

STATE OF CONNECTICUT

SITING COUNCIL

<b>CSC REGULATIONS REVISIONS –</b> Amendments to Regulations Relating to the Rules of Practice of the Council, Sections 16-50j-1 to 16-50z-4, inclusive, and Sections 22a-116-B-1 to 22a-116-B-11, inclusive, of the Regulations of Connecticut State Agencies	November 23, 2011
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**COMMENTS OF THE CONNECTICUT LIGHT AND POWER COMPANY  
REGARDING AMENDMENTS TO REGULATIONS RELATING TO THE  
RULES OF PRACTICE OF THE COUNCIL**

The Connecticut Light and Power Company (“CL&P”) respectfully files these comments regarding Amendments to Regulations relating to the Rules of Practice of the Council pursuant to the Council’s Notice of Intent to Amend Regulations, as published in the Connecticut Law Journal on October 25, 2011.

**A. Overall Comments**

In general, the Council’s proposed amendments will promote consistency with relevant statutory provisions, document existing polices and procedures of the Council, streamline the review process, and provide greater clarity. Therefore, participants in the Council’s future proceedings, staff and the Council will benefit from these efforts.

**B. Support for Proposed Amendments**

CL&P wishes to express its support for certain amendments, as follows:

1. 16-50j-2a Definitions:

Except as noted below in Section C.6 of these Comments, the new definitions and revisions to existing definitions provide greater clarity.

2. 16-50j-14 Application for Party Designation, 16-50j-15a Intervenor Participation, 16-50j-22a Conduct of Proceedings:

By virtue of the incorporation of §§ 4-177a and 177b of the Uniform Administrative Procedures Act, CGS § 4-166 et seq., the new provisions and revisions provide for a more structured approach and therefore promote consistency and fairness.

3. 16-50j-56 through 58 Energy Facilities Exempt Modifications:

CL&P strongly supports the creation of this streamlined procedure for modifications to facilities that will not have a substantial adverse environmental effect. This procedure will reduce the commitment of resources by energy companies and the Council for largely routine matters and, in so doing, reduce costs.

4. 16-50z-1 Statement of Intent to Acquire:

Incorporation of the Council's existing interpretation of CGS § 16-50z as excluding electric substation-only projects in the Council's Rules of Practice makes this important guidance more accessible to stakeholders.

### C. Requested Changes

CL&P requests that the Council revise its proposed revisions to provide an appropriate standard or to avoid unintended consequences, as stated below:

1. 16-50j-21(a) Notice of Hearings:

In subsection (4), a requirement to provide notice of the application or petition filing to abutters of primary or alternative sites on which the proposed facility would be located has been added. For large transmission line projects, this regulation would be unduly burdensome. Although CL&P understands the Council's interpretation that the requirement in CGS § 16-50i(b) for bill inserts for transmission lines trumps this provision, CL&P recommends that language be added at the beginning of subsection (4) to explain that transmission line projects are exempt from this requirement as follows: "Except for facilities defined in section 16-50i(a)(1) of the General Statutes, [t]he..." CL&P also understands that the reference to "alternative sites" would not include alternative sites that have been rejected and thus not proposed as an alternative site in the application or petition.

2. 16-50j-57 Exemptions:

As to the references in subsection (b)(2) (B) and (c)(3) to changes that "do not increase the height of existing associated equipment", CL&P notes that certain equipment that is innocuous such as lightning masts and various replacement components of equipment (e.g., circuit breakers or circuit switchers), may result in a minimal increase in height. CL&P

suggests excluding such equipment. CL&P also suggests excluding minor height increases of up to ten (10) feet of the original height for transmission line-related equipment and six (6) feet for substation-related equipment.

3. 16-50j-57(c) Exemptions:

Subsection (c) (6) requires the receipt of local approvals. Since in many circumstances a town zoning agency or building official does not have jurisdiction over energy components that are subject to PUESA, CL&P recommends that the Council delete this subsection.

4. 16-50j-61(b) D&M Plan Elements (Plan drawings); (c) Supplemental Information; (e) Notice; (f) Changes:

Subsection (b) (1) requires property owners to be identified. For large transmission projects, such a requirement would be unduly burdensome. Thus, CL&P requests that the Council require the identification of property owners only for areas where the company does not own the land in fee or possess easement rights.

Subsection (b) (7) (E) requires information on “[r]esidences or businesses within or adjoining the site that may be disrupted during the construction process.” The Council may wish to clarify the type of disruption, such as an interruption of access to the subject property. Otherwise, use of the

term “disrupted” could be interpreted too broadly to include an impact such as a general increase in construction truck traffic in the vicinity.

Subsection (b) (7) (F) requires information on “[s]ignificant environmental, historic and ecological features, including, but not limited to, significantly large or old trees, buildings, monuments, stone walls or features of local interest.” CL&P encourages the Council to add language to clarify this requirement for features identified as “significant” in the underlying proceeding so as to ensure that applicants concern themselves with appropriate environmental, historic or ecological features. Without clarification, the broad focus of the proposed language could render the D&M plan process unnecessarily complex. For example, with respect to trees, CL&P suggests that the Council specify a reasonable diameter at breast height and an approximate age, as well as exclude danger trees (e.g., trees that could contact a transmission line if they were to fail and fall into the right-of-way) or decayed and diseased trees. In addition, CL&P requests that the Council exclude tall growing trees (regardless of their age or significance) within the cleared and maintained portion of any transmission right-of-way.

As evidenced during Storm Irene and the recent Nor'easter, trees can cause significant damage to utility facilities and result in

prolonged interruptions of service. While CL&P understands the Council's intention to preserve trees where appropriate, CL&P must protect the integrity of its system by minimizing potential hazards from trees.

Subsection (c) (8) includes a requirement for contact information for the contractor's personnel. Since the applicant or petitioner is ultimately accountable for the project, this information would not be necessary. Furthermore, the Council may wish to avoid involving itself in issues that may be within the contract relationship between a company and its contractors. Finally, the contractor is not always determined at the time of the D&M plan filing. Note that this information is not required in 16-50j-76(c) (D&M plans for CATV or telecommunications sites).

Subsection (e) would require that copies of the plan or section be provided to "the service list and the property owner of record, if applicable" upon filing. In some proceedings, many of the participants would not likely be interested in reviewing the D&M plan. To conserve paper and avoid unnecessary expense, the Council should consider revising this language to require that copies be provided to any town officials that were named on the service list for the underlying proceeding and, as to others on that service list, a notice of the filing be provided with information on

who to contact at the applicant or petitioner to review a copy of the D&M plan. The requirement to provide copies to “the property owner of record, if applicable” would be unduly burdensome for a large transmission project. Consistent with its Comment C. 4 as to 16-50j-61(b)(1) above, CL&P suggests that copies be provided to property owners only for areas where a company does not own the land in fee or possess easement rights. In the alternative, CL&P suggests that the D&M plan be posted on the applicant’s or petitioner’s website.

Subsection (f) provides that the Council may order changes to a D&M plan. Considering that in many cases the applicant or petitioner may propose changes to a D&M plan, the Council may wish to revise this sentence to state that the Council “may order or approve changes” to a D&M plan. Consistent with the approach recommended above for subsection (e) with respect to provision of copies of D&M plans, CL&P recommends that any proposed or ordered change(s) to a D&M plan be sent to any town officials named on the service list for the underlying proceeding, and for others on that service list, notice of such D&M plan change(s) be provided to those persons with information on who to contact at the applicant or petitioner to review a copy of the proposed or ordered D&M plan change(s).

5. 16-50j-62 Reporting Requirements:

In subsection (b) (2), advance written notice is required for a significant change to the D&M plan, unless impractical, in which case written notice must occur within 48 hours after immediate verbal notice. Additionally, the revisions would add to the list of significant changes: changes to structure locations (towers, guy wires, associated equipment, other) and increased or decreased mitigation measures. Including these particular changes has the potential to create an obligation that is unduly burdensome and in some instances not possible to meet. Decisions are often made in the field by the contractors based on soil types encountered, weather conditions, etc. and can be minor in nature, especially mitigation measures such as hay bales. CL&P may not be aware of such changes and the cost of the project is likely to increase if CL&P is required to have a field monitor painstakingly verify structure locations and exact mitigation measures, especially if there are expansive and/or multiple work areas. Moreover, the volume of filings would increase. CL&P suggests that the Council add a materiality standard as follows: a change to a project that significantly reduces the amount of protection to the environment or significantly increases potential public concerns.

In addition, CL&P requests that the Council consider clarifications as follows:

6. 16-50j-2a Definitions:

(1)(B) “Associated equipment”: In connection with electric facility projects, CL&P often must upgrade relay and control equipment and communications equipment at sites other than the project site to create a seamless network. CL&P recommends that the definition include “network equipment” to encompass such related activities.

7. 16-50j-21(a)(4) Notice of Hearings:

The statement of purpose reflects the Council's intention to allow opportunities for meaningful participation by interested parties. For petition proceedings, CL&P suggests that the Council allow petitioners to send notice on the date of filing. In that way, interested parties will be able to obtain relevant information immediately in lieu of waiting until (and perhaps forgetting) the filing date. CL&P also requests that the Council provide clarification that an affidavit is sufficient proof of notice.

8. 16-50j-22a Conduct of Proceedings:

In subsection (c), responses to the Council's information requests must be “separately and fully answered under the penalties of perjury by the witness that shall testify during the hearing as to the content of the response”. The witness panel is not always determined at the time of responses and could change depending on whether a particular witness is

available on the hearing date. To prevent the unavailability of a witness for the hearing calling into question the response, CL&P suggests that the Council delete the language "that shall testify during the hearing as to the content of the response". Moreover, the responses are always authenticated by a member of the witness panel prior to admission as an exhibit at the hearing, ex. the response was prepared under the supervision of the hearing witness. Therefore, adequate safeguards to ensure the accuracy of responses are in place so that the witness who initially responds need not be the same witness on the panel.

9. 16-50j-57(b)(2)(F) Exemptions:

This subsection would require that the structural integrity of a facility being modified be determined by a Connecticut-licensed professional engineer. CL&P requests that the Council add "where applicable" before "as determined" to reflect the statutory exemption in C.G.S. § 20-309 for corporations under the jurisdiction of the now Public Utilities Regulatory Authority.

10. 16-50j-57(d)(2)(D) Exemptions:

Because only electric and magnetic (EMF) fields for existing facilities can be measured, CL&P recommends that the Council require the notice regarding temporary facilities to state that the EMF fields will be managed in a manner consistent with the Council's EMF Best Management

Practices for the Construction of Electric Transmission Lines in Connecticut ("BMPs").

The same comment applies to 16-50j-57(d)(3)(D).

11. 16-50j-59(o) Information Required (for Certificates):

Modeled after the telecommunications facility regulations, the requirement for “a list of all energy facilities and associated equipment” within a specified radius of the proposed facility (5 miles) may be of limited usefulness for energy sites. Generally speaking, telecommunication towers are more adaptable for use by more than one carrier, whereas energy sites often are not as readily adaptable for multiple users, especially users with different fuels or technologies.

12. 16-50j-59(r) Information Required (for Certificates):

EMF levels at the property boundaries might not necessarily be helpful for a transmission line project. CL&P suggests a reference to the information required in the Council's BMPs.

**D. Potential Statutory Authority Issues**

1. 16-50j-1 Description of Organization:

Subsection (a) generally tracks the legislative purpose of PUESA set forth in CGS § 16-50g. The following language in CGS § 16-50g is omitted at the end from (7) regarding activities that facilitate planning: “to

implement the foregoing purposes.” While it may be implicit, the Council may wish to specify the connection between its planning efforts in support of its other functions.

2. 16-50j-21(a) Notice of Hearings:

In subsection (1), new language “not later than” one week “after” was added in place of the prior language [within] that was verbatim from §16-50m(c). Additionally, the subsection would add an alternative of “not less than 30 days prior to a hearing date”. Note that only the one week requirement is set forth in CGS §16-50m(c).

3. 16-50j-44 Transferability of Certificates:

This new section tracks CGS § 16-50k(b). However, subsection (d)(2) adds an additional ground of non-payment of annual assessments and invoices under CGS §16-50v for denial of a transfer. Neither §16-50k(b) nor §16-50v authorize withholding of approval of the transfer of a certificate based on such non-payment (§16-50v(i) provides for monetary penalties.)

4. 16-50v-3 Non-payment:

This new section would provide that the Council must refrain from considering pending and future matters filed by any person who fails to pay invoice and assessment amounts that are 30 days or more past due.

Note that the Council refers to CGS §16-50v; however, §16-50v(i) only provides for a monetary penalty for non-payment.

**E. Minor Editorial Changes/Clarifications**

1. 16-50j-12(f) Filing Requirements (Service):

The requirement to serve copies of filed documents presumably excludes bulk filings. The Council may wish to state such exclusion. Also, new language exempts from service list mailings proprietary information or CEII “for which a protective order may be sought.” CL&P suggests adding “and granted by the Council” after “sought.”

2. 16-50j-14(b) Application for Party Designation:

This subsection requires a petition to be designated as a party "to state facts that the petitioner's legal rights, duties or privileges shall be specifically affected by the Council's decision" pursuant to CGS §4-177a. CL&P recommends that the Council insert “show” or “establish” after “to state facts that”.

3. 16-50j-21(a) Notice of Hearings:

Subsection (4) requires notices of filings, which would occur prior to a hearing. The Council may wish to change the heading to “Notice of Filings and Hearings.”

4. 16-50j-28 Rules of Evidence:

The Council's mark-up shows the deleted existing language in brackets concerning judicially cognizable facts as identical for former subsections (d) and (e). The existing subsection (e) has different language concerning technical and scientific facts. To avoid confusion as to the language being replaced, the Council may wish to correct the existing text for subsection (e) in its mark-up.

5. 16-50j-39 Filing Requirements (for Petitions for Declaratory Ruling):

Subsection (b)(7) refers to information the petition may consider relevant. The Council may wish to substitute "petitioner" for "petition".

6. 16-50j-40 Procedure after Petition Filed:

New language in (a) requires pre-filing notices. The Council may wish to change the heading to "Petition Filing Procedures."

7. 16-50j-57(b)(2)(D) Exemptions:

The proposed language may be clearer if stated as follows: "(2) Changes on an existing site that do not: ... (D) fail to manage electric and magnetic fields at the site boundary in a manner that is consistent with the Council's Best Management Practices for Electric and Magnetic Fields at the site boundary; ..."

8. 16-50j-61 D&M Plan Elements:

Since there is no subsection (d), subsections (e) and (f) should be corrected.

9. 16-50v-4 Municipal Participation Fee:

This section summarizes the provisions of CGS §16-50bb. However, note that the first sentence refers to §16-50bb for the requirement of fee payment at application filing which is actually required by §16-50l(a)(1) and §16-50l(a)(3).

Respectfully Submitted,

THE CONNECTICUT LIGHT AND POWER  
COMPANY

By:   
Jeffery D. Cochran  
Senior Counsel  
Northeast Utilities Service  
Company  
Its Attorney

By: CARMODY & TORRANCE LLP  
Its Attorneys

  
Marianne Barbino Dubuque