STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Implementation of Section 8 and Section 54 of Public Act No. 07-242 An Act Concerning Electricity and Energy Efficiency	:	**DOCKET NO. 346**
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	:	**DECEMBER 2, 2008**

THE CONNECTICUT LIGHT AND POWER COMPANY'S
AND THE UNITED ILLUMINATING COMPANY'S
JOINT MEMORANDUM REGARDING THE SCOPE OF THE HEARING

The Connecticut Light and Power Company ("CL&P") and The United Illuminating Company ("UI") (collectively, "the Companies") hereby jointly respond to the Connecticut Siting Council's (the "Council") request for comments on the scope of Docket No. 346, concerning the Implementation of Section 8 and Section 54 of Public Act No. 07-242 An Act Concerning Electricity and Energy Efficiency.

Executive Summary

The Companies fully recognize that the security of our nation's energy infrastructure is an important, ongoing, evolving, nationwide issue. However, the Companies submit that the Council's legislative mandate for this docket is a narrow one, and based on the plain language of the Act and the Council's overarching purpose under Conn. Gen. Stat. § 16-50g, there is no need for exploration of detailed technical issues on the design of facilities or their vulnerabilities. More importantly, though, the Council need only investigate these issues, and is not required by statute to develop Best Management Practices ("BMPs").

The Companies envision that this Docket would be an opportunity to inform the Council as to how this important issue is currently being addressed by a number of national, regional, and

industry agencies and organizations, including, but not limited to the Federal Energy Regulatory Commission ("FERC"), the North American Electric Reliability Corporation ("NERC"), the Northeast Power Coordination Council ("NPCC"), and ISO New England ("ISO-NE"). These agencies and organizations have already drafted and implemented a comprehensive standards development and enforcement system – with which the Companies are fully complying – and these standards are constantly evolving and improving. Thus, the Companies submit that the Council should not develop its own BMPs in this Docket because they would be duplicative, and potentially contradictory to existing and constantly evolving national and regional comprehensive standards and enforcement systems.

I. Introduction

On June 4, 2007, Governor Rell signed Public Act 07-248, *An Act Concerning Electricity And Energy Efficiency* (the "Act"). Section 8 of the Act requires the Council to investigate energy security with regard to the siting of electric generating facilities and transmission facilities, including consideration of planning, preparedness, and response and recovery capabilities. Section 8 of the Act reads:

> Not later than September 1, 2007, the Connecticut Siting Council, in consultation with the Emergency Management and Homeland Security Coordinating Council, established pursuant to section 28-1b of the general statutes, and the Department of Public Utility Control shall initiate a contested case proceeding, in accordance with the provisions of chapter 54 of the general statutes, to ***investigate energy security with regard to the siting of electric generating facilities and transmission facilities***, including consideration of planning, preparedness, response and recovery capabilities. The Connecticut Siting Council may conduct such proceedings in an executive session with sensitive information submitted under a protective order. (Emphasis added.)

On April 29, 2007 the Council opened Docket No. 346. On October 3, 2008 the Council issued a notice of hearing. A Pre-Hearing conference was held on October 29, 2008, at which the parties were invited to submit briefs providing their interpretation of scope of the hearing required under Section 8 of the Act. The Companies respond to that request in this memorandum.

The Companies submit that the scope of the hearing should focus on how the Council may best address security aspects of siting applications and petitions submitted to the Council for approval, in light of existing federal, regional and industry standards. Moreover, the Companies submit that the Council should not seek to develop its own portfolio of energy security initiatives or standards as contemplated by the draft BMPs issued by the Council on October 27, 2008. The Companies believe that other agencies at the national and regional level currently have the responsibility for the planning, operation, and oversight of security of the Bulk Power System ("BPS") and those agencies have instituted comprehensive standards and procedures that address the issues contemplated by the BMPs. The Council can best serve its purpose to promote energy security by working in concert with agencies tasked with the purpose of managing the energy security of the electric grid and taking measures to protect critical information it receives from applicants regarding planned energy infrastructure.

II. The Language of the Act and Purpose of the Council Mandates a Narrow Proceeding

Section 8 of the Act states that the Council must "investigate energy security with regard to the ***siting*** of electric generating facilities and transmission facilities," and that this investigation may include "planning, preparedness, response and recovery capabilities." (Emphasis added.) This text is clear that the scope of this proceeding should be limited to the

siting of facilities, and that the Council need only ***investigate*** these issues, and is not required to develop BMPs.

Interpretation of statutes is governed by the "plain meaning rule" found in Conn. Gen. Stat. § 1-2z, which states that:

> [t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

As the Supreme Court explained in *Windels v. Environmental Protection Commission*, 284 Conn. 268 (2007),

> When construing a statute, [the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.... In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes.

Id. at 294.

Thus, the language in Section 8 of the Act should be read in relation to the other statutes governing the Council's activities. The Council's primary mandate under the Public Utility Environmental Standards Act is

> [t]o provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values. . . .

Conn. Gen. Stat. § 16-50g.

When Section 8 of the Act is read in conjunction with the Council's primary environmental directives in Conn. Gen Stat. §16-50g, it is clear that the Council's investigation into energy security issues should be limited in scope.

Evaluation of detailed security issues of the type contemplated by the draft BMPs is an area that falls outside the scope and purpose of the Council under § 16-50g. The Council should not assume the burden of becoming experts on security issues without an unambiguous statutory directive. No such clear mandate is provided by the Act.

Furthermore, when considering how a proposed facility may contribute to, or detract from, the security of the electric supply system, the Council need not require the detailed exposure and explanation of system vulnerabilities that the draft BMPs appear to require. Such detail would provide little assistance to the Council's siting determinations, while requiring applicants to develop and disclose information that should not be introduced into the public record, even with the somewhat limited protection of a protective order.

While the Act directs the Council to generally investigate security aspects of the siting of energy facilities, it clearly does not direct the Council to undertake a wide-ranging investigation of the security of ***existing*** energy facilities throughout the state. The draft BMPs suggest otherwise in that they propose:

> These Best Management Practices will not only be used during their review of such proposed facilities, but will also promulgate policy and guide industry leaders in method and manner to secure operations in Connecticut.

To the contrary, the Council should restrict itself to general security considerations as they relate to siting proceedings, and not presume to set general industry-wide policies for either existing or planned facilities. Inherently, the Council already implicitly considers energy security in transmission line applications, because the applications comply with applicable transmission security design criteria from federal, state and regional standards.[1] The Council can

[1] The Council already implicitly considers the extent to which the location and overall/general design of a proposed facility contributes to, or detracts from, energy security. For instance, the Council might consider such factors as black start capability (which clearly makes a greater contribution to energy security) or the configuration of

view this proceeding as an opportunity to familiarize itself on these existing and robust national and regional oversight regimes.

III. Electric Utility Security Issues are Already Comprehensively Addressed by Federal and Regional Agencies

The Companies view Docket No. 346 as an opportunity to inform the Council of the comprehensive and ongoing national and regional activities on energy security. A quick synopsis of these initiatives, standards, and enforcement systems follows.

A. FERC and NERC Reliability Standards

The transmission grid and generation are regionally integrated systems that are federally regulated. Energy security, as an important element of system reliability, has been the focus of the federal oversight agencies for some time. The large scale blackout in August of 2003 highlighted the vulnerability of the Bulk Power System ("BPS"). FERC, for example, has reorganized to re-focus its oversight of bulk power system's reliability and has issued regulations preventing indiscriminate publication of Critical Energy Infrastructure Information ("CEII"). NERC[2] is mandated by FERC to undertake a variety of industry supported initiatives, including best practices and standards development to address reliability and security of the BPS.

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transmission lines on separate structures (which are more secure than those that are located on common structures) when balancing the need for a particular facility with environmental concerns.

[2] NERC is an international, independent, self-regulatory, not-for-profit organization, whose mission is to ensure the reliability of the bulk power system in North America. Unlike water or gas, electricity cannot be stored. It must be generated and then used immediately. Furthermore, electricity follows the "path of least resistance", so it generally cannot be routed in a specific direction. This means generation and transmission operations in North America must be monitored and controlled in real-time, 24 hours a day, to ensure a consistent and ample flow of electricity. This requires the cooperation and coordination of hundreds of electricity industry participants. NERC is responsible for aspects of an international electricity system that serves 334 million people, and has some 211,000 miles (340,000 km) of high-voltage transmission line.

The federal Energy Policy Act of 2005 granted FERC statutory authority over the reliability of the nation's BPS to implement mandatory reliability standards. FERC then delegated the authority for the development of these standards to an Electric Reliability Organization ("ERO") for North America: NERC. These standards became mandatory and enforceable on June 18, 2007 and apply to all BPS owners, operators, and users. New and revised NERC Reliability Standards are developed through an ANSI approved stakeholder process. In this process standards are approved by the stakeholders by vote and then sent to FERC. Once FERC approves a NERC Reliability Standard, that Standard becomes mandatory and enforceable. NERC signed delegation agreements with eight regional entities, such as the NPCC,[3] the regional entity responsible for enforcing Reliability Standards in the northeast region of the United States and eastern Canada.

NERC Reliability Standards define the reliability requirements for planning, protecting and operating the North American bulk power system. NERC has developed and implemented a set of Critical Infrastructure Protection (CIP) standards. The CIP Reliability Standards will require certain users, owners, and operators of the BPS to comply with specific requirements to safeguard critical cyber assets. The Companies are both required to comply with these Reliability Standards.

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[3] It is the NPCC mission to promote and enhance the reliable and efficient operation of the international, interconnected bulk power system in Northeastern North America through (i) the development of regional reliability standards and compliance assessment and enforcement of continent-wide and regional reliability standards, coordination of system planning, design and operations, and assessment of reliability, pursuant to an agreement with the ERO which designates NPCC as a regional entity and delegates authority from FERC, and by Memoranda of Understanding with applicable Canadian Provincial regulatory and/or governmental authorities (collectively, "statutory activities"), and (ii) the establishment of regionally-specific criteria, and monitoring and enforcement of compliance with such criteria (collectively, "non-statutory criteria services"). In the development of regionally-specific reliability criteria and standards, NPCC, to the extent possible, facilitates attainment of fair, effective and efficient competitive electric markets. NPCC's Amended and Restated Bylaws provide for open, inclusive membership and fair and non-discriminatory governance with the corporation's activities directed by a balanced stakeholder Board of Directors. The geographic area covered by NPCC includes New York State, the six New England States, and the Ontario, Québec, and the Maritime Provinces.

NERC Reliability Standards also require Transmission Owners ("TO") to prepare, and maintain a formal transmission vegetation management program ("TVMP") for all transmission lines operated at 200 kV and above and any lower voltage lines designated by a regional entity (i.e., NPCC) as critical to the reliability of the electric system in the region. These federally mandated standards ensure reliability and security of the electric transmission systems by preventing outages from vegetation located on transmission rights-of-way ("ROW") and minimizing outages from vegetation located adjacent to ROW, maintaining clearances between transmission lines and vegetation on and along transmission ROW.

B. NERC's Other Roles

NERC plays a role in protecting the bulk electric system by coordinating information exchange on critical infrastructure issues between the electricity industry and the federal government. For example, the Critical Infrastructure Protection Committee ("CIPC") Executive Committee, along with the President and CEO of NERC, serve as the Electricity Sector Coordinating Council to collaborate with the U.S. Department of Energy ("DOE") and U.S. Department of Homeland Security ("DHS") on critical infrastructure and security matters. The DOE designated NERC as the electricity sector coordinator for critical infrastructure protection. NERC serves as the Electricity Sector Information Sharing and Analysis Center ("ESISAC") for the electricity sector. As the ESISAC, NERC gathers, disseminates and interprets security-related information. The ESISAC website posts advisories, alerts, warnings and the current threat alert levels for the Homeland Security Advisory System and the electricity sector. NERC also works closely with the DHS and Public Safety Canada to ensure the critical

infrastructure protection functions are coordinated with the governments of the United States and Canada.

C. Other FERC Actions

In September 2007, FERC created the Office of Electric Reliability. The mission of this office will be to be to focus on enforceable reliability standards for users, owners and operators of the bulk power system. Central to the Office's duty is to create a robust reliability regime. System security is necessary to any reliability standards.

FERC has amended its regulations to restrict access to CEII to ensure that sensitive information critical to energy infrastructure is protected. Work on these rules began shortly after September 11, 2001 (*see* FERC Orders Nos. 630 and 630A). FERC's Order No. 702 categorically disallowed generic access to CEII for state agencies and local governments because state Freedom of Information Act ("FOIA") laws vary and may not adequately protect CEII.

D. ISO-NE Regional Requirements

ISO-NE has lead responsibility for the reliable operation of New England's bulk electric system, including meeting reliability standards set by NERC and NPCC. ISO-NE is registered as the Reliability Coordinator ("RC") and Balancing Authority ("BA") for the New England area utilities.

As a RC, ISO-NE is the top level authority responsible for a reliable BPS with the authority to "prevent or mitigate emergency operating situations in both next-day analysis and real-time operations." ISO-NE has a Wide-Area view of the BPS, allowing for "the calculation of Interconnection Reliability Operating Limits, which may be based on the operating parameters

of transmission systems beyond any Transmission Operator's vision."[4] As a BA, ISO-NE "integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time."[5]

ISO-NE has several types of documents with which its members must comply, including System Operating Procedures ("SOPs") and general Operating Procedures ("OPs"). These procedures are guidelines for Area system operations, featuring technical specifications and requirements for Control Centers and Transmission operations in New England.

ISO-NE also performs Operations Audits per an annual plan, which focuses on Control Center (ESCC/CONVEX) functions, Maintenance and Vegetation Management programs, and IT functions.

IV. A Comprehensive Investigation by the Council is Unnecessary

The scope and purpose of the Council is not to probe into the detail of issues related to planning and operational security of the electric energy system as described in the BMPs, but rather the Council should continue to dedicate its resources to its primary mission of balancing the infrastructure needs of the State with its responsibility of protecting the environment. The existing statutory responsibilities of the Council do not support a new role that is more apt for Department of Emergency Management and Homeland Security.[6] The Council was not intended

[4] NERC Glossary of Terms Used in Reliability Standards (May 2, 2007).
[5] NERC Glossary of Terms Used in Reliability Standards (May 2, 2007).
[6] *See* Conn. Gen. Stat. § 28-1b: (a) There is established a state-wide Emergency Management and Homeland Security Coordinating Council to advise the Department of Public Safety, the Office of Emergency Management and, on and after January 1, 2005, the Department of Emergency Management and Homeland Security with respect to: (1) Application and distribution of federal or state funds for emergency management and homeland security; (2) planning, design, implementation and coordination of state-wide emergency response systems; (3) assessing the state's overall emergency management and homeland security preparedness, policies and communications; (4) the recommendation of strategies to improve emergency response and incident management including, but not limited to, training and exercises, volunteer management, communications and use of technology, intelligence gathering, compilation and dissemination, the development, coordination and implementation of state and federally required

to perform similar duties to those national and regional agencies with the charge to evaluate energy security. However, the Companies would not object to a requirement of the Council that petitions and applications contain an affirmative statement that the proposed project will comply with all applicable federal and regional energy security and reliability standards.

Moreover, should the Council decide to develop its own portfolio of energy security initiatives, the Council would be faced with numerous practical obstacles that would need to be overcome in order to guarantee the safekeeping of highly sensitive material that a detailed investigation might generate. To date the Council has no continuing statutory direction, administrative rules or practices for protective orders. Unfortunately, the authorization in Section 8 of the Act to consider submissions in executive session and under protective order is limited to this proceeding, and does not apply to siting proceedings generally. While the Council has inherent power to adopt protective orders, any sensitive security information, such as the Council is likely to consider from now on, should have the added protection of a legislative exemption from FOIA laws and procedural requirements, such as is provided by the authorization in Section 8 of the Act.[7]

Indeed, even if certain protected materials are exempt from production and a state agency participating in a proceeding signs a protective order, the state agency may nevertheless receive a FOIA request for the documents in its possession. The state agency would then be bound to

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emergency response plans, and the assessment of the state's use of regional management structures; and (5) strengthening consultation, planning, cooperation and communication among federal, state and local governments, the Connecticut National Guard, police, fire, emergency medical and other first responders, emergency managers, public health officials, private industry and community organizations. The council shall advise the Governor and the General Assembly on its findings and efforts to secure the state from all disasters and emergencies and to enhance the protection of the citizens of the state.

[7] While the Council can take the needed steps to overcome this procedural issue, currently the Council lacks rules to secure the highly sensitive material that a detailed investigative probe might generate. Moreover, the Council does not have the physical facilities to secure potentially highly sensitive data filed in this investigation and future proceedings. The material that could be in the Council's possession would require security measures that are beyond the present capability of the Council.

respond to a request for those documents and either provide the documents or inform the requestor that it believes the documents are exempt from disclosure under Conn. Gen. Stat. §1-210(b). The possibility exists that if the state agency is not sure that the documents are exempt from public release that it would make the documents available and the burden then would be on the original provider of the documents to obtain a court order preventing the agency from releasing the documents. This of course assumes that the agency has made a good faith effort to warn the original provider of the documents that a request has been made for protected documents and that it intends to release the documents. However, there is no requirement that state agencies alert anyone that a request has been made to make documents public.

The Council's very capable staff has developed its expertise mostly on understanding the transmission system in terms of evaluating its environmental effects. This has led to a need to understand how the system works in relation to minimizing the impact new facilities will have on the environment. The staffs' understanding of what role a proposed facility plays in the regional system need not require it to become familiar with the many operational and design planning strategies that address untoward threats to the system. The authorized federal and regional agencies have the mandate to evaluate the efficacy of the detailed measures that are in place to secure the transmission system.

V. The Council Can Promote Energy Security by Protecting CEII

The Council currently collects CEII, including location, design, construction, safety, and operating information about electricity generation, transmission, and supporting facilities that could, in the wrong hands, assist a person intent on causing disruption to Connecticut's or the regional energy supply. The Companies have a direct and vital interest in the Council's handling

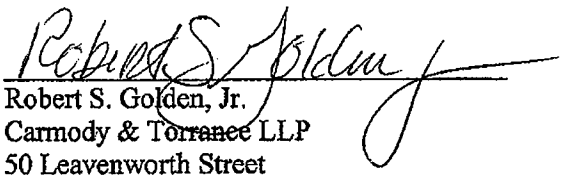
of this information under CEII requirements implemented by FERC. Any steps the Council might take to limit the dissemination of CEII (e.g., through rules, procedures, or policies) would promote energy security.

VI. Conclusion

A general investigation of energy security as part of this proceeding would be duplicative of national and regional activities and initiatives. Energy security currently regulated by FERC which has issued regulations protecting from indiscriminate publication of CEII; NERC which has developed best practices and standards to address reliability and security of the BPS; NPCC which implements and enforces mandatory reliability standards; and ISO-NE which has primary responsibility for a reliable BPS. The Council has not been tasked with, and should not undertake an identification and analysis of the vulnerabilities of the existing bulk power system or proposed additions to it. The Council's investigation in this proceeding should focus on educating itself regarding the ongoing national and regional initiatives on energy security, and deciding how it will generally address and promote security of proposed transmission and generation facilities in siting proceedings in light of these national and regional programs. The Council can best serve its purpose to promote energy security by encouraging designs that enhance the security of the energy infrastructure as it relates to its statutory duties.

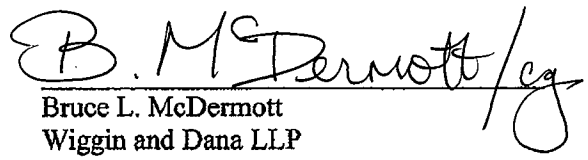
Respectfully submitted,

THE CONNECTICUT LIGHT AND POWER COMPANY

By: 

Robert S. Golden, Jr.
Carmody & Torrance LLP
50 Leavenworth Street
Waterbury, CT 06702
Its Attorneys

THE UNITED ILLUMINATING COMPANY

By: 

Bruce L. McDermott
Wiggin and Dana LLP
265 Church Street
New Haven, CT 06510
Its Attorneys

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