

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

PETITION OF BRIDGEPORT ENERGY : PETITION NO. 841  
II, LLC FOR A DECLARATORY RULING :  
TO APPROVE THE INSTALLATION :  
AND OPERATION OF A 350 MW :  
PEAKING FACILITY AT THE EXISTING :  
BRIDGEPORT ENERGY FACILITY IN :  
BRIDGEPORT, CONNECTICUT : APRIL 3, 2008

PETITIONER'S POST-HEARING BRIEF

I. INTRODUCTION

The Bridgeport Peaking Station project (the "Project") proposed by Bridgeport Energy II, LLC ("BEII" or "Petitioner") will significantly contribute to the reliability of Connecticut's electric system by adding important peaking capacity where it is needed most—in the southwestern portion of Connecticut where electric demand is high and the transmission system is constrained. The Project is ideally located only 250 feet away from United Illuminating's Singer Substation now under construction on a parcel of heavy industrial land that is part of a site that has been dedicated for decades to the generation of electricity.

The City of Bridgeport, its departments and agencies, and the neighborhood planning committee all strongly support the Project. The Mayor personally appeared at the hearing to support the Project recognizing the need for a reliable electric supply and the "fast-start peaking capacity vitally needed by the citizens of Bridgeport and the rest of southwestern Connecticut." (March 4, 2008 Letter to Council from Mayor Finch).

Opposition to the Project has been limited. Two neighboring property owners intervened in the proceeding to raise potential concerns about the Project. The developer of 60 Main Street intervened to object to the expansion of the existing energy generating complex on the grounds that it is not in keeping with the surrounding area. (60 Main Street Exhibit 1 Prefiled Testimony of Stephen Grothwohl, p. 2). Mr. Grothwohl raised concerns about the visibility of the peaking plant, while at the same time acknowledging that he was fully aware of the existence of the electric generation complex when he purchased his property and presented his development proposal. (Transcript 2, pp. 64-65). Indeed, Mr. Grothwohl's development renderings for 60 Main Street clearly show the 498-foot Bridgeport Harbor Station exhaust stack and, during the hearing, he testified that he was aware of the four oil tanks, each with a capacity of more than 7 million gallons, and the large coal pile next door to the 60 Main Street development. (Transcript 2, pp. 65-68). Despite the presence of this large scale electric generating complex, 60 Main Street obviously believes that its mixed use development is in keeping with this surrounding land use. The addition of an infrequently operated, modern peaking facility does not change the nature of the area.

In response to requests from the City and 60 Main Street, BEII has added enhanced landscaping and a modern building to enclose the turbines, and has proposed to work further with the City and 60 Main Street to add reasonable architectural treatments to improve the appearance of the new peaking plant. (Transcript 1, pp. 33-34; 57; 67; 102; Transcript 2, p. 58; BEII Exhibit 1, pp. 16-17; BEII Exhibit 3 Prefiled Testimony of D. Blake Wheatley, pp.5-7; BE II Exhibit 9; BEII Exhibit 11; BEII Exhibit 19 Responses to 60 Main Street's Interrogatories, Interrogatory 1). Thus, 60 Main Street's argument

that BEII has not proposed “any visual mitigation or landscaping to reduce the visual impact of the Proposed Facility” is plainly wrong. Post-Hearing Brief of 60 Main Street (“Intervenor’s Brief”) at 2.

The other party that intervened to raise objections during the hearing was Mr. Mauzerall, who also objects to the 60 Main Street project. Mr. Mauzerall identified drainage concerns during his testimony, but admitted that the ten year old photographs of flooding on Henry Street were the result of a storm surge on Long Island Sound. (Transcript 2, pp. 86-87). It is difficult to see how a facility further inland of his property will exacerbate this problem. Moreover, the Bridgeport Peaking Station has been designed to meet the drainage and stormwater requirements established by the Bridgeport Water Pollution Control Authority. (BEII Exhibit 1, p. 16; BEII Exhibit 7 Prefiled Testimony of Andrew Degon, p.3).

Only two members of the public spoke in opposition to the proposed Project. One complained about the impact of United Illuminating’s transmission line construction in the City, not about the peaking plant. It was clear from the other speaker’s statements that he opposes all energy infrastructure improvements in the City of Bridgeport.

The administrative record of this proceeding, as shown in the accompanying Proposed Findings of Fact, demonstrates that the Council should approve this Project. This post-hearing brief further addresses several questions raised during the hearing: (1) the appropriate mechanism to finalize the architectural design of the facility; (2) the applicable noise regulations and status of noise and air quality studies; and (3) the need for a traffic study.

## II. ARCHITECTURAL DESIGN

Projects of this type typically do not finalize the architectural design until after issuance of all required governmental approvals and financing. Accordingly, final design will be done in conjunction with detailed engineering, which will be completed after the requisite government approvals are obtained. Moreover, the Council usually addresses architectural and landscaping elements as a component of the D&M plan. (Transcript 2, p. 59). BEII notes that, in its Post-Hearing Brief, 60 Main Street has suggested that the Council require a D&M plan for this project. BEII does not object to a D&M plan requirement for this Project, and in fact suggests that the final architectural treatment of the buildings and landscaping be addressed as part of that D&M plan. The D&M plan condition in the Council's ruling on the Petition should include provision for architectural and landscaping elements as follows:

- (a) Reasonable architectural treatments to improve the appearance of the new peaking plant and to minimize visual effects; and
- (b) Urban appropriate landscaping to provide visual screening of the facility.

Although BEII is amenable to incorporation of the above elements into the D&M plan, 60 Main Street incorrectly claims that an architectural wall along Russell Street is feasible from an engineering standpoint. Intervenor's Brief at 5. In fact, during his testimony, Andrew Degon specifically indicated that a wall along Russell Street cannot be constructed for engineering reasons as the wall would block the inlet air intakes of the Project, which cannot be relocated. (Transcript 1, pp. 96-97). BEII indicated a wall around the oil tank may be feasible from an engineering standpoint, so long as there is proper access to and from that tank for purposes of refueling. (Transcript 1, pp. 95-96). Further, although BEII is amenable to working with 60 Main Street on architectural treatments of the facility, it objects to the imposition of conditions imposing specific

fencing material, which may or may not be determined appropriate and feasible during the final engineering design process. Ultimately the plant must meet the insurance and other applicable requirements to this type of facility.

Additionally, BEII objects to any condition requiring it to add visual mitigation, such as landscaping on the adjacent PSE&G Bridgeport Harbor Station site. BEII does not have any control over the disposition of PSE&G 's property and, as a competitor of BEII, there is no reason for PSE&G to agree to allow the use of its property to support BEII's construction of the Project. Accordingly, any conditions contemplating or premised on the cooperation of adjacent or nearby property owners is inappropriate and should not be included in the Siting Council's decision.

### III. NOISE AND AIR QUALITY ISSUES

At the public hearing a question was raised as to the applicable noise regulations. In 1969, pursuant to the State Law, the DEP adopted the Control of Noise Regulations ("DEP Noise Regulations"), R.C.S.A. §§ 22a-69-1 through 22a-69-7.4, inclusive. By default, the applicable noise regulations are DEP Noise Regulations, unless the DEP has approved local noise regulations which are consistent with the State noise regulations. Conn. Gen. Stat. § 22a-73. DEP Noise Regulations do not establish a permitting or approval regime, but merely set forth noise level standards.

Like most municipalities, the City of Bridgeport has adopted noise control regulations. Ordinances of the City of Bridgeport, §§ 8.80.101-8.80.130 (formally prior code §§ 21-35-21-46). The City of Bridgeport's noise control regulations and DEP's Noise Regulations set forth the same noise level standards for noise emitters from industrial zones. Ordinances of the City of Bridgeport, § 8.80.040; DEP Noise

Regulations, R.C.S.A. § 22a-69-3.6. The most stringent noise level standard for industrial zone emitters is the nighttime residential noise level of 51 dBA. *Id.* Both the DEP and Bridgeport's regulations allow for an increase of 5 dBA over the 51 dBA standard in high background noise areas. *Id.*; see also Transcript 1, pp. 31-32. This high background noise standard is necessary since the noise levels monitored in receptor zones include noise from multiple sources that must be taken into account during any receptor noise monitoring program. Therefore, 60 Main Street's suggestion that the Council set a noise level standard of 51 dBA or less, without taking into account the regulatory standards for high background noise areas is inappropriate and should be rejected.

With respect to taking sound measurements, both sets of noise regulations require that sound measurements to demonstrate compliance with the regulations must be made by persons trained in sound measuring techniques, using sound measuring principles and instrumentation in accordance with procedures set forth in the regulations. Ordinances of the City of Bridgeport, § 8.80.030; DEP Noise Regulations § 22a-69-4. As with DEP Noise Regulations, no permits or approvals are required to emit noise under Bridgeport's noise regulations.

With respect to air quality, in its Post-Hearing Brief, 60 Main Street argues that BEII has not submitted appropriate air quality information to the Council. However, not only did BEII address air impacts in its Petition, in the Prefiled Testimony of Richard Londergan, and through testimony at the public hearing, but it filed a copy of its DEP New Source Review (NSR) Air Permit application as a bulk exhibit for Council review. (BEII Exhibit 1, pp. 12- 13 and Appendix F; BEII Exhibit 5 Prefiled Testimony of Richard Londergan; Transcript 2, pp. 20-21; 34-38; 40-41). As the Council well knows,

the DEP has primary responsibility for air quality regulation and the Project cannot be constructed unless the DEP issues a NSR air permit. Accordingly, further submittals regarding impacts to air quality are likewise unnecessary.<sup>1</sup>

#### IV. TRAFFIC ISSUES

During the hearing and in its Post-Hearing Brief, 60 Main Street argued that the Siting Council should require a formal traffic study as a condition of approval. The Intervenor's argument is based on a complete misrepresentation of the likely traffic generated by the Project. First, the purpose of the Project is to provide standby resources when needed by the electric system operator. (Transcript 1, pp. 70-71). The expectation is that the Project will operate only infrequently, so that it can provide operating reserves. (Id.).<sup>2</sup> Second, operations on oil will be even more infrequent and likely to occur only during a few extremely cold days in the winter. (Transcript 1, pp. 85; 87). Even then, the Project is not likely to operate continuously for 24 hours, but only for part of each day. (Transcript 1 70-71). Third, 60 Main Street argues that if the plant operates on oil for 24 hours, the plant will generate 200 oil trucks per day. Intervenor's Brief at 4. This statement is completely contrary to the testimony that the tank can only accommodate two 8,000 gallon trucks per hour. See Transcript at 85; 88; 92-93. This minimal amount of traffic does not warrant a traffic analysis beyond what was provided by BEII. In any

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<sup>1</sup> 60 Main Street suggests that the Council include a condition limiting the hours of operation of the Project to 2500 hours per year, as the DEP air permit would do. By practice, however, DEP typically limits a facility's operations by the amount of fuel that can be burned in a year. Therefore, the DEP permits, when issued, will not have an hours limit, but rather a fuel limit equivalent to amount of fuel that can be burned at the maximum firing rate for the number of hours specified. This takes into account the possibility that a facility may operate at less than maximum firing rate for a period of time, while still restricting operations consistent with the air quality analysis. Therefore, rather than putting a condition in the Siting Council Petition specifying hours, BEII requests a condition that the Project operate in compliance with the DEP air permit.

<sup>2</sup> Although the expectation is that the Project will operate only infrequently, the purpose of having the flexibility to run more often is to increase the system's reliability in the event of an extraordinary event, e.g., in the event other generation was not available and operation was necessary to serve the load. (Transcript 1, p. 64; 71).

event, 60 Main Street has already done a "thorough" traffic study for its project indicating that its project will generate significant traffic as a result of 1200 condominium units, 75,000 square feet of commercial retail space, a 250 boat slip marina with a 2500 space parking lot. (Transcript 2, p. 71-73). If 60 Main Street truly believed that two oil trucks per hour would adversely affect traffic in the vicinity of its project, it has the data to show this. The fact that 60 Main Street did not submit any such data, strongly suggests that its desire for an additional traffic study is nothing more than a way to deter this Project.

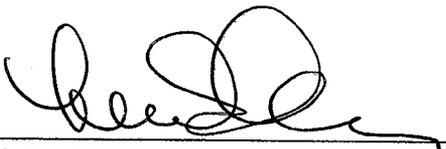
V. CONCLUSION

For the foregoing reasons, and as supported by the facts contained in the administrative record, BEII respectfully requests that the Siting Council approve BEII's Petition for Declaratory Ruling.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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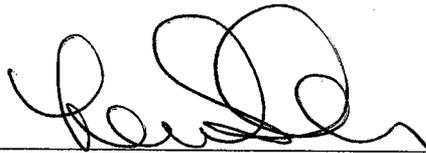
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