

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

NORTHEAST UTILITIES SERVICE
COMPANY APPLICATION TO THE
CONNECTICUT SITING COUNCIL
FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED ("CERTIFICATE")
FOR THE CONSTRUCTION OF A
NEW 345-KV ELECTRIC TRANSMISSION
LINE FACILITY AND ASSOCIATED
FACILITIES BETWEEN SCOVILL
ROCK SWITCHING STATION IN
MIDDLETOWN AND NORWALK
SUBSTATION IN NORWALK, INCLUDING
THE RECONSTRUCTION OF PORTIONS
OF EXISTING 115-KV AND 345-KV
ELECTRIC TRANSMISSION LINES,
THE CONSTRUCTION OF 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 NO. 272

MARCH 16, 2004

THE TOWNS OF BETHANY, CHESHIRE, DURHAM, EASTON, FAIRFIELD,
HAMDEN, MIDDLEFIELD, MILFORD, NORTH HAVEN, NORWALK, ORANGE,
WALLINGFORD, WESTON, WESTPORT, WILTON, AND WOODBRIDGE

REPLY TO OPPOSITION TO THE TOWNS' MOTION TO COMPEL
DISCOVERY RESPONSES AND TO RESCHEDULE CERTAIN DEADLINES
AND HEARINGS

The above-captioned Towns, each a participant in this proceeding, hereby respond to the Opposition to the Towns' Motion to Compel Discovery and to Reschedule Certain Deadlines and Hearings ("Opposition") filed by the

Connecticut Light and Power Company (“CL&P”) and The United Illuminating Company (“UI”) on March 15, 2004.¹

In the Opposition, the Applicants criticize the Towns’ Motion filed on March 5, 2004 (the “Motion”) as being “replete with generalities”; however, the Opposition contains no direct rebuttal of the assertion in the Motion that the Applicants have failed to timely respond to the Towns’ discovery requests. Additionally, the Applicants have not, contrary to their assertion in the Opposition, “endeavored to answer each interrogatory as accurately as possible and as fully as is reasonable.”

For their part, the Towns have not, as alleged in the Opposition, delayed in conducting discovery at all. The Towns have promptly served discovery requests in this proceeding, in response to continual changes in the Application. The Towns have an absolute right to conduct discovery with each new filing made by the Applicants. The Towns’ request for responses within 15 days is no shorter than the time requested by any other participant in this proceeding. Clearly, the Applicants have the resources to meet these deadlines. By failing to provide complete and timely responses, the Applicants have placed the Towns in the untenable position of entering the evidentiary hearings without the same information that is in the Applicants’ hands. This is unfair.

Beyond the issue of basic fairness, the Opposition also asserts that the Motion “fails to specify any prejudice” to the Towns caused by the Applicants’ actions. To the contrary, the Motion asserts that the Applicants’ actions “will

¹ CL&P and UI are sometimes hereinafter referred to collectively as the “Applicants.” The undersigned represents solely the towns of Durham and Wallingford in this proceeding. The undersigned have been authorized to submit this Reply on behalf of the Towns.

deny the Towns their statutory right to present their case and conduct cross-examination” on the subject matter of their Interrogatories, and will deny the Towns a “full and fair disclosure of the facts,” in violation of Conn. Gen. Stat. § 16-50o(a), unless the Motion is granted. It is impossible to specify any prejudice greater than that.

A discussion of particular issues raised in the Opposition follows.

EMF Issues

The Applicants are in possession of all of the information, data and studies relating to EMF and should have been able to respond to most of the EMF questions immediately. As discussed *infra*, the Applicants have placed the Towns in the unfair position of not having sufficient information to make a determination as to pre-filing EMF testimony today, and with inadequate time to prepare for the March 25th hearing.

The Towns’ Second Set of Interrogatories dated February 17, 2004 and due March 2, 2004 (the “Second Set”), consisted of eleven questions on the critical issue of EMF. To date, the Applicants have not provided a single response to the Second Set. Instead of explaining that failure, the Opposition asserts that the Second Set was really seventy-five questions rather than eleven. Without conceding that assertion, it is a fact that, eleven questions or seventy-five, the Applicants have not provided a single response to any of those questions. The Applicants have not even answered the questions asking for: (1) the workpapers, and input and output data files for the EMF analyses; and (2) the documents reviewed by the Applicants’ EMF consultant. There is no credible

reason why these materials could not have been provided within a couple of days. All that was required was for someone to copy the computer files to a CD, xerox any printed documents and mail the copies to counsel for the Towns.

In any event, the arguments over the Towns' Second Set have been rendered moot by the Applicants' filing yesterday (on March 15, 2004), of major revisions to their EMF figures which, according to that filing, are based on entirely new analyses. Clearly, all participants in this proceeding have the right to conduct discovery on these revised EMF figures and entirely new analyses. The Towns intend to do so within two or three days. The EMF hearings scheduled for March 25, 2004 will need to be rescheduled to accommodate the need for this essential discovery and to ensure that all parties are on a level playing field when the evidentiary hearings begin.

Undergrounding Issues

The Towns submitted their first set of Interrogatories to the Applicants on January 28, 2003 (the "First Set"). To date, the Applicants still have not answered all of the questions in the Towns' First Set – Question No. 32 remains unanswered. In addition, the Applicants waited forty-one days before objecting to Questions 24 and 26 of the First Set, even though the transmittal letter for the First Set requested that the Applicants notify the Towns as soon as possible if there were objections to any of the questions.²

² The materials requested in Questions 24 and 26 of the Towns First Set related to correspondence between the Applicants and GE (and any other consultants retained to assess the viability of undergrounding options for the proposed 345 kV facilities. These materials are essential to enable the Towns to evaluate the undergrounding reports submitted by the Applicants. The Towns' consultants have received these same types of materials in their reviews of proposed transmission facilities in other states –for example, in proceedings before the Public Utilities Commissions in Maine and Rhode Island.

The Applicants' belated responses to many of the questions in the First Set were really objections rather than answers, because they did not provide the requested information. For example, Questions 1, 2, 3, 11, 12, 15, 16 and 17 of the Towns' First Set requested the input data used in the GE Harmonic Studies in machine-readable format. Instead of providing the requested input data, the Applicants merely responded that the GE model was proprietary. The Applicants state in the Opposition that the Towns' attorney in connection with the Interrogatories "was provided with the name of the GE attorney so that GE's concerns could be addressed"; however, the Applicants fail to mention that it took them more than three weeks to provide that name.

The Applicants also state in the Opposition that "an agreement has been reached" among GE, the Companies and the Towns that will permit the Towns' expert to perform his own analyses using the GE model; however, once again, the Opposition omits a piece of relevant information. The Applicants are requiring that the Towns first prepare an agreement governing the performance of those analyses. The Towns do not believe that such an agreement is necessary; more fundamentally, this requirement will cause additional delay before GE and the Towns can begin the necessary analyses.³

The Opposition also states that "with nearly one month before the anticipated deadline for the filing of pre-filed testimony related to the topics to be covered in the April hearings (that are over a month away), the Towns have

³ The Opposition also incorrectly describes the proposed agreement. As the Towns understand the agreement, GE will rerun its propriety model to reflect changed scenarios and input assumptions as specified by the Towns' consultants. The Towns' consultants will not have access to or use the GE model on their own.

failed to establish any prejudice to them by the current hearing schedule.” This is not correct. In response, the Towns note that the anticipated testimony filing date is approximately April 6, which is only twenty –two days away, not “nearly one month.” Additionally, many activities still remain to be completed before the Towns’ consultants will be ready to file testimony:

1. First, the Towns have to determine, together with GE and the Applicants, whether a new written agreement governing the GE modeling for the Towns’ consultants is necessary. If it is ultimately determined that such an agreement is necessary, it will have to be drafted, circulated, perhaps revised, and then signed.
2. The Towns’ consultants will need to communicate to GE the new scenarios that they wish to have run on the GE model.
3. The GE personnel will need to determine which input assumptions in the GE model will have to be changed, to reflect the new scenarios proposed by the Towns’ consultants.
4. Alternatively, the verbal agreement that the Towns believe that they have with GE and the Applicants would require that the GE personnel discuss each of these changed input assumptions with the Towns’ consultants.
5. If there are no disagreements between the GE personnel and the Towns’ consultants, then the GE personnel will be able to rerun the GE model to reflect each of the new scenarios requested by the Towns’ consultants.
6. GE then will forward the results of the new model runs to the Towns’ consultants. The form in which this information will be forwarded has not yet been determined or agreed upon.
7. The Towns’ consultants will need time to review and analyze the results of these new computer model runs and will have to determine whether any additional scenarios are required.
8. The Towns’ consultants will need time to draft their testimony.
9. Counsel and the CEOs for the Towns will need time to review the draft testimony.
10. At this point the testimony may be filed.

Clearly, the completion of these activities will take substantially longer than 22 days. The Towns have not even been provided a commitment from GE

to give priority to perform the new model runs over other GE projects. Consequently, the Towns have no idea how quickly GE will provide the results of these new model runs to the Towns' consultants.

For all of these reasons, the Towns expect that it will take a minimum of six weeks before their consultants will be able to submit their expert testimony on undergrounding issues.

Segment 1 and 2 Towns Issues

The Motion requested that the Segment 1 and 2 Towns hearings scheduled for May also be delayed. The Applicants claim that all of the parties, including the Applicants, will have to do "more than one thing at a time in order to meet the Councils schedule." The Towns have no objection to "multi-tasking"; however, it must be understood that if the EMF and/or the undergrounding hearings are delayed as requested in the Motion, the Towns and their consultants will be unable to complete their analyses and testimony on the Segment 1 and 2 Town issues at the same time, and on the same schedule, as they complete their analyses and testimony on the EMF and Undergrounding issues.

Conclusion

For the aforesaid reasons and for the reasons set out in the Motion, the Council should grant the relief requested in the Motion. With respect to hearing(s) on EMF, the Towns also request that the Siting Council schedule those hearings to begin not less than two weeks after the Towns' consultants receive the last of the Applicants' responses to the new questions necessitated

by the Applicants' new EMF Filing. The filing date for EMF testimony would be not less than one week after the Towns' consultants receive the last of the Applicant's responses.⁴ Finally, the Towns request that the Council order the Applicants to make timely and complete answers to Questions No. 24 and 26 of the First Set.

Respectfully submitted,

THE MUNICIPALITIES OF
BETHANY, CHESHIRE,
DURHAM, EASTON,
FAIRFIELD, HAMDEN,
MIDDLEFIELD, MILFORD,
NORTH HAVEN, NORWALK,
ORANGE, WALLINGFORD,
WESTON, WESTPORT,
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⁴ Even if the Towns' consultants do not need to file testimony on the issue of EMF, the Applicants' answers to these questions will be essential to enable the Towns to prepare cross-examination on EMF.

CERTIFICATION

I hereby certify that a copy of the foregoing has been mailed and/or hand-delivered to all known parties and intervenors of record this 16th day of March, 2004.

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