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June 5, 2007

Daniel F. Caruso, Chairman
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

RE: **DOCKET NO. 326** - The Connecticut Light and Power Company application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a proposed substation located at Stepstone Hill Road, Guilford, Connecticut.

Dear Chairman Caruso:

Enclosed please find 20 copies of CL&P's Objection to Brief Filed by Russi T. Suntoke in the above referenced matter. A copy will also be filed electronically.

Very truly yours,



Robert S. Golden Jr.

Service List

DOCKET NO. 326 – Northeast Utilities Service	}	Connecticut
Company, on behalf of The Connecticut Light and		
Power Company (CL&P) Application for a Certificate of	}	Siting
Environmental Compatibility and Public Need for the		
construction, maintenance and operation of the	}	Council
proposed Stepstone 35L Substation located north of		
Stepstone Hill Road and east of Route 77, Guilford,	}	June 5, 2007
Connecticut		

OBJECTION TO BRIEF FILED BY RUSSI T. SUNTOKE

The Connecticut Light & Power Company (“CL&P”) objects to the brief filed by Russi T. Suntoke (“Suntoke”), a party to this Docket, dated May 18, 2007. The reasons for this objection are that the brief contains no legal arguments, provides no citations to the record and is in essence, testimony that is improperly submitted after the Council’s hearing and that is prejudicial to CL&P.

I. BACKGROUND

On December 15, 2006, CL&P filed with the Connecticut Siting Council (“Council”) an application for a Certificate of Environmental Compatibility and Public Need for the construction of the Stepstone Substation. A duly noticed Council hearing (the “Hearing”) was held in the Guilford High School Auditorium, 605 New England Road, Guilford, Connecticut, on the afternoon and evening of April 24, 2007. (Tr. 1, p. 3) At the hearing, Suntoke was initially made an intervenor to the proceedings. (Tr. 1, p. 4) Suntoke cross-examined the witnesses as to the need and safety of the proposed substation. (Tr. 1, pp. 71-90).

At the end of the Hearing, Suntoke was given party status because his property abutted the proposed substation site. (Tr. 2, pp. 27-28) Both parties submitted post hearing briefs.

For the reasons set forth in this objection Suntoke's "brief" does not comply with the Council's rules governing post hearing briefs and the Council should take this into consideration when evaluating the contents.

II. ARGUMENT

A. Suntoke's brief provides no legal arguments

Although active and well spoken participant, he may not be familiar with the statutes or the Council's regulations that control participants' rights in contested case proceedings, he is a party and as such is bound by rules governing those with party status. Suntoke's post hearing "testimony" and non-record evidence seriously impairs CL&P's rights to a fair hearing. At the minimum, Suntoke's filing denies CL&P, to its detriment, its opportunity to cross examine Suntoke on his new assertions and new material that he should have presented in his pre-filed testimony or at the hearing. (see Conn. Gen. Stat. §4-178 and RCSA §16-50j-28 (c)) *Ann Howard's Apricots Restaurant, Inc. v. Commission On Human Rights and Opportunities et al* 237 Conn. 209 (1996)¹.

¹ "We have stated that the test of cross-examination is whether there has been an opportunity for full and complete cross-examination rather than the use made of that opportunity." (Internal quotation marks omitted.) *Pet v. Dept. of Health Services*, 228 Conn. 651, 663, 638 A.2d 6 (1994); see Connecticut General Statutes § 4-178 (5) (pursuant to the Uniform Administrative Procedure Act, "a party . . . may conduct cross-examinations required for a full and true disclosure of the facts"); *Gordon v. Indusco Management Corp.*, 164 Conn. 262, 271, 320 A.2d 811 (1973) (party must be able to "substantially and fairly [exercise]" right of cross-examination). To establish a violation of the right to cross-examination, a party who has been deprived of its opportunity to conduct a full and complete cross-examination must

The purpose of a post hearing brief is to summarize the evidence in the record and provide legal arguments in order to aid the Council in its decision-making process.

In his brief, Suntoke neither summarizes the evidence presented nor proffers any legal arguments. Instead, Suntoke provides additional testimony. His brief consists of four separate comments or suggestions. Suntoke states: (1) that CL&P has inadequate fire protection measures; (2) that a concrete wall should be built around the substation perimeter; (3) that the Council should require CL&P to submit final drawings showing the precise number of trees to be removed; and (4) that the Council should require CL&P to measure electric and magnetic fields along the southernmost line of the proposed substation site. None of these observations constitute a legal argument either for or against the approval of the application. These comments are merely Suntoke's opinion as to certain components of the proposed substation. Such unsupported observations do not aid the Council in rendering its decision.

In addition, Suntoke does not cite to the record. Without record citation, it is even more evident that Suntoke is not making legal arguments, but rather, making comments and/or suggestions to Council. A brief is not a place for such observations. The contents of a brief should contain legal arguments, for or against a position, as

additionally show that such deprivation has caused substantial prejudice. See *Pet v. Dept. of Health Services*, supra, 663-64; *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 489, 576 A.2d 510 (1990).

supported by the record. Suntoke's brief fails to meet these commonly accepted standards.

B. Suntoke's brief is prejudicial to CL&P

Post hearing briefs are not to be used to submit new evidence. Providing new evidence in a post hearing brief is prejudicial to other parties because there is no opportunity for rebuttal. Nevertheless, Suntoke has submitted new evidence in his post hearing brief.

In Section 1 of his brief, Suntoke discusses five alleged instances of substation fires occurring in Connecticut, California, New Jersey, Virginia, and Florida. Nowhere in the record is there mention of these alleged fires. This is new evidence and as such it is prejudicial to CL&P. CL&P does not have the opportunity to cross-examine Suntoke in order to question the veracity of these statements. Allowing such evidence to be submitted and subsequently used in rendering a decision is detrimental to CL&P and flies in the face of the Council's administrative process. Without the opportunity to otherwise rebut Suntoke's newly submitted evidence, Suntoke's inaccurate statements may be regarded as fact by those who read his brief.

III. CONCLUSION

The Council should therefore give the statements in Suntoke's brief the appropriate weight with respect to the rights of the Applicant. As stated above, Suntoke's brief is merely additional testimony and should not be relied on by the Council

in its decision-making process. CL&P drafted its brief within the confines of the record and Suntoke should be required to do the same.

Respectfully submitted,

APPLICANT,
THE CONNECTICUT LIGHT AND POWER
COMPANY

BY: 
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Its Attorneys

Copies to Service List Attached

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	The Connecticut Light and Power Company (CL&P)	<p>Robert E. Carberry, Manager Transmission Siting and Permitting Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-6774 (860) 665-6717 fax carbere@nu.com</p> <p>Kathleen A. Shea, Esq. Northeast Utilities Service Company, Legal Dept. P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2396 sheaka@nu.com</p> <p>Helen Wong, Project Manager Transmission Project Management Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2464 (860) 665-6550 fax wonghh@nu.com</p> <p>Anthony M. Fitzgerald, Esq. Robert S. Golden, Esq. Marianne Barbino Dubuque, Esq. Carmody & Torrance LLP P.O. Box 1110 Waterbury, CT 06721-1110 (203) 573-1200 afitzgerald@carmodylaw.com rgolden@carmodylaw.com mdubuque@carmodylaw.com</p>
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