

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

NORTHEAST UTILITIES SERVICE
COMPANY APPLICATION TO THE
CONNECTICUT SITING COUNCIL
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED
("CERTIFICATE") FOR THE CONSTRUCTION
OF A NEW 345-KV ELECTRIC TRANSMISSION
LINE FACILITY AND ASSOCIATED
FACILITIES BETWEEN SCOVILL ROCK
SWITCHING STATION IN MIDDLETOWN
AND 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
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
INTERCONNECTION

DOCKET NO. 272

JANUARY 10, 2005

**MOTION TO RESCIND AND RECONSIDER THE SITING COUNCIL'S
WHOLLY NEW EMF BEST MANAGEMENT PRACTICES
("WHOLLY NEW BMP") DATED DECEMBER 21, 2004**

The Towns of Durham and Wallingford (the "Towns") hereby request that the Connecticut Siting Council (the "Council") rescind and reconsider the Wholly New BMP.

On July 23, 2004, the Towns submitted a Procedural Motion (“Procedural Motion”), asserting that the Council’s EMF Best Management Practices (the “BMP”) adopted on February 11, 1993, (the “Vintage 1993 BMP”), “...must be updated to comply with P.A. 04-246 [the “Act”] before using the ...[BMP] as a basis to make the findings required by law, in the consolidated proceedings requested herein.”¹ On September 3, 2004, CL&P and UI (the “Applicants”) filed a brief (the “Applicant Brief”) in response to the Procedural Motion. The Applicant Brief argued that the Council’s Vintage 1993 BMP need not, as a matter of law and pursuant to the Act, be updated and applied to the facilities under review in this proceeding.²

To the date hereof, the Council has declined to rule on this legal issue contested in the Procedural Motion and the Applicant Brief. Notwithstanding that declination to rule on this significant legal issue, on December 21, 2004, the Council issued the Wholly New BMP, which was administratively noticed in this proceeding by the Council on January 6, 2004. The Wholly New BMP recites (at page 1) that its issuance fulfills the Council’s obligation under the Act (Sec. 10.(c)) to “review and revise” its BMP. The Council will now presumably apply the Wholly New BMP as its basis to fulfill another

^{1/} The requested consolidated proceedings were consolidated proceedings on the facilities reviewed, and under review, respectively, in the Council’s Dockets Nos. 217 and 272. At the Council’s Special Meeting held on January 5, 2005, the Council denied the request for such consolidated proceedings.

^{2/} Brief of the Connecticut Light and Power Company and the United Illuminating Company Concerning Revisions of the Council’s Best Management Practices in Opposition to “Procedural Motion” (“Brief”)

new requirement in the Act (in Sec. (3)(D)); namely, that the Council find and determine that the facilities to be approved“ . . . are consistent with theCouncil’s BMP...”.

The Wholly New BMP violates the Act by dramatically reducing public protections against EMF exposure contained in the Vintage 1993 BMP. Additionally, the Wholly New BMP was improperly adopted by the Council with no consultation from statutorily designated and other critically impacted stakeholders, including the participants in this proceeding.³ For these reasons, the Wholly New BMP should be rescinded and the Vintage 1993 BMP should be properly updated based on more current scientific and other information, so that the updated Vintage 1993 BMP may be applied as part of the Council’s adjudication of Docket 272.

A. The Wholly New BMP Reduce Public Protections against EMF

By eliminating certain key elements of the Vintage 1993 BMP and introducing untested new concepts in the Wholly New BMP, many former protections against EMF exposure in the Vintage 1993 BMP are at risk of being eviscerated. The eliminated elements of the Vintage 1993 BMP include; e.g., Requirements Nos. 6 and 7, which respectively require “baseline” and “post-construction” **measurements** of EMF.⁴ The

³ Indeed, the Wholly New BMP predecides many factual and legal findings and determinations which are to be adjudicated in Docket 272, thereby impairing the due process rights of virtually every participant herein.

⁴ This Motion does not purport to exhaust the list of protections which the Council has eliminated by its adoption of the Wholly New BMP and the referenced BMP elements are merely illustrative. See, e.g. No. 11: “consider project-specific limits for EMF, and No. 12 . . . consider conditioning approval on retrofitting or elimination of facility to meet future federal and state standards.”

new concepts introduced in the Wholly New BMP include EMF **modeling** in lieu of EMF **measurements** and a “no net increase” test. These changes, if retained, will result in the approval of facilities which presumably achieve a no net increase in EMF over existing levels; however, **in each case utilizing modeling instead of measurement protocols**, thus completely eliminating the consideration of “real-world” EMF levels in favor of modeled EMF values of questionable or, at best unknown, validity. The Council must rigorously evaluate the potential effects of such a drastic modification of its siting process before wholesale abandoning its EMF **measurement** protocol. Furthermore, the Wholly New BMP literally materialized out of nowhere as an added agenda item in a recent Council meeting and as a new Council “Publication” posted on the Council’s Web site. Thus, the Wholly New BMP, is both substantively and procedurally flawed, and should therefore be rescinded and reconsidered.

B. A Wholly New BMP Should Be Adopted in a Consultative Fashion

Ironically, the Applicants (who opposed the Procedural Motion’s claim for the need for an updated Vintage 1993 BMP), fully support the claim herein that any Wholly New BMP (as did the Vintage 1993 BMP) must result from a more thoughtful, consultive and inclusive process than has taken place thus far. The Applicant Brief, which on this point deserves full recitation, states that the Applicants:

“... have previously reviewed the origin and history of the Siting Council's EMF Best Management Practices (‘BMP’)[fn omitted]. Briefly, the Council developed and adopted its BMP in conjunction with the work of the State's Interagency EMF Task Force, established by the legislature in 1991 to determine the appropriate role of the State in addressing the potential

problems associated with electric and magnetic fields.[fn omitted] The Chairman of the Siting Council is a member of this Task Force, which also includes the Commissioner of Public Health, the Commissioner of Environmental Protection, the Commissioner of Economic Development, the Secretary of the Office of Policy and Management, and the Chairperson of the Department of Public Utility Control Authority.”

(Applicant Brief at p.3).

The Applicant Brief further states that:

“[a]lthough the Council is not required to revise its Best Management Practices in conjunction with Docket 272, it may nevertheless wish to institute a proceeding for the specific purpose of reassessing them in light of recent research and policy recommendations, some of which have been discussed in Docket 272. Since the Act has now provided express statutory authorization for BMP under Conn. Gen. Stat. §15-50t, [fn omitted] the Council may retain consultants to assist it in this task and assess the costs thereof (as well as other administrative expenses) pursuant to Conn. Gen. Stat. § 16-50v(g). Thus, the Council would be able to seek assistance from independent, highly qualified epidemiologists and other health scientists, electric system experts, and public policy consultants. Moreover, the Council could undertake its assessment in consultation with the State's EMF Interagency Task Force, which is still designated by statute as the body that is to "study electric and magnetic fields" and "determine the appropriate role of the state in addressing the potential problems associated with electric and magnetic fields." [fn omitted] Just as the Council developed its initial BMP in consultation with this Task Force, it would be appropriate for the Council to consult the other members of the Task Force in considering any major revision of the standards. Thus, the Council would have the benefit of the views of not just the Commissioner of Public Health, but also those of the Commissioner of Environmental Protection, the Commissioner of Economic Development, the Secretary of the Office of Policy and Management, and the Chairperson of the Department of Public Utility Control, all of whom have a stake in any major revision of BMP policies. In declining to **rush to judgment** on an overall revision of its BMP in the context of a pending transmission line proceeding, and instead opening a general standard-setting docket, the Council would be following the recent example of the California Public Utilities Commission ("CPUC).”

(Applicant Brief at pp. 7-8) (emphasis added).

Clearly, and consistent with the above cogent observations, the participants in Docket 272, the legislature, and the public **all** deserve an update of the 1993 Vintage BMP by the Council, and within the context of Docket 272, via a more worthy process than a procedural blindside. There is time remaining within this proceeding for the Council to conduct a more credible process, and produce a more thoughtful update of the 1993 Vintage BMP as clearly required by the Act.⁵

C. Conclusion

For all of the foregoing reasons, the Council should rescind and reconsider its Wholly New BMP, and permit the statutory parties referenced herein, as well as the participants in Docket 272, to participate in a meaningful process to update and apply this critical new element of the Council's siting criteria, as directed by the Act.

⁵ Significantly, section 12 of the Act pertinently requires that “[n]ot later than January 1, 2005, the Connecticut Siting Council shall, in accordance with section 11-4a of the general statutes, submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to energy and the environment, which report shall contain the council's most recent version of its standards for best management practices for electric and magnetic fields for electric transmission lines **and a description of the methodology used in selecting such standards.** [emphasis added]

Respectfully Submitted
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cc: Docket 217 Service List
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