

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

The Connecticut Light and 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

Docket No. 424

April 9, 2012

COMMENTS OF NRG ENERGY, INC.

To: Ms. Linda Roberts
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Pursuant to the Notice issued by the Connecticut Siting Council ("CSC" or the
"Council") on March 26, 2012 in this proceeding, NRG Energy, Inc. ("NRG") hereby
submits its comments with respect to the Applicant's request for an open-ended
"continuance" that effectively suspends the established procedural schedule pending a

review by ISO New England, Inc. ("ISO-NE") of the regional need for the Applicant's Interstate Reliability Project (the "Project"). The Applicant hopes that by April 20, 2012, it will be a position to identify more precisely the date by which ISO-NE will be in a position to submit pre-filed testimony in this proceeding that presumably would address the regional need for the Project from ISO-NE's perspective. At this point, the Applicant believes that date could be as early as June 15 or as late as September 3 of this year.

This development poses two fundamental problems for the Council. First, if the Applicant's request is granted, it will have effectively reduced the period of time within which this application must be reviewed by between three and six months. This prejudices not only the Council and its staff, but also parties and intervenors. The Applicant's request includes an open-ended consent to "any extension of time for decision pursuant to Conn. Gen. Stat. § 16-50p(a)(2) that the Council may determine it will require [sic] in order to grant the request". But the statutory scheme does not allow transmission line applications to be pending before the CSC for more than one year after the deadline for filing an alternative application as provided in Conn. Gen. Stat. § 16a-7c. Section 16-50p of the General Statutes establishes the relevant deadlines. In instances where the legislature intended any of these deadlines to be subject to extension with consent of the Applicant, it has said so explicitly. See e.g., Section 16-50p(a)(2)(B) and (C). Thus, the clear inference from Section 16-50p(a)(2) is that CSC does not have the statutory authority to extend the deadline beyond the twelve month period allowed by law, even if the Applicant consents to such an extension. One purpose served by this limitation is to prevent CSC and stakeholders from being required to react to an application that has grown stale. The Council's March 26, 2012

notice correctly points out that there is no statutory provision for an extension of the twelve month deadline.

The second fundamental problem posed by the revelation that ISO-NE is reviewing the need for the Interstate portion of the New England East-West Solution is that this ISO-NE determination forms a key element of the Applicant's case. The Application itself is premised on several ISO-NE planning documents evaluating the need for the facility. For ISO-NE to be reassessing the regional need for the facility at this stage injects a major element of uncertainty into this proceeding.

Taken together, these two concerns pose a major challenge to CSC as it attempts to act on this application. On the one hand, it does not appear that CSC can grant the Applicant's request without unduly shortening the time in which the Council, its staff and other stakeholders have to review the application. On the other hand, it does not appear that CSC has the statutory power to extend the twelve month deadline in order to eliminate this prejudice.

Under these circumstances, the only appropriate course of action is to instruct the Applicant to withdraw the application without prejudice and to file an updated and revised application if the completed ISO-NE reassessment of need shows that the transmission line is still needed. A withdrawal will also permit the Connecticut Energy Advisory Board ("CEAB") to carry out its statutory duty under Section 16a-7c of the General Statutes to issue a request for proposals for alternatives to the transmission line, based on the facts that exist upon the updated and revised application, unless it affirmatively determines that such a process would be futile.

It is not clear that CEAB's action on February 1, 2012 comports with the intent of Section 16a-7c. That statute does not grant plenary discretion to CEAB to determine whether to issue an RFP for alternatives. By the express terms of section 16a-7c of the General Statutes, except for facilities specially determined by the Siting Council and the Public Utilities Regulatory Authority as necessary for critical defense or homeland security purposes (not applicable here), the only permissible basis for declining to issue an RFP for alternatives is where the CEAB determines "that a request for proposal is unnecessary for a specific application because the process is not likely to result in a reasonable alternative to the proposed facility."

In light of the foregoing, the Council should direct the Applicant to withdraw its application without prejudice.

NRG ENERGY, INC.

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