July 14, 2006

Carissa Sedlacek
ISO-New England
1 Sullivan Road
Holyoke, Massachusetts 01040-2814

Re: TCA Application #NU-04-TCA-04, Dated: January 12, 2005

Dear Ms. Sedlacek:

Enclosed, please find the Comments of Richard Blumenthal, Attorney General for the State of Connecticut, in the above-referenced matter.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

By: ____________________________

Michael C. Wertheimer
Assistant Attorney General
Attorney General's Office
10 Franklin Square
New Britain, CT 06051
Tel: 860-827-2620
Fax: 860-827-2893

TCA APPLICATION #NU-TCA-04, :
DATED JANUARY 12, 2005 : JULY 14, 2006

COMMENTS OF RICHARD BLUMENTHAL, ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT

Richard Blumenthal, Attorney General for the State of Connecticut ("Connecticut Attorney General"), hereby submits his comments regarding TCA Application #NU-TCA-04, Dated: January 12, 2005. These comments concern ISO New England's ("ISO-NE" or "ISO") draft determination in connection with the revised transmission cost allocation ("TCA") application submitted by the Connecticut Light and Power Company ("CL&P") pursuant to Schedule 12C of the ISO-NE Open Access Transmission Tariff and ISO-NE Planning Procedure No. 4 ("PP-4") dated June 15, 2006 (referred to herein as the "Draft Decision" or "Draft").

For the reasons explained herein, the Connecticut Attorney General respectfully submits that ISO-NE should find that the entire $354.8 million cost of the Phase I project, a 20.4 mile 345 kV line between Plumtree Substation in Bethel, Connecticut and Norwalk Substation in Norwalk, Connecticut, along with reconfiguration of certain sections of existing 115 kV lines along the route (collectively the "Phase I Project"), qualifies as Pool Supported PTF costs and thus should be spread throughout the New England region.[1] First, the Phase I Project is clearly required to address regional electric system reliability needs. Second, consistent interpretation of ISO-NE's rules and ISO-NE's active advocacy in and during the Connecticut regulatory process approving the Phase I Project requires that the full cost associated with the Phase I Project be found to be reasonable and necessary to complete construction and place the Phase I Project in

[1] These Comments do not address the $2.4 million in Non-PTF, or localized, costs.

service and, therefore, to qualify for regional cost allocation. ISO-NE should reconsider and modify its Draft Decision to adopt this position.

I. INTRODUCTION

There has been a long-standing recognition of the reliability need for the Phase I Project and urgency in completing its construction by both ISO-NE and Connecticut. In 2001, ISO-NE identified southwest Connecticut's ("SWCT") import interface as the most heavily constrained in the New England region. See ISO-NE Regional Transmission Expansion Plan, September 28, 2001 ("RTEP01"). In 2003, ISO-NE again highlighted the transmission needs of SWCT in its Regional Transmission Expansion Plan dated November 13, 2003 ("RTEP03"). In fact, the 2003 Plan recommended the completion of the Phase I and Phase II 345 kV projects "as soon as practicable." RTEP03, 32.

Connecticut took the reliability issues raised in RTEP01 and RTEP03 seriously and acted responsibly and expeditiously to address them. CL&P filed its application to construct the Phase I project with the Connecticut Siting Council ("Siting Council") in 2001 and on July 14, 2003, the Siting Council approved that application. Construction for this project is now nearly complete and the line is expected to be in service by the end of 2006. In addition, Connecticut has since granted siting approval to the Phase II line and construction of that line, which will complete the 345 kV loop through SWCT, is already underway.

The Siting Council's approval of the Phase I Project followed a contested proceeding which included 21 hearings. ISO-NE was an active participant in those proceedings. ISO-NE provided testimony and submitted briefs in support of the Phase I Project. Among other things, ISO-NE provided guidance to the Siting Council on how

the line should be designed in order to provide the best chance for the costs of this line to be spread regionally. For example, ISO-NE testified to the Siting Council that a Siting Council order requiring underground would carry weight and that local laws matter when considering how the costs of a project would be allocated.

The project, as approved by the Siting Council, contains both overhead and underground construction of the 345 kV line and the existing 115 kV lines. See Draft, 6-7, 19. Such a design was required due to the unique demands of siting transmission lines in SWCT, one of the most densely populated and developed regions in the country and certainly the most densely populated and developed part of our highly developed state. The SWCT region also is home to a host of unique historic and environmental concerns that must be taken into account. In other words, siting transmission lines in SWCT is a demanding task and cannot be compared or related to siting transmission in abstract, hypothetical cases.

It is beyond serious dispute that the configuration of the line that the Siting Council approved was the only design that could have been approved, certified, constructed and in service in 2006, and likely in 2007 or thereafter, for that matter. As a result of this configuration, the line approved by the Siting Council will be in service this year and will address the reliability needs of SWCT and the region.

Now, after demanding that Connecticut address the reliability needs of SWCT and the regional transmission grid with new transmission lines and after providing guidance as to the standards that would apply when considering the allocation of the costs of this project, ISO-NE has preliminarily determined that $119.9 million of the total estimated cost of the Phase I project should be "localized," or allocated only to Connecticut as

opposed to being shared throughout the region. In so doing, ISO-NE has punished Connecticut and its electric ratepayers in at least two ways. First, it has punished Connecticut for designing, approving and constructing the only configuration that could have been constructed and placed in service this year. Second, the ISO-NE has punished Connecticut for listening to its testimony and following the its advice on how to design the line in a manner in which the costs would be spread regionally. ISO-NE does this by applying a standard for determining how the costs of the project should be spread that is in no way related to the standards that ISO-NE itself described to the Siting Council during the Council's deliberation on the Project and that is internally inconsistent; essentially a form of "bait-and-switch."

ISO-NE should reconsider its Draft Decision and determine that the full amount of the costs of the Phase I Project should be spread across the region. Connecticut should not be forced to pay more than its fair share of the cost of this project that is designed to benefit the entire region. Connecticut also should not be punished for following the ISO-NE's guidance during the regulatory proceeding for approval of the Phase I Project and for designing and approving the only configuration that would allow the line to go into service in 2006 rather than some much later date, if at all.

II. ISO-NE'S DRAFT DECISION

In its Draft, ISO-NE described and applied its method for determining how the costs of a transmission project should be allocated. According to the ISO-NE's draft, this method is based upon its interpretation of Schedule 12C and PP-4. Schedule 12C states, in relevant part, that:

> [t]he ISO shall determine what those reasonable requirements are that are consistent with Good Utility Practice and the current engineering and construction practices in the area in which the Transmission Upgrade is built [and that] [t]he costs of Transmission Upgrades that exceed those reasonable requirements . . . shall be Localized Costs.

Draft, 4.

When considering whether costs should be localized, 12C provides that, with input from the ISO-NE Reliability Committee, ISO-NE should consider:

> -good utility practice;
>
> -current engineering design and construction practices in the area in which the project is being built;
>
> -allowing for appropriate expansion and load growth;
>
> -alternate feasible and practical transmission alternatives;
>
> -the relative costs, operation, efficiency, reliability and timing of implementation of the proposed project.

Id.

Also according to the ISO-NE's Draft Decision, PP-4 states that a "feasible and practical transmission alternative means a transmission alternative that is feasible and practical from an engineering design and construction perspective." Id. It further provides that "[a]n alternative that is not or may not be approved by a siting or local review board may still be considered a feasible and practical transmission alternative." Id., 4-5.

ISO-NE, in its Draft, interpreted 12C and PP-4 in a manner that departs from the foregoing criteria by distorting and ignoring several critical elements. Accordingly, the Draft Decision is arbitrary, capricious, internally inconsistent and entirely divorced from reality. In its Draft Decision, ISO-NE concluded that:

> Schedule 12C directs the ISO to determine whether the estimated costs of a proposed project exceed the estimated costs of an alternative project that provides equivalent performance and that is consistent with Good Utility Practice and feasible and practical to be designed and constructed from an engineering standpoint. The fact that it may be difficult or impossible from a state or local statutory, regulatory, or political perspective to convince a relevant governmental body to allow the applicant to build such an alternative is irrelevant, because this outcome would be unrelated to engineering design and construction or Good Utility Practice.

Id., 5. (Emphasis added).

When it applied this incorrect description of its own standard for cost allocation, ISO-NE determined that just $237.3 million of the total estimated cost of $354.98 million qualifies as Pool-Supported PTF costs that will be allocated regionally across New England. As a result, according to ISO-NE's Draft $119.9 million of the projected costs of the Phase I project as approved and constructed will be allocated solely to Connecticut ratepayers. Draft, 2-3.

III. ISO-NE'S DRAFT DECISION IS ARBITRARY AND CAPRICIOUS

ISO-NE should reconsider its Draft Decision and should allocate the full amount of the costs of the Phase I Project regionally. The Phase I Project benefits the entire region and all of the costs related to that project are entirely necessary in order for that line to have been sited, constructed and placed in service in 2006.

A. ISO-NE's Draft Decision is Inconsistent with Its Own Testimony in the Siting Council's Phase I Proceeding

ISO-NE's initial decision to deny regional cost treatment to the entire cost of the Phase I Project and assign approximately $120 million of this project to Connecticut ratepayers only is arbitrary and capricious because ISO-NE applied a cost allocation standard that was entirely different than the one that it testified would apply in the Phase I proceeding Before the Connecticut Siting Council. In the Phase I case before the Siting

Council, ISO-NE provided extensive testimony on the question of how the costs of the project would likely be allocated. In so doing, ISO-NE gave guidance to the Siting Council on the critical question of how the line could and should be designed to best assure that the costs of the project would be shared regionally. The Siting Council relied on ISO-NE's testimony and approved a design the line that it reasonably believed, based on ISO-NE's testimony in that case, should have resulted in the entire cost of the line being shared regionally.

In its Draft Decision, however, ISO-NE applied a standard that bears no relation to the one it described to the Siting Council in the Phase I proceeding and, if the Draft Decision is adopted, will result in Connecticut ratepayers bearing the annualized costs of an additional $120 million in transmission construction costs. ISO-NE's failure to apply the standard that it described to the Siting Council in the siting proceeding is arbitrary and capricious.

In the Phase I proceeding, the Siting Council asked many questions of ISO-NE's witnesses on the question of how the costs of the project would be allocated. For example, on January 22, 2003 Council Member O'Neill asked ISO-NE:

> [w]ell, I'm interested in what you would do and the ISO would do. We have to make a decision here at the Council. And one of my concerns is that if we decide on an underground option, for example, we don't exactly know how ISO is going to review that application or how that would spread throughout ISO or throughout our region as far as the cost analysis.

Phase I Transcript 1/22/03, 123-124.

In response to this and other similar questions, ISO-NE provided detailed answers to the Siting Council about the cost allocation process and the standards that ISO-NE would apply in that process. For instance, on January 15, 2003, ISO-NE's witness Steve

Whitley, the Chief Operating Officer of ISO-NE, answered in the affirmative when asked whether the Federal Energy Regulatory Commission's ("FERC") December 20, 2002 order in the standard market design meant that the costs of the Phase I line would be spread regionally if it were in service within five years, or prior to December 20, 2007. Specifically:

> MR. FITZGERALD: So let me start out. Does that -- do you agree that this order provides that the costs of building the Plumtree-to-Norwalk line proposed in this docket will be socialized, at least if the line is constructed as described in RTEP02?
>
> MR. WHITLEY: I do, if it can be placed in service within five years.

Phase I Transcript, 1/15/03, 204-205.

Mr. Whitley then went on to state that the order:

> makes it clear that if the project is placed in service within the five-year period, that the cost of the project would be -- some use the term "socialized". I like to use the term "regionalized", which means it would be spread out to all of the load within New England for the life of the project, to pay for the project over the life of the project, rather than other alternatives which might result in, let's say, the State paying for 100 percent of the cost.

Id., 206.

After noting that pursuant to the FERC order the costs of Connecticut transmission projects that are placed in service prior to December 20, 2007 "can be socialized throughout the pool," id., 238-239, the Council specifically asked ISO-NE about how the cost of the Phase I project would be allocated in the event that the project included underground lines. When asked whether it was possible that the costs of a line that included underground construction could be socialized, Mr. Whitley testified as follows:

MR. WHITLEY: We don't know for sure. It -- you know, a lot of people would have input on that in the pool as it goes through the NEPOOL processes. We do have, you know, 2,000 miles of 345 in New England that's overhead. We have 400 miles of it in Connecticut that's overhead. And so I think there would be a lot of objections to put things underground unless there was a logical engineering reason to do that; it was deemed the right thing to do because of cost or environmental factors. So all that evidence would be -- and certainly the kind of things you all are going through would be things that would have to be heard. So we can't -- we just couldn't say one way or the other now without going through that process.

Id., 239-240.

When asked however, whether a Siting Council order would be persuasive in that process, however, Mr. Whitley responded unequivocally in the affirmative.

MS. KATZ: Well, if an administrative agency orders that part of it be underground, does that carry any weight?

MR. WHITLEY: I think it should. Yes. It should definitely carry some weight, yes.

MS. KATZ: Thank you.

Id., 240.

The Council also explored with ISO-NE's witnesses the concept of "gold-plating," and whether ISO-NE would spread any costs that were determined to be gold-plating across the region or assign them solely to Connecticut. When asked whether ISO-NE had any guidelines of the term "gold-plating" that the Siting Council could apply in its deliberations, ISO-NE responded that, "I would say sound engineering judgment, which includes environmental, you know, laws, anything that's an environmental law." Phase I Transcript (1/22/03), 128. Thus, by clear implication Mr. Whitley endorsed the incorporation of the requirements of the environmental laws into sound engineering judgment. Costs incurred to comply with environmental laws are not, therefore and for that reason alone, "excessive" or "gold-plating."

Later that same day, upon re-direct examination by ISO-NE's counsel, Mr. Whitley testified that gold-plating is associated with need.

> MR. MACLEOD: And is there a -- I'm not sure what standard this falls under. I don't know if it's 15.5, 18.4 or whatever. But I -- I have a hunch that perhaps it's 15.5. Is there a determination in that process that needs to be made as to whether or not the facility or the cost of the facility exceeds the need? Is that –
>
> MR. WHITLEY: Yes. That's the 15.5 process.
>
> MR. MACLEOD: Okay. And is that a criteria that would come up in the determination of gold-- this –
>
> MR. WHITLEY: Yes.
>
> MR. MACLEOD: -- quote, "gold-plating", unquote?
>
> MR. WHITLEY: Yes.
>
> MR. MACLEOD: Okay. So there would be some standard in the 15.5 as to how you go about determining whether something is gold-plating or not?
>
> MR. WHITLEY: Right.
>
> MR. MACLEOD: And that's defined in accordance with the need.
>
> MR. WHITLEY: Right.

Id., 156-157.

The evidence presented on the record in the Phase I proceeding before the Siting Council by ISO-NE painted a clear picture of how ISO-NE would allocate the costs of the Phase I Project. Pursuant to ISO-NE's testimony in that proceeding, the Siting Council and the people of the State of Connecticut reasonably concluded that the cost of the Phase I project would be spread regionally so long as the line was in service by December 20, 2007 and that any underground sections were required to be buried by the

Siting Council, state laws and/or there was otherwise a need to do so. Thus, the Siting Council approved a configuration of the line that included undergrounding segments of the 345 kV and the existing 115 kV lines.

Now, in its Draft Decision that was issued years after the Phase I Project was approved by the Siting Council and after the vast majority of its construction has been completed, ISO-NE has arbitrarily and capriciously applied a very different cost allocation standard than the one that it had described to the Siting Council. According to the ISO-NE's Draft, the Siting Council's order that required underground construction carries absolutely no weight. Similarly, the existence of state laws, including environmental laws, is now rendered entirely irrelevant in determining whether the design of the line conforms with sound engineering judgment. Also, the question of the need for a line that can actually be approved, constructed and in service as quickly as possible is now of utterly no consequence.

The result of this entire and unfortunate process is that the Siting Council and the State of Connecticut are being punished for relying on ISO-NE's own testimony with respect to cost allocation. The Council properly asked ISO-NE to describe the standards that it would apply when determining how the costs of the Phase I project would be allocated and relied on that testimony. According to the picture painted by ISO-NE in the Phase I proceeding, the costs of the Phase I line as approved by the Council should be shared regionally. In this case, however, ISO-NE has arbitrarily and capriciously applied an entirely different standard for determining the cost allocation of the Phase I Project.

ISO-NE should reconsider its Draft Decision and apply the cost allocation standard that it testified in the Phase I case before the Siting Council that it would apply.[2]

ISO-NE should also reconsider its Draft Decision because it sets a very dangerous precedent that could impede future efforts to upgrade transmission infrastructure in the region. The Draft Decision sends a very clear warning to the New England states that cooperation with ISO-NE when designing and approving transmission projects comes at their own peril. When states cannot design projects in a manner that protects valid local concerns -- be they legal, environmental or aesthetic -- without imposing punishing costs on their ratepayers, states are likely to think twice about whether to cooperate with ISO-NE. ISO-NE's Draft Decision threatens to do more to balkanize the region than it does to encourage states to work together for the common good.

B. The Cost Allocation Standard Applied by ISO-NE in the Draft Bears No Relation to Reality

The standard applied by ISO-NE in its Draft for determining whether the costs of the Phase I Project should be shared regionally or allocated solely to Connecticut is based on ISO-NE's unreasonably narrow interpretation of 12C and PP-4. As noted supra, ISO-NE's standard rests entirely on its latest interpretation of "engineering design and construction or Good Utility Practices issues." Draft, 5 (referred to herein as the "Good Utility Practice" or "GUP" standard). In essence, ISO-NE formulated – seemingly from

[2] It is interesting to note that ISO-NE's Draft Decision relies a great deal upon extremely selective descriptions of the Siting Council's decision in the Phase I case as well as equally selective portions of the record in that case. For example, the Draft contains not only a careful parsing of the language of the Council's Order and Findings of Fact, but also includes selected passages from CL&P's Application and quoted passages from certain Siting Council members' concurring and dissenting opinions, even though they do not reflect the Council's majority decision in that case. See, e.g., Draft, 30 note 113. Carefully omitted from the ISO's careful parsing and description of the record in that case, however, was any mention of its own testimony on the question of how the costs of the Phase I project would be allocated.

whole cloth – a hypothetical configuration for the Phase I line called "Alternative 5a" that it believes would be consistent with its Good Utility Practice standard and then held that any costs which exceed the costs of its hypothetical transmission line should be localized and not shared regionally. Draft, 29.

According to ISO-NE's Draft, it makes absolutely no difference whether its hypothetical line could ever be built in Connecticut. ISO-NE considered it irrelevant whether its hypothetical line could gain siting approval or was consistent with state law.

ISO-NE should reconsider the application of its GUP standard in this proceeding. This standard is entirely unreasonable in that it is based in fantasy and bears absolutely no relation to reality. The cost allocation decision in this case has very direct and real financial impacts on electric ratepayers in Connecticut. These are not hypothetical costs, but are rather real dollars that must be paid out of Connecticut's electric consumers' pockets at a time when electricity costs are already spiraling out of control. Decisions that impact electric rates should not be based in fantasy, but rather must be grounded in reality. The reality of the situation is that ISO-NE's hypothetical 5a simply could not to be built in Connecticut. As such, it should not be used as the standard against which cost allocation decisions for new transmission projects should be made.

1. <u>Alternative 5a Violates State Law</u>

ISO-NE's Alternative 5a violates state law in that it would locate the hypothetical transmission line in a right-of-way in which the line cannot, consistent with Connecticut state law, be placed. As described in the Draft, segment 6 of Alternative 5a would require "the appropriate 345-kV pole construction along the edge of the land reserved by

the Connecticut Department of Transportation ("CDOT") for the Super 7 highway (with acquisition of an adjoining strip of private lands for ROW) for 2.1 miles . . . ." Draft, 28.

ISO-NE cannot start with the premise that CL&P has the right to use Super 7 for its transmission lines. Electric companies in Connecticut can only occupy state land with the state's permission. Conn. Gen. Stat. § 16-232. Since the right to occupy state land is created by state law, the state can place limitations on that right. One such limitation is reflected in Conn. Gen. Stat. § 13a-85b(a), which states that "[t]he Commissioner of Transportation shall not sell, or use in any manner that is incompatible with transportation purposes, the existing right-of-way acquired for potential use as the Route 7 limited access highway from Danbury to Norwalk." (Emphasis added). Pursuant to this statute, CL&P lacks the legal ability to site, construct or operate the Phase I transmission line in the Super 7 corridor without a change in state law or the specific approval of the CDOT. See also Conn. Gen. Stat. § 13a-247; R.C.S.A. § 13b-17-1 (which provides that "no work shall be performed within the state's right of way until a permit has been issued").

The evidence presented to ISO-NE during the course of the Phase I proceeding and this 12C process made clear that CDOT did not and would not approve the construction of the Phase I line in the Super 7 corridor. See, e.g., Affidavit of Salvatore Giuliano, submitted to the Siting Council in Docket 217, December 13, 2002. As a result, the only way that the Phase I line could have been built consistent with ISO-NE's hypothetical Alternative 5a was if there were to be a change in state law.[3]

[3] CDOT's limitations on the use of the right of way are neither unilateral nor without substance. CDOT is charged with planning and constructing the State's highway infrastructure, which includes extensive planning and property rights acquisition. See Conn. Gen. Stat. § 13b-4, 13b-26. To the extent that CDOT is utilizing federal funds and/or exercising the right of eminent domain to acquire such property rights,

In its Draft Decision, ISO-NE concluded that "the fact that it might be difficult to get permission from CDOT, or that it would require an act of the Connecticut General Assembly to create a specific ROW, does not make the alternative infeasible or impractical from an engineering design and construction perspective." Draft, 42. ISO-NE seems to take comfort from its notion that if a change in law is needed, "the Connecticut General Assembly has the power to make such changes to allow CL&P to build a less-expensive feasible and practical alternative." Draft, 44.

ISO-NE does not at all address CDOT's underlying need for the right-of-way to allow for construction of highway infrastructure. The logic of ISO-NE's approach would ignore all pre-existing property rights or the planning or operation requirements of existing public infrastructure – a result that cannot possibly be squared with GUP or applicable law.

ISO-NE should not allocate the costs of the Phase I line based on a GUP standard that is utterly divorced from reality. Electric rates should be grounded in reality, reflecting the true costs of providing electric service. State law prohibits the use of the Super 7 corridor for transmission lines. Moreover, contrary to ISO's apparent belief, state laws are not easily changed. Accordingly, it is unreasonable for ISO-NE to punish Connecticut's ratepayers for any costs that may be associated with complying with this law.[4]

CDOT must act as a fiduciary to protect encroachments on its rights of way which could impede or impair the construction of highways. The design and construction of electric transmission lines cannot simply assume away these constraints.

[4] ISO's preliminary decision that it can disregard Conn. Gen. Stat. § 13a-85b(a) on the ground that it could always be changed by the legislature raises the question of what other state laws ISO would disregard when determining cost allocation; state minimum wage laws? Laws governing the handling and disposal of hazardous or contaminated materials? Procedures or substantive requirements of eminent domain laws?

2. Alternative 5a Causes Wetlands Disturbances

ISO-NE's hypothetical alternative 5a calls for what is described in the Draft as the "Bethel Bypass #2." Draft, 34. This bypass is intended to address the routing of the lines in and around the Bethel education park. Bethel Bypass #2 calls for siting the ISO-NE's imaginary line in a manner that causes wetlands disturbances. Though CL&P made ISO-NE aware of the wetlands issues created by this route, ISO-NE concluded that the issues could "be addressed with special design and construction methods and use of best management practices, and are therefore no basis for rejecting Bethel Bypass #2 as a practical and feasible alternative routing." Draft, 35.

The issues associated with construction of the Phase I transmission lines in and around wetlands in Connecticut cannot, however, be so easily dismissed. First, the Connecticut Department of Environmental Protection ("DEP") raised wetlands concerns in its initial comments to the Siting Council in Docket 217. Those comments specifically addressed, among other things, construction in and around the wetlands that would be impacted by ISO-NE's hypothetical Alternative 5a near the Bethel education park. See DEP Comments, Siting Council Docket 217, March 8, 2002. The hypothetical Alternative 5a does not effectively address or respond to these comments and should have done so if truly reflective of a GUP designed configuration.

Second, pursuant to Conn. Gen. Stat. § 22a-14 et seq., the Connecticut Environmental Protection Act, any person may maintain an action for declaratory ruling or equitable relief for the protection of the public trust and natural resources of the state from unreasonable pollution or destruction. Similar appeal rights exist in other states. Any project of the magnitude of Phase I involves material impacts to inland wetlands and

other natural resources. The additional costs and delays in construction associated with the protection of wetlands – not to mention the costs and delay associated with litigation related thereto – can be staggering. Avoidance of such costs and delay should necessarily be integral to a GUP designed configuration and was not reflected is ISO-NE's hypothetical Alternative 5a configuration.

Third, wetlands impacts are matters of municipal and federal, as well as state, regulation. See, e.g., Clean Water Act Section 404. Moreover, Connecticut's wetlands regulations parallel those of other New England states. It is clear error to assume that a GUP designed configuration can assume away the strictures of these regulations.

C. ISO-NE Cannot Reasonably Refuse To Consider Costs Associated with Delay

According to its Draft, ISO-NE concluded that Alternative 5a was the appropriate baseline from which to identify which costs should be allocated locally to Connecticut and which should be shared regionally. In so doing, ISO-NE completely disregarded the fact that Alternative 5a would have taken significantly longer to implement, if it could even be implemented at all, than the Phase I Project as approved by the Siting Council. The approved route was the only configuration that could have been sited, permitted, constructed and placed in service in any reasonable period of time. As noted herein, the Phase I Project will be in service in 2006. No alternative route, particularly ISO-NE's imaginary Alternative 5a, could have been approved or built in such a time-frame. The logic and logistical flaws in ISO-NE's Alternative 5a discussed supra, such as the fact that Alternative 5a presumes that Connecticut could have and would have changed state law to approve the use of the Super 7 corridor, reveal quite plainly that Alternative 5a

would have taken significantly longer to site, certify and construct than the approved and nearly in service Phase I project.

ISO-NE did not dispute the fact that its hypothetical Alternative 5a would taken significantly longer to implement than the Phase I project. In its Draft, however, it nonetheless refused to consider the costs that are caused by such delays when determining how the costs of the project should be allocated. According to ISO-NE's Draft:

> [s]tate regulatory barriers, however, play no determinative role under Schedule 12C. Interpreting Schedule 12C, PP-4 further explains that "[a]n alternative that is not or may not be approved by a siting or local review board may still be considered a feasible and practical transmission alternative," and that the ISO must assess "the schedule or in-service date of the Project from an engineering and construction standpoint rather than from the standpoint of potential delays in local or state siting."

Draft, 29 (notes omitted).

ISO-NE's refusal to consider the "timing of implementation" of its imaginary Alternative 5a compared with that of the approved Phase I Project is flatly contrary to the plain language of Schedule 12C as well as ISO-NE's own definition of GUP. Schedule 12C specifically addresses the issue of timing and, therefore, the costs associated with delay. Pursuant to Schedule 12C, ISO-NE must consider the reasonableness of the proposed design and construction method with respect to a number of factors, including "e) the relative costs, operation, efficiency, reliability <u>and timing of implementation</u> of the proposed Project." Draft, 4 (emphasis added). Similarly, ISO-NE's own definition of Good Utility Practice includes consideration of "expedition," which plainly indicates that timing matters.

ISO-NE's arbitrary application of Schedule 12C and its definition of GUP is particularly glaring considering the fact that ISO-NE did not in its Draft dispute the fact that its Alternative 5a could not have been sited, certified, constructed and in service in 2006, or anywhere even close to that time frame.

Further, even if Schedule 12C and ISO-NE's definition of GUP did not require the ISO-NE to consider the timing of implementation, ISO-NE's refusal to consider the practical realities of the costs associated with the delay that would have been caused by the pursuit of hypothetical Alternative 5a is arbitrary and capricious in at least two other respects. First, as discussed herein, ISO-NE denied regional treatment of any costs related to compliance with state laws, such as the law which prohibits construction of Alternative 5a in the Super 7 corridor as well as the laws which apply to wetlands, claiming that state law could always be changed. At the same time, however, ISO-NE also denied regional treatment of any costs that it feels would be associated delay in the completion of the line. ISO-NE cannot have it both ways. If it is going to hold that Alternative 5a is viable because state laws can always be changed, then it must also acknowledge that that changes in law – even if possible – take time and that there are real costs associated with the delays inherent in changing state laws.

Second, for at least five years, ISO-NE has urged Connecticut to address the transmission deficiencies in SWCT. In 2001, ISO-NE identified "severe" reliability problems in SWCT that could be addressed by transmission upgrades and also described the economic benefits that would accrue from such upgrades. See RTEP01, 9, 150. In 2003, ISO-NE stated:

> The most urgent system reliability need in New England continues to be in Southwest Connecticut and Norwalk Sub-areas. The combined area lacks the required transmission infrastructure to provide adequate reliability to its electric customers. Studies demonstrate that, without transmission infrastructure upgrades, widespread violations of transmission planning criteria will exist. Without such upgrades, it is doubtful that the existing system could reliably support projected loads in the long term.

RTEP03, 32.

Connecticut did not wait until it saw ISO-NE's 2003 report to begin to address the transmission infrastructure in SWCT. In 2001, CL&P filed its application for the Phase I Project, and the Connecticut Siting Council approved this project in 2003. Even if the Phase I Project is not the one that ISO-NE or others outside of the state may have drawn up in a class-room setting far removed from practical realities, it is beyond dispute that the project, as approved, was the only configuration that could have been approved, built and placed in service in 2006. ISO-NE must bear in mind that the CL&P and the Siting Council were not seeking to construct a transmission line through some unpopulated or undeveloped area. Rather, SWCT is among the most densely populated and developed areas of the United States. Moreover, because it was settled and developed literally hundreds of years ago, it does not have utility corridors or vast amounts of open space in which the lines can be placed.

Connecticut responded to the transmission needs of SWCT with great diligence and care and did so as expeditiously as possible under the circumstances. With this Draft Decision, however, ISO-NE is seeking to punish Connecticut and its electric ratepayers for their effort.

ISO-NE should consider how it likely would have treated Connecticut if it had sought to actually site and build Alternative 5a. Such a line would likely still be on the

drawing board today, exposing the residents of SWCT and the region to the very reliability and economic risks identified by ISO-NE in RTEP01 and RTEP03 and depriving the region of access to the SWCT market. It is hardly difficult to imagine the many heavy-handed measures that ISO-NE would likely have sought to impose on Connecticut for its "failure" to site and construct its hypothetical route, including imposing additional economic penalties on Connecticut's ratepayers.

D. ISO-NE's Interpretation of Good Utility Practice Is Unreasonably Narrow

Good Utility Practice, as defined by Schedule 12C, is far more flexible and accommodating to local interests than ISO-NE's Draft reflects. The considerations listed on page 4 of the Draft, such as design and construction practices in the area in which the project is being built and feasible alternatives, support a flexible cost allocation standard that takes into consideration local factors affecting the approval and construction process. GUP does not require, as ISO-NE mistakenly seems to think, a one-size-fits-all, cookie cutter approach.

For example, ISO-NE, in its Draft Decision, noted incorrectly that costs incurred to address aesthetic concerns are presumptively localized costs. See Draft, 37, 38. Indeed, at one point in its Draft ISO-NE went so far as to state categorically that "[t]he view-related and environmental issues identified by CL&P are simply aesthetic; they do not pose engineering or construction problems, or otherwise demonstrate a failure to comply with Good Utility Practice." Draft, 44.

ISO-NE, however, failed to demonstrate that Good Utility Practice cannot include the consideration of aesthetics. Moreover, ISO-NE's own definition of GUP is to the contrary, providing no presumptive prohibition on the consideration of aesthetics

(especially when coupled with the ability to expedite the siting of a project, as here).

ISO-NE's own definition of GUP in its tariff provides, in relevant part:

> [a]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or <u>any</u> of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, <u>could have been</u> expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather includes all acceptable practices, methods, or acts generally accepted in the region.

ISO New England, Inc., FERC Electric Tariff No. 3, Open Access Transmission Tariff, Section II.1, Definitions, 428-429. (Emphasis added).

Nothing in ISO-NE's own definition would preclude the consideration of aesthetics along with other relevant factors when determining Good Utility Practice. For example, painting transmission poles green so that they will better blend in with their surroundings would certainly be consistent with GUP despite the fact that aesthetics were a relevant concern.

Wherefore, for the foregoing reasons, the Connecticut Attorney General respectfully requests that ISO-NE reconsider its Draft Decision and allocate all of the costs associated with the Phase I Project regionally.

Respectfully Submitted,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

By: ______________________

Michael C. Wertheimer
Assistant Attorney General
Attorney General's Office
10 Franklin Square
New Britain, CT 06051
Tel: 860-827-2620
Fax: 860-827-2603