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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

THE CONNECTICUT LIGHT AND POWER 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 FACILITIES BETWEEN SCOVILL ROCK SWITCHING STATION IN MIDDLETOWN AND NORWALK SUBSTATION IN NORWALK, CONNECTICUT INCLUDING THE RECONSTRUCTION OF PORTIONS OF EXISTING 115-KV AND 345-KV ELECTRIC TRANSMISSION LINES, THE CONSTRUCTION OF THE BESECK SWITCHING STATION IN WALLINGFORD, 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	:	DOCKET NO. 272 AUGUST 21, 2006

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BRIEF OF WILLIAM A. ROOT IN SUPPORT OF A FINDING OF NO CHANGED CONDITIONS

The undersigned, William A. Root of 18 Center Road, Woodbridge, Connecticut files his brief in support of a finding that no changed conditions exist that would justify re-opening, reversing or modifying the Connecticut Siting Council's April 7, 2005 Decision and Order ("D&O") in this docket. Specifically, the Connecticut Siting Council, (hereinafter "Council"), on its own motion, held hearings on July 20, 2006 pursuant to Conn. Gen. Stat. § 4-181a (b) to consider whether changed conditions exist to allow it to

reopen the D&O and consider two deviations to the approved 345 kV transmission line route submitted by the Connecticut Light and Power Company ("CL&P") in its June 15, 2006 proposed Development and Management Plan ("D&M Plan") for segment 2b of the 345kV transmission project in the Town of Woodbridge. The D&M Plan submitted by CL&P does not conform to the Council's D&O. For the reasons stated below, the Council should reject the proposed D&M Plan and require that it be revised to conform to the D&O because there are no "changed conditions" to provide the Council with the statutory authority to re-open the D&O. Moreover, the route deviation presented in the D&M Plan has been previously considered and rejected by the Council.

Indeed, the changed conditions offered consist solely of proposed real estate transactions to effectuate a routing alternative fully considered by the Council and rejected for reasons firmly supported in the record. As a matter of law, a proposed or planned action is not sufficient to constitute a "changed condition." In addition, the Council should not permit parties to manufacture "changed conditions" as a means to avoid statutory and administrative procedures. Last, no proposed settlement structured solely as a means to create changed conditions to sidestep the administrative process that fails to provide notice and an opportunity to be heard by all affected parties can be accepted by the Council.

I. FACTS AND PROCEDURAL HISTORY

By decision dated June 7, 2005, the Council issued its final D&O establishing the approved route of the 345 kV transmission line and associated right-of-way that is the subject of this Docket. During hearings held prior to the issuance of the final D&O, the Council took evidence and administrative notice of scientific and medical research on

electromagnetic fields and applied the Council's Best Management Practices for Electric and Magnetic Fields. See April 7, 2005 Opinion, Docket 272 at p. 2-3. "The Council adopted Electric and Magnetic Field Best Management Practices (EMF BMP) on February 11, 1993 on its own initiative." April 7, 2005 Opinion, Docket 272, at p. 12. The Council clearly stated that its version of the EMF BMP was sufficient to decide the issues before it in Docket 272 and that all parties and intervenors had a full opportunity to present witnesses, enter documentary evidence, introduce published medical and scientific studies, present EMF measurements, and advocate for particular standards related to EMF issues. See April 7, 2005 Opinion, Docket 272, at p. 12. In this regard, the Council concluded that the D&O complied with all of the requirements of Conn. Gen. Stat. § 16-50t. See April 7, 2005 Opinion, Docket 272, at p. 12. Finally, the Council concluded that "the new lines will be contained within a buffer zone adequate to protect public health and safety, and will not pose an undue hazard to persons and property along the location traversed by the lines." April 7, 2005 Opinion, Docket 272, at p. 12.

During the numerous hearings conducted before the issuance of the final D&O, the Council evaluated and approved route deviations after hearing arguments from, among others, the Congregation B'Nai Jacob / Ezra Academy ("Academy") and the Woodbridge Jewish Community Center ("JCC"). In reaching its D&O, the Council carefully considered various proposals and arguments presented by CL&P, the Academy and the JCC with respect to the placement of the 345 kV transmission line. Specifically, with respect to the issues raised concerning the location of the right-of-way in relation to the Academy and the JCC, the Council found the following facts relevant to the issues presented herein:

589. An existing CL&P ROW crosses the property of the Jewish Community Center of Greater New Haven (JCC) on which there are existing 115kV transmission lines. Both the ROW and transmission lines traverse through the JCC property at Amity Road in Woodbridge. (Pre-filed testimony of Witkin, 1/13/05)

590. The JCC's main building is approximately 45 feet from the edge of the existing CL&P ROW. Two playgrounds used by children attending the JCC are approximately 45 feet from the ROW. The JCC currently has 3599 children enrolled who are under age 18. (Pre-filed Testimony of Witkin, 1/13/05)

591. The JCC prefers the line be placed underground. Placing it overhead, away from the JCC building, would place it directly over the day camp, playing fields, picnic area, camp building, and pool area. About 400 children attend their day camp daily in the summer. Creating a jog in the line may require moving the day camp. (Tr. 2/17/05, p. 160-161)

592. If the lines cannot be placed underground, the JCC notes that the Applicants own land adjacent to the JCC property well within the buffer zone of the proposed new lines. If the Applicants could move the JCC Camp, they could place the lines as proposed, and the camp and JCC building would both be far enough away from the lines. This would be the JCC's next preferable option. (Tr. 1/20, p. 39-41)

593. When asked whether the JCC would prefer putting the line closer to the day camp, the JCC responded that they would prefer that the line remain in the ROW at a point that is as close to the centerline as possible (TR. 2/17/05, pp. 164-166)

594. The JCC wants a buffer zone of at least 300 feet from all areas of the camp and the building due to their safety concerns.(Tr. 1/20, p. 43)

595. In the vicinity of the JCC property, the Applicants propose to construct 135-foot poles to hold the 345-kV lines and 105-foot poles to hold the two 115-kV circuits. (Tr. 1/20, p.212)

596. The JCC asked the Applicants if the right-of-way could be moved farther away from their facilities. One option would be a jog in the right-of-way, moving it farther away from the JCC facility itself. Another option was moving the right-of-way as far back along the edge of the JCC property as possible. (Tr. 7/27/04, p. 99)

597. Option A would shift the ROW to the west over a swimming pool. Option B is a jog in the ROW to move the ROW away from the JCC building by using the infield portion of a ball field. Assuming split-phasing, the magnetic field at the pitcher's mound would be 4.4 mG for a 135-foot tower for the 345-kV line and 110-foot tower for the 115-kV line, based on a 15 GW load level. (Tr. 2/1/05, p. 221-222; Tr. 2/17/05, pp. 160-168)

598. In Option B, at 25 feet from the pitcher's mound moving toward second base, magnetic fields would be 5.6mG, then decreasing to 4.6 and then 5.6 mG in centerfield (Tr. 2/1/05, p. 225-226)

599. The JCC building is approximately 60 feet from the existing ROW. (Tr. 2/1/05, p. 241)

600. The JCC bypass would relocate a day camp (Option C), and assumed the existing JCC day camp could be relocated to the property south of the JCC property. The corner of the JCC day care facility would be approximately 270 feet from the relocated ROW on Option C. The Applicants are uncertain as to whether an existing day camp on the JCC property can be relocated onto a 60-acre parcel adjacent to the ROW. (Tr. 2/1/05, pp. 207-208; pp. 244-246)

601. The magnetic field at the corner of the building from the relocated ROW would be less than 0.1mG. both options A and B, which are closer, are also at 0.1mG (Tr. 2/1/05, p. 246-247)

602. Option C was presented by the Applicants at the request of JCC and would shift the ROW west over the outfield of the ball field. Options A and B were at the request of the Council. Options A, B, and C are not supported changes by the Applicants. The Applicants finds Option C, which would cross over the pool, less desirable. Relocating the pool and other facilities would constitute a great cost to the Applicants. (Tr. 2/1/05, p. 256-257)

603. Electric fields from a 345-kV line would be a concern for a parking area more than magnetic fields, especially for higher vehicles, such as a bus. (Tr. 2/1/05, p. 261, p. 263-264)

604. To place a ball field directly underneath the 345-kV lines, the JCC would have to request a waiver from the Applicants. (Tr. 2/1/05, p. 259)

605. The JCC currently has a waiver to use its parking facility on the ROW. The impact of locating a 345-kV line over the parking area would have to be re-investigated. (Tr. 2/1/05, p. 260-261)

606. The Applicants would prefer to keep the existing ROW in the JCC area and employ prudent avoidance techniques such as low magnetic field designs, including increasing pole heights by up to 30 feet. However, Options A, B, and C are all considered buildable, despite increased costs. Based on the evidence, the Council finds use of the center of the ROW with low magnetic field design to be prudent. (Tr. 2/1/05, p. 257-258)

B'Nai Jacob/Ezra Academy

607. Congregation B'Nai Jacob is located at 75 Rimmon Road in Woodbridge and has approximately 400 students. Ezra Academy has 227 students. (Pre-filed Testimony of Waynick, et al., dated 1/13/05)

608. A ROW of four existing 115-kV lines in a ROW currently crosses the B'Nai Jacob/Ezra property, crossing over a basketball court, sports field and a preschool nature field. The school's classrooms are approximately 60 feet from the edge of the ROW, and a playground is directly adjacent. (JCC 14, 1-26-05)

609. The B'Nai Jacob/Ezra Academy first preference is that the proposed lines be buried underground in the middle of the existing ROW across the campus. Their second preference would be to have the overhead lines relocated away from the daycare and school facilities as far as possible on the B'Nai Jacob property. The Reis property, an underdeveloped parcel to the north, is encumbered by a portion of the existing ROW, and B'Nai Jacob/Ezra suggests moving the ROW onto this property. (JCC 14, 1/26/05)

610. If the existing ROW were moved onto the Reis property, it would be about 350 feet from the edge of the ROW to the corner of the building. The magnetic field would be about 0.1mG at the building edge using a split-phase configuration. (Applicant ex. 73, p. 13; Tr. 2/1/05, p. 248-250)

611. Homes on a cul-de-sac on Twin Brook in Woodbridge to the north would be about 180 feet from the relocated line. (Tr. 2/1/05, p. 250)

612. The Applicants approached the property owner of an adjacent parcel and asked about relocating the ROW entirely onto their property. The owner, Mr. Reis, indicated he is not interested in

changing the easements that presently exist, due to residential development plans. (Tr. 2/1/05, p. 209-210)

613. The Applicants have offered a deviation from the existing right-of-way to be relocated roughly to the north side of the Ezra Academy and B'Nai Jacob property. The magnetic field would be approximately 0.1 mG at the nearest edge of the building using a split-phase configuration. Based on the evidence, the Council finds relocating the overhead lines away from day care and school facilities as far as possible on the B'Nal Jacob property to be prudent. (Applicants ex. 73, p. 11; Tr. 10/14/04, p. 69; Applicant 163, aerial photograph, p. 10 of 13)

April 7, 2005, Findings of Fact, Docket 272, p. 64-66.

The Council rejected several options presented by both the Academy and the JCC and thereafter, the Academy and the JCC, among others, took an appeal from the Council's Decision. See Ezra Academy et al v. Connecticut Siting Council, CV-05-4006418-S, J.D. Hartford-New Britain, at New Britain. In an attempt to settle the appeal, the parties to the appeal essentially agreed to property transfers that were considered in the original docket and rejected by the Council. Specifically, "[a]s it relates to the JCC Property, the settlement calls for the right-of-way to be relocated to the west over the existing ball field, to a location substantially similar to that of one of the options presented and rejected during the docket." Pre-Filed Testimony of Anne Bartosewicz, Robert Carberry and Louise Mango in Support of Proposed Route Variations in Woodbridge, Docket 272, July 13, 2006, at p. 5. "[A]s part of the settlement, CL&P will sell its property south of the JCC to the JFNH [Jewish Federation of New Haven]; and the JCC plans to relocate its ball field to this new property." Id.

The settlement agreement also addresses the Academy property. The Academy's original preference as presented by representatives of the Academy during the hearings on Docket 272 is as follows:

> [t]he stated preferences of B'nai Jacob and Ezra Academy concerning the routing of the line were as follows: (1) underground lines; (2) if the line must be overhead, relocate the right-of-way over the Reis parcel to the north; (3) relocate the right-of-way to the north of the B'nai Jacob/Ezra Academy parcel so that the line is as far as possible from the buildings on the campus. Woodbridge Organizations' Ex. 14, Responses to Council Interrogatories dated February 10, 2005; 2/17/05 Tr. at 168-174 (Birke Fiedler). At that time, the owner of the Reis parcel opposed relocation of the right-of-way on to the Reis Property. The D&O [April 7, 2005 Decision and Order] adopted the third preference above, and ordered that the right-of-way be shifted within the B'nai Jacob Property, farther away from the buildings. D&O, p.2, ¶ 6b; Opinion, p. 15, ¶XVIb.

Pre-Filed Testimony of Anne Bartosewicz, Robert Carberry and Louise Mango in Support of Proposed Route Variations in Woodbridge, Docket 272, July 13, 2006, at p. 5-6. Donna Reis, the owner of the Reis Property over which the Academy originally sought to locate the 345 kV transmission lines, also appealed from the April 7, 2005 Decision and Order, "complaining of the proximity of the Certified Route to her property. Reis v. Connecticut Siting Council, CV-05-4005763, J.D. New Britain." Pre-Filed Testimony of Anne Bartosewicz, Robert Carberry and Louise Mango in Support of Proposed Route Variations in Woodbridge, Docket 272, July 13, 2006, at p. 6. Ms. Reis participated in the settlement and agreed to "sell a small piece of her property (less than 11,000 sq. ft.) to Congregation B'nai Jacob, so that the right-of-way can be moved somewhat further away from the buildings on the B'nai Jacob property than it would have been under the D&O." Id. As a result of the sale of the 11,000 sq. ft. piece of

property, the new route will actually be as close or closer to the Reis property, thus calling into question the actual basis for the Reis appeal in the first instance.

On June 15, 2006 CL&P submitted its proposed D&M Plan for segment 2b of the 345kV transmission project in the Town of Woodbridge that included changes that were agreed to by settlement of only those parties to the appeals from the D&O and not all of the parties in Docket 272. It is noteworthy that all potentially affected parties were not notified of the appeal, nor were they represented during the negotiations that took place as a result of the appeal. In point of fact, most of the parties to Docket 272 were not represented during the negotiations and eventual proposed settlement brought about as a result of the appeal and later represented in the D&M Plan that was submitted to the Council. The D&M Plan submitted by CL&P was created without the safeguards of a complete administrative process allowing notice and an opportunity to be heard by all of the parties to Docket 272. More importantly, the proposed D&M Plan submitted by CL&P was created without allowing notice and opportunities to be heard by the property owners most affected by the revisions. Because the D&M Plan severely deviates from the Council's original D&O, the Council noticed and on July 20, 2006, held hearings on whether there were changed conditions that would warrant the reopening of the D&O to address the deviations in the D&M brought about by the purported settlement. Testimony at the July 20, 2006 "changed conditions" hearing verified that the proposed changes to the approved route pursuant to the D&O have nothing to do with safety concerns or exposure to EMF, rather they are made solely for the purpose of avoiding

delay due to pending appeals.[1] See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at pp. 79-80.

The facts presented during the July 20, 2006 "changed conditions" hearing verify that the appeal process was inappropriately used by the appellants to gain leverage to effect property transfers that were considered and rejected during the hearing process of the original hearings in Docket 272. Specifically, during the pre-D&O hearings of Docket 272, CL&P attempted to negotiate a sale of the Reis property to allow a shift in the transmission line away from the Academy; CL&P's offers were declined. See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at pp. 93-94. After the original D&O was issued, declining to force the right-of-way onto the Reis property, the Reises appealed the decision and thereafter agreed to sell the originally sought quarter acre property as part of the settlement for $250,000. See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at pp. 94-95. Furthermore, the settlement involves the transfer of property from CL&P for the benefit of the JCC, whereby CL&P will sell its property valued at $1,350,000 to the Jewish Federation of Greater New Haven (for the benefit of the JCC) for $700,000. See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at pp. 69; See Testimony of Leslie Zackin, Tr. 7/20/2006, 7:05 P.M. at pp. 33-34. The Department of Public Utility Control must approve such a sale and, given CL&P's failure to seek fair market value to the detriment of its ratepayers, such approval is dubious at best and can certainly be appealed if given, causing even further delay. Finally, testimony at the "changed conditions" hearing verified that in addition to the aforementioned property transfer costs, the proposed route deviation will

[1] It is noteworthy that the appellants do not have a stay of the Council's D&O.

increase the cost of the originally approved project (pursuant to the D&O) by more than $1,460,000.00 because of additional site preparation work and the more complicated construction necessitated by the proposed zigzag configuration. See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at pp. 59-69.

II. ARGUMENT

A. No Changed Conditions Exist to Authorize the Council to Re-Open and Revise the Original D&O

Under Connecticut law, "[o]n a showing of changed conditions, [an] agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion." Conn. Gen Stat. § 4-181a (b). The parties to the appeal negotiated a settlement that involves the proposed transfer of land and major deviations from the previously decided route for the 345Kv right of way ("ROW") that do not amount to changed conditions. The parties used the appeal process to usurp the Council's administrative power and obtain a result that was originally presented during the pre-D&O hearings but, after a full and fair hearing, was rejected by the Council. Neither the parties to the appeal nor the Council can deny that the route presented as a result of the settlement was previously ruled upon after a full and fair opportunity for all of the affected public to be heard, contrary to the settlement which was reached only by excluding all affected property owners. The very land swap deals arrived at through the appeal process were considered and rejected by the Council and by the parties during the hearings held before the issuance of the D&O. By agreeing to actually implement the property transfers that were rejected by the Council in its D&O, the parties cannot create a "changed condition" that now requires the Council's reconsideration of its D&O.

The undeniable evidence in the record establishes that the settlement presented in the D&M Plan represents the exact proposals rejected by the Council in its D&O in Docket 272. Condoning such a practice and allowing implementation of the settlement sends a signal to parties that Council determinations are easily circumvented.

Careful scrutiny of the record in this matter establishes that the parties in support of a finding of "changed conditions" introduced no new evidence that in any way affects the previous determinations by the Council that the D&O approved route is safe. On the contrary, the claimed "changed conditions" are mere agreements to transfer property to allow the relocation of the right-of-way to locations previously rejected by the Council and to the detriment and in violation of the due process rights of other abutting property owners. The Council already gave careful consideration to the location of the 345kV transmission line and, in fact, it approved a route deviation from the proposed plan to allow for concerns previously raised by the Academy and the JCC in Woodbridge. See April 7, 2005 Opinion, Docket 272, at p. 15. Indeed, based upon the Council's consideration of EMF exposure at each of these locations, and the arguments presented by each of these parties, the Council concluded that route deviations approved in the D&O were warranted. See id. More importantly, the Council specifically considered and rejected the solutions now proposed by each of these parties when it ordered the deviations from the original proposed plan. See id. (The Academy sought to shift the existing right-of-way farther north onto another property that is also encumbered with an existing right-of-way and the JCC requested the 345kV transmission lines be aligned to provide an adequate buffer from children using its community center and day camp operations). These very changes previously

considered and rejected by the Council are now reflected in the D&M Plan that the parties claim represent "changed conditions." Nothing could be further from the truth.

B. The Property Sales Claimed by the Parties to the Settlement are Preliminary, Therefore, They are Insufficient Evidence of Changed Conditions to Authorize the Re-Opening of the D&O

Under Connecticut law, "[o]n a showing of changed conditions, [an] agency may reverse or modify the final decision, at any time, at the request of any person or on the agency's own motion." Conn. Gen Stat. § 4-181a (b). Connecticut case law regarding how the Council or other agencies have interpreted the term "changed conditions" in the context of reopening an earlier final decision establishes that the proposed sales claimed by the parties to the appeal do not amount to "changed conditions" because they are preliminary and not sufficiently certain or final. In Sielman v. Connecticut Siting Council, 2004 Conn. Super. LEXIS 119, January 14, 2004, J.D. New Britain, the appellant appealed from a Council decision finding that Council approval or interim approval of two cell towers did not constitute "changed conditions" warranting the reopening of an earlier Council decision regarding a different cell tower that, in the appellant's view, was deemed unnecessary by the later approved cell towers. Id. at *18 - *21. The Council reasoned, in part, that one of the two new cell towers did not constitute "changes conditions" because it had not been certified, and therefore it was only in the preliminary planning stage and not a change in conditions. See id. at *18. Here, like in Sielman, all of the alleged property transfers are in the preliminary stages and can not be considered "changed conditions." The testimony of CL&P representatives verified that its property transfer to the JFNH is subject to a DPUC

proceeding that is currently pending. See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at p. 75. Additionally, there was testimony that the Reis property sale has not been finalized. Id. For these reasons, the Council must find, as it did in Sielman, that no changed conditions exist that would authorize it to re-open or modify its D&O.

C. A Finding by the Council that the Proposed Settlement Route Presented in the D&M is a "Changed Condition" Will Invite Future Appeals and Allow Parties Time to Create "Changed Conditions" to Force the Council to Reopen any Final Decision

The revised 345 kV transmission line route presented in the D&M Plan is not the result of changed conditions authorizing the re-opening or modifying of the D&O because the alleged "changed conditions" do not create circumstances or conditions that were not already fully considered and rejected as part of the approved route deviations identified in the original D&O. If the Council accepts the parties proposed settlement agreement and land transfer as sufficient to create a "changed condition" warranting the re-opening or modification of the D&O, then parties could always artificially create "changed conditions" by appealing an administrative agency decision and engaging in settlement negotiations that simply adopt positions previously rejected by the Council.

If the Council accepts the appellate parties' claims that the proposed property transfers here amount to "changed conditions" that are deemed sufficient to reopen the D&O, it will only encourage future frivolous appeals taken to inject delay into the process and allow parties to achieve through the appeal process what they could not achieve through the administrative process below. Indeed, CL&P representatives

clearly stated that they take no position on where the project goes, they simply want to avoid the delay posed by the appeals.[2] See Testimony of Anne Bartosewicz, Tr. 7/20/2006, 3:20 P.M. at p. 79-80. If the Council acquiesces to the claimed "changed conditions" arguments of the appellants in this case, then parties and intervenors in subsequent cases will be encouraged to take appeals to force settlements that involve scenarios that were originally rejected by the Council. This would set a dangerous precedent that would encourage appeals that cause delay and allow parties to achieve results through the appeal process that are rejected for good reasons during the administrative hearings. Furthermore, as in this case, parties to the appeal reach agreements that do not account for the concerns of all of the parties to the original docket. This only invites further appeals based on due process concerns as well as substantive appeals and even further delay.

This scenario, as played out here, allows parties to an appeal from a Council decision to hold the Council hostage based upon the fear of delay of necessary infrastructure projects. CL&P's willingness to spend over $1.4 million of ratepayer money in additional construction costs and its willingness to sell property for at least $650,000 below market value to the detriment of its ratepayers to settle the appeals in this matter and avoid further delay caused by the appeals is strong evidence of the egregious behavior that the Council will be promoting by agreeing that the claimed settlement in this matter amounts to "changed conditions." The Council simply should not allow parties to create "changed conditions" by reaching settlements through an

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[2] One can easily envision the unending circle of appeals that may result if the Council accepts the settlement as a changed condition. Affected parties not invited to participate in the settlement can appeal, and potentially reach settlements with CL&P that would constitute "changed conditions" under this scenario, which would invite further appeals ad infinitum.

appeal process that mirror issues considered and rejected during the hearing process of the original Docket. To do so will invariably invite appeals by parties that seek a "second bite at the apple" when they fail get what they want through the administrative process. It will also encourage parties to avoid making compromises during the hearing process if they believe they can easily revisit issues on appeal and return to the Council with claims of "changed conditions" requiring a re-opening of a final D&O. While appeals are often necessary to evaluate the appropriateness of agency action, they should not be used to create a second opportunity to address issues that were fully and fairly considered during hearings before the issuance of a D&O.

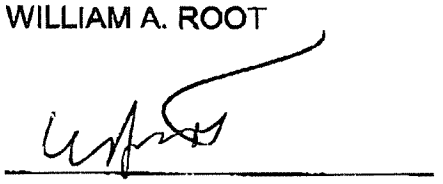
III. CONCLUSIONS

The parties in support of the settlement proposal that allows for the deviation from the final D&O have presented no evidence of "changed conditions" that authorize a re-opening or warrant a revision of the D&O. The parties to the appeal from the D&O reputedly sought to force the Council to reconsider the undergrounding of the Woodbridge section of the 345 kV transmission project. However, after apparently realizing that the undergrounding has been irrefutably deemed technically infeasible, the parties, through a settlement process brought about as a result of the appeal, have rewritten the D&O to approve their own second best options, without affording all of the parties to the original Docket 272 notice and an opportunity to be heard. The proposed settlement agreement introduces no new or changed conditions that the Council has not already considered and therefore, the Council should refuse to re-open the Docket, reject the D&M Plan and affirm the original D&O.

The 345 kV project has not been exceedingly popular among affected residents and businesses along the right-of-way. However, to allow one set of affected parties to craft their own second-best resolution through a frivolous appeal process and a sham settlement invites only further appeals and delays and denies all remaining affected property owners fundamental rights of due process. The appellate process should not be used in an attempt to force the Council to deviate from the administrative findings arrived at through a fair and impartial process.

For all of the foregoing reasons, the undersigned respectfully requests the Council reject the proposed D&M plan and affirm its original D&O.

WILLIAM A. ROOT



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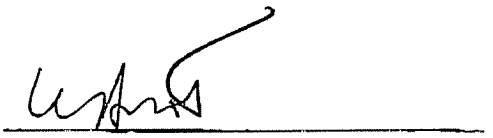
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of William A. Root in Support of a Finding of No Changed Conditions was mailed, postage prepaid, this 21st day of August, 2006, to each Party and Intervenor on the Service List dated July 21, 2006



William A. Root