

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC UTILITY CONTROL

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APPLICATION OF THE UNITED ILLUMINATING	:	DOCKET NO. 08-07-04
COMPANY TO INCREASE ITS RATES AND	:	
CHARGES	:	MAY 15, 2009

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**OPPOSITION OF THE UNITED ILLUMINATING COMPANY  
TO THE CITY OF NEW HAVEN'S MOTION TO REQUIRE PROVISION OF  
CONFIDENTIAL DOCUMENTS OR TO SET ASIDE PROTECTIVE ORDERS**

The United Illuminating Company ("UI" or "Company") opposes the motion filed by the City of New Haven ("City") with the Department of Public Utility Control ("DPUC" or "Department") on May 11, 2009 in which the City asks (1) that UI be required to provide to the City under protective order all confidential documents filed in this docket relating to the Company's Central Facility, or (2) that the Department set aside the protective orders relating to UI's confidential filings related to the Central Facility.

The Department should deny the City's request as untimely, unnecessary and inappropriate. The City's request is either too late or too early. In this docket, the City's request is too late – the Department issued its decision on February 4, 2009 and has not reopened with respect to the Central Facility. The City's request is too early for the future docket in which UI will request cost recovery and the inclusion in rate base of the capital investment for the Central Facility – that docket has not been initiated and, consistent with Department practice and the Connecticut General Statutes, these matters will not be addressed until a future rate case. Moreover, since the Department's February 4, 2009 decision does not include any Central Facility costs in UI's rate base, there is no rate order for the City to contest. Finally, UI has offered to make available to the City, outside of any docket and subject to a nondisclosure

agreement, information on the Company's economic evaluation of the Central Facility as compared to the alternative of maintaining the status quo.

As to the City's argument that the information filed in the docket is no longer confidential, that claim would be baseless even if the City had raised the claim in a timely manner. UI is in the process of selecting contractors to perform work on the Central Facility. Making information public as to UI's alternative costs or as to the Company's expected costs would impair the Company's ability to achieve the lowest costs, which in turn harms customers. Further, information about other potential sites for the Central Facility is wholly irrelevant to the economic analysis of the Central Facility to be built by UI in Orange and the City's assertion that the Company's headquarters must stay in New Haven. Moreover, information on other sites is subject to UI's contractual obligations to maintain confidentiality and the property owners' reasonable expectations of non-public disclosure of confidential site-related information.

The City's newly awakened interest in this docket relates to the City's apparent interest in delaying or preventing UI from moving certain offices from New Haven when the Company's current lease ends in 2012. This is not a basis for granting the City's untimely, unnecessary, inappropriate request.

**I. The City's request is untimely.**

The discussion regarding the Central Facility in this docket has long been over. The last hearing day was about six months ago, and the Department issued its final decision on February 4, 2009. The City became an intervenor in this docket in September 2008. Thereafter, the City chose not to seek the documents relating to the Central Facility that the City now asserts it needs.

As the Department is aware, the Company filed its rate case application on August 8, 2008. The City, by letter dated September 8, 2008 from the Mayor to the Department, sought

intervenor status in this docket. The Department granted intervenor status to the City a few days later. Thereafter, the Company made numerous filings regarding the Central Facility plan, including interrogatory responses, late-file exhibits and briefs, and the Central Facility was discussed at length at hearings. The City chose not to submit interrogatories, not to cross-examine UI witnesses, not to present witnesses on behalf of the City, not to review documents, not to submit briefs or reply briefs, not to submit written exceptions to the January 2009 draft decision and not to present oral argument. A final decision was issued on February 4, 2009.

Contrary to the argument of the City in its May 2009 motion,<sup>1</sup> the February 4, 2009 decision is final as to all matters relating to the Central Facility. When the Department agreed to consider the items identified in UI's request for reconsideration (i.e., specific items requested to be clarified or corrected), the proceeding was not reopened or reconsidered with respect to the Central Facility or any other matter. The technical meeting addressed only those specific items, and the April 23, 2009 draft decision reflects reconsideration only of those specific items. The Department chose to issue a draft decision that included, with no change, the language in the February 4, 2009 final decision on all non-reconsidered matters. This administrative choice does not change the limited nature of the reconsideration. There is nothing open or reconsidered as to the Central Facility.

Similarly, the City's claim that it needs the requested information in order to prepare for May 19, 2009 oral arguments regarding the April 23, 2009 draft decision does not render the City's claim timely. The Central Facility is not a topic to be addressed at that oral argument.

## **II. The City's request is unnecessary and inappropriate.**

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<sup>1</sup> The City's motion states (at paragraph 5): "The UI is mistaken that the proceedings regarding the Central Facility have terminated."

No costs associated with the Central Facility are included in UI's rates for 2009 or 2010. Accordingly, it is neither necessary nor appropriate for the City, at this post-final decision date, to seek information submitted in the docket with respect to the Central Facility. At such future time as the Company seeks to include Central Facility costs in rates, the City will have the opportunity to seek intervenor status and participate. The City's current request for information is clearly premature as to a not-yet-filed future proceeding.

Moreover, even though the Company has no obligation to do so, the Company offered to provide to the City's counsel a number of confidential documents relating to the Central Facility. The documents would be provided voluntarily by UI, outside of a regulatory proceeding, pursuant to a nondisclosure agreement.<sup>2</sup> If the City wants to obtain information, this would be the appropriate path to follow.

### **III. The Company's confidential filings remain confidential.**

The City also argues that the Company's documents relating to the Central Facility are not confidential. The City's arguments are again misplaced. The Company's confidential filings include information regarding sites other than those purchased and leased by UI as well as economic analysis of the Central Facility plans. The reasons for granting confidential treatment of these filings have not changed from the Company's original request. In fact, the need for confidential treatment is all the more necessary to enable the Company to pursue its plans in a manner that is in the best interest of customers. Public disclosure of the Company's economic

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<sup>2</sup> The information that the Company offered to provide to the City include: (i) explanation of how the design of the Central Facility has been changed due to Company's 10 year plan, (ii) budgeted construction costs for site 8 and construction costs for sites 11 and 12, (iii) assumptions, calculations and breakdown of capital and O&M costs regarding annual revenue requirements regarding sites 11 and 12, (iv) narrative of UI's efforts to acquire a Central Facility site, (v) annual detail comparing Status Quo Plus to sites 11 and 12, and (vi) assumptions, calculations and breakdown of capital and O&M costs regarding annual revenue requirements regarding Status Quo calculations.

analysis would severely impair its ability to negotiate the contract terms that are beneficial for the Company and its customers.

For the above reasons, UI respectfully requests that the Department deny the City's motion.

Respectfully submitted,

**THE UNITED ILLUMINATING COMPANY**

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CERTIFICATION

This is to certify that on this 15<sup>th</sup> day of May, 2009, an original of the foregoing was mailed to Kimberley J. Santopietro, Executive Secretary, Department of Public Utility Control, 10 Franklin Square, New Britain, CT 06051, one (1) copy will be delivered by e-mail on this 15<sup>th</sup> day of May, 2009 to the Office of Consumer Counsel, 10 Franklin Square, New Britain, CT 06051, and one (1) copy will be mailed, postage prepaid or e-mailed, on this 15<sup>th</sup> day of May, 2009, to all other known parties and intervenors.

  
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Linda L. Randell