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September 3, 2004

Pamela B. Katz, Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

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Re: **JOINT APPLICATION OF THE CONNECTICUT SITING COUNCIL
COMPANY AND THE UNITED ILLUMINATING COMPANY FOR A
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC
NEED FOR A 345-KV ELECTRIC TRANSMISSION LINE FACILITY AND
ASSOCIATED FACILITIES BETWEEN SCOVILL ROCK SWITCHING
STATION IN MIDDLETOWN AND NORWALK SUBSTATION IN
NORWALK**
Docket No. 272

OBJECTIONS OF THE OFFICE OF CONSUMER COUNSEL TO THE TOWNS' MOTION

Dear Chairman Katz:

The Office of Consumer Counsel ("OCC") is a party to the above-captioned proceeding. On July 29, 2004 in this docket, OCC filed its Third Set of Interrogatories ("OCC's Third Set"). The written discovery found in OCC's Third Set asks several questions of other docket participants.

OCC is in receipt of a copy of a letter filed in this docket on August 12, 2004, by Attorney Peter G. Boucher on behalf of seven towns (the "Towns' Motion"). The Towns' Motion, in effect, asks the Connecticut Siting Council ("Siting Council" or "Council") to rule that the Towns are not required to answer OCC's Third Set. While this 8/12/04 letter is self-described as an objection, the Council's August 23, 2004 notice (setting an agenda for the September 8, 2004 session in this docket) refers to the 8/12/04 letter as a motion, and OCC also will do so here.

OCC herewith files its Objections to the Towns' Motion. OCC believes, for reasons explained in detail below, that each docket participant identified in OCC's Third Set should be required to answer OCC's questions as propounded.

The Towns' Motion states that it was filed on behalf of seven Towns, each identified in the 8/12/04 letter. The Council may note that OCC's Third Set is directed to nine towns --- specifically, to the seven Towns objecting, and also to Middletown and Meriden. OCC is not aware whether Middletown and Meriden object to OCC's written questions to them. However, none of the questions propounded in OCC's Third Set have been answered to date.

The Siting Council Should Reject the Towns' Motion

The Siting Council should reject the Towns' Motion. OCC's discovery is fully consistent with the Uniform Administrative Procedure Act ("UAPA"), under which this docket is being conducted, and with existing Siting Council procedures and practices. The questions found in OCC's Third Set are reasonably calculated to lead to the discovery of admissible evidence, evidence directly relevant to determinations that the Siting Council must make in this docket.

This conclusion is explained in specific detail below, in a discussion organized into three subparts. First, cost issues are central to this proceeding. Second, grant of the Towns' Motion would impair OCC's rights. Third, the Towns' further objections are baseless.

ONE: Cost Issues Are Central to this Proceeding

OCC's Third Set asks one or another Town about a number of cost-related issues. These questions relate particularly to underground transmission options that one or more Towns advocate in this docket. The Siting Council should require the Towns to provide answers to these questions, since such answers will substantially assist the Council in making a variety of factual and regulatory determinations required in this proceeding. One way or another, the Siting Council must take cost issues into account in all of its determinations in this proceeding.

Costs and cost containment are an inescapable consideration in this docket. This fact is fundamental to utility regulation. The Connecticut Light and Power Company ("CL&P") and The United Illuminating Company ("UI") [CL&P and UI together, the "Applicants"] both are regulated utilities subject to Title 16 of the Connecticut General Statutes ("CGS").¹ The Applicants have franchise territories granted under special state statutes, and an obligation to serve the customers in those territories (including through

¹ The Applicants also are subject to a variety of federal statutes, including the Federal Power Act. The fundamental principles stated here (about costs, rate recovery and cost containment) do not differ between state and federal law.

provision of adequate transmission facilities). In return, the Applicants are allowed a reasonable opportunity to recover the operating and capital costs of providing such service (including an appropriate profit level). The intent of Title 16 is that this reasonable opportunity will be provided to the Applicants by allowing them to collect such costs in rates charged to customers.

Given that the Applicants recover their costs through regulated rates (and not merely in the competitive market, where cost recovery for a business enterprise of course is not assured), cost containment also is fundamental to utility regulation. This is why the Title 16 regulatory standards, which the Applicants always must meet, include efficiency, economy and prudence. This fundamental structure of regulation (in which rate recovery and cost containment go hand in hand) applies equally to the Siting Council and the Department of Public Utility Control ("DPUC"), even though the Council and the DPUC have different specific responsibilities under Title 16.

This said, it also is true that cost containment is not the only consideration that the Siting Council must take into account in this docket. Title 16 requires the Council to keep other considerations in mind in its deliberations and determinations. For instance, in the design and construction of a transmission facility, pertinent reliability standards must be met. If reliability were degraded to "save money", that would be a false economy and one that Title 16 assumes the Siting Council would not embrace. Council consideration of other state policy priorities (e.g., meeting environmental standards) also is an inherent part of its decision-making responsibilities.

The Siting Council's deliberations and determinations in its Docket No. 217 (the Phase One transmission line case) exemplify the decision-making context sketched above. In that docket, the Council's Findings of Fact (which of course served as the foundation of its Opinion and of its Decision and Order) address cost issues explicitly, at Items 44 through 60. There, the Council states as follows:

- (a) It estimates the capital costs of the project as initially proposed, and as varied in certain ways.
- (b) It estimates the annual O&M costs and life cycle costs as well.
- (c) It discusses FERC guidance on regional socialization of these facility costs.
- (d) It concludes that such regional socialization, while not certain, is likely to be achieved for substantial parts of the project.
- (e) It concludes that transmission constraints cause several kinds of direct and indirect costs for consumers, costs that the proposed facility would alleviate or eliminate.

These Findings of Fact obviously bore directly on the ultimate decision that the Council made in that docket.²

² Cost issues also play a prominent role in Philip T. Ashton's dissent in Docket No. 217. Mr. Ashton was primarily concerned with what he describes as the "technical

Public Act 04-246, An Act Concerning Electric Transmission Siting Criteria, the recent statute especially applicable to this Council proceeding, has not changed the cost and cost containment regulatory framework sketched above in any important way. The Siting Council continues to have a duty to minimize the overall cost of any facility it certifies. The Council still cannot certify any facility unless it determines that the project will serve overall system economy, and will provide electric service at the lowest reasonable cost to ratepayers. The presumption favoring undergrounding found in PA 04-246 does not address these (or other) substantive provisions in the Public Utilities Environmental Standards Act ("PUESA"), but only PUESA's general purposes. Further, this new presumption is rebuttable. Cost issues remain vitally important in this docket, including with respect to the question of whether it is feasible to place given portions of the proposed facility underground.

The conclusions concerning PA 04-246 found in the prior paragraph are stated only in summary form. For a more extensive discussion of these points, OCC refers the Council to the following materials, already on file in this docket:

- (a) OCC Comments on PA 04-246 (July 19, 2004);
- (b) Applicants' Comments on PA 04-246 (July 19, 2004);
- (c) Applicants' Answers to Questions on PA 04-246 (August 10, 2004); and
- (d) ISO New England Comments on PA 04-246 (July 19, 2004).

For the purposes of these OCC Objections, OCC adopts the above-cited comments, as appropriate.

The Towns' Motion has very little to say about the place of cost issues in this Siting Council proceeding. That Motion does complain that OCC is asking the Towns to defend positions concerning issues outside the Siting Council's jurisdiction. This complaint refers to the fact that some of the cost determinations relating to this proposed facility will not be made by the Council but rather:

- (a) in the ISO New England/NEPOOL context (ultimately reviewable by FERC), or
- (b) or by the Connecticut DPUC.

This observation in the Towns' Motion is accurate. However, it does not constitute a valid reason for the Towns to refuse to answer the questions in OCC's Third Set.

This is because the Siting Council's factual determinations in this docket will vitally inform and assist those other regulatory bodies in the cost decisions they must make or may make. In other words, the Council can and should substantially assist the work of those other bodies, through the determinations it makes in this docket.

As an example, OCC's Third Set asks whether the construction of particular underground transmission segments would benefit the state as a whole or only the town

nightmare" associated with underground construction and so-called porpoising, but he also states his concern with "the unresolved issue of extra costs."

in which they are located. This is an issue that the Council must address in its own eventual decision in this case, and the answers that the Council reaches will inform the later work of other decision makers. If the Council reaches the former conclusion (i.e., statewide benefit), the case for regional cost sharing conceivably could be strengthened. If the Council reaches the latter conclusion (i.e., local benefit), the case for regional socialization clearly would be weakened. "Regional" benefit in this context of course refers to all six New England states. If the Council determines that certification of particular underground transmission segments would benefit Connecticut as a whole, rather than merely particular Towns within the state, that determination would inform any DPUC deliberations regarding special costs for which the Applicants seek recovery.

The Applicants' views on whether the incremental (underground-related) costs of some of the projects advocated by the Towns would be regionally socialized already are on record in this docket.³ The Applicants did not object to answering OCC's questions on this subject, and the Towns have no legitimate basis to refuse to answer similar questions. Having the Towns' pertinent views on record will substantially assist the Council's decision-making process relating to these issues.

Another reason this regional socialization issue is significant in this docket is that it affects the cost to Connecticut of this project. Generally, Connecticut electric ratepayers will pay only 25% of project costs that are regionally socialized, but they will pay 100% of any such costs that are not regionally socialized.

PA 04-246 specifically contemplates that regional socialization may not be available for some of the costs arising out of this docket. That is why this law includes a special provision (its § 11) allowing the Applicants to ask the DPUC for recovery of certain costs. And unless the Siting Council makes a variety of pertinent factual findings in this docket (e.g., identifying project changes resulting from PA 04-246, and their estimated costs), the DPUC will be disabled from properly administering this special provision. And the further question that the DPUC must address in this context is from which customers any valid § 11 costs should be recovered. Again, if the Council does not make appropriate factual and policy findings in this present docket, the DPUC will be unable to properly decide any § 11 cost recovery requests that the Applicants may bring to it.

In sum, it is evident that cost issues are central to this proceeding, whether considered in the context of the Siting Council's PUESA mandate as set forth at the outset of this docket or that mandate as modified by PA 04-246. This being so, it also is evident that answers from the Towns to the questions propounded in OCC's Third Set would substantially assist the Siting Council in its work.

³ See the answers to OCC-13 and OCC-14, filed 7/28/04.

The discussion above is the primary basis for OCC's Objections to the Towns' Motion. However, OCC will close this letter by also explaining certain further points.

TWO: Grant of the Towns' Motion Would Impair OCC's Rights

One objection to OCC's Third Set found in the Towns' Motion is described there as an equitable one. Purportedly, it is unfair for OCC to ask the Towns to stand behind the transmission line configuration preferences they already have communicated to the Siting Council. This is ridiculous. While it is true that the various Towns have made their preferences known to the Council in varying degrees of detail and fervency, the plain intent of all such expressions of preference is to influence one or more particulars of the transmission facility that the Council eventually certifies in this docket. It hardly is inequitable for other docket participants to seek further information (as OCC here does) on the implications of possible Council acceptance of these various preferences as those preferences already have been stated.

Equitable considerations, to the extent relevant in a docket governed by UAPA rules, should apply to all docket participants. The Towns have not hesitated to ask voluminous discovery of the Applicants in this proceeding, propounding questions evidently requiring a great deal more effort and time to answer than would be required for the Towns to answer the questions found in OCC's Third Set. Further, the Towns apparently have asked the Applicants to fund parts of the Towns' own litigation costs in this proceeding.⁴ If the Applicants treat such special funding as a project cost, as is likely, then utility ratepayers ultimately may be responsible to pay those costs. OCC of course is the state's statutory advocate for utility ratepayers.

Further, and perhaps more to the point here, OCC is a party to this case. As a party, OCC has the right to cross-examine other parties, intervenors and witnesses, and the right to present evidence and argument on all issues involved. CGS §§ 4-177c, 4-178. Siting Council grant of the Towns' Motion would impair OCC's exercise of these UAPA rights in this proceeding.

OCC is the advocate for all utility ratepayers across Connecticut. The keen interest in undergrounding that the Towns and others have displayed adds equitable and policy issues of its own to this proceeding, specifically in the area of costs. Cost causation is a fundamental principle of utility ratemaking. OCC, through the questions in OCC's Third Set, is seeking information directly relevant to these issues. For instance, if a case can be made that extensive undergrounding of the transmission facility the Applicants have proposed would benefit all of Connecticut, then that case should be presented to the Council here and now.

⁴ That is, over and beyond the municipal participation fund required by statute.

OCC submitted the questions in OCC's Third Set in writing, for two reasons. First, this approach is more efficient than covering the same ground in open hearing would be. The Council often (and rightly) has urged docket participants to do what they can to save hearing time, and OCC's Third Set meets this objective. Second, this approach to developing the docket record is more accurate and complete. For instance, the Towns can supply their answers to OCC's questions upon consideration rather than in open hearing under time pressure. Also, the Towns in this way can supply answers without having to send representatives to the Council hearings.

THREE: The Towns' Further Objections Are Baseless

The Towns' Motion contains several further objections to OCC's Third Set that are baseless. In closing, OCC briefly addresses those objections.

The Towns' Motion states that the questions in OCC's Third Set are illegitimate because they seek legal positions rather than "relevant factual information." This is incorrect. The record information already asked of (or volunteered by) participants in this docket has not been so limited in other docket filings. With respect to numerous issues (e.g., route or tower design preferences, environmental impacts, appropriate EMF standards, buffer zone dimensions), the docket evidence has included participant preferences, and also participant interpretations of policy and legal criteria applicable to this docket. The questions in OCC's Third Set do not depart from this familiar and accepted framework.

The Towns' Motion also states that the Towns have thus far been unable to present specific proposals to the Council, due to the newly instituted efforts to address ISO New England's reliability-based objections to the Applicants' main proposal. This comment, while accurate as such, does not justify a refusal to answer OCC's interrogatories. OCC is not the author of the delays to which the Towns here refer. Further, the Council already has indicated its intent to use the "waiting time" that ISO New England's continuing studies have imposed on the Council and on other docket participants for other docket work. There is no reason why such interim work could not include a closer look at cost issues.

The Towns' Motion also states that the Towns have no burden of production in this docket (as do the Applicants). It certainly is true that the Towns have no obligation even to participate in this docket. However, once anyone (an individual, a group, or an entity) decides to intervene in a proceeding such as this one, their willingness to amplify, explain and justify their views certainly bears on the credibility of their advocacy. The common (and proper) practice in administrative agency dockets in Connecticut, under the UAPA, is to give less weight to advocacy that is neither explained nor defended upon further inquiry (e.g., the inquiry undertaken in OCC's Third Set). This is why the UAPA

sets out specific evidentiary procedures for the conduct of agency dockets such as this one.

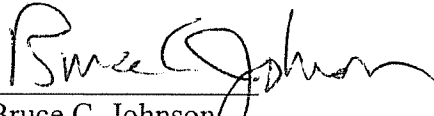
One line of inquiry in OCC's Third Set concerns whether individual Towns advocating particular underground transmission facility configurations in this docket would be willing to bear the incremental cost of such configurations, if regional socialization of such costs is not allowed and consistent with current DPUC policy (which assigns cost responsibility for undergrounding distribution lines that utilities believe should be placed overhead to the proponent of placing those lines underground). These questions are highly relevant to this docket. For instance, if one or more Towns are not willing to bear such costs, they might reconsider their present advocacy in this docket. Any such change of heart could profoundly affect the range of views placed before the Siting Council in this proceeding. It also could affect the advocacy that OCC pursues in this docket. This is a further reason why the Towns should be required to answer the questions in OCC's Third Set.

Conclusion

For all the reasons given above, OCC objects to the Towns' Motion and asks the Siting Council to reject it. Thank you for your consideration.

Very truly yours,

MARY J. HEALEY
CONSUMER COUNSEL

By 
Bruce C. Johnson
Litigation Attorney

cc: Service List