

## State of Connecticut

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



Hartford

March 15, 2005

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

**Re: Docket 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:

Thank you for your response to my letter dated March 8, 2005 in which I asked, among other things, that the Connecticut Siting Council ("Council") immediately and publicly disclose the specific nature of the communications that are mentioned in the Council's January 10, 2005 letter to the legislature concerning its Revised Electric and Magnetic Field Best Management Practices dated December 21, 2004 ("Revised EMF BMP"). In your response dated March 14, 2005, you asserted that the Council considers the adoption of the Revised EMF BMP to be separate from the present contested Phase II proceeding and that it does not constitute a contested case. As a result, the Council concluded that the requirements of Conn. Gen. Stat. § 4-181 do not apply. Notwithstanding those conclusions, however, the Council disclosed the nature of the communications and concluded that they were not substantive and did not prejudice any party or intervenor in the present proceeding.

While I appreciate your prompt response to my inquiry, the Council's letter raises several questions and concerns. The Council's Best Management Practices are intended to represent the latest scientific and medical research on electric and magnetic fields. Conn. Gen. Stat. § 16-50t(c). The Best Management Practices are to require individual, project-specific assessments of EMFs and will have a direct, substantive bearing on all projects that generate EMFs.

While the Council may not consider EMF BMP regulations under Connecticut law, id., they nonetheless are legally significant and have a direct, immediate impact on this present contested proceeding. Pursuant to Conn. Gen. Stat. § 16-50p(a)(3), the Council must determine the probable environmental impact of the proposed facility, including EMFs. Moreover, pursuant to Conn. Gen. Stat. § 16-50p(a)(3)(D)(iii), any transmission facility approved by the Council must be consistent with the purposes of the PUESA, as amended by the Act, as well as such regulations and standards that the Council may adopt, including its EMF BMP.

Since the passage of the P. A. 04-246, the Council's EMF BMP have assumed a new and additional importance and relevance to the present case. Pursuant to the Act, the EMF BMP is critical to the review of the proposed 345 KV line because the Council's decision must be consistent with the standards set forth in the BMP. Thus, the development of the Revised EMF BMP during this ongoing contested proceeding, in which EMF is a central issue in dispute, has a direct, material impact on this contested proceeding, determining the siting of the transmission line and health and environment of the citizens and communities along the proposed route.

Conversations with only one party to this contested case about a central issue in the case at minimum presents the appearance of impropriety. This fact is especially true here, where the communications that occurred were between Council staff working on the Phase II case and a CL&P employee who appeared as a witness for the Applicants in this proceeding presenting testimony concerning the Applicants' position on EMF's. See, e.g. tr., February 17, 2005, 239-240.

I understand that all agency business cannot cease because of the pendency of an contested case. However, the Council's BMP has a direct and critical impact on an ongoing contested case critically important to the State of Connecticut and its citizens. Procedures and safeguards should have been in place to avoid any communications between the Council and parties to the present contested case regarding as highly a disputed issue as EMFs unless all parties were informed of such communications and had an opportunity to comment and participate.

The Council revised its EMF BMP's without notice to, or input from, the public and non-applicant parties and intervenors in this case. Only one party to this case -- the applicant -- knew that the BMP were being revised and only one party had an opportunity to comment on those revisions, however extensive or significant those comments were. Astonishingly, even some Council members apparently may have been unaware of these communications. See, tr., January 5, 2005, 146.

Under the circumstances, the Council must immediately rescind its Revised EMF BMP. The Council should adopt an open, inclusive and transparent process, allowing comment and an opportunity for discussion by all parties to the present proceeding when drafting any revisions to the EMF BMP.

Very truly yours,



RICHARD BLUMENTHAL  
ATTORNEY GENERAL  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

cc: Service List