

Docket No. 135 - An application of The United Illuminating Company for a Certificate of Environmental Compatibility and Public Need for the construction of two electric combustion turbines, one diesel engine-generator and one associated 115 kV switchyard, in New Haven, Connecticut.

Connecticut

Siting

Council

September 26, 1990

DISSENT

This application asks the Council to approve, under the banner of advance planning, the stockpiling of certificates of public need and environmental compatibility against unspecified and undocumented future need. We are not against advance planning, or motherhood or apple pie. And the proposal under consideration is very seductive - it involves an old building on an existing site which is currently being used to generate electricity. Not much can be done that won't improve the site.

But that is not the point. We are being asked to approve the principle of contingency planning as a basis for the issuance of a certificate of need that does not currently exist, and which may never exist. We are being asked to approve a project under existing environmental conditions and current knowledge of the environment, without knowing what those conditions and knowledge will be when and if the project is needed. We are being asked to know what alternative energy sources or technologies might exist when the project is needed. Approving a project now under those conditions of uncertainty imposes a polluting technology on a dynamic environment, hardly the basis of sound contingency planning.

We are told not to worry about these admitted uncertainties because we can wait until the certificate is taken off the shelf when the project is needed and then get into these questions at that time. Maybe yes and maybe no. If not, we will have made a bad mistake, one that would be damaging to the

environment and the ratepayer. But even if we can, what then is the purpose of this current exercise? How can we fully protect the environment at the time the project is to be built without getting fully into all the questions of need and of environmental considerations? How can we foreclose the public or new neighbors from raising issues of need or environmental concern. Or will they be precluded by some type of estoppel? Or will the council be bound by some sort of precedent: Of course not. The public interest must be served at the time we are asked to give our final decision. If, then, a full and open rehearing is required, what have we saved? Haven't we just wasted everyone's time and money by doing twice what we could have and should have done only once? We don't need a dress rehearsal. Let's do it once, right.

We have other concerns. We will be setting precedent, whether we say so or not. As we noted at the outset, this particular project is an appealing one for certificate banking - no new site is involved and almost anything done to the building could be considered an improvement. But if we approve this application, we are not just approving this particular contingent plan, we are approving the concept of certificate stockpiling in general. What will we say to another applicant who proposes a new site or significant modifications to an existing site? Such an applicant will also have a sound "contingency" plan, and it too will argue that issues of future need and environment compatibility can be "adequately" readdressed at the time the project is to be constructed.

And underlying all of this discussion is our concern for our authority to issue such a certificate. Where in our enabling legislation is the Council authorized to issue a "temporary" or "contingent" certificate? Where are we authorized to issue a so called "permanent" certificate which we then make subject to cancellation. A contingent certificate by any other name is still a contingent certificate. For what period of time is the certificate to be "permanent"? Currently we certificate a project and set a "to be constructed by" date. That cannot be done here. What is to be the shelf-life of one of these

contingency certificates? If an applicant can prove need within a foreseeable a period of time, how then to set a cancellation date? Or is the certificate to be open-ended as to date? That would be consistent with the argument that need and the environment can be adequately re-examined fully at the time the certificate is taken off the shelf by the certificate holder. One look at the conditions imposed by the Decision and Order in this docket reveals the problems inherent in trying to issue a non-permanent permanent certificate.

But even if the issues of precedent and authority can be addressed, we should not pass on this application at this time. To do so risks not just increased costs, but also the likelihood that alternative non-polluting energy sources will be prejudiced or locked out. Certificate banking by the Connecticut utility will also reduce the pressures on utilities in other states to conserve and be efficient as well as subject Connecticut ratepayers to higher costs. And having once given its blessing to a contingent plan, the Council (or any other body or individual) will be less likely to reverse itself or impose stringent new conditions in the future.

We believe that the environment, and the public and the rate payer, will all be best served if we invoke Lord Falkland's Rule: "When it is not necessary to make a decision, it is necessary not to make a decision".

For these reasons, we respectfully dissent.