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September 15, 2009

S. Derek Phelps
Executive Director
Connecticut Siting Council
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OCC Comment **On Protective Order**

Re: CL&P Application for the Greater Springfield Reliability Project and the Manchester to Meekville Junction Circuit Separation Project
Docket No. 370A (Consolidated Docket)
&
NRG Energy, Inc. Application Pursuant To CGS § 16-50l(a)(3) For Consideration Of A 530 MW Combined Cycle Generating Plant In Meriden, Connecticut
Docket No. 370B (Consolidated Docket)

Dear Mr. Phelps:

The Office of Consumer Counsel (“OCC”) is a party to the above-captioned proceeding. This letter responds to a letter from counsel for Connecticut Light & Power, Co. (“CL&P”) to the Connecticut Siting Council (“CSC”), dated September 11, 2009 (the “CL&P Letter”).

The question at hand is how any protective order which CSC may issue (per what has been termed NRG’s motion for access) should be interpreted and administered.

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The CL&P Letter (at its p. 1) says that protective order (if issued) should be in the form already proposed by NRG in its “Exhibit A” drawn from a DPUC proceeding.¹ OCC agrees with this point.

However, the CL&P Letter (at its p. 2) also says that copies of information subject to that protective order should be available to docket participants only in the CSC offices. OCC disagrees with this conclusion, for two reasons.

First, this interpretation of the protective order’s Paragraph 3 seriously misapprehends its text. Plainly, that protective order contemplates that docket participants (once they sign the nondisclosure agreement) may receive and review the confidential materials in their own (geographically scattered) offices. The notion that this protective order actually would require NDA-signers to travel to the CSC offices in New Britain to view those materials renders meaningless these further provisions of that order:

- (a) Paragraph 4 --- NDA-signers must “keep this information secure.” There would be nothing for them to “secure” in this manner if they could not remove any confidential materials from the CSC offices.
- (b) Paragraph 5 --- LEI “shall deliver” the confidential materials to NDA-signers. There would be nothing for LEI to “deliver” to them, if the confidential materials were available only in the CSC offices.

The undersigned can state, from personal knowledge, that the LEI-derived confidential materials covered by the DPUC protective order which NRG references in its 8/25/09 letter were made available to NDA-signers outside the DPUC offices.

Second, as a practical matter, this narrow interpretation of the protective order’s text would be difficult for OCC to work with. Specifically, Paul Chernick (our expert consultant in this docket) maintains offices in Arlington, Massachusetts. It would be a waste of public resources for CSC to require Mr. Chernick to travel to New Britain before he could review any confidential materials covered by this protective order. Through the entire course of this docket to date, Mr. Chernick has been receiving the CEII materials (covered by CSC’s existing protective order) at those Massachusetts offices.

OCC also surmises that CSC and its staff would find the CL&P proposal inconvenient. Accepting it would require the agency not only to receive and sequester the confidential materials, but also thereafter to allow various docket participants to visit the agency offices, and to keep a log of each such visit.

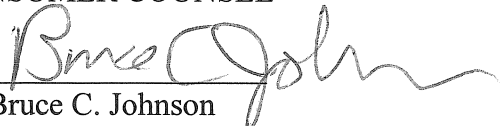
¹ The CL&P Letter references an NRG letter of 9/2/09. However, the NRG letter containing the indicated Exhibit A actually was filed with the CSC on August 25, 2009.

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For these reasons, OCC asks CSC not to impose the “only in New Britain” restrictions, as advocated by CL&P, on the administration of any protective order granted pursuant to NRG’s motion for access.

Very truly yours,

MARY J. HEALEY
CONSUMER COUNSEL

By: 
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cc: Service List