

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

**Implementation of Section 8 and Section 54 of Public Act No. 07-242 An Act Concerning Electricity and Energy Efficiency** : **DOCKET NO. 346**  
:   
:   
: **JUNE 22, 2009**

**THE UNITED ILLUMINATING COMPANY’S MEMORANDUM  
REGARDING THE CONNECTICUT SITING COUNCIL’S DRAFT WHITE PAPER**

The United Illuminating Company (“UI”) hereby responds to the Connecticut Siting Council’s (the “Council”) request for comments on the draft “White Paper” for Docket No. 346, concerning the Implementation of Section 8 and Section 54 of Public Act No. 07-242, *An Act Concerning Electricity and Energy Efficiency*.

**I. Executive Summary / Introduction**

UI commends the Council for its thoughtful consideration of this important topic, and for drafting a White Paper that furthers the Council’s and UI’s goal of enhancing the security of our energy infrastructure, without venturing too far afield from the Council’s core mission of balancing the infrastructure needs of the State with its responsibility of protecting the environment.

UI supports the Council’s decision to limit the scope of the White Paper to intentional physical threats to a facility, and not “cyber” threats to a facility, or operational, reliability, maintenance procedure, asset connection requirements, or natural disaster issues.

To assist the Council and those parties appearing before it, UI recommends that the Council develop a standing order with specific procedures for the submission, handling, storage, and oral presentation of confidential and highly sensitive energy security-related information.

These procedures would include, *inter alia*, the use of protective orders, secure storage facilities at the Council's offices, and closed-session hearings before the Council, when necessary.

UI supports the Council's implicit suggestion that, after reviewing a company's application, the Council may utilize its discretion to further probe these siting security topics where necessary, but need not further examine these issues in every application.

**II. The White Paper appropriately limits the Council's scope of review of energy security issues with respect to the siting of facilities.**

UI supports the Council's decision to limit the scope of the White Paper and the Council's review of energy security issues to intentional physical threats to a facility. UI endorses the White Paper's language that reads:

Pursuant to legislative intent of the Act, this document will review existing regulations and guidelines regarding security for the siting of electric generating and transmission facilities. Security in this document *will only relate to intentional physical threats to a facility...* Siting security in this document *does not relate to operational, reliability, and maintenance procedures asset connection requirements, or naturally-caused calamities* (i.e. hurricanes or ice storms).

White Paper at 1 (emphasis added).

UI believes the Council's decision on the scope of the White Paper properly respects the Council's primary mission of balancing the infrastructure needs of the State with its responsibility of protecting the environment, while at the same time meeting its additional responsibility to promote energy security. *See* Conn. Gen. Stat. § 16-50g. The Council, through this White Paper, has developed a reasonable means by which it may contribute its "unique insight[s]" on security concerns with respect to the physical siting of facilities to larger state, regional, and national regulatory standards, guidelines, and compliance systems that are already addressing issues of energy security. White Paper at 4. *See also id.* at 1-3 (outlining existing

standards and guidelines on energy security issues that already apply to UI and other entities in the electricity sector); *id.* at 5 (“The Council understands the complexity of a dynamic system such as the electric grid and accepts and concurs with the layers of oversight that protect it by competent and responsive entities.”).<sup>1</sup>

**III. The Council should establish a standing order to safeguard the sensitive and confidential information on energy security issues, that will be submitted in response to the White Paper.**

To further support its statutory goal of promoting energy security, UI suggests that the Council create a “Standing Order on Submitting or Presenting Confidential Energy Security Information” (the “Standing Order”), that would outline the procedures for safeguarding the highly sensitive material that UI and other entities will submit or present to the Council regarding the energy security issues outlined in the White Paper. This Standing Order could be incorporated into the White Paper, or referenced by it.

Because all of the energy security topics covered by the White Paper are inherently highly sensitive and confidential, UI submits that the Standing Order could automatically grant applicants permission to file the sections of their applications addressing energy security issues under seal pursuant to a protective order. This would reduce the administrative burden of filing motions for such a protective order for each individual application. Similarly, if the Council issues interrogatories to an applicant pertaining to the topics outlined in the White Paper, the applicant again could automatically have permission to file its responses under seal pursuant to a protective order.

---

<sup>1</sup> UI suggests that the Council clarify the language used in the list of topics that may be explored on pages 4 and 5 of the White Paper, to reflect its earlier explanation on page 1 that the term “security” only refers to “intentional physical threats.” White Paper at 1. For example, in Part A.1 on Planning, the White Paper currently states that the applicant should “Identify the types of security threats to a facility.” *Id.* at 4. UI proposes that this language be changed to “Identify the types of *intentional physical security threats* to a facility.”

UI further suggests that the Standing Order could establish procedures for how the Council handles the sensitive information applicants file under seal in accordance with their obligations under the White Paper. For instance, the Standing Order could, *inter alia*, explicitly state that any documents filed under seal with the Council (such as a section of an application, or a response to an energy security related interrogatory): (1) will be kept in a secure location at the Council's office; (2) will not be uploaded to the public website; (3) will only be copied and distributed to Council members and staff, and parties who explicitly request access, and sign a statement acknowledging the sensitivity of this information and the need to safeguard it; and (4) will only be discussed in a closed hearing.

**IV. The White Paper's use of permissive instead of mandatory language gives the Council appropriate flexibility to further investigate these energy security issues when necessary.**

UI supports the Council's decision to implicitly limit its role in conducting in-depth review of energy security issues to those applications in which the Council decides that these issues may require further investigation and discussion. Specifically, UI agrees with the Council's decision to use permissive language ("may") instead of mandatory language ("must" or "shall") in the White Paper, in the following description of the Council's role:

The Council *may* examine the siting security topics, as set forth in Section 8 of Public Act 07-242, during the application process to ensure they are considered with existing guidelines, standards and other criteria. The topics: Planning, Preparedness, Response and Recovery, *may* be explored for all proposed electric generating, transmission, and substation facilities[.]

White Paper at 4 (emphasis added).<sup>2</sup>

---

<sup>2</sup> The Council's decision to use its discretion when addressing these energy security issues during the application process comports with general statutory framework that governs the Council's decision-making process. Specifically, the factors that the Council may consider when approving or rejecting the siting of a particular electric

To assist the Council in its decision on whether it should conduct further in-depth review of energy security issues on a particular application, the Council may wish to seek guidance from the Connecticut Department of Emergency Management and Homeland Security (“DEMHS”). *See, e.g.*, Conn. Gen. Stat. § 28-1b (establishing the state-wide Emergency Management and Homeland Security Coordinating Council to advise DEMHS on homeland security and emergency response issues).<sup>3</sup>

## **V. Conclusion**

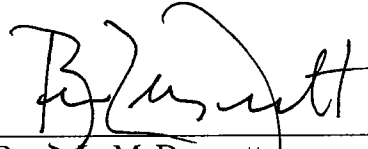
UI believes that the draft White Paper furthers the Council’s and UI’s goal of enhancing the security of our energy infrastructure, and takes advantage of the Council’s unique expertise in the siting of electric facilities. UI believes that the scope of the White Paper has been reasonably limited to consideration of intentional physical threats to electric facilities. UI proposes that as part of the White Paper process, the Council develop a standing order on the procedures for protecting and safeguarding the confidential information that will necessarily be included in any submission to the Council on these energy security issues. UI agrees with the Council’s decision that, after reviewing an applicant’s submission on energy security issues, it may exercise its discretion to determine whether or not further investigation of these issues is necessary.

---

facility are limited by Conn. Gen. Stat. § 16-50p(a)(3) & (c). This statute does not allow the Council to consider energy security issues when making its ultimate decision to approve or reject an application.

<sup>3</sup> UI notes that DEMHS is not listed in Conn. Gen. Stat. § 16-50j(h) as one of the state agencies with which the Council must consult and from whom it must solicit written comments regarding applications for the construction or modification of electric facilities. DEMHS also does not automatically receive notice of such applications. *See* Conn. Gen. Stat. § 16-50l(b)(5). The Council may want to consider modifying its regulations accordingly. *See* Conn. Gen. Stat. § 16-50l(b)(6) (applications shall be served on “other state and municipal bodies as the council may by regulation designate”).

By:

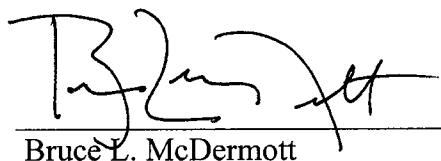


Bruce L. McDermott  
of Wiggin and Dana LLP  
Its Attorneys  
One Century Tower  
265 Church Street  
P.O. Box 1832  
New Haven, CT 06508-1832  
(203) 498-4340

Linda L. Randell  
Senior Vice President and General Counsel  
The United Illuminating Company  
157 Church Street  
New Haven, CT 06506-0901  
(203) 499-2575

## CERTIFICATION

This is to certify that on this 22<sup>nd</sup> day of June, 2009, an original and twenty (20) copies of the foregoing were delivered by hand to The Connecticut Siting Council, 10 Franklin Square, New Britain, Connecticut 06051, one copy was served on all other known parties and intervenors by depositing the same in the United States mail, first class postage prepaid on this 22<sup>nd</sup> day of June, 2009 and an electronic copy was provided to the Connecticut Siting Council and all other known parties and intervenors.



Bruce L. McDermott

10705\1805\2235336.5