

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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| <p>The Connecticut Light & Power Company Application for a Certificate of Environmental Compatibility and Public Need for the Connecticut Portion of the Interstate Reliability Project that traverses the municipalities of Lebanon, Columbia, Coventry, Mansfield, Chaplin, Hampton, Brooklyn, Pomfret, Killingly, Putnam, Thompson, and Windham, which consists of (a) new overhead 345-kV electric transmission lines and associated facilities extending between CL&P's Card Street Substation in the Town of Lebanon, Lake Road Switching Station in the Town of Killingly, and the Connecticut/Rhode Island border in the Town of Thompson; and (b) related additions at CL&P's existing Card Street Substation, Lake Road Switching Station, and Killingly Substation.</p> | <p style="text-align:center">Docket No. 424</p> <p style="text-align:center">APRIL 9, 2012</p> |
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**APPLICANT'S COMMENTS CONCERNING ITS
REQUEST FOR CONTINUANCE**

Applicant, The Connecticut Light and Power Company (CL&P) submits these comments concerning its March 23, 2012 Request for a Continuance (Continuance Request), in response to the Request for Comments (Comment Request) of The Connecticut Siting Council (Council) dated March 26, 2012.

A. CORRECTIONS

CL&P wishes to make two corrections to its Continuance Request: (1) The words "for February 27, 2012" in the last line of subparagraph (a) on page 1 should be eliminated, so that the reference to evidentiary hearings is to "the evidentiary hearings currently scheduled for May 1..." Those hearings were scheduled in a notice issued on February 27, 2012, but the reference to that date is unnecessary. (2) CL&P's reference

to an extension of the time for decision in the last paragraph of the Continuance Request is mistaken. As the Council correctly points out in the Comment Request, there is no longer a provision authorizing such an extension.

B. THE TIME FOR THE COUNCIL'S DECISION IN THIS DOCKET IS MAY 21, 2013, NOT FEBRUARY 1, 2013.

A recent close reading of the relevant statutes causes CL&P to respectfully submit that the deadline for the Council's decision in this Docket is actually May 21, 2013, which is twelve months from the deadline established by Conn. Gen. Stats. §16-50p(a)(2)(A) for filing an application following the request-for-proposal process.

This conclusion is warranted by an examination of the evolution of the key statutes and familiar principles of statutory construction.

(1) Public Act 03-140

Since its amendment by Public Act 88-121, and until its amendment by Public Act 03-140 § 19, section 16-50p(a) of the Council's governing legislation prescribed a time for decision in transmission line dockets of twelve months from the date the application was filed, which could be extended for up to an additional 180 days with the consent of the applicant. This period was amended when the legislature, in P.A. 03-140, enacted a request-for-proposal (RFP) process to be administered by the Connecticut Energy Advisory Board (CEAB). The new legislation directed the CEAB to solicit and evaluate proposals for alternative projects to satisfy a need addressed by a transmission line project, and authorized a responder who submitted such a proposal to file a competing application with the Council after the CEAB had completed its evaluation process. In conjunction with adopting this new RFP process, the legislature amended the time for the Council's decision on a transmission line application to "[n]ot later than

twelve months after the deadline for filing an application following the request-for-proposal process...” P.A. 03-140, §11; Conn. Gen. Stats. §16-50p(a)(2)(A).

The RFP process was to occur over a fixed period that could not exceed 150 days. This time period was not stated in one place, but was the sum of the following periods: 1) a period not to exceed 15 days from the date of the original transmission line application for the publication and issuance of an RFP for alternative projects (P.A. 03-140, § 19(b), Conn. Gen. Stats. § 16a-7c(b)); 2) a period of 60 days from the first publication date for the submission of responsive proposals (P.A. 03-140, § 19(d); Conn. Gen. Stats. § 16a-7c(d)); 3) a period of not more than 45 days from the deadline for submission of such proposals, for the CEAB to issue a report of its evaluation of the alternatives (P.A. 03-140, § 19(f), Conn. Gen. Stats. § 16a-7c(f)); and 4) a period of up to 30 days following the issuance of the CEAB’s report, in which an entity that had responded to the RFP could file a competing application with the Council. (P.A. 03-140, § 5; Conn. Gen. Stats. § 16-50l(a)(3)).

This new timetable for the Council’s decision-making was intended to “extend...the deadline for the council to hold its hearings and issue its decision to account for the time taken up in the CEAB review process.” Office of Legislative Research, Analysis of sHB 6508, An Act Concerning Long-Term Planning for Energy Facilities, <http://www.cga.ct.gov/2003/ba/2003HB-06508-R010771-BA.htm>. To balance this extension of the Council’s basic twelve-month period for decision by the addition of 150 days on the front end, the legislature eliminated its potential extension by 180 days at the back end. This trade-off must have been motivated by the legislature’s desire not to unreasonably curtail the Council’s consideration of an application, while at

the same time not burdening an applicant with an unreasonably lengthy or unlimited procedure.

The process established by P.A. 03-140 *required* the CEAB to initiate an RFP process with respect to *every* transmission line application. P.A. 03-140, § 19(b). However, no one was required to file a response to the RFP. The CEAB could send out invitations, but no one had to come to the party. In that event, there would never be a time set for the sponsors of competing projects to submit an application to the Council, which meant that there would never be time needed to evaluate those proposals, and there would never be an opportunity to submit a competing application following the evaluation. Under these circumstances, what would “the deadline for filing an application following the RFP process” be? One possible answer was that the absence of responses meant that no such deadline would be established. This would mean that if no responses to the RFP were submitted, the time limit for the Council’s decision would never start running and so would never expire. On the other hand, if there were responses to the RFP, the Council’s time for decision would be limited to twelve months starting 30 days after the CEAB’s evaluation report was due. The statute would thus provide less time for more work. This result makes no sense. It is the kind of “absurd or unworkable result” that the canons of interpretation deplore. Conn. Gen. Stats. § 1-2z.

The alternative is to construe the term “deadline” for submitting a competing application as meaning “a fixed time limit,” rather than “a date or time before which something must be done and after which the opportunity passes.” Both meanings are in the dictionaries. *See, e.g.,* Webster’s Third New International Dictionary, Deadline. In this case, the period fixed for the submission of competing project applications is 150

days from the submission of the original application. In practice, it could work out to be less than that if the CEAB did its work quickly, but the period's outer limit is fixed; and this period can be ascertained when the initial transmission line application is filed.

This construction avoids the absurd or unworkable conclusion that there is no time set for the Council's decision because there is no deadline for submission of competing applications; but it is still based on the construction of the term that the legislature used. It thus satisfies the canon of interpretation that the words of a statute shall not be treated as "superfluous, void or insignificant." *State v. Gibbs*, 254 Conn. 578, 602 (2000) It also avoids the sin of re-writing the statute to achieve a desired (even if sensible) result that the terms the legislature actually used does not support. *See, e.g., Vincent v. City of New Haven*, 285 Conn. 778, 792 (2008) ([A] court must construe a statute as written. Courts may not by construction supply omissions or add exceptions merely because it appears that good reasons exist for adding them. The intent of the legislature...is to be found not in what the legislature meant to say, but in the meaning of what it did say...It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is a function of the legislature.")

Note, also, that the legislature in P.A. 03-140 did contemplate that no responses to an RFP might be filed in the provision prescribing the time for public hearings to begin. If no competing proposals were received pursuant to the RFP process, the Council was directed to commence public hearings within 30 to 60 days after the deadline of the submission for such proposals. P.A. 03-140, § 8. Conn. Gen. Stats. § 16-50m(a). But the act made no explicit provision for a different time for the Council's decision depending on whether or not the CEAB received RFP responses or issued a report. This

differential treatment reinforces the conclusion that the legislature did not intend to shorten the Council's time for decision, but rather fixed it at 150 days plus twelve months after an initial application was filed, so as to not unreasonably curtail the previously available period of twelve months plus a potential additional 180 days.

2) Public Act 07-242

In Public Act 07-242, the legislature authorized the CEAB to decide not to issue an RFP. P.A. 07-242, § 54; Conn. Gen. Stats. § 16a-7c(b). However, the legislature left unchanged the requirement that the Council make its decision within twelve months after “the deadline for filing an application following the request-for-proposal process.” But now it was even more likely that there might never be a time set for filing such applications. It was always the case that the CEAB could send out invitations that no one would accept; but now the CEAB could decide not to have a party at all, as they did in this case. The solution for achieving a sensible result while satisfying the canons of construction remained treating the “deadline” for submission of competing applications following the RFP process as a fixed period of 150 days.

3) The Council's Construction of Conn. Gen. Stat. § 16-50p(a)(2)(A)

In the Comment Request, the Council states:

During a meeting held on February 1, 2012, the CEAB decided not to issue a request for proposal for non-transmission alternatives to the proposed transmission line. Therefore, the current deadline for a Council decision on this application is February 1, 2013.

The Council does not explain the reasoning by which it reaches this result in the Comment Request. However, there is no way that the Council could have reached this result by construing the actual terms of the statute, particularly the term “deadline.”

Rather, it had to implicitly re-write the statute to add a provision to the effect that if the CEAB votes not to issue an RFP, the Council's time for decision shall be twelve months from the date of that vote. This would be a sensible result. However, this result requires re-writing the statute to add a provision that is not there now – something that the legislature may actually do in this case, but that a court or an agency may not do. *Vincent v. City of New Haven, supra*, 285 Conn. at 792. On the other hand, as shown above, the Council may construe “deadline,” as used in the present statute, to mean a period fixed by the statute, and this approach also yields a sensible and workable result.

This approach also avoids a problem in complying with the timing for commencing public hearings specified by Conn. Gen. Stats. § 16-50m. P.A. 03-140 amended this provision to its present form, which provides in pertinent part: “The council shall promptly fix a commencement date and location for a public hearing on an application for a certificate complying with section 16-50/ ...where no proposals are received pursuant to the request for proposal process, not less than thirty days after the deadline for submission of such proposals or more than sixty days after such deadline...” If this provision is construed in the same way as the Council has construed § 16-50p(a)(2)(A), so that the CEAB's February 1, 2012 vote not to issue an RFP is treated as the equivalent of the referenced deadline, the Council should have commenced public hearings in this case by April 2, 2012 – sixty days from the CEAB's vote. However, if the “deadline” for submitting responses is treated as the maximum period fixed by Conn. Gen. Stats. § 16a-7c, it can be identified as 75 days from the filing of the Application on December 23, 2011, or March 7, 2012, so that the public hearings should begin between April 6 (30 days from the March 7 deadline) and May 7 (60 days from the March 7

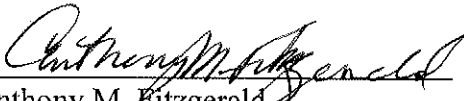
deadline plus one day because the 60th day falls on a Sunday). The public hearings will begin within that period in this case.

C. THE COUNCIL SHOULD GRANT THE CONTINUANCE REQUEST

As CL&P has stated many times in its Application, it believes that the Interstate Reliability Project is needed today, and will be needed more acutely in the near future. However, it can not proceed to present evidence without the support of the Independent System Operator – New England (ISO-NE), which is responsible for the planning and operation of the regional transmission system, and which has performed many of the critical analyses demonstrating this need. In turn, ISO-NE will not go forward without re-checking its conclusions concerning need against the very latest projections of future system conditions and loads. CL&P believes that, whether the time available for the Council’s determination is considered to expire on February 1, 2013 or May 21, 2013, the granting of the continuance requested will not preclude the Council from a timely conclusion of its work. CL&P expects to have further word with respect to the status of ISO-NE’s updating process by April 20, 2012. At that time, CL&P expects to be able to suggest a time for the commencement of evidentiary hearings, which could be as early as June, 2012, or as late as early September, 2012. In either case, there should be sufficient time for the Council to conclude its work.

Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing has been electronically mailed / sent by U.S. Mail on this 9th day of April, 2012 upon all parties and intervenors as referenced in the Connecticut Siting Council's Service List attached hereto.


Anthony M. Fitzgerald

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