

STATE OF CONNECTICUT

SITING COUNCIL

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

**APPLICANTS' BRIEF ADDRESSING
MUNICIPALITY NOTICE ISSUES AND THE COUNCIL'S AUTHORITY
TO GRANT A CERTIFICATE WITH RESPECT TO ALTERNATIVE ROUTE A OR B**

Applicants The United Illuminating Company ("UI") and The Connecticut Light and Power Company ("CL&P") (collectively, the "Companies" or "Applicants") submit this brief in response to the June 10, 2004 request by the Connecticut Siting Council (the "Council") to:

brief the issue of notification requirements to municipalities, consistent with Connecticut General Statute Section 16-50l(b) relative to a prospective route raised in the proceeding. The prospective East Shore Route, also known as the 345-kV Circuit 387 Line, is not part of the application but is proximate to the proposed route in Wallingford and traverses the Towns of North Branford, North Haven, Branford, East Haven and New Haven. Some of these municipalities did not receive notification of the application.

June 10, 2004 Council Request. During the June 23, 2004 Process Meeting, the Applicants agreed also to address notification issues concerning the "Northerly Route" and the "Durham Bypass Route." See June 23, 2004 Process Meeting Transcript at 34-38.¹

¹ While not mentioned in the cited portion of the transcript, the Applicants will also include a discussion of the Black Pond Route.

The Applicants also include in this brief a discussion of notice and municipal consultation with respect to the Council’s authority to grant a certificate with respect to the two alternative routes, Alternative Routes A and B, proposed in their Application. This discussion is provided in response to statements by Chairman Katz regarding the municipal consultation process for Alternatives A and B. *See id.* at 41.

Statutory Requirements for Notice and Consultation with Municipalities

Conn. Gen. Stat. § 16-50l(b) requires that each application to the Council be accompanied by proof of service of a copy of the application on, among others, “[e]ach municipality in which any portion of such facility is to be located, both as primarily proposed and in the alternative locations listed, and any adjoining municipality having a boundary not more than two thousand five hundred feet from such facility.” *See also* Application Guide for Terrestrial Electric Transmission Line Facilities Adopted September 9, 2003 (the “Application Guide”), ¶ IV.A.

Conn. Gen. Stat. § 16-50l(e) requires that “[a]t least sixty days prior to the filing of any application with the council, the applicant shall consult with the municipality in which the facility may be located and with any other municipality required to be served with a copy of the application” pursuant to subsection one of Conn. Gen. Stat. § 16-50l(b).

Notice to, and Consultation with, Municipalities as to the Proposed Route, Alternatives A and B, the Northerly Route, the Durham Bypass Route and the Black Pond Route

The Applicants fulfilled their statutory notice and consultation obligations with respect to the proposed route, Alternatives A and B, the Northerly Route, the Durham Bypass Route and the Black Pond Route.² (See Volume 1 at R-1 to R-7 and Sections IV through VIII of the Application in this Docket 272 filed with the Council on October 9, 2003). The Applicants notified each municipality traversed by these routes, as well as any adjoining municipalities requiring notification under the statute. The Applicants also met the municipal consultation process requirements set forth in Conn. Gen. Stat. § 16-50l(e) as to each such municipality.

Notice to, and Consultation with, Additional Municipalities for an East Shore Route

The Applicants did not include an “East Shore Route”³ in the Application because the Applicants do not consider it to be a practical, feasible or reasonable alternative route for the Project.⁴ The Applicants therefore did not give statutory notice to those municipalities that were not required to receive notice of the proposed route or Alternative A or B, but which would be traversed by an East Shore Route or would be within 2,500 feet of such a route. Nor did the Applicants undertake the required municipal consultation with these municipalities.

² While the application did not present the Northerly Route, the Durham Bypass Route or the Black Pond Route as the proposed route or alternative routes, the towns that would be entitled to notice for these routes received notice because they were also entitled to notice as to the proposed route and/or alternative routes.

³ The definition of “East Shore Route” set forth in the Companies’ April 8, 2004 letter to the Council is incorporated by reference into this Brief.

⁴ After the application was filed, the Town of Wallingford provided comment on the proposed and alternative routes, including a comment regarding a potential route that has now been described as the East Shore Route. Under the Application Guide, an applicant is required to respond to a municipality’s comments such as those submitted by Wallingford. See Application Guide, ¶ VII.Q. The Applicants therefore provided the supplemental information required by the Application Guide. The supplemental information set forth the reasons the Applicants do not believe that an East Shore Route is a practical, reasonable and prudent alternative to the routes described in their Application (i.e., the proposed route, Alternative A and Alternative B). (See Supplemental Filing dated December 16, 2003; Addendum #1 to Supplemental Filing dated January 8, 2004; Addendum #2 to Supplemental Filing dated January 30, 2004; Addendum #3 to Supplemental Filing dated February 20, 2004.)

The three municipalities that were not required to receive notice of the Application, but would be required to receive notice of an application for an East Shore Route, are North Branford, Branford and East Haven.

Authority of the Council to Certify an East Shore Route

Conn. Gen. Stat. § 16-50p(a) provides that the Council may grant or deny an application as filed or grant it “upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.” The power to modify, however, is not limitless. Conn. Gen. Stat. § 16-50p(d) provides:

If the council determines that the location of all or a part of the proposed facility should be modified, *it may condition the certificate upon such modification, provided the municipalities*, and persons residing or located in such municipalities, *affected by the modification shall have had notice of the application as provided in subsection (b) of section 16-50l.*
(emphasis added)

Accordingly, it does not appear that the Council is statutorily authorized to modify the proposed transmission line route to include the portions of an East Shore Route traversing through, or adjoining, North Branford, Branford and East Haven. If the Council intends to continue consideration of an East Shore Route, these additional municipalities must be given the statutorily required notice and the opportunity to participate in the proceedings in this docket, including municipal consultation pursuant to Conn. Gen. Stat. § 16-50l(e).

Under a strict reading, it would be impossible to comply with Conn. Gen. Stat. § 16-50p(d) with respect to the East Shore Route in the current proceeding, and the Applicants would have to start the process all over again. They would have to discontinue these proceedings and serve a copy of a new application on the municipalities entitled to notice under Conn. Gen. Stat. § 16-50l(b), this time also serving the three municipalities entitled to notice of the East Shore Route that were not served the first time around. The Applicants would also have to republish

the public notice and once again serve a copy of the application on the Attorney General, as well as certain agencies and members of the legislature. Conn. Gen. Stat. § 16-501(b). The Applicants would then have to consult with the municipalities as required by Conn. Gen. Stat. § 16-501(e), even with those municipalities with which they have already consulted.

Requiring the Applicants to refile their Application and begin anew would not serve the apparent purpose of the municipal notice and consultation requirements, which are designed to ensure that municipalities receive adequate notice of the proceedings and the opportunity to be heard. Under the circumstances, substantial compliance with the statutory requirements should be deemed sufficient if it ensures that all affected municipalities know about the proceedings and can participate in them. If the Council were to determine that the Council would give serious consideration to certifying an East Shore Route,⁵ it would be reasonable for the Council to determine that a new application is not required to achieve the goals and objectives of the notice and municipal consultation requirements. Instead, the Council could determine to require the Applicants to amend the Application and to apply the statutory notice and consultation requirements to that amendment with respect to the three additional municipalities.

The proposed procedure is consistent with the procedure followed by the Council some years ago regarding notice of a proposed facility in Preston, Connecticut. *See Town of Preston v. Connecticut Siting Council*, 20 Conn. App. 474, 478-80, *cert. denied*, 214 Conn. 803 (1990). While the procedural posture in *Town of Preston* was not identical to the procedural posture here, the Council's reasoning is instructive and may be expanded and applied in these proceedings.⁶

⁵ The studies to date do not support the granting of a certificate because an East Shore Route does not appear to meet the reliability needs of the electric system. It is also not known whether ISO-New England would be likely to approve an East Shore Route from the standpoint of electric system reliability.

⁶ In *Town of Preston*, the applicants failed to notify an abutting landowner before filing their application. When they realized their mistake, the applicants filed a motion with the Council, which then ordered that the landowner be served and that the hearing be stayed for thirty days following service to give him time to prepare. *Id.* at 480. After the Council approved the project, opponents appealed, claiming that the late notice to the abutting landowner (who

Even though the notice/consultation issue could be “fixed,” the Applicants respectfully urge the Council not to consider an East Shore Route further. An East Shore Route is not practical, and does not solve system reliability problems, and no party or intervenor in this proceeding has presented any evidence to the contrary. The information in the record establishes the problems associated with an East Shore Route, the lack of advantages of such a route compared to the proposed route, Alternative A and Alternative B, and the advantages (compared to an East Shore Route) of the proposed and alternative routes described in the Application. There would be no cause to delay these proceedings by requiring formal notification of any additional municipalities.

No Additional Notice or Process Is Required for the Council to Grant a Certificate for Alternative A, Alternative B, the Northerly Route, the Durham Bypass Route or the Black Pond Route.

On June 23, 2004, the Chairman of the Council questioned whether the Council could grant a certificate for either of the two alternative routes presented in the application without additional municipal consultation because those routes were not the subject of as extensive questioning as some other routes discussed at the hearings. It is clear, however, that all statutory requirements have been met with respect to Alternatives A and B.

was not a party to the appeal) rendered earlier published notice ineffective. The Appellate Court rejected the appellants’ argument, explaining:

The purpose of notice by publication to the general public is to advise all affected parties of their opportunity to be heard and to be apprised of the relief sought. That purpose was fulfilled in this case. Any defect of notice was in the timing of the personal notice to [the landowner], and that was fully cured by the council’s orders and by his conduct waiving any such defect.

Id. at 481 (internal citations and quotations omitted). In another portion of the opinion discussing the § 16-501 notice requirements, the Appellate Court rejected a literal reading of those requirements that “would elevate form over substance, and would serve neither the letter nor the purpose of § 16-501 (b).” *Id.* at 480.

As required by Conn. Gen. Stat. § 16-501(a)(1), the application included “justification for adoption of the route or site selected, including comparison with alternative routes or sites which are environmentally, technically and economically practical.” (*See* Application Vol. 1 at H-1 through H-49). The proposed route and Alternatives A and B are the routes that the Applicants determined to be “environmentally, technically and economically practical.” Specifically with respect to Alternatives A and B, the Application included maps and other detailed information about these routes together with the respective advantages and disadvantages of these alternatives compared to the proposed route. (*See* Application, Vol. 1 at ES-4 through ES-6, H-1 through H-49, I-28 through I-37.) The Applicants also discussed Alternatives A and B during the municipal consultation process with each of the municipalities potentially affected by the alternative.

The two alternatives were also discussed during the public comment hearings held by the Council prior to the commencement of evidentiary hearings, and the Applicants made presentations that discussed those alternatives when either alternative would affect one or more of the municipalities participating in the hearing. (*See, e.g.*, December 17, 2003 Bridgeport Public Hearing Testimony at 18-20, 31-33, 38, 46; January 5, 2004 Westport Public Hearing Testimony at 19-20; January 15, 2004 Milford Public Hearing Testimony at 10, 15-17; January 21, 2004 Weston Public Hearing Testimony at 12, 16-17; February 5, 2004 Wallingford Public Hearing Testimony at 8-9, 13-15; February 9, 2004 Woodbridge Public Hearing at 10, 14-15, 29; February 23, 2004 Orange Public Hearing Testimony at 10, 15-17; February 24, 2004 Middletown Public Hearing Testimony at 11-12, 15-18.)

The Applicants provided further information about Alternatives A and B in prefiled testimony. (*See, e.g.*, April 8, 2004 Prefiled Testimony of Roger Zaklukiewicz at 5-19, 29-30,

37-39; March 16, 2004 Prefiled Testimony of William H. Bailey at 5, 18-19; April 8, 2004 Prefiled Testimony of Louise Mango at 2, 17-23) The Applicants also responded to discovery requests about Alternatives A and B. (*See, e.g.*, Cyril Welter October 24, 2003 responses to Data Request D-W-01, Q-D-W-027 through 030; Anne Bartosewicz October 24, 2003 response to Data Request D-W-01, Q-D-W-031; Jay Williams and Roger Zaklukiewicz October 24, 2003 response to Data Request D-W-01, Q-D-W-036; Peter Brandien October 24, 2003 response to Data Request D-W-01, Q-D-W-038; Anne Bartosewicz and Peter Brandien December 19, 2003 response to Data Request AG-01, Q-AG-013, Attachment; Dr. Bailey February 17, 2004 response to Data Request Towns-02, Q-Towns-037 and 038, attachments; Anne Bartosewicz February 4, 2004 response to question #2 posed by Senator Thomas P. Gaffey.)

During the hearings, the Applicants' witnesses responded to questions about Alternatives A and B. (*See, e.g.*, March 23, 2004 Hearing Testimony of Roger Zaklukiewicz at 20; April 20, 2004 Hearing Testimony of Roger Zaklukiewicz at 46-47, 196-97, 202, 213, 242; April 20, 2004 Hearing Testimony of John Prete at 201; April 20, 2004 Hearing Testimony of Louse Mango at 201-02, 206-13; April 20, 2004 Hearing Testimony of Anne Bartosewicz at 242-43; April 22, 2004 Hearing Testimony of Cyril Welter at 93-95.) Moreover, at all times throughout the months in which the hearings have occurred, the Applicants have been ready, willing and able to address any questions or concerns of the Council or any party or intervenor about Alternatives A and B. The fact that the Council, parties and intervenors have not elected to further question the Companies through cross-examination questions or interrogatories should not be to the detriment of the Companies.

The Applicants similarly notified and consulted with the municipalities entitled to notice and consultation with respect to the Northerly Route, the Durham Bypass Route and the Black

Pond Route. (See Volume 1 at R-1 to R-7 and Sections IV through VIII of the Application in this Docket 272 filed with the Council on October 9, 2003). They also answered questions about those routes during the hearings. (See, e.g., June 1, 2004 Hearing Testimony of Anne Bartosewicz at 48; June 2, 2004 Hearing Testimony of Anne Bartosewicz at 23-28, 132-33, 230-31; June 2, 2004 Hearing Testimony of Roger Zaklukiewicz at 30-37, 97-98, 135-36, 231-32; June 2, 2004 Hearing Testimony of John Prete at 238-39; Applicants' Exhibits 102 and 103.).⁷

In sum, the Applicants have met all statutory requirements and have provided significant information about Alternatives A and B. The Applicants identified and presented the routes in their Application, provided detailed information about these alternatives, and complied with all municipal consultation obligations regarding these alternatives. They then presented prefiled and hearing testimony about these alternatives, and hearing participants were afforded every opportunity to seek discovery and cross-examine witnesses about the Alternatives A and B. The Applicants similarly provided all information requested about the Northerly Route, the Durham Bypass and the Black Pond Route and notified and consulted with the necessary municipalities. The Council clearly has the information and authority necessary to grant a certificate for any of these routes if the Council chooses to do so. Additional municipal consultations are neither legally required nor practically necessary. Other parties' and intervenors' comparatively lower level of interest in these routes reflects municipalities' preferences, not any legal deficiency.

⁷ On July 16, 2004, the Town of Middlefield filed a Brief Regarding Requirement for New Hearing on "Northerly Route". The Brief notes that the notice provided by the Companies pursuant to Conn. Gen. Stat. §16-501 did not list the Northerly Route as a possible route for the Project. In its brief, the Town of Middlefield acknowledges that it has not actively participated in Docket 272 until recently when the Northerly Route was discussed at hearings. See pages 4 and 7. However, while the Town of Middlefield may not have elected to actively participate in this Docket, it can nevertheless increase its participation now and the filing of Middlefield's brief is an indication that it is doing so. The previous lack of participation by Middlefield has nothing to do with the question of whether the Companies' notice and municipal consultation requirements were met.

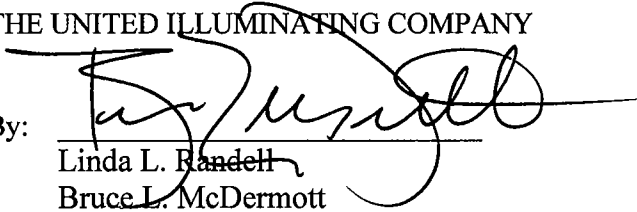
CONCLUSION

The statutory notice and municipal consultation requirements are clear in identifying the municipalities to whom notice and information must be provided for potential facility locations. The Applicants have met all statutory requirements for the certification of the proposed route, Alternatives A and B, the Northerly Route, the Durham Bypass Route and the Black Pond Route. Additional notice and consultation would be necessary if the Council were to consider certification of an East Shore Route. As discussed extensively in the record in this docket, an East Shore Route is not practical, and should not be considered further.

Respectfully submitted,

THE UNITED ILLUMINATING COMPANY

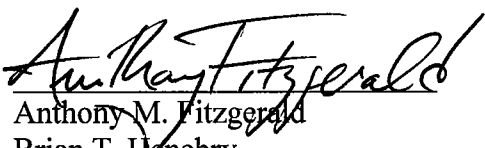
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CERTIFICATION

This is to certify that on this 19th day of July, 2004, the original and twenty (20) copies of the foregoing was mailed, postage prepaid, to the Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051, and one (1) copy was mailed, postage prepaid, on this 19th day of July, 2004, to all other known parties and intervenors. Additionally, an electronic copy of the foregoing was provided to the Connecticut Siting Council and all other known parties and intervenors on July 19, 2004.



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