

State of Connecticut



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Hartford

August 12, 2004

Pamela B. Katz
Chairman
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 272 – Connecticut Light and Power Company and United Illuminating Company Application for a New 345-kV Electric Transmission Line Between Scovill Rock Switching Station in Middletown and Norwalk Substation in Norwalk

Dear Chairman Katz:

In anticipation of the upcoming process meeting to be held on August 19, 2004, Richard Blumenthal, Attorney General for the State of Connecticut (“AG”), and the Towns of Bethany, Cheshire, Easton, Fairfield, Hamden, Middlefield, Milford, North Haven, Norwalk, Orange, Weston, Westport, Wilton, and Woodbridge¹ (jointly referred to herein as “Parties”) write to advise the Connecticut Siting Council (“Council”) of their concerns regarding the conduct of this proceeding going forward. The Parties share the Council’s clearly stated goal of resolving this proceeding as expeditiously as possible. It is our hope that raising these concerns at this time will both aid the Council and avoid the potential for future delays in this proceeding by ensuring a fair process.

BACKGROUND

Prior to this Phase II proceeding, the Council considered and approved the Phase I line from Bethel to Norwalk. Long after CL&P’s application was filed, and after many hearings to consider the initial application, the Council was presented with a configuration known as “Configuration X”. The Council appropriately conducted additional process, including new evidentiary hearings, before making a decision on the application.

¹ The undersigned has been authorized to file this letter on behalf of the referenced Towns.

In this case, the Connecticut Light and Power Company ("CL&P") and the United Illuminating Company ("UI") (jointly referred to herein as the "Applicants") filed their application on October 9, 2003, following a sixty-day municipal consultation process which began in May 2003. From that time until ISO-NE filed its June 7, 2004 testimony, in which it stated that the project as proposed by the applicants "will not operate reliably," the Parties committed significant resources to participate in a meaningful manner in this case. Many towns and organizations hired attorneys and experts who spent many months carefully reviewing the application, conducting discovery, independently analyzing potential alternatives and participating in the many months of hearings in this case. These towns and organizations have dedicated a tremendous amount of time and money participating in this process based on the application that the Applicants filed. At this point, the budgets of these towns and organizations have been pushed to the limit, and there is a real concern over their ability to meaningfully continue to participate in a process which has suddenly changed.

After ISO-NE filed its June 7, 2004 testimony, the entire process of this case changed radically. The Council created the so-called "Reliability and Operability" working group "to develop a revision to the application that is the subject of this action." Council Memorandum to Parties and Intervenors in Docket 272, July 14, 2004. The Council authorized the working group process because it became clear that the Applicants had to propose a revised configuration for the sole purpose of obtaining ISO-NE's support. The working group consists of the technical staffs of ISO-NE and the Applicants. Council's July 14, 2004 Memorandum. Pursuant to the direction of the Council, this working group is to "collaborat[e] on a weekly basis to assess the various underground transmission technologies, and their feasibility, to ultimately provide a revised proposal that will maximize the amount of underground construction in this application." *Id.* The working group intends to submit its proposal to the Council by August 16, 2004.

The Parties have participated in this process as much as the process has allowed. Typically, results of the weekly studies conducted by the working group are circulated via email on Monday afternoons and the conference calls with the working groups are held the following Tuesday mornings. Hence, the discussions held during these conference calls regarding these studies have been fairly cursory because there has been inadequate time for careful review of the studies or preparation for the calls.

On August 3, 2004, the Council advised all parties and intervenors in this proceeding that it will hold a process meeting on August 19, 2004 "to discuss how best to process the Reliability and Operability Report due on August 16, 2004." Council's August 3, 2004 Memorandum. The Parties submit this letter at this time to advise the Council of their concerns in a timely manner.

DISCUSSION

The Parties' participation in this ROC process thus far has raised a number of serious concerns. While certain of these concerns have been raised by others, including the Council, at various times during these proceedings, the Parties believe that raising them in this letter will best facilitate a fair and expeditious resolution in this case.

1. The Council Should Allow Additional Process, Including Discovery, the Presentation of New Evidence and Hearings, Regarding the New Proposal

As noted in the Council's Memorandum of July 14, 2004, the purpose of the working group process is for ISO-NE and the Applicants to "provide a revised proposal." This revised proposal will necessarily differ significantly from the preferred route that the Applicants submitted in their application. The Council must treat any revised configuration as an entirely new proposal. This fact requires providing the Council, as well as parties and intervenors in this case, a reasonable opportunity to conduct discovery regarding the new proposal, evaluate the new proposal in light of the discovery and to conduct such independent analysis as they deem appropriate. In addition, the Council must provide for additional hearings during which the Council, its staff as well as parties and intervenors can both question the working group about the proposal and submit such additional testimony and evidence as they deem appropriate. Allowing such additional proceedings is not only required under the Uniform Administrative Procedures Act, Conn. Gen. Stat. § 4-166 et. seq. ("UAPA"), but is also entirely consistent with the Council's treatment of Configuration X in Phase I.

Basic notions of fundamental fairness also require the additional process requested herein. A full and fair review of the revised proposal that emerges from the working group process may well require independent study and analysis by experts. As the Council is well aware, prior to the ISO-NE testimony of June 7, 2004 when the Applicants' proposals were at issue, the Applicants and certain towns agreed that the Applicants would fund certain transients and harmonics studies for the towns. Additionally, the towns were in the process of performing load flow studies for certain routes that would provide a regional solution. Since the Applicants' proposal appeared moot solely because of ISO-NE's 11th hour objections, those towns, at the Council's request, agreed to suspend these studies to allow the working group process to proceed as expeditiously as possible. The City of Milford and Town of Woodbridge also agreed, again at the Council's request, to allow GE to replace their town specific transients and harmonics studies in the GE queue with studies directed to ISO-NE's issues. The Towns did not waive their rights to their studies and to present them to the Council.

Moreover, the Towns' willingness to cooperate with the Council and the Companies to allow the ISO-NE related studies and the working group process to proceed should not require the Towns' to sacrifice their rights and opportunity to prepare and present their analyses. Of course, until the working group report is prepared, disseminated, analyzed (including appropriate discovery), the towns cannot know what additional studies, if any, will be necessary and what

they will look like. In order for this process to be fair, it cannot be rushed. The Towns must be afforded ample time to address what may be an entirely different application. To be clear, the Towns are not seeking delay; the Towns had nothing to do with the concerns raised by ISO-NE at the 11th hour. The Towns are merely seeking to protect their due process rights.

Under these circumstances, it is imperative that the Council allow the time for independent studies to be conducted after the revised proposal is presented. Additionally, since many towns have now spent enormous amounts of money performing work based on an application that is suddenly in the process of revision, a process should be established to provide future transients and harmonics studies and load flow studies for the towns at the Applicants' expense.

2. The Council and All Participants Must Know Whether ISO-NE Supports the Revised Proposal

As noted above, the application in the present Phase II case was submitted on October 9, 2003, after a sixty-day municipal consultation period which began in May 2003. Though ISO-NE was a participant in this case from the beginning, it waited until June 7, 2004 to advise the Council, Applicants and others that the application, as proposed, "will not operate reliably" and could not be approved. As a result of that testimony, the Council has effectively been forced to start a major part of this entire process over from the beginning, starting with the formation of the working group.

As discussed herein, the revised proposal submitted by the working group must receive a full and fair review in this proceeding. Moreover, the Council and all participants in this case must know whether the proposal ultimately submitted by the working group has ISO-NE's unqualified support. The Council should seek to avoid a situation wherein it considers the working group's proposal only to learn later, either in this case or in the ISO-NE's 18.4 process, that ISO-NE cannot support it and we are again back at square one.

CONCLUSION

In conclusion, the Parties respectfully request that the Council grant the requests described herein. The Parties have no intention of unnecessarily delaying the consideration and approval of the Phase II project. The reliability needs of southwest Connecticut are very real, and the Parties appreciate the need for infrastructural upgrades as soon as practical. The Council should bear in mind, however, that under the present circumstances, the provision of additional process in this case is necessary not only to protect the procedural rights of the Parties, but also to help maintain public confidence in the integrity of the process and ultimate outcome of this proceeding. Moreover, any delay that may be caused by the allowance of the additional process

requested in this proceeding is the direct result of the actions of ISO-NE in this case, not the Parties.

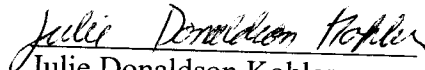
Finally, we ask the Council to bear in mind when considering the Parties requests that December 20, 2007 is no longer a firm, bright-line cut-off for the prospect of regional allocation of the costs associated with the Phase II project. As discussed during the hearing on July 29, 2004, the 2007 deadline for regional cost allocation originated in a FERC order that is no longer applicable.²

Very truly yours,



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² See FERC Order, ER03-1141-000, December 18, 2003 (in which FERC approved ISO-NE's proposed TCA amendments dated July 31, 2003 and thereby effectively eliminated the 2007 cut-off for regional cost allocation of the Phase II project). See also Transcript, June 1, 2004, 214; June 2, 2004, 115-116 (in which CL&P and others testified in this proceeding that 2007 is no longer a firm cut-off for regional cost allocation for the Phase II project).

cc: Service list

