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June 2, 2006

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

Re: Docket No. 217  
Northeast Utilities Services Company Application for the  
Construction of Transmission Lines from Bethel to Norwalk  
City of Norwalk Notice of Intent to be a Party

Dear Ms. Katz:

The Town of Durham (“Durham”) hereby submits its comments to the *Development & Management Plan for the Middletown – Norwalk 345-kV Transmission Line Project - Segment 1b – Royal Oak Bypass*; and more particularly, to the route of the Royal Oak Bypass contained in that Plan (the “Plan Route”).

The Plan Route would locate the Royal Oak Bypass (the “Bypass”) in close proximity to several existing homes in the Royal Oak neighborhood, with the apparent intent of minimizing the impact of the Bypass on the Wilsons’ proposed, but as - yet unbuilt, Majestic Oaks Estates.<sup>1</sup> As such, Durham is concerned that the Plan Route is inconsistent with the Council’s Findings of Fact, Opinion, and Decision & Order in Docket 272 (collectively, the “Decision”) and could therefore be deemed by a reviewing Court as unsupported by the Decision.

The Docket 272 Opinion (the “Opinion”) contains the Council’s rationale for its ordering of the Bypass in the Decision – the protection of the inhabitants of the Royal Oak neighborhood. In the Opinion, the Council first discusses and interprets the term “Residential Areas,” as contained in Public Act 04-246 (the “Act”). The Council notes that Residential Areas are included in the Act as an “area of concern” with respect to the siting of new electric transmission lines.<sup>2</sup> The Council next interprets the term “Residential Areas” and sets out the legislature’s intent in including that term in the Act:

The provisions of the Act that concern “residential areas” are intended to protect “public health and safety,” and not economic or other interests. We also note

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<sup>1/</sup> The Plan Route is illustrated in Figure 2-1 thereof.

<sup>2/</sup> Opinion at pg. 14.

that the Act uses the term “residential areas” to be considered, along with facilities where children tend to congregate for a significant period of time, such as schools, day care facilities and the like, and does not use the term “residences,” suggesting that the legislature meant by “residential area” what is commonly called a neighborhood. The crucial aim of the legislature was to protect people, particularly children, and not individual buildings. *Thus, the Council will define “residential areas” as being areas where people actually live, neighborhoods, not places they might live in the future.* (Emphasis added).<sup>3</sup>

The Council next notes that the Bypass is one of three proposed route deviations for the Middletown to Norwalk transmission project “based on EMF exposure.”<sup>4</sup> The Council characterizes the Royal Oak neighborhood as a “unique ‘residential’ area,” by reason of the Royal Oak neighborhood’s “intertwining” with the existing transmission Right – of – Way (“ROW”). The Council concludes that “the undeveloped area north of the Royal Oaks neighborhood [i.e., the Wilsons’ property] is essentially uninhabited and provides a reasonable corridor to protect the public health and safety of an existing neighborhood.”<sup>5</sup> (Emphasis added). Thus, in the Opinion, the Council: (1) notes the Act’s requirement for the protection of Residential Areas; (2) interprets that term to mean neighborhoods where people already live; (3) identifies the Royal Oak neighborhood as a unique Residential Area requiring protection by means of the Bypass; and (4) states the intent that the Bypass be located in an “essentially uninhabited” area north of the Royal Oak neighborhood, in order to protect the “public health and safety” of the inhabitants of the Royal Oak neighborhood.

In contrast to the Opinion, the Plan Route would place the Bypass directly adjacent to several existing homes in the Royal Oak neighborhood, for the benefit of an unknown number of as-yet unbuilt homes. The Plan Route is therefore inconsistent with the Opinion (and, by extension, the Act).

Additionally, the Council’s Docket 272 Findings of Fact (the “Findings of Fact”) evince a Council intent that the Bypass would be sited in a ROW to the north of the Plan Route. For example, Finding of Fact No. 527 states that “[t]he bypass of the Royal Oak neighborhood would be located in Middletown and Middlefield. . . . There are three structures within 300 feet of the Royal Oak Bypass.” (Emphasis supplied). That Finding of Fact references the Docket 272 hearing held on October 14, 2004; the

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<sup>3/</sup> *Id.*

<sup>4/</sup> Opinion at pg. 15.

<sup>5/</sup> *Id.*

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transcript of that hearing discusses an "aerial photograph, map 2 of 13," (attached).<sup>6</sup> That photograph clearly shows a Bypass route that is north of the Plan Route. Furthermore, two of the "three structures" referenced in that Finding of Fact are commercial buildings.<sup>7</sup> In addition, Finding of Fact No. 543, which discusses "[p]lacing the proposed ROW through the Wilson parcel," references Wilson Exhibit 5 (attached), which also illustrates a Bypass route to the north of the Plan Route.

In contrast to the Findings of Fact, the Plan Route would place the Bypass in close proximity to a number of existing homes in the Royal Oak neighborhood. Thus, as in the case of the Opinion, the Findings of Fact are inconsistent with (and *arguendo* do not support) the Plan Route.

The inconsistencies between the Plan Route on the one hand, and the Opinion and Findings of Fact on the other, concern Durham because of the possibility of a Court concluding that the Plan Route is unsupported by the Decision, and thereby creating new appellate rights to the Decision.<sup>8</sup> Such a conclusion would further delay the final adjudication of all judicial appeals of the Decision. For the above reasons, Durham respectfully requests that the Council carefully consider the potential ramifications of the Plan Route. Finally, Durham restates its support of and commitment to the Bypass, as originally ordered by the Council in the Decision.

Very truly yours,



Peter G. Boucher

PGB/pab  
cc: Parties and Intervenor

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<sup>6/</sup> Transcript, 10-14-04, at pgs. 32-33.

<sup>7/</sup> *Id.*

<sup>8/</sup> Durham expresses no support hereby for such appellate rights.



Middlefield

Middletown

Haddam

Durham

Middlefield, Middletown, Haddam

4517A

Legend

- Statutory Facilities
- 3 MG Boundary @ 150W
- 3 MG Boundary @ 27.50W ROW
- 200 FT Buffer
- Property Line
- NJ Property Line
- Interstate Highway
- US Route
- State Road
- Street Network
- Town Lines

0.5 Miles

USGS

Map of Middlefield, Middletown, and Haddam, Connecticut

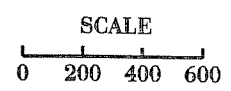
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**ROYAL OAK BY-PASS  
MIDDLETOWN-NORWALK  
345-kV TRANSMISSION LINE  
CITY OF MIDDLETOWN  
TOWNS OF DURHAM  
AND MIDDLEFIELD**

MAP-BLOCK-IOT#

32 47-2 3
32 46-1 14-1
32 46-1 14X
18-18
21-22

OWNER

WILSON LINDA D.
BOSCARINO NANCY TRUSTEE ETALS
HAMDEN GREENHOUSE LLC
MIDDLETOWN WATER CO.
MOSS, JOHN T

OWNER ADDRESS

591 BOW LA. MIDDLETOWN, CT 06457
31 LAUREATE DR. MIDDLETOWN, CT 06457
2301 SOUTH MAIN ST. MIDDLETOWN, CT 06457
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