officials; notice of the hearing and public field review; and notice of a pre-hearing conference were fair, reasonable, and exceeded all legal notice requirements.

Conclusion

In conclusion, we find that the subject matter of all motions, requests, and contentions to re-evaluate this case and reinvestigate issues, has already been carefully considered by the Council in deciding this application nearly two years ago, on September 18, 1991. We know of no new information or facts that were not available at that time that would compel us to reopen this case. We have not identified any unknown or unforeseen events or any relevant circumstances that would compel us to reopen this case. There have been no scientific or technological breakthroughs that would have altered our analysis. Our analysis remains valid today and consistent with State law and State policy, including policy from the State Department of Public Health and Addiction Services and the Department of Environmental Protection.

Because of a legal expectation of finality of a decision, we must find a showing of changed conditions or a compelling reason to reopen this proceeding. After considering each and every motion, request, and contention, we find no such changed conditions or compelling reasons.

Nonetheless, as decided by the Council in its decision and order dated September 18, 1991, should scientific knowledge lead to the establishment of new electric and magnetic field standards promulgated by State or federal regulatory agencies, the facility

will be brought into compliance with such standards as soon as practical. The Council's requirements for pre-construction and post-construction monitoring of electric and magnetic fields, as ordered by the Council in its September 18, 1991, decision and order, will provide the Council the information necessary to enforce and compel compliance with its Decision and Order including compliance with new electric and magnetic fields standards, should they be promulgated by State or federal regulatory agencies. This monitoring will also provide information to help the public understand the nature and exposure of electric and magnetic fields from not only this transmission line, but also from internal sources within their homes, schools, and businesses.

While we have decided this application to balance the need for adequate and reliable public utility services at the lowest reasonable cost to protect consumers, public health, and the environment, the controversy surrounding potential health effects associated with electric and magnetic fields has not been resolved by our decision and will not be resolved by this decision not to reopen the proceeding. Even if we were to reopen this proceeding at this time, such a reopening would not be productive because there is no new scientific or technical information that would help to resolve this global issue.

We will at this time continue to monitor this issue using all available resources including the Connecticut Department of Health and Addiction Services, the Interagency Task Force, and the United States Environmental Protection Agency for scientific and technological breakthroughs which might be considered grounds to reopen this proceeding and other Council proceedings, and/or to establish proceedings to reconsider the siting of other facilities within our jurisdiction to protect the public consistent with such new information.

By order of the Chair,

Mortimer A. Gelston

Mortimer A. Gelston

cc: Service List
Parties and Intervenors

7126E 1-7