

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

THE CONNECTICUT LIGHT AND POWER	:	DOCKET NO. 272
COMPANY AND THE UNITED	:	
ILLUMINATING COMPANY APPLICATION	:	
FOR A CERTIFICATE OF ENVIRONMENTAL	:	
COMPATIBILITY AND PUBLIC NEED FOR	:	
THE CONSTRUCTION OF A NEW 345-KV	:	
ELECTRIC TRANSMISSION LINE AND	:	
ASSOCIATED FACILITES BETWEEN THE	:	
SCOVILLE ROCK SWITCHING STATION IN	:	
MIDDLETOWN AND THE NORWALK	:	
SUBSTATION IN NORWALK, INCLUDING	:	
THE RECONSTRUCTION OF PORTIONS	:	
OF EXISTING 115-KV AND 345 KV ELECTRIC	:	
TRANSMISSION LINES, THE CONSTRUCTION:	:	
OF BESECK SWITCHING STATION IN	:	
WALLINFORD, EAST DEVON SUBSTATION	:	
IN MILFORD, AND SINGER SUBSTATION IN	:	
BRIDGEPORT, MODIFICATIONS AT	:	
SCOVILL ROCK SWITCHING STATION AND	:	
NORWALK SUBSTATION, AND THE	:	
RECONFIGURATION OF CERTAIN	:	
INTERCONNECTIONS	:	JUNE 1, 2006

**COMMENTS OF RICHARD BLUMENTHAL, ATTORNEY GENERAL
FOR THE STATE OF CONNECTICUT, CONCERNING THE DEVELOPMENT
AND MANAGEMENT PLAN FOR SETMENT 1b – ROYAL OAK BYPASS**

Richard Blumenthal, Attorney General for the State of Connecticut (“Attorney General”), hereby submits his comments concerning the Development and Management Plan in the above-captioned proceeding for Segment 1b – Royal Oak Bypass that the Connecticut Light and Power Company (“CL&P” or “Company”) submitted to the Connecticut Siting Council (“Council”) on May 12, 2006 (“D&M Plan”). These comments are being filed pursuant to the Council’s issuance dated May 17, 2006 inviting such comments by parties, intervenors and certain individuals directly affected by the new route proposed in the D&M Plan.

I. SUMMARY

For the reasons stated herein, the Attorney General respectfully requests that the Siting Council reject CL&P's D&M Plan for the Royal Oak Bypass and require CL&P to submit a D&M plan that conforms with the Council's final decision in this case. The route for the Royal Oak Bypass that the Company proposed in the D&M Plan is entirely new to this case and directly impacts residents in a manner that was never contemplated or foreseen. Moreover, the newly proposed route was neither reviewed nor approved by the Council during the certification phase of this proceeding. Under these circumstances, the Council is without authority to approve this new route in the development and management stage of this proceeding. In order to consider CL&P's proposed new bypass route, the Council must reopen these proceedings to consider amending the certificate.

During the hearings in the certification phase of this case, the Council spent many months evaluating the various possible routes for the proposed 69 mile, 345 kV electric transmission line in detail. During that process, parties affected by any of the options that were considered had ample notice and opportunity to participate in the hearings to express their views regarding those route options.

The route of the proposed transmission line in and around the Royal Oak neighborhood received a significant amount of attention, primarily because the originally proposed route placed the proposed 345 kV lines along the same path as the existing 115 kV lines, which meant that both sets of lines would go directly through this residential neighborhood. The Council also considered a bypass that routed the proposed lines along a specified route north of the neighborhood. That Royal Oak bypass route was depicted in maps provided by CL&P that were evaluated in the proceeding by the

Council and all interested participants. The Council ultimately approved the use of the Royal Oak Bypass for the 345 kV lines, and left the existing 115 kV lines in their place.

In its D&M Plan, however, CL&P has taken it upon itself to create a route for the Royal Oak Bypass that is entirely different than that which was considered and approved during the certification phase of this case. In effect, the Company is seeking to trump the Council's authority to determine the route of the line. Moreover, the Company's proposal for a new Royal Oak bypass directly impacts a number of individuals who had no reason to know or believe that they could be so impacted by the line as it was considered or approved in this case. Under these circumstances, the Council should reject CL&P's D&M Plan for the Royal Oak Bypass and require CL&P to file a plan that conforms with the Council's final decision in this case. In order to consider CL&P's newly proposed bypass, the Council must reopen these proceedings to consider amending the certificate.

II. PROCEDURAL BACKGROUND

During the certification stage of this proceeding, the Council considered two possible routes for the 345 kV line in and around the Royal Oak neighborhood. The Council considered the proposed route, which placed the 345 kV lines along the route of the existing 115 kV lines which pass directly through the middle of this neighborhood.¹ The Council also considered a bypass route for the 345 kV lines that carried the lines to the north of the Royal Oak neighborhood through undeveloped property owned by the Wilson's. This bypass route was depicted in a map that was presented by CL&P during the certification phase of this case as well as earlier in the D&M process. See, e.g., Vol.

¹ There is no overhead right of way along this portion of the route, only an easement for the utility poles that carry these 115 kV lines.

2, Segment 1a D&M Plan, Sheet 5 of 7 (November, 2005) (referred to herein as “Sheet 5 of 7”).

The map of the bypass that was used and relied upon in the certification phase of this case made clear that the bypass route left a buffer of land between the southern edge of the transmission ROW and the northern edge of any property owned by residents of the Royal Oak neighborhood. Specifically, the bypass route did not abut any property owned by current residents of the Royal Oak neighborhood who live on Acorn Drive, the northernmost part of the neighborhood.

The Council considered a number of alternative uses of the proposed bypass route during the hearings in this case, including moving the existing 115 kV lines and the 345 kV lines to the bypass and using the bypass only for the 345 kV lines and leaving the 115 kV lines where they were. Then, on April 7, 2005, the Council issued its Decision and Order in which it approved a certificate for the 345 kV line. That approval included the requirement that the applicants use the Royal Oak Bypass for the 345 kV line. Condition number 4 of the Council’s Decision and Order states that:

[t]he Certificate Holders shall utilize the Royal Oak Bypass which shall include the rights-of-way not to exceed 165 feet in width, and cleared rights-of-way of 125 feet, for the proposed 345-kV transmission line and leave the existing 115-kV ROW in place.

(Emphasis added). The Council also addressed the Royal Oak Bypass in its Findings of Fact. Findings of Fact No. 526 and 527 state:

526. The Applicants investigated a route that would bypass the Royal Oak neighborhood beginning on June 2, 2004. There is adequate space to take the 345-kV line to the north of the Royal Oak neighborhood and south of another development, through a hardwood forest. The bypass would require the clearing and crossing of seven acres of wetlands. This bypass would be a new right-of-way, which would have to be cleared.

527. The bypass of the Royal Oak neighborhood would be located in Middletown and Middlefield and totals 1.1 miles. There are three structures within 300 feet of the Royal Oak bypass.

(Emphasis added. Transcript cites omitted).

On May 12, 2006, CL&P filed its D&M Plan for Segment 1b – the Royal Oak Bypass. This D&M Plan, however, contained a route for the Royal Oak bypass that is entirely different from that which was considered and approved during the underlying proceeding. According to CL&P's D&M Plan, the right-of-way for the bypass would now travel along the southern edge of the Wilson property and abut the property lines of those who live on the northern side of Acorn Drive in the Royal Oak neighborhood.

Recognizing that CL&P's D&M Plan for Segment 1b represented a significant departure from the route it approved in this case, on May 17, 2006 the Siting Council sent letters to a number of residents of the Royal Oak neighborhood who live on Acorn Drive advising them of CL&P's latest proposed route and encouraging them to submit their comments regarding this route to the Council by June 2, 2006. Moreover, also on May 17, 2006 a number of residents of Acorn Drive, through counsel, filed an Application to Intervene and be Designated as Parties and Petition for Declaratory Rulings. In this Petition, they ask, among other things, that the Council issue a declaratory ruling that the D&M Plan as filed by CL&P is not in accordance with and violates the Council's Decision and Order in this case.

III. DISCUSSION

Under the circumstances presented in this case, the Siting Council lacks the authority to approve the route proposed by CL&P in its D&M Plan for Segment 1b – the Royal Oak Bypass in the development and management plan phase of this proceeding.

The Council may only consider this entirely new route if it reopened this docket to consider amending the Certificate it already granted.

Conn. Gen. Stat. § 16-50k states in relevant part that “[a]ny facility with respect to which a certificate is required shall be built, maintained and operated in conformity with such certificate and any terms, limitations or conditions contained therein.”

(Emphasis added). Similarly, Conn. Gen. Stat. § 16-50u provides that “[t]he council shall take reasonable steps to insure that each facility for which a certificate has been issued is constructed, maintained and operated in compliance with such certificate”

The certificate issued to CL&P in this case to construct the 345 kV electric transmission line requires that CL&P follow the route for the Royal Oak Bypass route that is depicted on Sheet 5 of 7. As noted supra, both the Council’s Decision and Order and the Findings of Fact refer to that route. Simply put, the route now proposed by CL&P in its D&M Plan for Segment 1b was never reviewed or approved by the Council in this docket.

The purpose of a development and management plan is to “fill up the details” in the Council’s final decision. Town of Middlebury v. Connecticut Siting Council, 2002 WL 442383 (Conn. Super.) (Feb. 27, 2002) (Cohn, J.) (citation omitted). “The D&M plan cannot provide a substitute for matters not addressed during the application process.” Id.

CL&P may not use this D&M phase to place the lines somewhere that is entirely different than the approved route. Such a procedure would render useless the entire certification portion of this proceeding and would not adequately protect the rights and interests of those who may be impacted by the proposed facility.

The letter issued by the Siting Council to certain residents of the Royal Oak neighborhood on May 17, 2006 inviting their comment regarding CL&P's D&M plan clearly indicates the Siting Council's firm understanding of the proper role of the development and management phase. In that letter, the Council stated that "[i]t should be noted that the Council decision does not specify exactly where the utility poles would be placed on the Wilson property." (Emphasis added). It is important to note that the Council did not indicate that there was any flexibility as to where the ROW would go on the Wilson property, only where the poles would go within that ROW.

The question of the scope of the Council's authority in the development and management phase of a siting proceeding is new neither to the Council nor to CL&P. In the development and management phase of Docket 217, the so-called "Phase I" proceeding, the Town of Redding stated its preference for a site for a transition station that was not reviewed or considered by the Council in the underlying proceeding, though it was close in proximity to the sites that the Council did consider.

CL&P adamantly opposed Redding's request, arguing that because that site was never reviewed or considered by the Council in the underlying docket the Council "lacks the power to approve the use of the . . . site unless it reopens the docket to allow the amendment of the certificate" Docket 217, The Connecticut Light and Power Company's Comments Regarding Transition Station Siting Issues Raised in the Siting Council's Notice Dated October 8, 2004, October 22, 2004, 4. CL&P further argued that the Town of Redding was "attempting to change the location of a transition station to a new site that was never reviewed or approved by the Council." Id., 5. In that case, the

Council approved one of the sites considered in the underlying case, not the site proposed by Redding in the development and management phase.

In the present case, CL&P appears to be on the exact other side of this same argument. The law, however, cannot and should not change to suit the whim and convenience of CL&P.

Accordingly, the Council should reject CL&P's D&M Plan for Segment 1b – Royal Oak Bypass and require the Company to submit a plan that conforms with its certificate, Final Decision and Order and Findings of Fact in this case. The Council cannot consider the bypass route proposed in CL&P's D&M Plan unless it reopens these proceedings to consider amending the certificate in this case.

WHEREFORE, for the foregoing reasons, the Attorney General respectfully requests that the Council should reject the D&M Plan for the Royal Oak Bypass and require CL&P to file a plan that conforms with the Council's final decision in this case.

Respectfully Submitted,

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Service is hereby
certified to all parties
and intervenors designated
on this Agency's service
list in this proceeding.

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