

November 16, 2004

Connecticut Siting Council
10 Franklin Square
New Britain, CT 06505
Attn: Pamela B. Katz, Chairman

Re: Docket 272, Application of The Connecticut Light and Power Company and The United Illuminating Company: Response to November 8, 2004 Letter of Towns of Cheshire, et al Objecting to Proposed Hearing Schedule.

Dear Chairman Katz,

This letter responds to the November 8, 2004 letter of Brian M. Stone on behalf of the Towns of Cheshire, Durham, Milford, Orange, Wallingford, and Woodbridge ("Towns") objecting to the Council's schedule as announced in the Council's November 1, 2004 notice (the "Towns' Objection"). The Connecticut Light and Power Company and The United Illuminating Company (the "Companies") respectfully submit that the schedule announced in the notice is reasonable and that the Towns' request to abandon the schedule should be denied. A specific response to each of the Towns' contentions follows:

Towns' claim that there is no application before the Council (Towns' Objection, page 1)

The Towns' Objection claims that there is no application presently before the Council. To the contrary, the Application identifies three alternative configurations for a 345-kV line between Middletown and Norwalk: the proposed configuration that includes approximately 24 miles of underground cables; and Alternatives A and B, both of which would involve substantially more overhead construction. The Companies have not withdrawn their support of any of these alternatives. While they have concerns with the reliability and operability of the proposed configuration, the Companies have not, as the Towns' Objection claims, "taken the position that it cannot be operated reliably." Rather, as the Reliability and Operability Committee ("ROC") stated in the October 8, 2004 Interim ROC Report (Applicants' Exhibit 164), "the ROC and its consultants are in the

{AMF1065}

Connecticut Siting Council
Pamela B. Katz, Chairman
November 16, 2004
Page 2

process of working through individual case scenario results [of transient network analyses] to determine how serious these concerns are and whether the potential for overvoltages can be mitigated.” *Id.*, p. 4. The ROC expects to be able to present the results of this work to the Council soon.

Moreover, the Towns’ assertion (Towns’ Objection, page 1) that the ROC “has thus far conceded that they have been unable to devise an alternative to the Companies’ original proposal which they are willing to support” wholly ignores Alternatives A and B. While it is the case that the ongoing effort of the ROC to maximize undergrounding may result in the identification of a configuration that includes more underground components than Alternatives A or B, but which is different than the originally proposed configuration, that configuration would be identified as an additional alternative – not as the only possibility.

Towns’ claim that the parties ca not propose feasible and reliable alternatives until they receive the final ROC Report (Towns’ Objection, page 2)

The Towns and other participants have had the opportunity to propose alternatives since this application was filed. By way of example, in Docket 217, the Attorney General and the affected towns each presented an alternative proposal at the outset of the case, which they claimed to be feasible and reliable. In this Docket, the Towns have opted not to present an original proposal of their own, but rather to simply denigrate the Companies’ proposals. While this is their right, it does not follow that they are entitled to delay the Council’s process by waiting until after the final ROC Report is published to start designing a proposal of their own, and to demand that months be added to the schedule for their convenience.

Towns’ due process claims (Towns’ Objection, page 2)

The Towns’ assertion that their “due process” rights will be compromised unless they are given more than a month and a half to review and analyze the final ROC Report before any hearing. To the contrary, the Towns have been afforded all requirements of due process¹ and fundamental fairness in this docket. A leisurely schedule and the

¹ Preliminarily, since the due process clause protects private interests from state action, as subdivisions of the state, the towns do not have due process rights with respect to proceedings before state agencies. *See, In re Scott Cable Communications, Inc.*, 259 B.R. 536, 543, 544 (D. Conn. 2001) (Thomson, J.) Even so, the Towns should have the benefit of fundamental fairness. *Id.*

Connecticut Siting Council
Pamela B. Katz, Chairman
November 16, 2004
Page 3

ordering of proceedings to suit one's view of a case are not due process requirements. The record is clear that the Council has bent over backwards to provide meaningful opportunity for the Towns and other participants to participate in this docket, well beyond the legal requirements. Neither due process nor fundamental fairness requires more than notice and an opportunity to be heard, which the Towns will have. *Fermont Division v. Smith*, 178 Conn. 393, 397 (1979). In particular, they do not require that a party to an administrative proceeding obtain full discovery at any time in advance of a hearing – or that the party obtain any discovery at all. *Pet v. Department of Health Services*, 207 Conn. 346, 3355 (1988). “The Constitution does not require that a respondent [or other party] in an administrative proceeding be aware of all evidence, information and leads to which opposing counsel might have access.” *Id.*

Towns' claim that they need to review the ROC Report before they cross examine ABB and KEMA (Towns' Objection, pages 2 and 3)

Remarkably, the Towns assert that, in order to have a “meaningful” attempt to cross examine ABB and KEMA, they must have, well in advance of the hearing, not just (i) ABB's and KEMA's own reports (which they will have had for nearly two months; (ii) ABB's and KEMA's responses to interrogatories; and (iii) the extensive testimony and exhibits that the Companies have submitted; but also the ROC's critiques of, or responses to the ABB and KEMA reports. It appears that the Towns want the Applicants and ISO-NE, through the ROC Report, to assist the Towns in their preparation of cross-examination of ABB and KEMA. There is obviously no such obligation to educate an opponent so that the opponent can cross examine third party witnesses.

Towns' claim of insufficient time to analyze the ROC Report (Towns' Objection, page 3)

The Towns are engaging in alarmist speculation about the content of the ROC Report, and making claims based upon the speculation regarding the results in order to claim that “the Towns will be faced with a new configuration that will amount to nothing less than a new application.” When the final ROC Report is filed, the Council will be able to determine whether it proposes a solution that is so radically different from anything considered so far that some departure from the published schedule is required. Until that time, there is no reason to assume that it will, and no reason to cease analysis of the proposals that have been made heretofore. Moreover, as noted earlier, Alternatives A and B remain as alternatives, discussed in the municipal consultation process and formally included as alternatives since the application was filed in October 2003.

Connecticut Siting Council
Pamela B. Katz, Chairman
November 16, 2004
Page 4

In the course of complaining that they can do nothing until the final ROC Report is issued, the Towns note that “none of the ROC Group’s transients studies...have been made public.” The interim ROC Report referred to raw preliminary results. The ROC Group and its consultants have worked extensively to complete these reports, and expect to begin filing these reports with the Council soon.

Towns’ claim of no opportunity to present feasible alternatives (Towns’ Objection, page 3)

The Towns need not await the ROC Report to present whatever feasible proposals they think they have come up with. If the Towns’ experts had developed a feasible solution, they could have presented it long ago.

Towns’ claim of no opportunity to have studies performed (Towns’ Objection, page 3)

The Towns correctly state that in June, they suspended their request that GE perform harmonics screens of their alternatives under consideration, so that GE “could prioritize the Companies’ reconfiguration studies.” (Towns’ Objection, p. 3) However, it is not the case that, as a result, the Towns have been deprived of the opportunity to have any work done until after the ROC Report is complete. To the contrary, on August 19, 2004, the Companies notified the Towns that an opportunity for commissioning such studies existed; and invited the Towns to pursue it.² They did not.

The Towns assert that their load flow analyses, using the originally proposed configuration as a base case, could not be done once “the technical configuration of the Companies’ proposal was rejected by ISO-NE.” This is another example of the unwarranted “completely new application” presumption. In fact, as the Council and other participants are aware, the Companies are committed to finding a way to make the

² In commenting on a proposed schedule, Ms. Kohler noted that the Towns had taken their studies out of the GE queue at the Applicants’ request. Ms. Randell then announced: “Could I respond and hopefully alleviate any concerns of the towns with respect to the frequency scans?...[T]he companies remain committed to what we agreed to before. And in order to speed the process, we have determined that ABB is able to [perform] frequency scans...and other studies...[W]e can get that going and talk to the towns about having ABB do the scans because GE is going to be busy doing further scans and studies and transient analyses and so on for the ROC group...at least for the month of September. So we would like to see if we can move along parallel paths.” (Tr. 8/19/04, pp. 43, 44) The Towns did not respond to this invitation.

Connecticut Siting Council
Pamela B. Katz, Chairman
November 16, 2004
Page 5

originally proposed configuration work or, that failing, coming as near to it as they can. The Towns should not assume that thermal load flow studies of any configuration using the originally proposed configuration as a base will have no utility.

Clean Up Days (Towns' Objection, page 3)

The Towns even resist identifying topics as to which additional evidence should be presented on "clean-up days," on the ground that this entire docket is a "vacuum" because there is "no pending application." This process of speculating, and then raising concerns based upon the speculation, was discussed above. Nothing precludes the Towns from identifying topics for clean-up day, which they have indeed done.

The Towns' "Direct Cases" (Towns' Objection, page 3)

The Towns suggest that they have not yet presented their "direct cases." To the contrary, they have done so, in accordance with the Council's directives, by pre-filing testimony of, among others, Messrs. Schlissel and Lanzalotta on May 25, 2004; and the cross examination of these witnesses has been completed. It may be that the Towns' experts will wish to comment further on the final ROC Report, and the Council may well provide them an opportunity to do so. However, whatever happens, the Towns have had their opportunity to present direct cases.

The Towns' Threatened Motion to Dismiss (Towns' Objection, page 3)


Having speculated that the ROC Report will amount to a brand new and wholly different proposal, the Towns announce their intent to move to dismiss this application and require the Companies to start all over again. This has no bearing on the scheduling issues that the Towns' Objection purports to address. The Companies will reserve their comment on the propriety and merits of such a motion until the time – if ever – one is filed.

Connecticut Siting Council
Pamela B. Katz, Chairman
November 16, 2004
Page 6


Very truly yours,

The Companies,

The Connecticut Light and Power Company,

By 
Anthony M. Fitzgerald
Carmody & Torrance LLP
195 Church Street; P.O. Box 1950
New Haven, CT 06509-1950
- and -

The United Illuminating Company,

By 
Linda L. Randell
Wiggin and Dana LLP
265 Church Street; P.O. Box 1832
New Haven, CT 06508-1832

cc: Service List

{AMF1065}