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November 4, 2009

S. Derek Phelps  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

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CONNECTICUT  
SITING COUNCIL

Re: Docket No. 370B: NRG Energy, Inc. application Pursuant to C.G.S. §15-50I(a)(3) for Consideration for a 530 MW Combined Cycle Generation Plant in Meriden, CT.  
Docket No. 370A: CL&P Application for the Greater Springfield Reliability Project and the Manchester to Meekville Jct. Circuit Separation Project

Response of Citizens Against Overhead Power Line Construction to Applicant's Objection to Portions of the Testimony of Richard Legere

Dear Mr. Phelps:

I am counsel for Citizens Against Overhead Power Line Construction ("CAOPLC"), a party in the referenced docket. On October 8 the Connecticut Siting Council (the "Council") granted CAOPLC's request to file additional testimony and interrogatories over the objection of the applicant Connecticut Light & Power ("CL&P"), and on October 30, CAOPLC timely submitted testimony of Richard Legere. Today CL&P submitted objections to portions of this testimony.

CL&P classified its objections in three categories. Certain testimony was objected to on the basis that "Mr. Legere is giving an unqualified expert opinion on a subject requiring specialized knowledge." Other testimony was objected to on the basis that "it is irrelevant, prejudicial, unreliable or relies on inadmissible hearsay." Some testimony was objected to on a combination of these grounds.

To assist the Council, CAOPLC wishes to present its responses to CL&P's objections.

1. CL&P's objections are based on an inaccurate or overly restrictive view of the rules of evidence applicable to this proceeding.

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CL&P objects repeatedly that certain testimony is hearsay or that the witness is not qualified as an expert. CL&P's objections indicate that it believes that the rules of evidence in this proceeding are substantially the same as the rules of evidence applicable to a jury trial. Proceedings before the Council are subject to rules set forth in the Connecticut Uniform Administrative Procedures Act C.G.S. §4-166 *et seq.*, the Public Utility Environmental Standards Act, C.G.S. §16-50g *et seq.*, and the Council's Regulations, §16-50j-28. The rules of evidence set forth in these statutes and regulations do not impose standards regarding hearsay or expert witnesses that CL&P claims are applicable here.

The evidentiary rules applicable to proceedings before the Council are significantly more liberal than the rules applicable to a jury trial. Unlike a jury, the Council is comprised of experts who are capable of evaluating the relevance and merit of any evidence that is submitted.

Furthermore, CL&P's objections are premature. CL&P claims that certain testimony should be excluded because the witness has not established a proper foundation or that Mr. Legere is unqualified to testify. However, the witness will have an opportunity to address these issues when he appears before the Council.

2. The witness is not testifying as an expert improperly.

CL&P objects that much of the testimony is improper expert testimony. However, the witness notes repeatedly that he is not testifying as an expert in these instances. Rather, he is simply asking the Council to take note of certain reports, technologies and issues that are being openly discussed and researched in scholarly articles and within the power industry. Furthermore, the evidentiary concerns that apply to expert testimony in a trial setting are not present here. Trial courts are required to exclude expert testimony if the witness is unqualified because of the concern that such testimony will unduly impact jurors who are not experts. That concern is not relevant here.

3. The witness is qualified to express the opinions in his testimony before the Council.

The witness has provided a description of his educational and professional background. As a result of his education and personal experience, the witness has gained superior knowledge in many areas. If CL&P wishes to question the witness regarding his credentials, it may do so.

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4. If the Council rules that CAOPLC's testimony is inadmissible, CAOPLC and its members will have been denied their right to due process of law.

CAOPLC and its members are property owners who will be directly impacted by the proposed project because the new transmission line will cross over, or adjacent to, their properties. The negative health and financial effects of this project will be felt primarily by CAOPLC's members and other people similarly situated. It is a basic principle of federal and state constitutional law that the government cannot take actions that affect a person's property without due process of law. Although the Council seeks to make its proceedings as fair as possible, the circumstances inherent in a proceeding of this type mean that the property owners who are most affected by Council proceedings are also the parties with the least experience and resources. With the exception of CAOPLC, every other party and intervenor in this proceeding is experienced in the workings of the Council and administrative procedures in general. Every other party and intervenor in this proceeding is either a private business that is seeking to benefit financially from the Council's decision, or is a government agency that is required to participate. Furthermore, every other person who has appeared in this proceeding is being paid to do so. CAOPLC investigated the possibility of hiring experienced counsel and expert witnesses. However, the cost of doing so was prohibitively high. It would be inherently unjust for the parties with the most at risk personally to be denied their right to participate in the proceeding due to their lack of funds and expertise.

Sincerely,



Matthew C. McGrath