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August 22, 2023

VIA E-MAIL AND HAND-DELIVERY

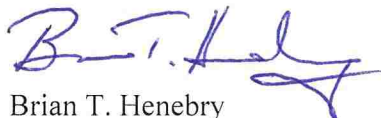
Attorney Melanie Bachman
Executive Director/Staff Attorney
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: PETITION NO. 1566 - The Connecticut Light and Power Company d/b/a Eversource Energy petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed Card Substation to Wawecus Junction Upgrade Project consisting of the replacement of electric transmission line structures along its existing 12.5-mile electric transmission right-of-way shared by its existing 115-kilovolt (kV) Nos. 1080/1490 and 1080/1070 Lines between Card Substation in Lebanon, Stockhouse Road Substation in Bozrah and Wawecus Junction in Norwich, Connecticut traversing the municipalities of Lebanon, Franklin, Bozrah and Norwich, and related electric transmission line and substation improvements

Dear Attorney Bachman:

In connection with the above-referenced Petition No. 1566, I enclose the original and fifteen (15) copies of the Response of Eversource Energy to Motions dated July 31, 2023 and August 7, 2023 filed by Cory Spaulding and Leslie Yeisley.

Very truly yours,


Brian T. Henebry

BTH/da
Enclosures
cc: Service List dated June 22, 2023 attached

**LIST OF PARTIES AND INTERVENORS
SERVICE LIST**

| Status Granted | Document Service | Status Holder (name, address & phone number) | Representative (name, address & phone number) |
|--|--|--|--|
| Petitioner | <input checked="" type="checkbox"/> E-mail | The Connecticut Light and Power Company d/b/a Eversource Energy | Deborah Denfeld Team Lead – Transmission Siting Eversource Energy P.O. Box 270 Hartford, CT 06141 Phone: (860) 728-4654 deborah.denfeld@eversource.com |
| Party and CEPA Intervenor (granted 6/22/23) | <input checked="" type="checkbox"/> E-mail | Cory R. Spaulding Leslie A. Yeisley 716 Beaumont Highway Lebanon, CT 06249 Phone: (352) 263-9226 coryspaulding@earthlink.net | |
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CONNECTICUT SITING COUNCIL

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|--|--------------------------------------|
| The Connecticut Light and Power Company d/b/a Eversource Energy petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed Card Substation to Wawecus Junction Upgrade Project consisting of the replacement of electric transmission line structures along its existing 12.5-mile electric transmission right-of-way shared by its existing 115-kilovolt (kV) Nos. 1080/1490 and 1080/1070 Lines between Card Substation in Lebanon, Stockhouse Road Substation in Bozrah and Wawecus Junction in Norwich, Connecticut traversing the municipalities of Lebanon, Franklin, Bozrah and Norwich, and related electric transmission line and substation improvements | PETITION 1566 August 22, 2023 |
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RESPONSE OF EVERSOURCE ENERGY TO MOTIONS DATED JULY 31, 2023 AND AUGUST 7, 2023 FILED BY CORY SPAULDING AND LESLIE YEISLEY

I. INTRODUCTION & SUMMARY OF EVERSOURCE’S RESPONSE TO INTERVENORS’ MOTIONS DATED JULY 31, 2023 AND AUGUST 7, 2023

On July 31, 2023, Cory Spaulding and Leslie Yeisley (“Claimants”) filed a Motion for Investigation of Illegal Work and False Statements (“Motion for Investigation”) with the Connecticut Siting Council to conduct an investigation pursuant to Regulations of Connecticut State Agencies (“R.C.S.A.”) § 16-50j-41 regarding the following:

- alleged illegal work done by Eversource in 2018 - 2021 – *i.e., prior to the filing of Petition 1566* – within an existing transmission right-of-way (“ROW”) over an undeveloped 64.84-acre parcel on Beaumont Highway in Lebanon, Connecticut that the Claimants acquired on August 13, 2020;
- alleged false statements by Attorney Melanie Bachman (“Attorney Bachman”), Executive Director of the Connecticut Siting Council (“Council”); and

- alleged false statements in filings made by Eversource in this proceeding. (Motion for Investigation at 1-2).

Along with the July 31st Motion for Investigation, the Claimants filed on that same date a Motion for a Procedural Conference pursuant to R.C.S.A. § 16-50j-22a to discuss a number of procedural matters related to their assertions of “illegal work” and alleged misrepresentations by the Council’s Executive Director.

On August 7, 2023, the Claimants filed additional requests entitled “Objections to Council Proceedings and scheduling of motions. Request for Immediate Hearing” (“Request for Immediate Hearing”). In this filing, Claimants blithely allege that *“The Council has made a mockery out of the public participation and party status process by showing obvious preferential treatment toward the petitioner and bias toward the parties to this proceeding and we object.”* In the Request for Immediate Hearing, the Claimants make various claims of procedural issues that they assert are “a prime example of the obvious corruption that has infested this Council,” and request an immediate hearing on the Motion for Investigation and the Motion for a Procedural Conference.

The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) files this objection to all of these specious filings by the Claimants and requests that the Council deny these motions with prejudice. As discussed in detail herein, Claimants’ requests should be denied because:

- These motions are essentially a “back door” attempt by the Claimants to reargue issues regarding allegations of prior “illegal” and “unauthorized” work – claims that the Council

implicitly rejected in its June 22, 2023 order denying Claimants' request for a hearing and denying their various requests that the Petition be dismissed;

- Both sets of motions and objections are beyond the scope of the Council's order granting the Claimants' party and CEPA intervenor status, which limited their participation to issues related to in-ROW work that is being proposed under Petition 1566, as opposed to their claims regarding prior work on the property;
- The Claimants' allegations of false statements by Attorney Bachman and by Eversource are baseless, *ad hominem* attacks made in a desperate attempt to relitigate the claims of illegal work;
- The prior work by Eversource replacing Structure 7786 was completed in 2019 - prior to Claimants' ownership of the parcel - and was not within the Council's jurisdiction because it involved maintenance work of a one-for-one replacement of a structure with no increase in the height of the replacement structure, and therefore no formal notice was required to the Council or to abutting owners;
- The prior maintenance work by Eversource replacing angle Structures 7785 and 7785A was completed in 2021 and was also not within the Council's jurisdiction because it involved one-for-one replacements of structures with no increase in structure height, and therefore no formal notice was required to the Council or to abutting owners (although the Claimants were in fact consulted by Eversource in connection with this work);
- Claimants' allegations of misrepresentations by Attorney Bachman and Eversource have no merit and certainly do not warrant an investigation; and
- Claimants' Request For Immediate Hearing is simply a renewal of the request for a hearing that was denied on June 22, 2023. Moreover, in direct violation of the order

granting party and CEPA intervenor status, Claimants do not seek a hearing on the work proposed in Petition 1566; rather, they seek a hearing on the alleged prior unlawful work on the parcel in 2019 and 2021.

The Motion for Investigation and the Request for Immediate Hearing have no merit and should be rejected in their entirety. Because of the voluminous nature of these filings and their disorganized presentation, Eversource cannot respond to each and every “shotgun-style” allegation made but will instead focus in this Response on the principal allegations regarding “illegal work.” Moreover, the Claimants’ filings represent an attempt to raise issues previously rejected by the Council by now raising baseless claims of “fraud” and “misrepresentation”. These types of arguments represent the “least common denominator” of advocacy. The Council should not tolerate the careless assertion of these claims simply because they have been made by pro se litigants. *Procedural errors and substantive misinterpretations by pro se parties not familiar with the Council’s procedures or with its jurisdictional limitations should be tolerated; however, efforts to slander the character of trusted Council personnel and the integrity of Council proceedings should not be overlooked or tolerated. Compare Mercer v. Rodriguez, 83 Conn. App. 251, 257 n. 9 (2004) (“[I]t is the established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party.... Although we allow pro se litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law.”)*

II. BRIEF PROCEDURAL HISTORY RELEVANT TO THE MOTION FOR INVESTIGATION AND REQUEST FOR IMMEDIATE HEARING

This proceeding concerns proposed modifications to transmission facilities owned by the Petitioner, Eversource, and located along a 12.5-mile section of existing transmission right of

way (“ROW”) in the towns of Lebanon, Franklin, Bozrah, and the City of Norwich. Since August of 2020, the Claimants have owned property in the Town of Lebanon that is crossed by the ROW. They are the only intervenors in this action.

On May 22, 2023, the Claimants filed the following requests with the Council:

- Request for Party and Intervenor Status;
- Request to Reject the Petition for Alleged Failure to Provide Eversource’s April 2022 Construction & Maintenance Environmental Requirements Best Management Practices;
- Request to Reject the Petition for Alleged Failure to Provide Information Required Pursuant to Petition No. 1293 for Sub-Petitions for Transmission Line Maintenance Projects to Comply with the National Electric Safety Code;
- Request for Dismissal of the Petition for Incompleteness for Alleged Failure to Provide Information Listed in R.C.S.A. § 16-50j-59;
- Request to Separate Optical Ground Wire Installation and Structure Replacement Work Into Separate Petitions;
- Request for a Public Hearing.

In support of these various requests, the Claimants made many of the same claims underlying their current motions. Specifically, they alleged that Eversource performed unauthorized work on the parcel at issue both prior to and after their acquisition of the property. (*See Claimants’ Request for Intervenor/Party Status dated 5/22/23 at 5.*) Eversource responded in detail to these claims of illegality in the Appendix to its June 12, 2023 Response to the May 22, 2023 motions filed by the Claimants.

On June 22, 2023, the Council granted the Claimants’ request for Party and CEPA Intervenor Status, “**with the condition that** [intervenors’] participation shall be limited to in-right-of-way work proposed to be performed by Eversource in Petition 1566.” (Council Letter to Claimants dated 6/22/23) (Emphasis in original). However, the Council denied the five other motions filed by Claimants, *including their request for a public hearing to address their various claims of illegal, unauthorized work that are once again referenced in their Motion for Investigation and Request for Immediate Hearing.*

III. SUMMARY OF CLAIMANTS’ ASSERTIONS REGARDING ALLEGED “ILLEGAL WORK” BY EVERSOURCE IN THE ROW PRIOR TO THE FILING OF PETITION 1566 & KEY FACTS REGARDING THESE CLAIMS.

Prior to rebutting the numerous inaccurate assertions by the Claimants regarding alleged “illegal work” between 2018 and 2021, it is first necessary to review *precisely what the Claimants are alleging* in their voluminous filings. This is by no means an easy task since the Claimants’ filings are disorganized, unclear, repetitive, overly long, and sometimes internally inconsistent. In addition, Claimants rely on flawed legal premises regarding the jurisdiction of the Council. More specifically, Claimants fundamentally misunderstand and misstate how certain jurisdictional principles that have been consistently applied by the Council over the last 50-plus years were properly applied to prior work on the property in question.

In the Motion for Investigation, Claimants lay out their allegation of “illegal work” as follows:

Petition 1566 contains illegally built infrastructure that was never reviewed or approved by the Council. The Council, property owner, and town were never notified of this work and no petition or notification of exempt work was ever filed with the Council, property owner, or town as required by law.

Specifically on the Spaulding / Yeisley property, sites 7785 and 7786 had poles replaced and extensive detrimental land feature changes were performed during the replacement. An illegal road was built between sites 7786 and 7784. Serious environmental damage was done to the property while performing this illegal work that has not been corrected or identified in the submitted petition. Additional illegal work at other sites on this property also exists.

The scope of work in Petition 1566 proposes to utilize this illegally built infrastructure. The Siting Council in Petition 1566 is being asked to approve illegal work that is characterized in the Petition as existing infrastructure. This infrastructure was illegally built. (Motion for Investigation at 1.)

Given the often confusing and redundant nature of Claimants’ voluminous filings,¹ Eversource is providing the following “high level” factual summary as a foundation for the Council’s review of the Motion for Investigation and the Request for Immediate Hearing. In addition, Eversource incorporates by reference the factual summary provided on pages 4 - 8 of its June 12th Response and the detailed factual information provided in the Appendix to that Response.

- As to Work Proposed in Petition 1566 to Replace Structures 7787 and 7788: Under the Council’s June 22, 2023 order, Claimants’ intervention is limited to “in right-of-way work proposed to be performed in Petition 1566.” Significantly, Claimants do not challenge the scope of new work proposed on Claimants’ property under Petition 1566 (replacement of two wooden H-frame Structures 7787 and 7788, replacement of existing shield wire with optical ground wire, use of existing access roads), *except* to the extent they claim that the pre-existing access road was “not authorized” and therefore illegal. They make no claims specifically regarding the proposed replacement of Structures 7787 and 7788; their claims relate to work previously done on the property and the continued use of previously installed structures. *See* Motion for Investigation at 29-39. Given that the Claimants’ intervention was limited to work proposed under Petition 1566, their Motion for Investigation and Request for Immediate Hearing can be summarily denied simply on the basis that they are not challenging the new work.

¹ It is difficult to respond to all of the Claimants’ “shotgun-style” assertions of malfeasance and “illegality” leveled against both Eversource and the Executive Director of the Council (or to even understand some of the claims), because of the number of these claims, the disorganized presentation, and the fact that allegations are included in multiple portions of the Motion for Investigation. For example, Claimants’ 27-page diatribe of alleged false statements by the Executive Director makes repeated references to illegal or unauthorized work (*id.* at 1-27), and then Claimants repeat claims of alleged unauthorized or illegal work on pages 29-39 of that same filing. Claimants will – no doubt – claim that Eversource’s attempt to summarize their claims of illegality in this factual summary has somehow unfairly characterized their claims or misrepresented the facts. Eversource chooses to disregard such anticipated complaints, however, because it feels that the Council will benefit from Eversource’s effort to put some type of organizational structure to the myriad number of allegations and assertions by the Claimants.

- As to Eversource Maintenance Work Completed in 2019 Replacing Structures 7784 and 7786:

- The Claimants do not appear to allege that the work in replacing Structure 7784 was illegal, but they do make many allegations regarding an alleged “illegal” access road in the vicinity of Structure 7784. *See* Motion for Investigation at 35-38.
- The Claimants allege that the work on Structure 7786 was illegal because formal notice was not provided by Eversource to the then-owner of the parcel or the Council. *See, e.g.,* Motion for Investigation at 3.
- The Claimants did not own the parcel in question at the time this work was done, since they did not acquire this land until August 13, 2020 and therefore purchased the property in the condition that existed *after* Eversource completed its work in 2019.
- While Eversource was not required to provide formal notice of the work on Structure 7786 because it was a one-for-one replacement with no height increase, Eversource communicated with and worked with the prior owner of the property regarding the work on the access road between Structures 7784 and 7786. *See* Appendix to Eversource’s June 12th Response, Tab 3.
- In the June 22, 2023 Staff Report, Attorney Bachman noted that the work on Structure 7786 was not subject to the Council’s 2017 Declaratory Ruling in Petition 1293 regarding the Sub-Petition process (including the notice provisions set forth in that Declaratory Ruling) because there was no change in the height of the structure.

- As to Eversource Maintenance Work Completed in 2021 Replacing Angle Structures 7785 and 7785A:

- Structures 7785 and 7785A were 2-pole H-frame angle structures that were replaced with 3-pole H-frame angle structures of the same height.
- In the June 22, 2023 Staff Report, Attorney Bachman noted that the work on Structures 7785 and 7785A was not subject to the Council’s 2017 Declaratory Ruling in Petition 1293 regarding the Sub-Petition process because there was no change in structure height.
- While Eversource was not required to provide formal notice of the work on Structures 7785 and 7785A because that work comprised one-for-one replacements with no height increase, Eversource had a series of meetings and communications with Mr. Spaulding regarding the work done in 2021 on

Structures 7785 and 7785A. *See* Appendix to Eversource’s June 12th Response, Tab 10.

- As to Eversource Work Completed near Structure 7787:
 - The Claimants do not make any allegations regarding Structure 7787, but make a number of claims regarding work near that structure. *See* Motion for Investigation at 38-39.

As outlined in Tab 10 of Eversource’s Appendix to its June 12th Response, Eversource representatives have been engaged in addressing various allegations, complaints, concerns, and litigation threats asserted by the Claimants since early 2021, shortly after they acquired the parcel in question. Suffice it to say that the number of demands and attention demanded by these Claimants is atypical compared to other properties that have been impacted by the same projects about which the Claimants now make allegations of various improprieties. While Claimants have certain due process rights given their status as a party and CEPA intervenor, those rights are limited by the conditions on intervention imposed by the Council. Moreover, their right to “due process” does not give the Claimants the right to abuse the Siting Council process. This is precisely what the Claimants are doing.

IV. EVERSOURCE’S RESPONSE TO THE JULY 31, 2023 MOTION FOR INVESTIGATION

A. Standard of Review

The Claimants’ Motion for Investigation was filed pursuant to R.C.S.A. § 16-50j-41, which provides:

[t]he Council may at any time initiate investigations and enforcement actions pursuant to Section 16-50u² of the Connecticut General Statutes. Orders initiating the investigation

² Connecticut General Statutes (“C.G.S.”) § 16-50u (“Enforcement of certificate and standards requirements”) provides:

The council shall take reasonable steps to insure that each facility for which a certificate has been issued is constructed, maintained and operated in compliance with such certificate and any other standards established pursuant to this chapter. Whenever the council deems it necessary to verify such compliance and whenever the meeting of any such other standards involves expenses, the person to whom such certificate has been issued shall be charged with and pay such expenses. The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive

shall indicate the nature of the matters to be investigated and shall be served upon any person being investigated. Upon direction by the Council said person shall file with the Council such data, facts, arguments and statement of position as shall be necessary to respond to the inquiry of the Council. The presiding officer may subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in a contested case pursuant to Section 4-177b of the Connecticut General Statutes. A motion for a protective order may be filed with the Council if the Council requests information that may qualify as trade secrets or commercial or financial information as described under Section 1-210(b) of the Connecticut General Statutes, or critical energy infrastructure information.

As a threshold issue, it is not clear from the language of either R.C.S.A. § 16-50j-41 or C.G.S. § 16-50u that these provisions empower the Council to conduct an investigation of allegations of fraud or misrepresentations made by third parties against its Executive Director (including unfounded allegations made by hyper-litigious pro se litigants), as opposed to an investigation of petitioners or applicants to the Council that is clearly envisioned by this regulation. For purposes of this argument, however, Eversource will assume that the Council has the power under R.C.S.A. § 16-50j-41 to order such an investigation, because the request can be easily rejected based on the lack of merit to this request.

The decision on whether to grant a request for an investigation is clearly subject to the complete discretion of the Council. The language of R.C.S.A. § 16-50j-41 says that it “may” conduct an investigation if it elects to do so. There is nothing in the language of this regulation or C.G.S. § 16-50u that the Council has any obligation to conduct an investigation simply because an intervenor is unhappy with a ruling by the Council. In short, the Council has complete and unfettered discretion in reviewing this request, and it should exercise this discretion to summarily reject the Motion for Investigation and related Motion for Procedural

relief, as may be necessary to secure compliance with this chapter and with a certificate issued pursuant to this chapter. The courts may assess civil penalties in an amount not less than one thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any certificate issued pursuant to this chapter. Civil proceedings to enforce this chapter may be brought by the Attorney General in the superior court for any judicial district affected by the violation. The remedies and penalties in this section shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person.

Conference and to instruct the Claimants that future filings must comply with the conditions of the Order granting them status as a party and CEPA intervenor.

B. The Claimants' Motions Represent a Thinly-Veiled Attempt To Reargue Their Motions Regarding Prior Work in the ROW That the Council Denied On June 22, 2023.

In its June 22, 2023 ruling, the Council: (1) granted the Claimants' motion to intervene as a party and a CEPA intervenor, with the condition that their participation was limited to in-ROW work proposed in Petition 1566; and (2) denied the five other motions filed by Claimants seeking that the Petition be dismissed and a hearing be held. In support of these six motions, the Claimants had submitted voluminous filings and exhibits in which they made allegations that prior Eversource work within the ROW was unauthorized and illegal. *See* Claimants' Six Requests dated 5/22/23. In the Appendix to Eversource's June 12th Response, Eversource reviewed and rebutted in detail these allegations of illegal and unauthorized work. *See* Appendix Tabs 1-10 of Eversource's June 12th Response. Similarly, in her June 22, 2023 Staff Report regarding Claimants' May 22, 2023 requests, Attorney Bachman provided a detailed history of work on the subject parcel in response to Claimants' allegations of illegal, unauthorized work allegedly conducted both before and after the Claimants acquired the parcel in 2020.

In fact, the Motion for Investigation actually represents the Claimants attempt to "take a third bite at the apple" in making claims of allegedly "illegal" work by Eversource. Exhibit 9 to Claimants' Motion for Investigation includes a series of 2021 email communications and correspondence between Claimants and Attorney Bachman. In this series of communications, the Claimants make allegations both about the access road on the property and their claim that the 2021 replacement of Structures 7785 and 7785A should have been included in Sub-Petition

1293-LFBNM-01. (Exhibit 9, Cory Spaulding Email to Attorney Bachman dated 9/1/21.) In Bachman’s reply letter, she specifically informed Mr. Spaulding that:

[w]ith reference to Structure No. 7785, structure replacements that require an increase in height to comply with NESC³ conductor clearance requirements are subject to the Council’s jurisdiction. Structure replacements that do not require an increase in height to comply with the NESC are not subject to the Council’s jurisdiction.

(Exhibit 9, Bachman letter to Spaulding dated 9/7/21). In short, this is at least the third time the Claimants have made claims of “illegal” work that are based on a flawed understanding of the Council’s jurisdiction.

In the Motion for Investigation, the Claimants “recycle” these claims of illegal work, but seek to add a new twist to their claims in an attempt to circumvent the Council’s rejection of their prior requests for dismissal and for a hearing. Specifically, on the basis of manufactured allegations of alleged fraud by the Executive Director of the Council, the Claimants request that the Council conduct an investigation pursuant to R.C.S.A. § 16-50j-41 of alleged misrepresentations and procedural manipulations by Attorney Bachman. Pro se intervenors are entitled to leeway on substantive and procedural technicalities, but they are still bound to make allegations based on legitimate, good faith claims based in fact. *See* Subsection IV E herein.

C. The Claimants’ Motions Are Barred Because They Clearly Exceed the Permissible Scope of Intervention Allowed by the Council in its June 22, 2023 Order.

The Claimants’ motions⁴ include numerous pages of scattered, misleading accusations of

³ “NESC” is an abbreviation for the National Electrical Safety Code.

⁴ Along with their Motion for Investigation, the Claimants also filed a Motion for a Procedural Conference with the following requested agenda: (1) Schedule time and procedure to investigate false statements made to the Council in Attorney Bachman’s staff memos dated June 15 and June 22, 2023; (2) schedule time and procedure to identify the full scope of illegally performed infrastructure work contained in Petition 1566; (3) schedule time and procedure to identify false statements and information contained in the record for Petition 1566; (4) schedule time and procedure to rehear their motion for a public hearing presented to the Council at its June 22, 2023 meeting due to false statements relied upon by the Council in the June 15 and June 22, 2023 staff memos; (5) schedule and discuss continued fact-finding discovery period due to delays in interrogatory responses, false statements in the Petition 1566 record, illegal infrastructure work contained in Petition 1566 and the Petition’s failure to accurately depict existing conditions; (6) schedule date for fact finding visit to Claimants’ property to assist in determining false statements in the official record and accuracy of existing conditions in Petition 1566; (7) schedule extension of time for Council’s final decision to allow for consultation with the Attorney General; (8) schedule time and procedure to comply with R.C.S.A. § 16-50j-22a(c), responses to information and testify during the hearing as to content of responses; (9) schedule time and procedure

prior illegal work on their property by Eversource dating back to 2018, well before they purchased the property traversed by Eversource’s ROW in August of 2020.⁵ The Claimants were granted party and intervenor status by the Council pursuant to C.G.S. § 22a-19 (the Connecticut Environmental Protection Act or “CEPA”) and R.C.S.A. § 16-50j-43; however, as discussed above, this status was conditioned on their participation being limited to in-ROW work across their property *as proposed in Petition 1566*. See Letter to Claimants from Connecticut Siting Council dated June 22, 2023. The Claimants’ July 31st filings not only seek a determination by the Council that Eversource’s past work on their property was illegal, but they also make similar claims regarding prior work on other owners’ properties that are crossed by Eversource’s ROW. These allegations simply do not pertain to the current Petition pending before the Council, and therefore, are outside the scope of the Council’s conditioned participation of the Claimants as parties and CEPA intervenors. See, e.g., *AvalonBay Communities, Inc. v. Inland Wetlands and Watercourses Agency of Town of Stratford*, 130 Conn. App. 69 (2011), *cert. denied*, 303 Conn. 908 (2011) (finding that the Town was not a party during the trial court proceedings and had failed to intervene during the underlying permit proceedings before the agency, and the agency, therefore, had made no findings with respect to § 22a-19 environmental issues); *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 154 (2002) (“Intervention allows one who was not a party in an original action to become a party upon his request. He has a derivative role by virtue of an action already shaped by the original parties. He takes the controversy as he finds it and may not introduce his own claims to restyle the action.”)

to comply with R.C.S.A. § 16-50j-28(a) Rules of Privilege and 16-50j-25(c) Pre-filed Evidence and Testimony; (10) the incorporation of all items contained in their “Action Requested” attachment; and (11) discuss and schedule any other matters that may facilitate the proceeding. For all the reasons set forth in this Response, Eversource objects to Claimants’ Motion for a Procedural Conference.

⁵ See the June 12, 2023 Response of Eversource Energy to Six Requests Filed by Cory Spaulding and Leslie Yeisley Dated May 22, 2023 for a more complete summary of (a) the procedural history of this Petition, (b) the property at issue owned by the Claimants, and (c) work performed by Eversource within the ROW over the Claimants’ property since 2017.

Notwithstanding the above, Eversource has previously responded to numerous of these allegations regarding prior work within the ROW that traverses Claimants' property, both in its June 12th Response and in its responses to the Claimants' interrogatories filed in this proceeding.

D. The Claimants' Multiple Allegations Regarding Utilization of Illegally Built Infrastructure Have No Merit.

1. The 2021 replacements of Structures 7785 and 7785A on Claimants' property were one-for-one replacements, not subject to the Council's jurisdiction.

The Claimants cite on multiple occasions to R.C.S.A. §§ 16-50j-57(b)(2) and 16-50j-58 in support of their allegation that Eversource failed to give property owners or the Council proper notice for replacement of Structures 7785, 7785A, and 7786⁶. However, prior work at these structures comprised one-for-one replacements as part of asset condition maintenance where structure height remained the same; therefore, §16-50j-58 of the R.C.S.A. is not applicable because the replacements are not jurisdictional, as interpreted by the Council⁷.

A "one-for-one" or "like-for-like" replacement refers to the replacement of an existing structure with a new structure that is similar in appearance and without an increase in structure height. *See* Eversource's Response to Interrogatories 5 and 6 (SY Set 01). For Structures 7785 and 7785A, each existing single-circuit H-frame structure previously had two support poles (i.e., four for the two structures), which were replaced by single-circuit H-frame structures with three

⁶ As stated previously, Structure 7786 was last replaced in 2018, before the Claimants owned the property at issue. Like the 2021 replacement of Structures 7785 and 7785A, this prior replacement of Structure 7786 was asset maintenance work that was not within the Council's jurisdiction because there was no increase in structure height. While notice to the property owner was therefore not required for this structure replacement work, Eversource did communicate with this prior owner regarding the installation of a gravel access road rather than temporary matting and the prior owner did not object to installation of gravel. See Appendix to Eversource's June 12th Response, Tab 3.

⁷ Relatedly, Claimants allege that Eversource falsely stated in its June 2023 Response that work performed at Structures 7785 and 7786 was done as part of sub-petitions 1293-LFB-01 and 1293-LFBNM-01, respectively. The Claimants appear to have taken this statement out of context. The June 2023 Response provided an overview of the past work performed within the ROW traversing the Claimants' property in relation to three separate projects since 2017. On page 7 of Eversource's response, it specifically states, "Structure #7786 was solely replaced due to asset condition, but was considered a 'non-jurisdictional structure' because there was no height increase or design change between the original structure and the replacement structure." Similarly on page 8, Eversource states that in 2021 it "replaced wood angle structures #7785 and 7785A on Lines 1490 and 1080, respectively, which were non-jurisdictional structure replacements."

support poles per structure (i.e., six for the two structures). The basic design of the previously existing and the replacement structures are each considered single-circuit H-frame structures that support three phase conductors.

The term “modification” is defined in C.G.S. § 16-50i(d) as “a *significant* change or alteration in the general physical characteristics of a facility” (Emphasis supplied). The replacement of an H-frame structure with another H-frame structure of the same height does not amount to a “significant” alteration of the structure’s physical characteristics, and therefore, is not considered by the Council to be a “modification” under the statute. *See* Connecticut Siting Council letter to Cory Spaulding dated September 7, 2021 (“Structure replacements that do not require an increase in height to comply with the NESC are not subject to the Council’s jurisdiction. Replacement of Structure No. 7785 did not require an increase in height. It is not subject to the Council’s jurisdiction.”); *see also* June 22, 2023 Staff Report, at 4 (“Structure replacements that do not require an increase in height to comply with the NESC conductor clearance requirements are not subject to the Council’s Declaratory Ruling.”) The Council’s longstanding interpretation of its own regulations and the statutes governing its jurisdiction govern this dispute over the meaning of these provisions. See also Paige v. Town Plan and Zoning Comm’n of Town of Fairfield, 235 Conn. 448, n. 5 (1995) (“When we interpret a statute, we generally accord great deference to the construction given by the agency charged with its enforcement.”) (internal citation omitted).

- a. Following Their 2020 Acquisition of the Parcel, the Claimants received actual notice of the non-jurisdictional work to be performed within the ROW on their property in 2021.***

On page 2 of the Claimants’ “partial listing of false statements to disclose made by Siting Council Executive Director Attorney Bachman in the April 22, 2023 staff report signed by

Attorney Bachman that was presented to the Council as a summation of the issues raised by Cory Spaulding and Leslie Yeisley” (“partial listing of false statements”) appended to their July 31 motions, they allege that “[t]he most serious damage to our property occurred at site 7785 in 2021,” after they became owners of the subject property; and that “we were **NOT** provided with any notice of Eversource’s intent to do this work [at Structure 7785].” This is categorically false. Even when the work it undertakes is non-jurisdictional to the Council (and therefore no notice is required), Eversource routinely provides notification to owners of property where structure replacements or other construction work in the ROW will take place. Indeed, Eversource provided such notification to the Claimants in 2021. Tab Number 10 of Eversource’s June 12th Response includes a summary of communications with Claimants dating back to March 2021, when Sub-Petition No. 1293-LFB-01 was filed with the Council, to introduce that project to Claimants and review the scope of work to be performed in the ROW on their property.

Even assuming, arguendo, that personal notice of the non-jurisdictional work on Structure 7785 was required as alleged by the Claimants, they had actual notice of the activities within the ROW on their property – including the replacement of Structure 7785 – and, therefore, were not prejudiced by any lack of formal written notice.

2. Eversource submitted appropriate maps with Petition 1566.

Claimants argue that the maps submitted for Petition 1566 are from 2019 and do not depict alleged illegal work performed by Eversource in 2021 or the present conditions in the ROW on the Claimants’ property. Specifically, Claimants allege that the maps fail to depict the access road running between Structures 7784 and 7786 within the ROW. As explained in Eversource’s Response to Interrogatories 12, 13, 14 and 16 (SY Set 01), the 1566 Petition map set uses a 2019 base map from Connecticut Environmental Conditions Online (CT ECO) Data

Source. The 2019 aerial used in the Petition is the most current statewide aerial imagery available.

In locations where sensitive or protected resource areas are in close proximity to the proposed Project area, additional field surveys are conducted. For Structures 7785 and 7785A, no sensitive or protected resource areas were identified nearby that would have necessitated additional surveys. Further, as stated in Eversource's Response to Council Interrogatories 14 - 15 (CSC 01) and Spaulding Interrogatories 40 - 43 (SY 01), the Project does not currently anticipate that the existing gravel work pads located at Structures 7786, 7785 and 7784, or the gravel access road between Structures 7784 and 7786, would require improvement or extension. The condition of these work pads and the road would be reevaluated during construction.

3. Eversource's proposed restoration plan for Claimants' property is not a part of the pending Petition before the Council.

The Claimants also contend that Eversource's March 2023 proposed restoration plan for the Claimants' property within the ROW identifies existing environmental issues that are not disclosed in Petition 1566. As a threshold matter, Eversource is not required to obtain the Council's permission prior to undertaking restoration activities within its ROW or needed maintenance of the ROW, including vegetation management or drainage features or the like installed under previous project work. Even in the absence of its filing of Petition 1566, Eversource would still be permitted to move forward with its proposed restoration activities on Claimants' property.

Moreover, as explained in Tab Number 6 to Eversource's June 12th Response, the description of existing conditions provided for Petition 1566 is intended to provide an overview of Project area resources. As is typical, the description does not set forth specific details regarding every single existing condition for each property over the entire Project area traversed

by the ROW, which is more than 12 miles long. However, additional details for specific resource areas are included when such details are helpful for resource protection. No such additional details were needed for Claimants' property because the proposed work will not require resource protection specific to this area.

Implementation of the proposed restoration plan would take place along with other Project-related work. This is the typical protocol for projects where Eversource has entered into agreements with property owners regarding restoration work on their property. It is not an attempt at cover-up or collusion; it is an attempt at maintaining relationships with the many property owners whose properties are traversed by one of Eversource's ROWs.

4. Claimants' allegations regarding numerous other sites on the transmission line ROW are not part of the pending Petition before the Council.

Throughout their July 31, 2023 pleadings, Claimants make reference to thirty or more other sites along the transmission line, upon which Eversource allegedly replaced poles that were never reviewed or approved by the Council. *See, e.g.*, Motion for Investigation at 12. This allegation is not only speculative, unsupported and unrelated to the current Petition 1566 pending before the Council, but it is also an allegation that has never been brought by any of these other putative property owners – either with Eversource or with the Council.

As explained above, if the replacement of an existing structure results in no structure height increase and is a one-for-one replacement, then the replacement would be non-jurisdictional to the Council, similar to Eversource's replacement of Structures 7785 and 7785A on Claimants' property in 2021. *See* Connecticut Siting Council letter to Cory Spaulding dated September 7, 2021; Council's June 22, 2023 Staff Report, at 4.

E. Claimants' Allegations that the Council's Executive Director Created a False Record to "Cover Up" Eversource's Past Work on the Claimants' Property Are Patently False.

1. There was no manipulation on the part of Attorney Bachman to deny the Claimants an opportunity for a hearing on Petition 1566.

The Claimants spend several pages in their Motion for Investigation theorizing on the numerous ways Attorney Bachman purportedly thwarted their efforts to request that the Council hold a hearing on Eversource's pending Petition 1566. There are multiple canards and assumptions threaded throughout these allegations that should be clarified, to wit:

- On pages 3-4 of the "partial listing of false statements", Claimants contend that "Attorney Bachman **failed to disclose to the Council that we had notified her on May 4th and May 5th, seven days earlier, via email, that we were requesting a hearing and filing for intervenor and party status for this petition" (Emphasis in original). Contrary to this allegation, the Claimants did not state anywhere in their emails of May 4th or May 5th (which they attach as exhibits) that they *planned to request a hearing*. Although the communications do state their intent to request party/intervenor status, an email about a forthcoming request does not meet the requirements under C.G.S. § 4-177a and R.C.S.A. §§ 16-50j-13 through 16-50j-17 for requesting party or intervenor status. In her May 5th response to the Claimants, Attorney Bachman explained that the deadline for filing a petition for party or intervenor status would depend upon whether or not the Council holds a public hearing on the Petition. At the time of this email exchange with the Claimants, the Council had not yet met to determine whether, in its discretion, a public hearing would be held on Petition 1566.**
- Although the Claimants allege that Attorney Bachman intentionally scheduled the public meeting on their request for a hearing after the 60-day action period had passed, this is

incorrect. The Claimants’ request for a hearing was received by the Council on May 22, 2023, eleven days *after* the Council had acted pursuant to C.G.S. § 4-176(e)⁸ and voted to set the date by which to render its decision on Petition 1566. The Council decided on that date not to hold a hearing on the Petition.

- Importantly, the Claimants fail to understand that even if their request for a hearing had been received prior to the Council’s action under C.G.S. § 4-176(e), the Council would not have been required to grant a hearing. R.C.S.A. § 16-50j-40(b) gives the Council discretion on whether to grant a hearing (*Id.* (Council determines whether it “deems a hearing necessary or helpful in determining any issue concerning the request for a declaratory ruling...”).
- The Claimants argue that Attorney Bachman could have placed their hearing request on the agenda for the Council’s meetings on either May 25, 2023 or June 8, 2023, which would have been within the statutory 60-day period for action. Notwithstanding the fact that the Council had already decided not to hold a hearing on the Petition, Eversource was given a period of time – until June 12th – to respond to the numerous allegations set forth in the Claimants’ voluminous filings prior to any Council decision pursuant to R.C.S.A. § 16-50j-22a(b).

The Claimants’ inflammatory and false accusations of illegal “cover ups” do nothing but illustrate that these latest motions have no legal or factual support to warrant their request for an investigation into Attorney Bachman’s actions.

⁸ Section 4-176(e) does not require the Council to wait 60 days before it acts on a petition. Rather, the Council is required to act “*within* sixty days after receipt of a petition for a declaratory ruling” (Emphasis supplied).

2. Petition 1566 was legally accepted by the Siting Council, despite the delayed receipt of the mailed notice to the Claimants.

The Claimants also allege that Attorney Bachman acted in contravention of R.C.S.A. § 16-50j-40(a) by accepting Petition 1566 before the Claimants received notification from Eversource. As with the other claims asserted against Attorney Bachman, the evidence contradicts this allegation.

On page 8 of their “partial listing of false statements” included in the Motion for Investigation, the Claimants write, “**The regulations require that notification of property owners occur PRIOR to submitting a petition to the Council. Notification does not mean putting a letter in the mail and sending it to an outstate address not on the public record**” (Emphasis in original). However, Eversource sent notice to the address listed on the Town of Lebanon’s property card (i.e., a public record) for Claimants’ property that is traversed by the ROW, which is their Florida address. *See* Claimants’ Exhibit 1 to their July 31, 2023 motions. Eversource provided all required notifications pursuant to R.C.S.A. § 16-50j-40(a) and produced an affidavit reflecting same with its Petition. *See* Attachment F to the Petition. *See also* Tab Number 2 of Eversource’s June 12th Response.

In addition to the written notice supplied pursuant to the applicable regulations, Eversource had also been in contact with the Claimants beginning in January 2023, well before the filing of Petition 1566. This included an onsite meeting in February 2023 to discuss the scope of work for the Project. To argue that Eversource failed to provide proper notice of the Project to the Claimants, and that Attorney Bachman knew of this purported lack of notice when the Council accepted Eversource’s petition, is nothing short of absurd.

3. Attorney Bachman did not fail to disclose to the Council the in-ROW access road between Structures 7784 and 7786, nor is this access road an “illegally built road”.

The Claimants continue to insist that the in-ROW access road between Structures 7784 and 7786 was built without the approval of the Council and without notification to the former property owner. Although the construction of the access road pre-dates the Claimants’ ownership of the subject property, Eversource nevertheless addressed this claim in detail its June 12th Response. As explained in Tab Numbers 3 and 4 of the June 12th Response, the construction of the access road was approved by the Council as a mostly matted access road under Sub-Petition No 1293-LFBNM-01. Prior to its construction, the Eversource Project Team had evaluated use of a gravel access road between the two structures to allow for safer construction, given the existing steep terrain. The proposed access road location did not require any matting for wetlands or protection of cultural resources. Moreover, the property owner at the time of construction was consulted regarding the road’s construction and was not opposed to the use of gravel for construction of the access road. *Id.*

On August 24, 2021, in response to inquiries from the Claimants and Attorney Bachman regarding the use of gravel on the access road, Eversource sent a memo to the Council explaining that the Eversource Siting Analyst assigned to the project had mistakenly believed that changes to the material used for the access road construction in upland areas was not jurisdictional to the Council, so long as the road remains in the same alignment. Eversource apologized for this oversight. As stated in Eversource’s Response to Interrogatory 13 (SY Set 01), the configuration of the access road has remained the same since 2019.

It is preposterous to claim that Attorney Bachman failed to disclose information regarding this access road to the Council when (1) a copy of Sub-Petition 1293-LFBNM-01 and the Council’s decision approving same is readily available on the Council’s website; and (2) a

summarized history of the access road's construction is included in Attorney Bachman's June 22, 2023 staff memo.

a. *Eversource will not seek access rights to Old Mill Road when it already has in-ROW access to Structures 7784 and 7785.*

Claimants also continue to allege that the only legal access to Structures 7784 and 7785 is via Old Mill Road, a separate road that runs across Claimants' property. However, as previously explained in Eversource's June 12th Response, Tab Number 9, Eversource's legal, in-ROW access road between Structures 7784 and 7786 provides the needed access so additional rights are not needed. Moreover, contrary to the Claimants' statement that Eversource already has legal access to Old Mill Road, this is not the case.⁹ Eversource currently has no temporary or permanent rights to use alternative access routes across Claimant's property, nor does it plan to acquire them. Easement acquisitions are time-consuming and result in additional costs that are passed on to Eversource's customers. The improvement of an off-ROW access route would further impact the environment due to the need for substantial improvements (i.e., vegetation removal, gravel installation) to ensure safe travel for Eversource's heavy construction vehicles and equipment.

F. Eversource Would Not Require Rights Outside of its ROW to Undertake the Work Proposed in Petition 1566.

Claimants inquire how Eversource "plan[s] on obtaining the rights to do work outside the

⁹ In support of this claim, Claimants cite to Conn. Gen. Stat. § 13a-55, which grants private rights to continue to use an abandoned or discontinued highway to owners of property that abuts the discontinued or abandoned highway (provided that the highway was abandoned or discontinued in 1959 or later). Eversource does not agree with Claimants that Conn. Gen. Stat. § 13a-55 would be applicable in these circumstances or that it would provide Eversource with the legal rights that Claimants allege. Even if it did, installation of that alternative access would involve substantial property impacts that would be required to construct a lengthy off right of way access road sufficient for use by heavy construction equipment. The length of that off right of way access road would likely exceed 2,000 linear feet and it would require a substantial amount of tree removals and civil construction work to build an access road that would be passable by heavy construction equipment.

right of way” for Petition 1566, specifically the use of 150 foot by 150 foot work pads that are called for within a 125-foot-wide ROW.¹⁰ See page 22 of Claimants’ “partial listing of false statements”. In Eversource’s Response to Interrogatories 19 through 22 (SY Set 01), it explains that work pad sizes vary based on the location and due to factors such as the scope of work to be performed, the terrain, and space availability. All work pads needed for the Petition 1566 work would be built within the boundaries of the existing easement area and would not extend past the established ROW limits.

G. Eversource has responded to allegations in the Claimants’ April 19, 2023 “complaint” via its responses to Claimants’ multiple filings regarding this Petition.

The Claimants argue that they “have not heard from [Eversource] since the April 13, 2023 meeting nor have they ever responded to our April 19, 2023 complaint of which was submitted over 90 days ago.” See Claimants’ “partial listing of false statements”, at 23. When Eversource representatives met with the Claimants at their property on April 13, 2023, they were informed by the Claimants that Eversource’s proposed restoration efforts on their property, including removal of a berm to restore pre-existing drainage patterns, repair of an eroded access road, installation of a drainage swale, and addition of fill to soften the slope at the Structure 7785 work pad, were not nearly enough.

Less than a week after Eversource’s meeting and follow-up email correspondence with the Claimants, they sent a nearly 40-page exposition of complaints to Eversource of alleged “illegal work” within the ROW across their property. Said “complaint” is included with Claimants’ July 31, 2023 motions. Shortly thereafter, Claimants proceeded to file six motions

¹⁰ On page 25 of Petition 1566, Eversource explains that “[t]ypical works pads are 125 feet by 125 feet but, due to terrain and spacing between the existing and proposed structures, the work pads may be up to approximately 150 feet by 150 feet...” While the ROW is generally 125 feet wide, a small portion expands to 300 feet northwest of the Stockhouse Road Substation. See page 6 of Petition 1566.

with the Council, followed in short order by over 90 interrogatories, in response to which Eversource has devoted numerous hours and pages to address them. The documents submitted by Eversource are, by their very nature, “responses” to the Claimants.

V. **EVERSOURCE’S RESPONSE TO THE AUGUST 7, 2023 REQUEST FOR IMMEDIATE HEARING**

To the extent a formal objection is necessary, Eversource also objects to the Claimants’ August 7th Request for Immediate Hearing for all of the reasons set forth in Section IV above as well as the reasons cited below. The bulk of this motion consists of unsupported allegations of “corruption” by the Council and its Executive Director in connection with procedural aspects of this docket. It is not clear to Eversource whether it needs to separately respond to the August 7th Request for Hearing, but it will do so to avoid any claim that it has somehow consented to the requests in this filing.

The Request for Immediate Hearing includes the following sections:

- **“Objections”**: Claimants allege that the Council “has made a mockery out of the public participation and party status process by showing obvious preferential treatment toward the petitioner and parties to this proceeding”
- **“Facts in support of the objection”**: In support of their claim of preferential treatment, the Claimants provide a fictional summary of the procedural history of this docket, laced with allegations that the Council’s Executive Director “manipulated the scheduling of proceedings” and “used her official position to cover up the illegal work.” Eversource will not dignify this summary with a point for point response but notes for the record that this complete narrative is improper and without basis in fact for the reasons explained above in this Response.

- “Motions”: The filing concludes by asking that the Council: (1) bring before the Council as soon as possible the Claimants’ Motion for Investigation and their related Motion for a Procedural Conference; and (2) the proposed procedural conference agenda be amended to include claims of alleged failure to answer interrogatories, and alleged delays in recognizing and scheduling motions.

It is not clear if the Claimants are seeking any relief in the “Request for Hearing” that is different from or supplemental to the requests made in the Motion for Investigation and the Motion for a Procedural Conference. To the extent the Claimants are simply asking that the Council hear and decide the Motion for Investigation and Motion for Procedural Conference as soon as possible, the request is moot because the Council has put the Motion for Investigation and Motion for a Procedural Conference on the agenda for its August 31, 2023 meeting. If, on the other hand, the Claimants are seeking a factual hearing on the issues presented in the Motion for Investigation and the Motion for Procedural Conference, then the request should be denied for the reasons stated above in this Response.

In the Request for Immediate Hearing, the Claimants also request that the agenda for the requested “procedural conference” include discussion of: (1) the alleged failure by Eversource to fully answer the Claimant’s Interrogatories; and (2) alleged intentional delay by the Executive Director in scheduling motions. Eversource objects to the Motion for a Procedural Conference and to the proposed agenda for this conference for all the reasons stated above regarding its objection to the Motion for Investigation.

VI. CONCLUSION

For all the reasons set forth above, Eversource respectfully requests that the Council deny with prejudice the Claimants’ Motion for Investigation, their Motion for a Procedural

Conference, and their Request for Immediate Hearing. In addition, Eversource requests that the Council put the Claimants on notice that further filings that repeat their allegations of alleged “illegal work” preceding the filing of Petition 1566 will be summarily denied without the need for any responses by the Petitioner.

Respectfully submitted,

THE CONNECTICUT LIGHT AND POWER COMPANY
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CERTIFICATION

I hereby certify that a copy of the foregoing Response of Eversource Energy to Requests of Cory Spaulding and Leslie Yeisley dated July 31, 2023 and August 7, 2023 was served upon all parties and intervenors as referenced in the Connecticut Siting Council's Service List dated June 22, 2023 as follows:

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