


DRAFT

DATE: September 22, 2023

TO: Council Members

FROM: Melanie A. Bachman 
Executive Director/Staff Attorney

RE: **DOCKET NO. 516** – The United Illuminating Company (UI) application for a Certificate of Environmental Compatibility and Public Need for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project that consists of the relocation and rebuild of its existing 115- kilovolt (kV) electric transmission lines from the railroad catenary structures to new steel monopole structures and related modifications along approximately 7.3 miles of the Connecticut Department of Transportation’s Metro-North Railroad corridor between Structure B648S located east of Sasco Creek in Fairfield and UI’s Congress Street Substation in Bridgeport, and the rebuild of two existing 115-kV transmission lines along 0.23 mile of existing UI right-of-way to facilitate interconnection of the rebuilt 115-kV electric transmission lines at UI’s existing Ash Creek, Resco, Pequonnock and Congress Street Substations traversing the municipalities of Bridgeport and Fairfield, Connecticut. **Town of Fairfield and Grouped LLC Intervenor and CEPA Intervenor Motions for Continuance – Staff Report.**

On September 15, 2023, the Town of Fairfield (Town), a party to the above-referenced proceeding, submitted a Motion for Continuance to amend the Connecticut Siting Council’s (Council) current proceeding schedule and deadlines (Town Motion) for the above-referenced application that was submitted to the Council by the United Illuminating Company (UI) on March 17, 2023.

On September 15, 2023, the Council issued a memorandum to the Docket 516 service list requesting comments or statements of position in writing with respect to whether the Town’s Motion should be granted or denied by September 21, 2023.

On September 18, 2023, the Grouped LLC Intervenor and CEPA Intervenor (Grouped LLC Intervenor) submitted its own Motion for Continuance (Grouped LLC Intervenor Motion) in response to the Council’s September 15, 2023 memorandum.

On September 21, 2023, UI submitted an Objection to the Town Motion and Grouped LLC Intervenor Motion (collectively, “Motions”) on the basis that UI’s project public outreach efforts commenced in July 2021 and there is no evidence that any applicable regulatory and/or statutory notice provisions were violated.

On September 22, 2023, the Grouped LLC Intervenor submitted a Reply to UI’s Objection reiterating the claims from the Grouped LLC Intervenor Motion that UI’s project public outreach lacked specificity and the Council failed to provide proper notice of the application and the public hearings held on it.

I. Procedural History

On March 17, 2023, UI submitted an application for a Certificate of Environmental Compatibility and Public Need (Certificate) pursuant to Connecticut General Statutes (CGS) §16-50k for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project that consists of the relocation and rebuild of its existing 115- kilovolt (kV) electric transmission lines from the railroad catenary structures to new steel monopole structures and related modifications along approximately 7.3 miles of the Connecticut Department of Transportation’s (DOT) Metro-

North Railroad corridor between Structure B648S located east of Sasco Creek in Fairfield and UI's Congress Street Substation in Bridgeport, and the rebuild of two existing 115-kV transmission lines along 0.23 mile of existing UI right-of-way to facilitate interconnection of the rebuilt 115-kV electric transmission lines at UI's existing Ash Creek, Resco, Pequonnock and Congress Street Substations traversing the municipalities of Bridgeport and Fairfield, Connecticut (Docket 516 or Project).

On March 20, 2023, the Council issued a letter to the State Treasurer, created a webpage for Docket 516 and posted the February 21, 2023 comments the Council received from the Town Conservation Commission related to the Project.¹

On April 13, 2023, pursuant to CGS §16-50m and during a regular meeting, the Council determined UI's application conforms to the technical, notice and filing requirements for completeness and approved a public hearing schedule for the application.² Also on April 13, 2023, pursuant to CGS §16-50m, the Council issued a notice of public hearing on the application to be held on July 25, 2023 and sent correspondence to the chief elected officials of each municipality traversed by the existing electric transmission line facility, including, but not limited to, the Town of Fairfield, inviting municipal participation in the Council's public hearing process.³

The Council's April 13, 2023 correspondence to the chief elected officials of the municipalities traversed by the existing electric transmission line facility included, but was not limited to, a copy of the proceeding schedule, service list, public hearing notice and instructions for public access to the Council's July 25, 2023 public hearing.

Notice of the date and time of the Council's public hearing on Docket 516 was published in the Connecticut Post on April 15, 2023.

Pursuant to §16-50j-21 of the Regulations of Connecticut State Agencies, upon the Council's request, UI posted notice signs at conspicuous locations along the Project route on July 10 and July 11, 2023, so as to inform the public of the name of the applicant, the type of facility, the remote public hearing date, and contact information for the Council (website and phone number), as follows:

1. Train Station located at 525 Water Street, Bridgeport;
2. Train Station located at 195 Unquowa Road, Fairfield;
3. Train Station located at 61 Constant Comment Way, Fairfield;
4. Ash Creek Conservation Area located at Kenard Street, Fairfield;
5. Pequonnock Substation located at 1 Kiefer Street, Bridgeport; and
6. Train Station located at 96 Station Street, Southport.

The Council issued interrogatories to UI on May 10, 2023. UI submitted responses to the Council's interrogatories on May 31, 2023.

On June 28, 2023, the Council held a pre-hearing conference on procedural matters for the Docket 516 public hearing. In addition to UI, BJ's Wholesale Club, Inc. (BJs) participated in the pre-hearing conference and requested party or intervenor status in Docket 516 later that day. On July 11, 2023, prior to being granted any

¹ Council Docket 516 Record, March 20, 2023, available at https://portal.ct.gov/CSC/1_Applications-and-Other-Pending-Matters/Applications/4_DocketNos500s/Docket-No-516

² Council Docket 516, Completeness Review, April 13, 2023, available at https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/1_MEDIA_DO500_600/DO516/ProceduralCorrespondence/DO516_CompletenessReview_Schedule-final_s.pdf

³ Council Docket 516, July 25, 2023 Hearing Documents, April 13, 2023, available at https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/1_MEDIA_DO500_600/DO516/HearingDocs/DO516-HRNGPKG-energy_s.pdf
(The Town of Westport is located within 2,500 feet of the existing electric transmission line facility.)

status in the proceeding, BJs issued interrogatories to UI consistent with the deadline for exchange of interrogatories between parties and intervenors in the Council's schedule. Also on July 11, 2023, the Council issued a second set of interrogatories to UI. On July 18, 2023, UI responded to the Council's interrogatories and BJs' interrogatories, as well as submitted exhibits and pre-filed testimony. During a regular meeting held on July 20, 2023, the Council granted BJs party status in Docket 516.

On July 25, 2023, the Council held a 2:00 PM evidentiary hearing session and a 6:30 PM public comment hearing session via Zoom remote conferencing in accordance with its hearing notice for Docket 516 that was issued on April 13, 2023 and published on April 15, 2023. During the evidentiary hearing session, UI was cross examined by the Council. During the public comment session, two interested persons gave oral limited appearance statements. At the close of the public comment session, the Council announced the date and time of the continued evidentiary hearing session on August 29, 2023.

On July 27, 2023, the Council sent a memorandum to the service list regarding the continuation of the evidentiary hearing session to August 29, 2023 and the revised schedule for additional interrogatories between parties and intervenors to be issued by August 15, 2023 and responses to interrogatories, additional pre-filed testimony and late-filed exhibits to be submitted by August 22, 2023.⁴ A copy of the Instructions for Public Access to the August 29, 2023 Remote Continued Evidentiary Hearing Session was attached to the Council's memorandum.

On April 17, May 26 and August 18, 2023, the Council received comments on the Project from the Connecticut Airport Authority, Council on Environmental Quality and DOT, respectively.

On August 18, August 29 and September 6, 2023, the Council received correspondence from State Representative Jennifer Leeper, State Representative Sarah Keitt and State Senator Tony Hwang, respectively, requesting the Council evaluate an underground electric transmission line facility alternative.

The Council issued a third set of interrogatories to UI on August 1, 2023. UI responded to the Council's third set of interrogatories and submitted late-filed exhibits on August 22, 2023. Also on August 22, 2023, BJs submitted pre-filed testimony.

On August 24, 2023, the Sasco Creek Neighborhood Environmental Trust, Incorporated submitted a request for intervenor and CEPA intervenor status. On August 25, 2023, the 12 Grouped LLC Intervenors requested intervenor and CEPA intervenor status and an additional evidentiary hearing. On August 28, 2023, Fairfield Station Lofts, LLC (FSL) requested intervenor and CEPA intervenor status and an additional evidentiary hearing. On August 29, 2023, the date of the continued evidentiary hearing session, the Town requested party status and an additional evidentiary hearing to be held **45 days** after the August 29, 2023 continued evidentiary hearing.

During the August 29, 2023 continued evidentiary hearing, the Council granted all of the requests for party, intervenor and CEPA intervenor status, noting the untimeliness, and granted all of the requests for an additional evidentiary hearing to be held on October 17, 2023. This continued evidentiary hearing date is **49 days** after August 29, 2023, consistent with the Town's August 29, 2023 request.

At the conclusion of the August 29, 2023 continued evidentiary hearing, the Council announced the date and time of the next continued evidentiary hearing. On August 30, 2023, the Council sent a memorandum to the service list regarding the continuation of the evidentiary hearing to October 17, 2023 and the revised schedule for additional interrogatories between parties and intervenors to be issued by September 19, 2023 and responses to

⁴ Council Docket 516, Continued Evidentiary Hearing Memo, July 27, 2023, available at https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/1_MEDIA_DO500_600/DO516/HearingDocs/DO516-20230727-continuationofevidentiaryhearingonAug29_a.pdf

interrogatories, additional pre-filed testimony and late-filed exhibits to be submitted by October 3, 2023.⁵ A copy of the Instructions for Public Access to the October 17, 2023 Remote Continued Evidentiary Hearing Session was attached to the Council's memorandum.

On September 15, 2023, FSL issued interrogatories to UI. No other parties or intervenors exchanged interrogatories by the Council's September 19, 2023 deadline.

Also on September 15, 2023, the Town submitted its Motion for Continuance. On September 18, 2023, the Grouped LLC Intervenors submitted its Motion for Continuance.

II. Town and Grouped LLC Intervenors Motions for Continuance

The proposed amended schedule for the proceeding in the Motions is identical and as follows:

- a. The final deadline for the exchange of interrogatories between parties and intervenors be extended to October 20, 2023;
- b. The final deadline for pre-filed testimony, responses to interrogatories and submission of late filed exhibits be extended to November 30, 2023; and
- c. The continued evidentiary hearing be scheduled for some date during the week of January 8, 2024.

October 20, 2023 is **217 days** after the application was submitted to the Council.

November 30, 2023 is **258 days** after the application was submitted to the Council.

January 8, 2024 is **297 days** after the application was submitted to the Council.

Under CGS §16-50p, the Council shall render a decision on an application for an electric transmission line facility not later than twelve months after the filing of an application. Twelve months is generally equivalent to **365 days**. The twelve-month deadline for the Council's decision on this application under CGS §16-50p is March 17, 2024. There is no provision for an extension of the Council's decision deadline under the statute.

Over the past six months, the Council has held an evening public comment session and two evidentiary hearings on the application with a third evidentiary hearing scheduled for October 17, 2023. This continued evidentiary hearing date is **214 days** after the application was submitted to the Council and is consistent with the Town's August 29, 2023 request.

In its September 15, 2023 Motion, the Town argues affected property owners who have reasonable concerns about the Project impacts on their property will not have enough time to genuinely participate in the application process unless the current schedule and deadlines are extended.

In its September 18, 2023 Motion, the Grouped LLC Intervenors echo the Town's argument and further argue that the Council did not provide proper notice of the application and the public hearings held on it.

The Grouped LLC Intervenors Motion makes the following claims **185 days** after the application was submitted to the Council:

⁵ Council Docket 516, Continued Evidentiary Hearing Memo, July 27, 2023, available at https://portal.ct.gov/-/media/CSC/1_Dockets-medialibrary/1_MEDIA_DO500_600/DO516/HearingDocs/DO516-20230727-continuationofevidentiaryhearingonAug29_a.pdf

1. In violation of CGS §16-50l, the Council's Docket 516 record does not demonstrate proper proof of notice that a copy of the application was submitted to each member of the legislature in whose assembly or senate district the facility or any alternative location listed in the application is to be located.
2. In violation of Public Act 22-3, the Council failed to post a copy of the Hearing Notice for the July 25, 2023 evidentiary and public comment hearing sessions and the August 29, 2023 continued evidentiary hearing with the Town Clerk and City of Bridgeport.⁶
3. In violation of CGS §1-225(b) and (d), the Council has not posted a regular meeting schedule nor provided proof that the public hearings on Docket 516 were special meetings for which notice was posted not less than 24 hours prior to the time of the meetings with the Town Clerk and City of Bridgeport.
4. In violation of CGS §16-50m, the Council's hearing notice for the July 25, 2023 public hearing did not state that UI proposes to remove the existing bonnets from the DOT railroad catenary structures, which is the only work performed on or abutting the Grouped LLC Intervenor's properties.

In its first claim, the Grouped LLC Intervenor's argue the Council's Docket 516 record does not demonstrate proper proof of notice of the application in violation of CGS §16-50l. They argue that UI sent an electronic copy of the application with paper copies available upon request to the legislators, but only included the physical mailing addresses of the legislators in the certification of service and not their electronic mailing addresses.

It is well established that parties do not have standing to raise a lack of notice claim on behalf third parties.⁷ Furthermore, in the case of *Mobley v. MetroMobileCTS, Inc.*, 216 Conn. 1 (1990), abutting property owners to an approved facility site appealed the Council's decision alleging lack of proper notice of the filing of the application under CGS §16-50(b). The Supreme Court held, "The purpose of constitutional notice is to advise all affected parties of their opportunity to be heard and to be apprised of the relief sought. That required notice, however, applies to **notice of the hearing**. It does not extend to notice of a prehearing application." (Emphasis added).

In compliance with CGS §16-50(b), on March 17, 2023, UI submitted proof of notice of the application on the listed recipients, including, but not limited to, the legislators. In compliance with CGS §16-50(e), on March 31, 2023, UI submitted its Municipal Consultation Filing. During a regular meeting held on April 13, 2023, the Council determined UI's application conforms to the technical, notice and filing requirements for completeness and approved a public hearing schedule for the application pursuant to CGS §16-50m. Contrary to the Grouped LLC Intervenor's first claim, the Council's Docket 516 record demonstrates proper proof of notice of the application to the required recipients, including the legislators.⁸

In its second claim, the Grouped LLC Intervenor's argue the Council did not post a copy of the July 25, 2023 Hearing Notice or the August 29, 2023 Continued Evidentiary Hearing Memorandum with the Town Clerk and City of Bridgeport in violation of Public Act (PA) 22-3. However, PA 22-3 does not require the Council to post a copy of the Council's hearing notices and continued evidentiary hearing memoranda with the Town Clerk and City of Bridgeport.

Section 1(a) of PA 22-3, codified at CGS §1-225a, requires, "Not less than 48-hours before any public agency... conducts a regular meeting by means of electronic equipment, such agency shall provide direct notification in

⁶ The Grouped LLC Intervenor's erroneously indicate in the Motion that the July 25, 2023 Hearing Notice and August 29, 2023 Memorandum for Continued Evidentiary Hearing were only posted on the Council's website.

⁷ *Town of Middlebury v. Conn. Siting Council*, 326 Conn. 40 (2017).

⁸ CGS §16-50m requires the Council to mail a copy of the hearing notice to the listed recipients in CGS §16-50l.

writing or by electronic transmission to each member of the public agency and post a notice that such agency intends to conduct the meeting solely or in part by means of electronic equipment (1) in the agency's regular office or place of business, (2) **in the office and on the Internet website of the Secretary of the State for any such public agency of the state** or quasi-public agency, in the office of the clerk of such subdivision for any public agency of a political subdivision of the state that is not a quasi-public agency, **or** in the office of the clerk of each municipal member of any multitown district or agency, and (3) if the agency has an Internet web site, on such Internet web site.” (Emphasis added).

The Council is a public agency of the state. It is not a municipal agency. The insertion of “**or**” rather than “and” in subdivision (2) of the statute clearly distinguishes between public agencies of the state and municipal agencies. Contrary to the Grouped LLC Intervenors’ second claim, the Council complied with Section 1(a) of PA 22-3.

In its third claim, the Grouped LLC Intervenors argue the Council did not post a regular meeting schedule nor provide proof that the public hearings in Docket 516 were special meetings for which notice was provided to the Town Clerk and City of Bridgeport less than 24 hours prior to the time of the meetings in violation of CGS §1-225(b) for regular meetings and CGS §1-225(d) for special meetings. However, like Section 1(a) of PA 22-3, CGS §1-225(b) and (d) do not require the Council to post a copy of the Council’s hearing notices and continued evidentiary hearing memoranda with the Town Clerk and City of Bridgeport.

For regular meetings under CGS §1-225(b), the Council is required to file not later than January 31 of each year in the Office of the Secretary of the State the schedule of regular meetings of the Council. The Council filed its 2023 schedule of regular meetings with the Office of the Secretary of the State on October 31, 2022. Hearings held on Docket 516 are not regular meetings. The Council holds its regular meetings every other Thursday per the schedule on file with the Office of the Secretary of the State.

For special meetings under CGS §1-225(d), the Council is required to file notice in the Office of the Secretary of the State not less than twenty-four hours before the special meeting. Hearings held on Docket 516 are special meetings. The Council filed notice of the July 25, 2023 public hearing with the Office of the Secretary of the State on April 13, 2023. In compliance with CGS §1-228 regarding notice of adjournment of meetings and CGS §1-229 regarding notice of continued hearings, the Council provided proper notice of the August 29, 2023 continued evidentiary hearing. Contrary to the Grouped LLC Intervenors’ third claim, the Council complied with CGS §1-225(b) and (d), as well as CGS §1-228 and CGS §1-229.

In its fourth claim, the Grouped LLC Intervenors argue the Council’s July 25, 2023 Hearing Notice did not state that UI proposed to remove the existing bonnets from the DOT railroad catenary structures in violation of CGS §16-50m. There is no specific requirement under CGS §16-50m of the Public Utility Environmental Standards Act related to the contents of a hearing notice.⁹ However, there is a specific requirement under CGS §4-177 of the Uniform Administrative Procedure Act related to the contents of a hearing notice.

CGS §4-177 states: “The notice shall be in writing and shall include (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) **a short and plain statement of the matters asserted**. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.” (Emphasis added).

⁹ CGS §16-50m requires publication of general notice to the public in 10-point, bold-face type within one week of the fixing of the date and location of the public hearing. The Hearing Notice was published in the Connecticut Post on April 15, 2023.

The Council's July 25, 2023 Hearing Notice states: "The hearing will be on an application from The United Illuminating Company (UI) for a Certificate of Environmental Compatibility and Public Need for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project that **consists of the relocation** and rebuild of its existing 115- kilovolt (kV) electric transmission lines **from the railroad catenary structures to new steel monopole structures** along approximately 7.3 miles of the Connecticut Department of Transportation's Metro-North Railroad corridor between Sasco Creek in Fairfield and UI's Congress Street Substation in Bridgeport, rebuild of two existing 115-kV transmission lines along 0.23 mile of existing UI right-of-way to facilitate interconnection of the rebuilt 115-kV electric transmission lines at UI's existing Ash Creek, Resco, Pequonnock and Congress Street Substations, and related modifications, traversing the municipalities of Bridgeport and Fairfield, Connecticut." (Emphasis added).

The Council's July 25, 2023 Hearing Notice contains a short and plain statement of the matters asserted consistent with CGS §4-177 and clearly indicates the existing electric transmission line facility will be relocated from the railroad catenary structures to new steel monopole structures.¹⁰ Contrary to the Grouped LLC Intervenor's fourth claim, the Council's July 25, 2023 Hearing Notice complied with CGS §16-50m and CGS §4-177.

III. Conclusion

Administrative agencies are permitted to organize proceeding schedules so as to balance interests in reasonable, orderly and nonrepetitive proceedings against the erroneous deprivation of a private interest."¹¹ It is not unconstitutional for the Council, in good faith, to balance its statutory time constraints against the desire of a party, intervenor or CEPA Intervenor for more time to present their objections to a proposal.¹²

Balancing the Council's statutory time constraints under CGS §16-50p against the Town and Grouped LLC Intervenor's desire for more time to present objections to the application, staff recommends the Motions be **granted in part** for a continued evidentiary hearing date of **November 16, 2023** in accordance with the attached revised schedule for which further extension requests will not be considered, and **denied in part** on claims that the Council did not provide proper notice of the application and the public hearings held on it.

¹⁰ Docket 516 is the second UI application for removal of its electric transmission lines from the DOT railroad catenary structures. See Docket 508. DOT supports the removal of UI's electric transmission lines from the catenaries.

¹¹ *Concerned Citizens of Sterling v. Conn. Siting Council*, 215 Conn. 474, 485-486 (1990).

¹² *Id.*



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REVISED SCHEDULE

DOCKET NO. 516 – The United Illuminating Company (UI) application for a Certificate of Environmental Compatibility and Public Need for the Fairfield to Congress Railroad Transmission Line 115-kV Rebuild Project that consists of the relocation and rebuild of its existing 115- kilovolt (kV) electric transmission lines from the railroad catenary structures to new steel monopole structures and related modifications along approximately 7.3 miles of the Connecticut Department of Transportation's Metro-North Railroad corridor between Structure B648S located east of Sasco Creek in Fairfield and UI's Congress Street Substation in Bridgeport, and the rebuild of two existing 115-kV transmission lines along 0.23 mile of existing UI right-of-way to facilitate interconnection of the rebuilt 115-kV electric transmission lines at UI's existing Ash Creek, Resco, Pequonnock and Congress Street Substations traversing the municipalities of Bridgeport and Fairfield, Connecticut.

Application received	03/17/2023
Completeness review	04/13/2023
Council Interrogatories <ul style="list-style-type: none">• Set-One Filed• Set-One responses due	05/10/2023 05/31/2023
Pre-hearing conference via Zoom remote conferencing - 11:00 a.m.	06/28/2023
Council Interrogatories <ul style="list-style-type: none">• Set-Two Filed• Set-Two responses due	07/11/2023 07/18/2023
Deadline for Exchange of Interrogatories between Parties and Intervenors	07/11/2023
Deadline for Pre-filed testimony and responses to interrogatories	07/18/2023
Deadline to request Party/Intervenor status	07/18/2023
Public Hearing 2:00 p.m. evidentiary session and 6:30 p.m. public comment session via Zoom remote conferencing	07/25/2023
Council Interrogatories <ul style="list-style-type: none">• Set-Three Filed• Set-Three responses due	08/01/2023 08/22/2023
Deadline for Exchange of Interrogatories between Parties and Intervenors	08/15/2023
Deadline for Pre-filed testimony, responses to interrogatories and submission of late filed exhibits	08/22/2023
Continued Evidentiary Session 2:00 p.m. via Zoom remote conferencing	08/29/2023
Final Deadline for Exchange of Interrogatories between Parties and Intervenors	09/19/2023
Final Deadline for Pre-filed testimony, responses to interrogatories and submission of late filed exhibits	10/03/2023
Continued Evidentiary Session 2:00 p.m. via Zoom remote conferencing (<i>refer to Hearing Information section on Docket 516 project webpage for Zoom remote conferencing log in/call in</i>)	10/17/2023

Final Extended Deadline for Exchange of Interrogatories between Parties and Intervenors	10/12/2023
Final Extended Deadline for Pre-filed testimony, responses to interrogatories and submission of late filed exhibits	11/02/2023
Continued Evidentiary Session 2:00 p.m. via Zoom remote conferencing (<i>refer to Hearing Information section on Docket 516 project webpage for Zoom remote conferencing log in/call in</i>)	11/16/2023
Close of Evidentiary Record	11/16/2023
Close of Public Comment Period	12/16/2023
Draft Findings of Fact	12/21/2023
Draft Findings of Fact, Opinion & Decision & Order	01/04/2024
Deadline for Decision	03/17/2024

Siting Analyst: Michael Perrone