

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

- Re: Application of The Connecticut Light and Power Company for a Certificate of Environmental Compatibility and Public Need for the Construction of a 345-kV Electric Transmission Line and the Reconstruction of an Existing 115-kV Electric Transmission Line between its Plumtree Substation in Bethel through the Towns of Redding, Weston, and Wilton, and to Norwalk Substation in Norwalk, Connecticut ) Docket 217
- Re: 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 272
- August 20, 2004

**CL&P'S MEMORANDUM IN OPPOSITION TO "PROCEDURAL MOTION" OF THE TOWNS OF DURHAM AND WALLINGFORD**

**I. STATEMENT OF THIS PROCEEDING**

More than a year ago, and after more than two years of proceedings, the Connecticut Siting Council ("Council") approved in Docket 217 the construction by The Connecticut Light

and Power Company (“CL&P”) of a 345-kV transmission line between Bethel and Norwalk. By the time of the Council’s decision approving this new 345-kV line in Docket 217, the existing 115-kV transmission system in Southwest Connecticut (“SWCT”) had come “precipitously close to failing,” nearly resulting in “the collapse of the transmission system.” (Revised Opinion, at 2)

At the time of CL&P’s application, “the SWCT transmission system [was] approaching maximum load capacity,” (FOF<sup>1</sup> ¶ 27). The proposed 345-kV line will substantially increase the “transfer limits,” or ability to import power, into SWCT and the Norwalk-Stamford sub-area. (FOF ¶ 84). Modeling of the existing system under loads anticipated to occur as early as 2006 showed widespread violations of reliability planning criteria set by the North American Electric Reliability Council, the Northeast Power Coordinating Council (NPCC) and the New England Power Pool, with which CL&P is required to comply. (FOF ¶¶ 34, 40). Many of these violations will be addressed by the proposed line, “on a stand alone basis, without completion of [a 345-kV] loop.” (*Id.*). For instance, “one of the elements necessary to maintain the reliability of bulk power systems is to maintain transmission voltage within a prescribed bandwidth in order to provide for safe operation of customer equipment and to prevent damage to the electric system. Voltages below 92% of the normal range damage customer equipment and create a risk of generator outages and load shedding.” (FOF ¶ 37). “A voltage disturbance that almost collapsed the Norwalk-Stamford area in June of 2000 led to the fast track planning for the ...proposed line” (*Id.*); and “the proposed 345-kV line, by itself, addresses voltage criteria violations in the SWCT system.” (FOF ¶ 38) Thus, the Bethel to Norwalk line, on a “stand-

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<sup>1</sup> Finding of Facts

alone” basis, will provide significant and urgently needed system improvements. (FOF ¶40) The Council therefore determined that “there is a need for a 345-kV transmission line between the Plumtree Substation in Bethel and the Norwalk Substation in Norwalk.” (Revised Opinion, at 3).

Since the Council’s issuance of a certificate of environmental compatibility and public need for the Bethel to Norwalk line, CL&P has invested millions of dollars and countless manhours in engineering the approved new and reconstructed lines, and in preparing and submitting Development and Management Plans. Some of these D&M Plans have been approved, and others are near approval. CL&P hopes to begin construction of these badly needed improvements in a matter of weeks.

*A. Norwalk Appeal*

On July 14, 2004, just over a year after the Council’s approval of the Bethel to Norwalk line, the Towns of Durham and Wallingford (“Towns”) filed a motion asking the Council to vacate its decision in Docket 217, and to consolidate that Docket with Docket 272, in which the Council is now considering an application for the construction of new 345-kV facilities between Norwalk and Middletown. The ground asserted for this extraordinary request is that of “changed conditions.” The two purportedly “changed conditions” cited by the Towns are: (1) The passage of Public Act 04-246, and (2) testimony from the Independent System Operator – New England (“ISO”) in Docket 272 that the underground construction initially proposed in that Docket would not permit reliable operation of the electric system.

## II. STATEMENT OF CL&P'S POSITION

Neither development claimed by the Towns to constitute "changed conditions" provides a reason, let alone a "compelling reason", to reopen and vacate the decision rendered in Docket 217. The Towns' request should be denied.

## III. DISCUSSION

Only a "compelling reason", such as "new information or facts that were not available [at the time of the decision]... unknown or unforeseen events... or scientific or technological breakthroughs that would have altered [the Council's] analysis", will provide the Council with a basis for reopening a final decision. (Docket No. 141, Decision on Motion to Reopen at 6)<sup>2</sup>; See also Farmers Export Company v. United States, 758 F.2d 733, 737(D.C. Cir. 1985) ("Petitions to reopen previously final agency decisions are to be granted only in the most extraordinary circumstances.") Neither of the claimed "changed conditions" provides such a basis for reopening.

### A. *P.A. 04-246*

While the enactment of P.A. 04-246 dictates changes in the way that the Council must evaluate electric transmission lines, the legislature quite clearly did not intend that these changes would affect the certificate issued in Docket 217. The legislature carefully made the new law applicable "to applications for a certificate of environmental compatibility and public need that

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<sup>2</sup> A joint Certificate the Connecticut Light and Power Company and the United Illuminating Company for the construction of a 115kV electric transmission line and related telecommunications equipment between the United Illuminating Company's Pequonnock Substation in Bridgeport and the Connecticut Light and Power Company's Ely Avenue Junction in Norwalk, Connecticut. A copy of the Decision on the Motion to Reopen is attached hereto as Exhibit A.

was originally filed on or after October 1, 2003, for which the Connecticut Siting Council has not rendered a decision upon the record prior to the effective date of this section.” P.A. 04-246, §1. When it thus restricted the applicability of P.A. 04-246, the legislature was well aware of the Bethel to Norwalk line approved in Docket 217, with respect to which it had enacted previous legislation. P.A. 02-95, § 2. Thus, reopening Docket 217 in order to decide it all over again by applying the new standards of P.A. 04-246 would contravene, rather than effectuate, the will of the legislature. The superior court recognized this in City of Norwalk v. Connecticut Siting Council, No. CV 03 0524145, J.D. New Britain, Memorandum of Decision Aug. 18, 2004 when it rejected Norwalk’s argument that the Council improperly considered the Bethel to Norwalk line separately from the Norwalk to Middletown line. The court (Cohn, J.) found that the two lines were properly considered separately because, in part, P.A. 04-246 applied to the Norwalk to Middletown line (“phase 2”), and not to the line certified in Docket 217. Id., at 28.

In any case, a change in the Council’s enabling legislation that does not affect previously approved projects hardly amounts to an unforeseen occurrence that requires reversal of a final decision. Since the Power Facilities Environmental Standards Act (“PUESA”) was first enacted, the legislature has overhauled the statute, as it relates to electric transmission facilities, many times.<sup>3</sup> While the enactment of new legislative standards may or may not represent an improvement of earlier standards, it does not in any case provide cause for revisiting and disturbing decisions previously rendered under the old standards. Such action would frustrate

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<sup>3</sup> See 1975 P.A. 375, 1976 P.A. 317, 1979 P.A. 214, 1994 P.A. 176, 1998 P.A. 28, 2001 P.A. 120, 2004 P.A. 236.

the important “legal expectation of finality of a decision.” Council Docket No. 141, Decision on Motion to Reopen, July 30, 1993 at 2). See also Rommell v. Walsh, 127 Conn. 272, 277 (1940).

**B. The ISO Testimony in Docket 272**

Neither CL&P’s proposal of the Norwalk to Middletown construction now under consideration by the Council in Docket 272, nor the relationship of that construction to the construction approved in Docket 217 is an unforeseen event. CL&P was required to demonstrate in Docket 217 that the approved Bethel to Norwalk 345-kV transmission line “conforms to a long-range plan for expansion of the electric power grid of the electric systems serving the state and interconnected utility systems...” Conn. Gen. Stats. § 16-50p(a)(2)(B). The Council determined that the line it approved in Docket 217 was consistent with such a plan, in part because that line would provide a “platform” for the completion of a “loop” of 345-kV transmission lines through SWCT, which had been in the planning process for more than thirty years.<sup>4</sup> In Docket 272, CL&P has proposed to complete that loop.

Each new element of an electric transmission system must be designed and constructed to work with pre-existing elements; those in the process of construction; and even those that are anticipated. Since the power grid is composed of a number of interrelated facilities, newly constructed segments of the grid must work within the technical limitations of the system

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<sup>4</sup> CL&P first identified its long-range plan for a 345-kV loop through SWCT to the Council in 1974, when it proposed to construct the Long Mountain – Plumtree line as “the first segment of the expansion of the 345-kV loop system into southwestern Connecticut.” (Docket 217, Findings of Fact, ¶¶ 24, 25.) It then “planned to extend the 345-kV transmission line south from Plumtree substation to Norwalk substation then northeasterly to Beseck substation in Wallingford, where it would be connected to the 345-kV system.” (*Id.*) At that time, the 345-kV system already served Long Mountain Substation by a series of 345-kV lines extending from Scovill Rock Switching Station, in Middletown, through substations in Southington and Watertown (Frost Bridge) (See Docket 217, Application of the Connecticut Light and Power Company, October 15, 2001, Vol. 1, Figure 14.)

already in place. These new segments must also serve the interests of electric system reliability. Just as certain aspects of the design and configuration of the line approved in Docket 217 were dictated by the constraints of the existing electric system, so too will the design and configuration of the line being developed in Docket 272. Thus, the ISO's testimony that the construction originally proposed in Docket 272 would not function reliably with that approved in Docket 217 – and the rest of the Connecticut's electric system, including the numerous capacitor banks installed in substations around the state – provides no reason to undo the approval of the approved Bethel to Norwalk line.

As the Council knows, studies are underway to identify a solution for the concerns that the ISO has expressed about the construction initially proposed in Docket 272. It is at this point sheer speculation to assert that any such solution will involve a revision in the design of the Plumtree to Norwalk line approved in Docket 217. And even if some such change were eventually to be found advisable, a general reopening and reversal of the decision in Docket 217 would not be required to effect such a change. Rather, the change could be by accomplished by proceedings on an application to amend the certificate, pursuant to Connecticut General Statutes § 16-50l(d).

The Council has recently recognized that speculation concerning the outcome of a pending proceeding provides no good reason to revoke a previously issued approval. In Docket No. 223, Application of Crown Atlantic Co., the plaintiffs asked the Council to re-open a docket in which it had approved the construction of a cellular phone tower because an application for another tower had been filed, and construction of the new tower would provide adequate

coverage such that the previously certified tower would no longer be necessary. The plaintiffs claimed that the construction of the new tower, which was being reviewed by the Council, constituted, in part, a changed condition requiring the reopening of the Council's earlier decision approving the first tower. The Council however rejected the plaintiffs' argument since "the tower had not yet been certified by the Council and 'in fact might never be certified.'" (Docket 198, Reconsideration Opinion, 9/05/02, at 1)<sup>5</sup> On appeal, the court dismissed the plaintiffs' appeal, holding that the Council reached "a logical and reasonable conclusion that a proposed tower in the early preliminary planning stages does not constitute a change in circumstances." Sielman v. Connecticut Siting Council, 2004 WL 203046 at \*\*6 (Conn. Super.) (Quinn, J., 2004)<sup>6</sup>

Like the new cell towers that the unsuccessful moving party in Docket No. 223 cited, the Norwalk to Middletown construction is still in the planning stage. We do not know what will ultimately be approved. In any case, the pendency of Docket 272; the ISO's criticism of the construction originally proposed in that Docket; and the possibility that some modification of the initially proposed configuration will be approved in Docket 272 provide no compelling and unforeseen reasons to undo the approval of the Bethel to Norwalk line.

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<sup>5</sup> Copy attached as Exhibit B hereto.


<sup>6</sup> Copy attached as Exhibit C hereto.



IV. CONCLUSION

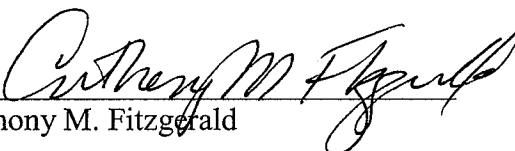
For the foregoing reasons, CL&P respectfully requests that the Council deny the Towns' Procedural Motion in all respects.

THE CONNECTICUT LIGHT AND  
POWER COMPANY,

By:   
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**CERTIFICATION**

This is to certify that a copy of the foregoing has been mailed, postage prepaid, on this 20<sup>th</sup> day of August, 2004, to the service lists in CSC Dockets 217 and 272 (copies attached).

  
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