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April 30, 2009

S. Derek Phelps
Executive Director
Connecticut Siting Council
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OCC Response to Siting Council's Request for Comments

Re: CL&P Application for the Greater Springfield Reliability Project and the Manchester to Meekville Junction Circuit Separation Project
Docket No. 370A (Consolidated Docket)
&
NRG Energy, Inc. Application Pursuant To CGS § 16-50/(a)(3) For Consideration Of A 530 MW Combined Cycle Generating Plant In Meriden, Connecticut
Docket No. 370B (Consolidated Docket)

Dear Mr. Phelps:

The Office of Consumer Counsel ("OCC") is a party to the above-captioned proceeding. OCC is in receipt of copies of two related documents --- the Siting Council's notice of April 17, 2009, inviting comments on certain positions The Connecticut Light and Power Company ("CL&P") has taken, and the NRG Energy, Inc. ("NRG") April 15, 2009 Request for Procedural Clarification ("NRG Request").

OCC herewith files its Response to Siting Council's Request for Comments.

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**The Siting Council Must Seek
the Best Overall Solution for Connecticut**

CL&P's April 14, 2009 letter, on which the Council seeks comment, says that NRG should not be allowed to participate in the present docket --- or, as CL&P so colorfully states, NRG "should not be allowed into the cage." However, this CL&P advocacy is based on an overly narrow, and ultimately insupportable, interpretation of applicable law.

NRG brought its Meriden generation project to CSC's attention in this consolidated docket through that company's response to the Request-for-Proposals ("RFP") issued by the Connecticut Energy Advisory Board ("CEAB"). CEAB issued that RFP pursuant to Public Act 03-140, An Act Concerning Long-Term Planning for Energy Facilities ("PA 03-140").

PA 03-140 specifically requires the CEAB to cast a wide net in its reactive RFPs, whenever certain projects apply to CSC for certification. The very fact that the law requires CEAB to issue such RFPs for proposed transmission projects (such as GSRP/MMP) and for proposed power plants and for proposed substations, itself indicates that the legislature sought to have CSC consider all types of projects when any one of them is proposed to the Council --- assuming, of course, that a project proponent first responds to the RFP in question.

The debate on House Bill 6508 (which became PA 03-140) highlights the comprehensive scope which the legislature intended for this statute. In the debate on the House floor, then-Representative (now Senator) Robert Duff stated as follows:

[T]his bill allows the Siting Council to look at more than one proposal at a time. Currently, the Siting Council looks at one proposal and it's pretty much first past the post and this bill does allow the Siting Council to look at alternatives, as well as the idea that's in the proposal that's on the table at the time.¹

Further, then-Representative (now DPUC Commissioner) Kevin DelGobbo also stated:

How do we make sure that those applications perhaps have different types of alternatives? So rather than just thinking in the traditional

¹ Remarks of Representative Robert Duff (137th), Transcript of House Proceedings, Vol. 46, Part 12, May 22, 2003, p. 4036.

way of alright, let's put the line in, what's the most immediately feasible engineering and least expensive or the most affordable way of doing it, what are other alternatives to finding the same solution?²

(The Senate did not conduct debate on HB 6508.)

Further, PA 03-140 required CEAB to develop (by December 1, 2004) comprehensive guidelines for evaluating proposals submitted in response to these RFPs. CEAB did develop such guidelines --- and, as CEAB's 2/17/09 report to CSC shows³, it used those guidelines to evaluate the several responses to GSRP/MMP received last winter. PA 03-140 required CEAB to include in these guidelines, not only power grid reliability criteria, but also environmental preference standards and efficiency standards. The very existence of these comprehensive criteria is further evidence that the legislature's intent under PA 04-140 is that CSC should make a broad and comprehensive review of alternatives to projects such as GSRP/MMP.

The RFP which CEAB issued on November 4, 2008 quite properly embodied an inclusive view of PA 03-140's purposes. This RFP states (at its p. 2) that CEAB is seeking "energy resource alternatives that could address part or all of the claimed needs identified in the CL&P filing." Again, the RFP states (at p. 6) that it seeks proposals "for any projects that address some or all of the needs identified in the CL&P filing as an alternative to the transmission solutions proposed by CL&P." (*Emphasis added.*) Further, CEAB's RFP templates quite plainly contemplated generation projects as possible responders.⁴

All of these points plainly refute and rebut CL&P's contention that the NRG Meriden project is not even eligible to participate in the present docket unless NRG contends, from the outset, that its project would fully meet the exact same need that CL&P claims its transmission project would meet.

The CEAB RFP (at p. 3) states that it seeks "any projects that a) may, alone or in combination, be alternatives to the GSRP and/or MMP, or b) may defer CL&P's claimed need for the GSRP and/or MMP to a later date." (*Emphasis added.*) And, in this context,

² Remarks of Representative Kevin DelGobbo (70th), Transcript of House Proceedings, Vol. 46, Part 12, May 22, 2003, pp. 4040-4041.

³ See pp. 16-18, 42-59 of the CEAB Report.

⁴ For instance: Template 1 asked about the project's size in MWs; Template 10 asked about the project's fuel supply plan; Template 13 asked about the project's interconnection status; Template 20 asked about the project's generation profile.

CL&P's own transmission project evidently is one of the "in combination" possibilities that is now before the Council. As both PA 03-140 and CEAB's implementing initiatives contemplate, the best solution for Connecticut to the reliability and other issues that GSRP/MMP claims to resolve may be some combination of projects. In this docket, the Council is free to mix and match various project elements in order to maximize the public benefit.

Analyzing whether given reliability problems can be more cost-effectively resolved by siting generation instead of (or in addition to) transmission is a recognized technical procedure [as, indeed, CL&P's GSRP/MMP Application plainly acknowledges]. In the Council's Docket No. 272,⁵ OCC asked the Council to add strategically-sited generation to the options under consideration there, since preliminary studies indicated that such generation possibly could enhance the viability of the so-called East Shore Alternative to Segment 2 of the proposed transmission line.⁶ The Council declined to take up this suggestion, stating that other forums were more appropriate for such an endeavor.⁷ In the present docket, by contrast, the Council is explicitly charged to examine such alternatives.

CL&P's 4/14/09 Letter styled the comparative evaluation of its GSRP/MMP project and the NRG Meriden project as:

"like a cage fight. Two or more competitors go into it, but no more than one may come out."

To the contrary, the present docket is not a dispute between two private parties, in which one must conquer the other. This docket rather endeavors to identify the overall best solution for Connecticut – the project or combination of projects which most cost-effectively meets the public interest in all its dimensions.

While PA 03-140 calls on CSC to broaden its procedures in applicable dockets, this law is entirely consistent with prior law. Council dockets have long been governed by

⁵ Joint Application of The Connecticut Light And Power Company and The United Illuminating Company For A Certificate of Environmental Compatibility and Public Need For A 345-kV Electric Transmission Line Facility and Associated Facilities Between Scovill Rock Switching Station in Middletown and Norwalk Substation in Norwalk. (CSC Decision, April 2005).

⁶ See OCC Motion for Technical Studies, June 22, 2004, in CSC Docket No. 272.

⁷ See CSC ruling on OCC's Motion, CSC Docket No. 272, July 29, 2004.

the purposes set forth in the Public Utility Environmental Standards Act, CGS § 16-50g (“PUESA”). The very first PUESA purpose listed in the statute is:

“To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values”.
(*Emphasis added.*)

Connecticut ratepayers, for whom OCC is the statutory advocate, will pay for the project, or combination of projects, certificated by the Council in this consolidated docket.⁸ This fact underscores the paramount significance of seeking the best overall solution for Connecticut in this proceeding. Based on potential cost implications alone, the NRG project should not be eliminated from all possible consideration at this early point.

The NRG Request of 4/15/09 asks the Council to clarify whether, in this docket, NRG must demonstrate that its Meriden project would resolve all reliability issues that CL&P contends GSRP/MMP would address, or only some of those issues. Based on the considerations explained in detail just above, OCC recommends that the Council advise NRG that the lower threshold will apply in this docket.

**The Docket Record Will Enable
the Council to Make Sound Determinations**

CL&P’s advocacy, contending that NRG should be prevented from participating in this docket, is not only wrong on the law, as argued above. It also is premature. CL&P’s 4/14/09 Letter mentions that the company explicitly considered several non-transmission alternatives to GSRP/MMP (as, of course, it was required to do). That letter then goes on to point out that CL&P’s studies conclude, “in this case”, that transmission improvements are the only practical means of resolving the identified reliability issues.

However, both CEAB and ISO New England (“ISO-NE”) already have raised questions about the sufficiency of the CL&P studies of non-transmission alternatives to GSRP/MMP. Specifically, CEAB’s 2/17/09 Report makes several observations to the

⁸ The costs of GSRP/MMP would be recovered through federally-regulated transmission rates charged to CL&P and then passed along to that company’s retail customers. See CSC-032. Further, NRG appears to contemplate a ratepayer-supported contract for recovery of the costs of its Meriden project. See OCC-24 & OCC-25.

effect that CL&P's needs assessment is incomplete. See OCC-8 through OCC-12, inclusive. Further, ISO-NE currently is revisiting its needs assessment with respect to NEEWS and similar projects. See OCC-15 through OCC-18, inclusive. These developments show that it is premature for CL&P to ask the Council to reject NRG's Meriden project from any possible consideration in this docket.

More broadly, we are at an early stage in the docket. Neither CL&P nor NRG yet can be said to have conclusively demonstrated the overall merits of their respective projects. Once the docket record has been developed, through discovery answers, expert testimony and otherwise, CSC will be in a good position to resolve all issues.

Going forward, CSC should require CL&P and NRG to respond to all reasonable discovery requests. Further, to assure that full attention is given to the public interest issues inherent in this proceeding, the Council should specifically invite both CEAB and ISO-NE to participate actively.

The value of having CEAB in the hearing room, to explain and defend its 2/17/09 Report, and of having ISO-NE in the hearing room, to explain its revised needs assessment for NEEWS and related projects, can hardly be over-estimated. Further still, it undoubtedly would be most helpful to the Council if both CEAB and ISO-NE are able to evaluate, on the docket record, any further advocacy that CL&P and NRG bring to bear for their particular projects, whether by responding to discovery requests or otherwise.

In sum, as this consolidated docket unfolds, there is every reason to expect that the evidence placed before the Council, focused and shaped by relevant expert testimony from diverse parties, will enable the Council to resolve all docket issues in the normal course.

Conclusion

OCC urges the Council to reject CL&P's overly-narrow (and self-serving) interpretation of Public Act 03-140. The NRG project should not be eliminated from all possible Council consideration at this early stage of the proceedings. NRG should be advised that the Council can consider the Meriden project in this docket even if this project meets only some of the needs that underpin CL&P's GSRP/MMP application.

The present consolidated docket represents the first substantial "road test" of the long-term planning initiatives enacted in Public Act 03-140. As this docket proceeds,

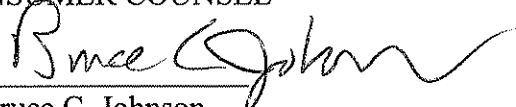
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OCC is confident that the Siting Council will find the process of reaching the best ultimate determinations entirely manageable.

Very truly yours,

MARY J. HEALEY
CONSUMER COUNSEL

By



Bruce C. Johnson
Principal Attorney

cc: Service List