



STATE OF CONNECTICUT

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January 29, 2014

TO: Parties & Intervenors

FROM: Melanie Bachman, Acting Executive Director ⁴⁴⁸

RE: **DOCKET NO. 224** - Northeast Utilities Service Company Certificate of Environmental Compatibility and Public Need for the replacement of a submarine electric transmission cable system from Norwalk, Connecticut to Northport, New York.

The above-referenced electric transmission facility was approved by the Connecticut Siting Council (Council) on September 5, 2002. The Connecticut portion of the project called for the replacement of existing fluid-filled marine electric transmission cables with new cross-linked polyethylene insulated transmission cables from Norwalk Connecticut to the Connecticut/New York border in Long Island Sound. The new cable system was installed and energized in 2008.

In recently reviewing the final decision documents for this docket, an error was found in the Decision and Order. The Council's Decision and Order for this proceeding contains a condition that provides immunity to any party that negligently damages the new cables. Condition No. 6 of the Council's 2002, Decision and Order states:

6. The Certificate Holder shall indemnify and hold harmless any person that causes unintentional damage to the cable system.

Condition No. 6 was not supported by the record in the Docket No. 224 proceeding. Rather, the condition was included in the Docket No. 224 Decision and Order as the result of a clerical error in which conditions of Docket No. 208 (for the installation of the Cross Sound Cable) were copied. Docket No. 208 included Condition No. 6 based on its record and specific circumstances due to its location in the federal navigation channel (FNC) in New Haven Harbor and Cross Sound Cable Company's consultations with the United States Army Corps of Engineers (USACE) to allow installation of the cable in the FNC. In contrast, the Docket No. 224 (Long Island Replacement Cables) received permits from the USACE and the Connecticut Department of Environmental Protection in 2007 that did not contain any conditions similar to Condition No. 6.

The Council approved Docket No. 208 on January 3, 2002. According to the record in Docket No. 208, Condition No. 6 was specifically included in the Council's Decision and Order on the basis that the original proposal to install the cables outside the FNC raised concerns of potential substantial environmental effects. The applicant then proposed to install the cable longitudinally for a distance of 3.75 miles in the FNC that required extraordinary permission from the USACE, which resists the location of facilities in its navigational channels. The applicant voluntarily accepted the condition to indemnify and hold harmless any person that causes unintentional damage to the cable system to secure permission from the USACE to occupy the FNC longitudinally (See Finding of Fact ¶60). The condition was included in the permits issued by the USACE, the Connecticut Department of Environmental Protection (DEP) and the Council for the Cross Sound Cable project. The record in Docket No. 208, including the final decision documents, clearly reflects the rational basis for the inclusion of the condition.

According to the record in Docket No. 224, there is no rational basis for the inclusion of Condition No. 6 in the Decision and Order. The Long Island Replacement Cables project is installed in the FNC perpendicularly for a short distance (See Finding of Fact ¶89). Accordingly, the USACE and DEP permits do not include the condition, but the Council's Decision and Order includes the condition. The record in Docket No. 224, including the final decision documents, is completely devoid of any rational basis for the inclusion of the condition in the Council's Decision and Order. This was a clerical error.

Therefore, in accordance with Conn. Gen. Stat. § 4-181a (c), which states, "The agency may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal that modification under the provisions of Section 4-183 or, if an appeal is pending when the modification is made, may amend the appeal," the Connecticut Siting Council hereby deletes Condition No. 6 to correct a clerical error in the final Decision and Order of Docket No. 224 Long Island Replacement Cable project on page 2, Condition No. 6. Please see the enclosed errata sheet in connection with the above-referenced proceeding.

Please remove the old page and insert the corrected page.

MB/CMW

This errata sheet corrects page 2 of the Decision and Order by deleting Condition #6

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Decision and Order
September 5, 2002
Page 2

- g) A pre-construction survey with obstructions noted and methods to provide cable protection noted;
 - h) A plan to minimize impacts to shellfish, developed in consultation with the Connecticut Bureau of Aquaculture;
 - i) A plan to minimize impacts to nesting birds and rare, threatened, and endangered species and species of special concern, developed in consultation with the Connecticut Department of Environmental Protection; and
 - j) A plan including provisions for the removal of the existing cables subject to approval from the Council and all other appropriate agencies.
5. The Certificate Holder shall hire an independent consultant, subject to Council approval, to monitor and report weekly to the Council on the environmental effects of the installation of the cable system, including impacts to rare, threatened or endangered species or species of special concern in the project area.
 7. The Certificate Holder shall cooperate with the Army Corps of Engineers regarding any schedule developed for future development of the Federal Navigation Channel.
 8. The Certificate Holder shall notify the Council and provide a plan for the relocation or deepening of the cable system at its own expense, if the Army Corps of Engineers proposes to deepen the Federal Navigation Channel.
 9. The Certificate Holder shall schedule and coordinate the proposed installation within Norwalk Harbor with the United States Coast Guard, and the City of Norwalk. Installation shall be undertaken during off-peak periods to minimize conflicts with waterborne ship traffic, and permit conditions of the Army Corps of Engineers and the Connecticut Department of Environmental Protection Office of Long Island Sound Programs, the Connecticut Bureau of Aquaculture, Norwalk Shellfish Commission, and the Norwalk Harbor Master.
 10. The Certificate Holder shall meet with commercial fishermen in the area regarding fishing activities and lobster migratory behavior within the cable corridor, in order to work together to minimize lobster mortality and disruption of fishing due to cable installation activities.
 11. The Certificate Holder shall provide to the Council an Installation Notification Plan identifying all parties with interests in navigation, State and federal regulatory agencies that have jurisdiction for the proposed cable system, and the commercial fishing, shellfishing, and lobster communities that would receive the following information:
 - a) Notice of the cable system installation within one week prior to the commencement of construction;
 - b) The proposed cable system route in Loran-C, Geographic Positioning System (GPS), and Connecticut State Plane Coordinates (NAD 83) coordinates;
 - c) Notice of completion of cable installation; and
 - d) Post-construction mapping of the cable system location and depth in Loran-C, Geographic Positioning System (GPS), and Connecticut State Plane Coordinates (NAD 83) coordinates, within two months of the completion of installation of the cable system, or as approved by the Council.