

STATE OF CONNECTICUT
SITING COUNCIL

Re: The Connecticut Light and Power Company and) Docket 272
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 15-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) July 19, 2004

**CITY OF NEW HAVEN'S MEMORANDUM OF LAW
REGARDING MODIFICATION OF PROPOSED FACILITY**

The City of New Haven, Connecticut, ("New Haven") hereby responds to the question presented by the Connecticut Siting Council ("Council"):

The question presented is whether the Council has authority to modify the location of a proposed transmission line to include a route that is not set forth either as a primary or alternate route in the application under consideration; which has been specifically rejected by the applicant as impractical; and which was not subject to the notification requirements of Conn. Gen. Stat. §16-501? In particular, may the Council modify the route of the 345-kV line from Beseck Switching Station in Wallingford to East Devon in Milford by means of an "East Shore" alternative route traversing Branford, East Haven and New Haven, without first requiring the Applicants to file and serve a new application on the affected municipalities?

The answer is no.

FACTS:

1. In the current docket, Connecticut Light & Power and United Illuminating Company (“Applicants”) propose to construct and operate a new 345-kV transmission line and associated facilities between Middletown and Norwalk, Connecticut (“Middletown to Norwalk Project” or “Project”), so as to meet the demand for reliable electric service in southwest Connecticut.

2. In the summer of 2003, New Haven received a copy of the Applicants’ Municipal Consultation filing, dated May 2003, containing detailed technical reports and information concerning the need, site selection, and potential environmental effects of the Project, as well as an evaluation of alternative routes and transmission configurations.

3. Neither the primary route under consideration, nor the alternative routes discussed in the documentation, called for the installation of new transmission lines or facilities within New Haven. However, because some of those routes were located within 2,500 feet of New Haven’s boundaries, the Applicants were required to, and did, serve a copy of the application on New Haven as provided by Conn. Gen. Stat. §16-50l(b)(1).

4. Because the Project did not directly affect New Haven, the City did not hold hearings nor did it seek to schedule a public “open house” with the Applicants during the Municipal Consultation period.

5. Neither the Municipal Consultation filing nor the Application included any alternative that involved a route connecting Beseck Switching Station in Wallingford (“Beseck”) to a termination facility adjacent to the existing East Shore Substation in New Haven, and ending at the East Devon Substation in Milford (“East Shore Route”). No East Shore Route alternative

was ever proposed by the Applicants, because “no East Shore Route meets the statutory criteria for an alternative route to be considered by the Council.” *See*, Direct Testimony of Roger Zaklukiewicz, Anne Bartosewicz, John Prete, Cyril Welter, and James Hogan Regarding the East Shore Route, dated May 25, 2004, at 2 (“Applicants’ May 25th Direct Testimony”).

6. During the Municipal Consultation process, the Mayor of Wallingford requested that the Applicants provide further information regarding an East Shore route. The Applicants filed supplemental filings in December, 2003 and January, 2004, containing detailed studies modeling route options between Beseck and East Devon by way of the East Shore. In addition, ISO-New England’s Southwest Connecticut (SWCT) Working Group completed a study entitled “Comparison of Middletown to Norwalk Project vs. East Shore Alternative,” dated February 18, 2004 (“Study”). The Study concludes: “The East Shore Alternative as studied was found to be an unacceptable substitute to the Middletown to Norwalk Project because it does not meet NERC, NPCC or NEPOOL criteria. The East Shore Alternative does not strengthen the power supply into SWCT by introducing a new source; it simply connects the load in SWCT to an already heavily loaded 387 line.” *Id.* (Executive Summary).

7. Because of time constraints, the Applicants’ review of potential East Shore alternative routes was conducted “without the benefit of consultation with the [newly-] affected municipalities.” Applicants’ May 25th Direct Testimony at 14, 23.

8. Connecting Beseck to New Haven would require both construction of a new facility on the East Shore of the New Haven Harbor, and the addition of a second 345-kV line that would abut schools, daycare centers, parks, and residences in Branford, East Haven and New

Haven. This construction would require extensive clearing of vegetation, and disruption of numerous residential areas. Applicant's May 25th Direct Testimony at 2.

9. Connecting East Shore to Devon would be "very challenging from a construction standpoint." *Id.* One option would require construction of as much as 13 miles of three sets of underground 345-kV cables under New Haven's business district. Not having consulted with New Haven on such a route, the Applicants had no information regarding the existing infrastructure under the old city streets, but nevertheless were able to determine that the additional miles of undergrounding – if it were even possible – would not provide acceptable system operability and reliability. *Id.* at 2-3. Another alternative, a 21 to 25 mile submarine route, would be environmentally harmful, and inconsistent with Federal and State regulations, including the continuing moratorium on construction within Long Island Sound. *Id.* at 20-22. Other options, using railway, highway and marine corridors, entail environmental, safety and construction constraints that render them infeasible. *Id.* at 18-28.

The facts clearly establish that there is no definitive East Shore route. An East Shore alternative is, and remains, an undeveloped concept unacceptable to the Applicants for environmental, technical, and economic reasons. The concept, completely lacking in details, was not discussed with the affected municipalities as required by statute, and cannot be incorporated as part of the present docket.

LAW

Several provisions of the Public Utility Environmental Standards Act ("PUESA") delineate the authority of the Council to modify the route of a proposed transmission facility:

Conn. Gen. Stat. §16-50l(a) requires an applicant in a certification proceeding to prepare and file an application containing, among other things, information concerning the need for the project, its cost, the environmental effects it may have, and justification for adopting the proposed preferred route selected, including comparison with alternative routes or sites which are “environmentally, technically and economically practical.”¹

Section VIII (Q) of the Council’s Application Guide for Terrestrial Electric Transmission Line Facilities requires the Applicants to provide supplemental information so the Council can “make a reasonable comparison between the Applicant[s’] proposed route and any reasonable alternative route recommended by the site municipalities pursuant to CGS section 16-50l.”

Conn. Gen. Stat. § 16-50p(a) provides that in a certification proceeding, the Council “shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the [C]ouncil may deem appropriate.” Subsection (a) at (4)(A)-(C) authorizes the Council to determine questions of whether sections of an electric transmission line should be placed underground; whether the facility conforms to long-range plans for providing a reliable electric system; whether the lines are cost-effective and appropriate; and whether overhead lines cause undue hazards to persons or property along the area traversed by the line.

¹ Conn.Gen.Stat. § 16-50l requires that: (a) to initiate a certification proceeding, an applicant for a certificate shall file with the council an application, in such form as the council may prescribe, . . . containing such information as the applicant may consider relevant and the council or any department or agency of the state exercising environmental controls may by regulation require, including the following information: . . . (D) *justification for adoption of the route or site selected, including comparison with alternative routes or sites which are environmentally, technically and economically practical*; . . . (H) *justification for adoption of the site selected, including comparison with alternative sites*; . . . (emphasis added.)

Conn. Gen. Stat. §16-50p(d) specifically precludes the Council from modifying a proposed facility unless the municipalities affected by the modification, and their citizens, shall have had notice as provided under section 16-50l(b).

Section 16-501(b) requires that an applicant in a certification proceeding serve a copy of the application on each municipality in which any portion of a facility is to be located, whether as a primary or alternative location, and any adjoining municipality having a boundary not more than 2,500 feet from the proposed facility. The applicant must consult with the municipalities who are entitled to be served under section 16-50l(b) at least 60 days prior to the filing of the application with the council. The affected municipalities may then conduct public meetings and other studies, and advise the applicant of its recommendations concerning the proposed facility.

Section 16-50l(e).

ARGUMENT

THE COUNCIL IS PRECLUDED FROM MODIFYING THE ROUTE IN THIS PROCEEDING TO INCLUDE AND CERTIFY AN “EAST SHORE” ALTERNATIVE BECAUSE SUCH A ROUTE IS NOT ENVIRONMENTALLY, TECHNICALLY, OR ECONOMICALLY PRACTICAL TO WARRANT CONSIDERATION IN A CERTIFICATION PROCEEDING; BECAUSE SUCH AN ALTERNATIVE WAS NOT PROPERLY NOTICED; AND BECAUSE THE COUNCIL’S STATUTORY AUTHORITY TO MODIFY AN APPLICATION DOES NOT EXTEND TO WHOLESAL PHYSICAL RELOCATION OF A FACILITY TO ANOTHER PART OF THE STATE.

Based on the facts and the law, the Council is not empowered to modify and certify the present Application to include an East Shore alternative route as part of this docket, because such a route does not meet the statutory criteria for inclusion, and because the PUESA statute does not authorize physical relocation of a transmission facility route not included in the Application without notice to previously-unaffected municipalities. Proper notice under 16-50l(b) requires

the Applicants to prepare a new application that provides specific details regarding an environmentally, technically, and economically practical East Shore route (if one exists), and that it be served on the affected municipalities, subject to municipal review and public hearings during a 60-day period prior to its filing with the Council.

Under subsection 16-50p(a), the Council's authority to make modifications to proposed transmission projects is limited to *construction or operation* of the facility. This includes, for example, authority to require underground construction in some segments, or moving of lines that may run too close to areas where children congregate, if it is technically possible. Substituting a demonstrably impractical route that runs through a different part of the state cannot remotely be justified as a modification of construction methods or operation.

The PUESA statute contemplates that in a certification proceeding the Council will confine its modifications to routes proposed in the application pending before it. Section 16-50p(d) specifically prohibits modifications that involve previously-unaffected municipalities, unless the modifications are made part of a new application and properly served under the requirements of section 16-50l(b).

It would not be legal or fair to impose a route on Branford, East Haven and New Haven that has not been properly noticed under section 16-50l. None of these newly-affected municipalities received notice or consultation that an East Shore route was under consideration, and their citizens were not advised of the potential impacts on them and their lives. The Applicants were under no duty to notify these municipalities at the time they were consulting with other localities affected by the Project as proposed, nor did they do so.

If the Council wishes to pursue an East Shore option with the potential of including such a route in the certified project, it cannot do so unless a new application is before it that has been presented to the affected municipalities and meets the criteria set forth in the governing statutes. In this case, it would not be reasonable to require the Applicants to prepare a new application when their combined studies all conclude that an East Shore route is not environmentally, technically, or economically practical.

CITY OF NEW HAVEN

By: _____
Elizabeth P. Gilson
383 Orange Street
New Haven, CT 06511
Tel: (203) 777-4050
Fax: (203) 787-3259

Its Attorney

CERTIFICATION

This is to certify that on this 19th day of July, 2004, a copy of the foregoing was sent electronically to the Service List below.

Elizabeth P. Gilson