

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : **APPLICATION NO.200201976-MG**

**THE CONNECTICUT LIGHT
AND POWER COMPANY** : **JULY 17, 2007**

PROPOSED FINAL DECISION

I

SUMMARY

On June 29, 2007, the applicant and DEP staff jointly filed the attached Agreed Draft Decision for my review and consideration. (Attachment A.) Regs., Conn. State Agencies §22a-3a-6(1)(3)(A). I have reviewed this submission, the record and the relevant law in this matter. I find that the application complies with the applicable statutes and relevant provisions of the implementing regulations. Furthermore, I find that the parties' Agreed Draft Decision, as supplemented herein, satisfactorily conveys the factual finding and legal conclusions necessary to support my conclusion. I therefore adopt this Agreed Draft Decision as part of my Proposed Final Decision.

The DEP has prepared a draft permit authorizing the project. (Attachment B.) The record and this draft permit reflect staff's consideration of all of the relevant criteria set forth in the applicable statutes and regulations governing the proposed activity.

If conducted as proposed and in accordance with the terms and conditions of the draft permit, the regulated activities would be consistent with all relevant statutes and

regulations regarding coastal resources, tidal wetlands and coastal management. General Statutes §§22a-28 through 22a-35, 22a-90 through 22a-112, 22a-359 through 22a-363f, and Regs., Conn. State Agencies §§22a-30-1 through 22a-30-17.

I therefore recommend issuance of the draft permit subject to the Agreed Draft Decision and the supplemental findings and conclusions of law set out below.

II

DECISION

A

FINDINGS OF FACT

The following findings supplement specific findings of fact contained in the Agreed Draft Decision. The numbered paragraphs correspond to the proposed findings of fact as they are numbered in the agreed draft decision.¹

1. Site Location and Character

1a. The site of the existing cable crossing on Sheffield Island is identified as beaches and dunes on the Coastal Resources Map². The northwestern side of Sheffield Island is identified as a coastal bluff and escarpment. Sheffield Island is also part of the Stewart McKinney Wildlife Sanctuary maintained by the U.S. Fish and Wildlife Service (FWS).³ The cable corridor also crosses municipal and state-managed shellfish beds to the north and south of Sheffield Island and to the south of Manresa Island. Between the islands, the corridor crosses recreational or “natural” shellfish areas. (Ex. APP-1, ex. DEP-13.)

¹ Testimony provided at the hearing on this application summarizes the exhibits entered into the record. Therefore, the citations to the record will only reference the exhibits.

² Maps that depict the location and condition of the following thirteen coastal resources as they are defined in the Connecticut Coastal Management Act: shorelands, bluffs and escarpments, rocky shorefronts, beaches and dunes, intertidal flats, tidal wetlands, freshwater wetlands and watercourses, estuarine embayments, coastal hazard areas, developed shorefront, islands, near shore marshy waters, and offshore waters. General Statutes §22a-93 (7).

³ Activity on the island is subject to federal land use restrictions. The applicant maintains an easement on the island and will conduct its activities within its easement. (Ex. DEP-13, ex. APP-1.)

2. Application History

2a. The applicant has entered into an agreement with the Norwalk Shellfish Commission regarding appropriate silt containment, restoration of natural bottom contours damaged during the project and restoration of shellfish beds damaged by installation of the existing cables and by the proposed activities. The Norwalk Harbor Management Commission has recommended favorable action on the application subject to conditions that are addressed in the draft permit and/or in the agreement with the Norwalk Shellfish Commission.⁴ (Ex. APP - 9.)

2b. The record in this matter closed on July 4, 2007. On July 12, 2007, the parties moved to reopen the record for the limited purpose of recommending changes to the draft permit. That motion was granted on July 16, 2007.⁵

3. Project Description

3a. The cable removal process would consist of pumping and flushing the dielectric fluid from the cables, then cutting and lifting the cables onto a barge. Most of the cable would be removed by a pulling operation, however, some hydro-mechanical assistance such as mechanical agitation and hydrojetting, may be necessary closer to shore to remove consolidated sediments covering the cables. (Ex. DEP-13.)

3b. Replacement cables would be laid within the corridor previously occupied by three of the existing cables. The primary cable-laying vessel, the C/S Havila Skagerrak, would not be used between Manresa and Sheffield Islands due to shallow water conditions. Smaller shallow-draft cable-laying vessels would be used between the islands and in other nearshore areas. Cables would be laid on prepared trenches and buried with a

⁴ During the June 27, 2007 hearing, the Norwalk Harbor Management Commission read into the record its written recommendations and conditions. This document is contained in the file maintained by the Office of Adjudications and is part of the record in this matter. General Statutes §4-177(d).

⁵ The parties' motion and my ruling are contained in the file maintained by the Office of Adjudications and are part of the record in this matter. §4-177(d).

remote operated hydraulic jet plow with some diver assistance where necessary. (Ex. APP-1, ex. DEP-13.)

3c. Custom-made cast iron pipe casings would be used in areas between Sheffield Island and Manresa Island to provide additional protection for the cables. Concrete mattresses located within trenches on the south side of Sheffield Island and in the intertidal area on Manresa Island would also be used for additional protection. Cables will be separated so that each cable may be repaired without de-energizing the other two. Separated cables will follow the same alignment as the existing cables, which will result in minimal disturbance to the substrate and reduce the likelihood of obstacles in the cable path. (Ex. DEP-13.)

3d. Conventional trenching equipment (excavators, backhoes) would be required at the nearshore area on Manresa and Sheffield Islands where mats or slabs exist to protect the existing cables. The hydraulic jet plow would be used to install cables to mean high water (MHW). Installation landward of MHW would be conducted with conventional excavation equipment. The draft permit requires the applicant to install appropriate sedimentation and erosion control measures around the work area. (Exs. DEP-13, 24.)

7. Shellfish

7a. Leased shellfish beds located south of Sheffield Island are under the jurisdiction of the Connecticut Department of Agriculture, Bureau of Aquaculture (BOA) and beds located north of Sheffield Island are under the jurisdiction of the Norwalk Shellfish Commission. The applicant has entered into an agreement with the Norwalk Shellfish Commission regarding such issues as silt containment inside Norwalk Harbor and restoration of any area damaged within the harbor. (Ex. APP-9, ex. DEP-13.)

7b. Shellfish in the project area may be exposed to short-term turbidity resulting from trench excavation and transported sediments during the cable removal and installation processes. To minimize such impact, the applicant would be required to conduct the

proposed activities outside of the June 1 to September 30 shellfish spawning season. The draft permit contains additional conditions intended to further minimize potential impacts to existing shellfish resources including a requirement for notice to area shellfisherman prior to the start of the project, pre-and post-installation surveys of shellfish beds in the project area, cable burial depth requirements and remediation of impacted shellfish beds. (Exs. DEP-13, 24.)

7c. The Department of Agriculture/Bureau of Aquaculture (DA/BA) determined that the proposed activities would have no significant impact on shellfish resources provided that the applicant complies with the seasonal restrictions, develops a shellfish restoration plan in consultation with the DA/BA, and the proposed activities occur within one season. In a June 29, 2007 memorandum, the DA/BA indicated that if the proposed activities are conducted in accordance with the draft permit conditions and shellfish monitoring plan, commercial shellfishing may be restored and enhanced in an area that had previously been disturbed and unavailable for shellfishing. The DA/BA determined that the restoration would address both current damage and any previous damage from the installation of the existing cables and, therefore, the “cable replacement project in its entirety will not significantly impact shellfish and shellfish habitat.” (Exs. DEP - 12, 13, ex. HO-1.)

10. **Finfish**

10a. Impacts to finfish in the direct vicinity of the cable path would be expected from the temporary sediment disturbance caused by the excavation and hydraulic jet plow. DEP Marine Fisheries has determined that the thermal or magnetic field effects from the cables are not expected to negatively impact finfish. The applicant would identify and notify commercial fishermen in the proposed work area in advance of the removal and installation activities to minimize conflicts with fishing activities and fishing gear. (Exs. APP-1, 13, ex. DEP-12.)

13. **Environmental Impacts**

13a. To minimize environmental impacts, the applicant intends to install the new cables within the existing cable corridor and to use existing landfalls and substation interconnections. Use of the hydraulic jet plow would minimize trench widths and shorten the duration of the cable installation and associated sedimentation suspension. Best management practices would be implemented including conducting activities in accordance with the National Marine Fisheries Service standard practices for mariners to avoid potential “harassment” of marine mammals that may appear in the project vicinity. (Ex. APP-1, ex. DEP-13.)

13b. The Manresa Island landfall and crossing areas are identified by the Federal Emergency Management Agency as within the 100-year floodplain and subject to coastal floods. The proposed stone or concrete mattresses would be installed at grade and the cable installation would be below grade, therefore, there are no adverse flooding impacts associated with the project. Also, there are no potential adverse impacts to water circulation patterns, drainage patterns, or shore erosion associated with the project. Water quality may be affected by sediment disturbance during the proposed activities, however, the effects are expected to be of short duration and no change in sediment or water quality is anticipated. (Ex. APP-1, ex. DEP-13.)

14. **Draft Permit Conditions**

14a. The draft permit contains specific terms and conditions that prescribe the methods for removing and installing the cables, cable burial depths, and monitoring and restoration requirements. The applicant would also be required to provide pre- and post installation notice to mariners, fishermen, shellfish bed owners and leaseholders, and various state and federal agencies and offices regarding the project schedule and nautical chart changes. (Ex. DEP-24.)

14b. Prior to installation, the applicant would be required to survey the existing cable corridor within specific parameters. Thereafter, biennial surveys are required to

determine if the cables have migrated, which would require the applicant to take corrective action. (Ex. DEP-24.)

14c. The applicant would be required to develop and implement a plan and schedule to conduct baseline surveys of existing shellfish beds prior to the commencement of the proposed activities and three additional post-installation surveys at six month intervals. The purpose of such surveys would be to determine the rate of sediment reconsolidation and biological recolonization in areas disturbed by the project and would include assessments of existing benthic conditions, sediment conditions, temperature, shellfish resource types, health and concentrations. The applicant may be required to remediate any impacted shellfish beds. (Ex. DEP-24.)

14d. The draft permit requires the applicant to plan and schedule two years of monitoring of electromagnetic fields, temperature, sediment chemistry, habitat disturbance and species impacts along the cable routes. The applicant would be required to mitigate or restore areas that have been adversely impacted by the cable installation. (Ex. DEP-24.)

14e. The applicant would also be required to prepare a tidal wetlands restoration plan to mitigate the impacted tidal wetlands areas located on Sheffield Island that are associated with the project. A plan for restoring shellfish beds impacted by the project and by previous cable installations would also be required. This plan would include provisions for backfilling trenches and placement of culch or other suitable bed material to encourage oyster population. (Ex. DEP-24.)

14f. A plan is required to compensate commercial shellfishermen, fishermen and lobstermen to catch lost or destroyed due to the proposed activities. The plan would include proof of loss requirements and a standard or formula for determining current fair market value of lost or destroyed catch. (Ex. DEP-24.)

14g. The parties have recommended the following revisions to the draft permit:

1. Page 2: **SPECIAL TERMS AND CONDITIONS**

Notice Requirements No. 3

Add “lobstermen” after the term “affected fisherman” in line 3.

Change “fisherman” to “affected party” in line 9.

2. Page 6: **Pre-Installation Requirements**

Paragraph 1.(b):

Change “if the cable has” to “if any portion(s) of the cables have” in line 3.

Paragraph 1.(c):

Change “cable” to “cables” in line 1.

3. Page 9: **Restoration Requirements**

Paragraph 2.

Change “oyster populations” to “shellfish beds” in line 1 (line 7 of the full condition.)

4. Page 10: **Administrative Requirements**

Paragraph 8

Change “6” to “7” in line 2.

5. Page 12: **Administrative Requirements**

Paragraph 16.

Eliminate the entire condition.

B

CONCLUSIONS OF LAW

The applicant has sufficiently demonstrated that all adverse environmental impacts associated with the proposed project have been avoided, minimized or mitigated. The proposed activities, if conducted in accordance with the terms and conditions of the draft permit as modified, would be consistent with all applicable criteria of the relevant statutes and regulations.

III

RECOMMENDATION

I recommend that the Commissioner issue the requested permit incorporating the terms and conditions set forth in the draft permit (Attachment B) and the recommended revisions set forth in this decision.

/s/ Jean F. Dellamarggio
Jean F. Dellamarggio, Hearing Officer

PARTY LIST

Proposed Final Decision In the Matter of The Connecticut Light & Power Company
Application No. 200201976-MG

PARTY

REPRESENTED BY

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