

STATE OF CONNECTICUT

**AUDITORS' REPORT
CONNECTICUT SITING COUNCIL
FOR THE FISCAL YEARS ENDED JUNE 30, 2000 AND 2001**

**AUDITORS OF PUBLIC ACCOUNTS
KEVIN P. JOHNSTON ♦ ROBERT G. JAEKLE**

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June 10, 2002

**AUDITORS' REPORT
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FOR THE FISCAL YEARS ENDED JUNE 30, 2000 AND 2001**

We have examined the financial records of the Connecticut Siting Council for the fiscal years ended June 30, 2000 and 2001. This report on that examination consists of the following Comments, Recommendations and Certification.

Financial statement presentation and auditing are being done on a Statewide Single Audit basis to include all State agencies including the Connecticut Siting Council. This audit examination has been limited to assessing compliance with certain provisions of financial related laws, regulations and contracts and evaluating the internal control structure policies and procedures established to ensure such compliance.

COMMENTS

FOREWORD:

The Connecticut Siting Council (Siting Council) operates primarily under Title 16, Chapter 277a and several sections of Title 22a of the General Statutes and is within the Department of Public Utility Control (DPUC) for administrative purposes only. A chairperson, who is appointed by the Governor, heads the Siting Council, as provided for in Section 16-50j, subsection (e) of the General Statutes. The chief administrative officer of the Siting Council is the executive director, who is appointed, in accordance with Section 16-50j, subsection (g), of the General Statutes.

Statutory responsibilities of the Siting Council include site regulation of electric generating facilities and substations of utilities and large private power producers, fuel and electric transmission lines, community antenna television towers, cellular telephone towers and telecommunication towers owned or operated by the State or public service companies (Chapter

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277a); hazardous waste management facilities (Chapter 445); a low level radioactive waste management facility (Chapter 446a) and ash residue management facilities (Chapter 446d and 446e). Section 16-50aa of the General Statutes authorizes the Siting Council to regulate the shared use of existing telecommunication towers to avoid the proliferation of unnecessary tower structures.

The Siting Council's primary mission is to provide a regulatory process for balancing the need for adequate and reliable public utility services with the need to protect the environment and ecology of the State, and to regulate siting of hazardous waste and low-level radioactive waste facilities in order to protect the health and safety of Connecticut citizens.

The Siting Council reviews and acts on applications for approval of sites for construction, operation, and maintenance of facilities for electric generation and transmission, fuel transmission, telecommunications, hazardous waste management, low-level radioactive waste management, and ash residue management.

Siting Council Members:

Pursuant to Section 16-50j, subsections (b) through (d), of the General Statutes, the Siting Council may consist of between nine and thirteen duly appointed members depending on the type of proceedings being heard. Members of the Siting Council as of June 30, 2001 were as follows:

Permanent Members:

Mortimer A. Gelston, Chairperson
Pamela B. Katz
Dr. William H. Smith
Colin C. Tait, Esq.
Edward S. Wilensky
Albert E. Gary
Daniel P. Lynch, Jr.,

Additional Members for Energy and Telecommunications Matters:

Commissioner of Environmental Protection:
Arthur J. Rocque, Jr.,
Chairperson, Public Utilities Control Authority:
Donald W. Downes

Additional Members for Hazardous Waste, Low Level Radioactive Waste and Ash Residue Disposal Matters:

Commissioner of Public Health:
Joxel Garcia, M.D.
Commissioner of Public Safety:
Arthur L. Spada

In addition, in proceedings concerning Hazardous Waste and Low Level Radioactive Waste matters, the council will also include four ad hoc members, three of whom shall be electors from the municipality in which a proposed facility is to be located and one elector from a neighboring municipality likely to be most affected by the proposed facility.

Also serving as a member for Hazardous Waste and Low Level Radioactive Waste Matters was Dr. Henry C. Lee, former Commissioner of Public Safety until his successor's appointment on June 1, 2000.

Joel M. Rinebold continued to serve as Executive Director of the Siting Council until his resignation on November 29, 2001. S. Derek Phelps was appointed Executive Director on December 24, 2001.

Significant New Legislation:

Significant new legislation affecting the Siting Council during the audited period included the following:

- Public Act 00-174, codified to Section 16-50v, subsection (b) of the General Statutes, transferred all annual communications service provider assessment responsibilities from the Commissioner of Revenue Services to the Siting Council. The responsibilities include the assessment calculations, billing and collections, and depositing of payments made by persons providing communications services that have come before the council in the preceding calendar year. The payments are considered administrative expenses recovered from the communications services providers. This change became effective with the assessment payment due on or before July 31, 2000.

- Public Act 01-6 transferred all responsibilities relating to the hazardous waste generators assessments from the Commissioner of Revenue Services to the Siting Council. The responsibilities include assessing in a manner that the council shall deem appropriate, and the collecting and depositing of payments made by generators of hazardous waste to the Siting Fund. The payments are accounted for as expenses recovered from generators of hazardous waste. This change became effective as of July 1, 2001.

RÉSUMÉ OF OPERATIONS:

The operations of the Siting Council are accounted for within the Siting Council Fund. Receipts consisted primarily of administrative assessments placed directly on applicable energy, telecommunications and hazardous waste industries, and recoveries of expenditures from applicants for costs incurred in conducting Siting hearings and proceedings. A comparative summary of Siting Council Fund receipts for the fiscal years ended June 30, 2000 and 2001, as compared to the prior fiscal year is presented as follows:

Fiscal Year Ended June 30,

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	<u>1999</u>	<u>2000</u>	<u>2001</u>
Annual Assessments:			
Energy Industry	\$327,570	\$ 467,834	\$ 373,245
Communications Services Industry	231,590	525,701	260,980
Hazardous Waste Industry	14,081	14,229	7,697
Recoveries of Expenditures:			
Communications Services Industry	174,670	297,251	236,067
Electric Industry	137,066	242,380	112,969
Hazardous Waste Industry	0	4,452	1,675
Miscellaneous recoveries	2,344	2,452	2,317
Refunds of Expenditures	<u>0</u>	<u>0</u>	<u>1,562</u>
Total Receipts	\$ <u>887,321</u>	\$ <u>1,554,299</u>	\$ <u>996,512</u>

The communications services' annual assessments more than doubled in the fiscal year ended June 30, 2000 due to the late collection of assessments associated with the fiscal years ended June 30, 1998 and 1999. The subsequent crediting of those assessment collections to the Siting Fund in the fiscal year ended June 30, 2000, was made by the Department of Revenue Services and totaled \$296,523. The continuing problem with late crediting of the fund by the Department of Revenue Services was resolved in fiscal year 2000-2001, with the passage of Public Act 00-174, as described under the "Significant New Legislation" section of this report. The new legislation resulted in transferring the responsibilities of collecting and depositing revenues from the communications services providers to the Siting Council.

The amounts of the annual assessments will fluctuate between the three industries each year based on the amount of time spent by the Siting Council on each industry's dockets and petitions in the prior year and in accordance with the assessment guidelines set forth in Section 16-50v of the General Statutes. The large variance in the recoveries of expenditures in each year is the result of differences in the number of dockets and petitions filed by each industry during each year and the actual expenses and corresponding reimbursements related to each case.

A summary of the Siting Council Fund expenditures for the fiscal years ended June 30, 2000 and 2001, as compared to June 30, 1999, follows:

	Fiscal Year Ended June 30,		
	<u>1999</u>	<u>2000</u>	<u>2001</u>
Personal services	\$361,144	\$422,392	\$457,408
Contractual services	260,538	270,099	293,668
Commodities	5,396	8,315	9,619
Revenue refunds	307	2,148	1,508
Sundry charges	199,740	271,087	286,939
Equipment	<u>15,837</u>	<u>3,118</u>	<u>2,513</u>
Total Expenditures	\$<u>842,963</u>	\$<u>986,159</u>	\$<u>1,051,656</u>

The major increases in personal services were due to a slight increase in staffing and

collective bargaining increases that became effective during the audited period. The 36 percent increase in sundry charges in the 1999-2000 fiscal year reflects the increases in fringe benefit costs associated with the increase in staffing and changes in the yearly fringe benefit rates. In addition, indirect overhead costs attributed to the Siting Council increased by \$27,442 or 39 percent in the 1999-2000 fiscal year.

CONDITION OF RECORDS

Our audit of the Connecticut Siting Council's records disclosed the following areas requiring improvement:

Council Member Reimbursements:

Criteria: The Siting Council's appointed public members are allowed compensation in accordance with Section 16-50j, subsection (f), for attendance at hearings, executive sessions or other council business that requires their attendance at a rate of \$150, provided that in no case shall the daily compensation exceed \$150 per day and the annual compensation exceed \$12,000. Section 16-50j, subsection (g) allows the Council to appoint staff to carry out the provisions of Chapter 227a and to appoint an executive director, who shall be the chief administrative officer of the Connecticut Siting Council.

Condition: The Siting Council's chairperson received compensation totaling \$39,201 and \$39,853 for calendar years 2000 and 2001, respectively. Included in the above totals was compensation for administrative work, at \$150 per day, for 194 days (\$29,100) and 179 days (\$26,850) in the calendar years 2000 and 2001, respectively. The chairperson requested compensation for administrative work performed at his home for most weekdays when there were no holidays, hearings or meetings scheduled. A random review of two other Council members during the same period found that they were compensated \$150 per day for two instances of administrative work in calendar year 2001. The administrative work compensation was in addition to compensation made for attendance at hearings, meetings and other Council business. Total compensation made to Council members, other than the chairperson, for the calendar years 2000 and 2001 did not exceed \$10,300 per year for any member. The Siting Council employs an executive director to act as its chief administrative officer.

Documentation submitted for administrative work compensation showed only the date and the notation "ADM". There was no accountability or indication of what was involved or how much time was spent on the work.

Cause: We were informed that the \$150 "administrative" compensation rate was based on the per diem rate stated in Section 16-50j, subsection (f) of the General Statutes. The Executive Director stated that the administrative compensation includes times when he speaks to the chairman on the telephone about administrative issues, and for the time the chairman spends in the preparation and oversight of meeting agendas or Council decisions. The work is of a nature that could not be charged to a specific hearing or docket. The causes for the

compensation prior to the new Executive Director's appointment in December 2001 were not determined.

Effect: The Siting Council's long-standing practice of compensating the chairperson or other Council members beyond the statutory limits set forth in Section 16-50j, subsection (f), may be inconsistent with the provisions of the General Statutes and the intent of the Legislature. Without proper accountability, internal controls are weakened.

Recommendation: An opinion of the Attorney General should be obtained with respect to the Siting Council's interpretation of Section 16-50j, subsection (f) of the General Statutes, and the authority to pay daily compensation to the Council Chairman and other members for administrative work. (See Recommendation 1)

Agency Response: “ ... It is the Council's long-standing and continued interpretation that the \$12,000 cap on annual compensation is limited to attendance at hearings held pursuant to §16-50m of the General Statutes. We continue to believe that this interpretation is the only interpretation possible given the clear legislative differentiation between public hearings, executive sessions, or other Council business as stated in §16-50j, subsection (f) of the General Statutes.

The General Assembly has been advised of this issue in past legislative sessions and has chosen to not take legislative action to further clarify this issue, presumably because it felt no further clarification was necessary. Furthermore, the Council – at the recommendation of the Auditors of Public Accounts – obtained an opinion from ... [an] Assistant Attorney General. ... While ... [he was] careful to stress that his opinion should not be construed as an official opinion of the Attorney General himself, his letter illustrates that he reached the same conclusions as described above.

Insofar as compensation, in the form of per diem payments, ... the Chairman of the Council has broad authority over the activities and operations of the Council. Consistent with the strict adherence that the Council maintains with the terms of the Uniform Administrative Procedures Act, the Chairman must remain fully engaged in many day-to-day decisions through regular communications with the staff. Accordingly, this agency views the per diem allowance for the Chairman – outside of compensation he receives for his attendance of meetings and hearings - to be appropriate and consistent with the provisions of this Section.

Nevertheless, ... the Council has asked the General Assembly to have the \$12,000 cap completely stricken from §16-50j of the General

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Statutes. Initial reaction to this request has been favorable and we are hopeful this action will occur during the current legislative session.”

Auditors’ Concluding Comments:

As appointed officials, the Council members shall not receive compensation for services unless prescribed by law. The statute only addresses payments for attendance at meetings, hearings and council business. The additional daily compensation paid to the Council chairperson is not clearly addressed or authorized in the current statutes or regulations.

The Assistant Attorney General’s memorandum states that the Statute’s language was confusing. He could not state with certainty that the total annual compensation could legally rise above the \$12,000 cap on compensation for attending hearings. He did not address whether there was any legal authority to pay the additional daily compensation. He states only that the statute clearly distinguishes hearings from other functions, as relating to the cap.

The Assistant Attorney General who wrote the memo referred to above by the Agency states in the memo that “This is not a legal opinion of the Attorney General himself. You [the Agency] may wish to request in writing either an informal opinion reviewed by my supervisor or a formal opinion of the Attorney General himself.” An Attorney General’s opinion is necessary to clarify these issues and should be obtained immediately.

Late Deposits:

Criteria: Section 4-32 of the General Statutes requires that receipts of \$500 or more be deposited and accounted for within 24 hours. If the total daily receipts are less than \$500, the receipts can be held until the total receipts to date equal the \$500.

Condition: The testing of 50 deposits made during the two-year audited period disclosed that 24 percent (12 of 50) included a portion of the receipts being deposited late. Nine deposits included receipts totaling \$20,062 and three deposits totaling \$9,228 were deposited between one to three days late, for the fiscal years ended June 30, 2000 and 2001, respectively. In addition, we found that 12 percent (6 of 50) of the State’s CO-39 deposit slip documentation was entered onto the State’s system from six to 11 calendar days after the actual deposit had been made.

Cause: The Siting Council has a two-person business office. When both employees are out during the same time, the deposit and the

corresponding paperwork is not prepared in a timely manner.

Effect: Receipts that are not deposited and recorded timely are subject to potential loss and are not in compliance with State laws and regulations.

Recommendation: The Siting Council should deposit and record receipts in compliance with Section 4-32 of the General Statutes. (See Recommendation 2)

Agency Response: “ The Council is in agreement with the finding of the Auditors of Public Accounts concerning bank deposits. ...

It is occasionally difficult for the Council to fully satisfy the provisions of this Section, given that the business office of the Council is comprised on only two employees. In the event both employees are out of the office it is not practicable to achieve the timely deposit called for within this statute.

In light of this difficulty the Council has asked the Office of the Treasurer to grant a waiver to the 24-hour standard concerning deposits. Should the Treasurer’s office act favorably upon this request the Council will continue to make deposits in as timely a manner as possible, in keeping with the spirit of this Section of the General Statutes.”

Annual Assessments:

Criteria: Section 16-50v, subsection (b) of the General Statutes addresses annual assessments billed to applicable energy and communications services providers that are used to cover the Siting Council’s budgeted administrative expenses. Public Act 01-06, Section 38, addresses assessments due from hazardous waste generators. Energy assessments are to be billed in three equal installments, communications services providers are assessed in four equal installments and hazardous waste generators are assessed in a manner deemed appropriate by the Council. Section 16-50j of the General Statutes states that the Council shall adopt, amend or rescind suitable regulations to carry out the provisions of Chapter 277a.

Good business practice and internal controls should include written policies and procedures that adequately address and are consistently applied to all aspects of the assessment billing and collection process.

Condition: Our review of annual administrative assessment calculations and the handling of year-end surplus revenue revealed inconsistencies in how the process was applied in each fiscal year. The Council has not

developed a clear policy concerning assessment credits or refunds. The handling of year-end surplus revenues resulting from the annual assessment process is not addressed by any Siting Council regulation or statute. There are no written guidelines concerning the billing of hazardous waste generators.

In fiscal year 1999-2000, the Council had \$358,891 in surplus assessment revenues from communications services providers. The large surplus resulted from \$195,232 in late collections and crediting of fiscal year 1998 and 1999 assessments by the Department of Revenue Services. In addition, recoveries of expenditures for the year were higher than anticipated, which resulted in additional surplus revenue. The Council determined that the surplus money was owed back to the originally assessed companies. A balance of the fiscal year 1999-2000 surplus assessments totaling \$58,672 remained unused at the end of the fiscal year 2000-2001 and were used to reduce the appropriate companies' first fiscal year 2000-2001's installment billing.

Prior to the fiscal year 2001-2002, annual assessment calculations were based on the Council's total estimated budget. Surplus revenues from the prior year-end were not considered in the original calculation or used to reduce the first installment due. Credit adjustments for any prior year-end surplus would be applied to the current year's future installments, as necessary. Beginning with payments due by January 31, 2001, installment bills were also reduced by a prorated adjustment for recoveries of expenditures related to individual docket and petition filings that were collected in the previous quarter. As of the fiscal year 2001-2002, except for the remaining \$58,672 amount mentioned above, the assessment calculation was based on the estimated budget less all prior year-end surplus revenue. Individual company credits were not given for any year-end surplus revenues. Prorated adjustments for recoveries of expenditures associated with the previous quarter are made only if it is determined that the revenues will not be needed for additional current year administrative expenses.

Some of the telecommunication and energy numbers used in the annual assessment calculations could not be easily traced to supporting documentation for both fiscal years reviewed.

Cause:

The Department of Revenue Services prepared the assessment calculations related to telecommunication companies in fiscal year 2000 and did not forward all backup documentation to the Siting Council. There is no regulatory guidance regarding the handling of year-end surplus revenues or for assessment billings of hazardous waste generators. Other causes were not determined.

Effect:

The inconsistencies in the annual assessments process and in the

handling of year-end surplus revenues could result in companies being incorrectly assessed and represents a weakness in internal controls.

Recommendation: The Siting Council should be consistent in its handling of annual assessments and should initiate regulations addressing the assessment process and the use of surplus revenues. (See Recommendation 3)

Agency Response: “The Council is in agreement with the finding of the Auditors of Public Accounts concerning assessments. Specifically, assessments should be made in a more consistent manner.

In fiscal years 98, 99, and 00, the Department of Revenue Services prepared telecommunications assessments and deposited the funds with the Council. The majority of receipts for these three fiscal years were not collected and deposited until the end of FY 00. There were also certain inconsistencies related to how year-end surplus revenues were handled.

Responsibility for all assessments and collections now rests with the Council. Therefore, the Council is taking steps to establish clear and consistent procedures with regard to the processes related to annual assessments.”

RECOMMENDATIONS

Status of Prior Audit Recommendations:

- The opinion of the Attorney General should be requested with respect to the Siting Council's interpretation of Section 16-50j, subsection (f), of the General Statutes allowing per diem payments to exceed \$12,000. The Siting Council did not obtain an official interpretation during the audited period. Additional issues concerning payments to council members are being addressed in this report. This recommendation is being modified and repeated. (See Recommendation 1.)

Current Audit Recommendation:

1. **An opinion of the Attorney General should be obtained with respect to the Siting Council's interpretation of Section 16-50j, subsection (f) of the General Statutes, and the authority to pay daily compensation to the Council Chairman and other members for administrative work.**

Comments:

Our review disclosed the Chairman's compensation to be in excess of the \$12,000 statutory limit. The compensation included administrative work that was not adequately documented. The Siting Council's long-standing practice of compensating the Chairman beyond the statutory attendance limitations may be inconsistent with the provisions of the General Statutes. The Agency received a memo from an Assistant Attorney General who indicated that the memo did not represent either an informal or formal opinion of the Attorney General.

2. **The Siting Council should deposit and record receipts in compliance with Section 4-32 of the General Statutes.**

Comments:

Testing revealed that twenty-four percent of the receipt sample tested was deposited between one and three days late. Also, deposit paperwork was not entered onto the State's system for twelve percent of the sample tested from six to eleven calendar days after the original deposit had been made.

- 3. The Siting Council should be consistent in its handling of annual assessments and should initiate regulations addressing the assessment process and the use of surplus revenues.**

Comments:

There were inconsistencies in the way annual assessments were calculated and how year-end surplus revenues were applied. There is no regulatory guidance addressing the annual assessment process and use of surplus revenue. Also, there are no Council guidelines concerning the assessment billings of hazardous waste generators.

INDEPENDENT AUDITORS' CERTIFICATION

As required by Section 2-90 of the General Statutes we have audited the books and accounts of the Connecticut Siting Council for the fiscal years ended June 30, 2000 and 2001. This audit was primarily limited to performing tests of the Agency's compliance with certain provisions of laws, regulations and contracts, and to understanding and evaluating the effectiveness of the Agency's internal control policies and procedures for ensuring that (1) the provisions of certain laws, regulations and contracts applicable to the Agency are complied with, (2) the financial transactions of the Agency are properly recorded, processed, summarized and reported on consistent with management's authorization, and (3) the assets of the Agency are safeguarded against loss or unauthorized use. The financial statement audits of the Connecticut Siting Council for the fiscal years ended June 30, 2000 and 2001, are included as part of our Statewide Single Audits of the State of Connecticut for those fiscal years.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial-related audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Connecticut Siting Council complied in all material or significant respects with the provisions of certain laws, regulations and contracts and to obtain a sufficient understanding of the internal control to plan the audit and determine the nature, timing and extent of test to be performed during the conduct of the audit.

Compliance:

Compliance with the requirements of laws, regulations and contracts applicable to the Connecticut Siting Council is the responsibility of the Connecticut Siting Council's management.

As part of obtaining reasonable assurance about whether the Agency complied with laws, regulations, and contracts, noncompliance with which could result in significant unauthorized, illegal, irregular or unsafe transactions or could have a direct and material effect on the results of the Agency's financial operations for the fiscal years ended June 30, 2000 and 2001, we performed tests of its compliance with certain provisions of laws, regulations, and contracts. However, providing an opinion on compliance with these provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our test disclosed no instances of noncompliance that are required to be reported herein under auditing standards generally accepted in the United States of America.

We did, however, note certain immaterial or less than significant instances of noncompliance that we have disclosed in the "Condition of Records" and "Recommendations" sections of this report.

Internal Control over Financial Operations, Safeguarding of Assets and Compliance:

The management of the Connecticut Siting Council is responsible for establishing and maintaining effective internal control over its financial operations, safeguarding of assets, and

compliance with the requirements of laws, regulations and contracts applicable of the Agency. In planning and performing our audit, we considered the Agency's internal control over its financial operations, safeguarding of assets, and compliance with requirements that could have a material or significant effect on the Agency's financial operations in order to determine our auditing procedures for the purpose of evaluating the Connecticut Siting Council's financial operations, safeguarding of assets, and compliance with certain provisions of laws, regulations and contracts, and not to provide assurance on the internal control over those control objectives.

However, we noted certain matters involving the internal control over the Agency's financial operations, safeguarding of assets, and/or compliance that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of internal control over the Agency's financial operations, safeguarding of assets, and/or compliance that, in our judgment, could adversely affect the Agency's ability to properly record, process, summarize and report financial data consistent with management's authorization, safeguard assets, and/or comply with certain provisions of laws, regulations and contracts. We believe the following findings represent reportable conditions:

- The lack of regulations concerning the annual assessment process, including the lack of procedures concerning surplus revenues.
- The lack of adequate accountability over documentation concerning the administrative payments made to Council members.
- The lack of timely deposits.

A material or significant weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that noncompliance with certain provisions of laws, regulations and contracts or the requirements to safeguard assets that would be material in relation to the Agency's financial operations or noncompliance which could result in significant unauthorized, illegal, irregular or unsafe transactions to the Agency being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over the Agency's financial operations and over compliance would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material or significant weaknesses. However, we believe that the reportable conditions described above are not material or significant weaknesses.

This report is intended for the information of the Governor, the State Comptroller, the Appropriations Committee of the General Assembly and the Legislative Committee on Program Review and Investigations. However, this report is a matter of public record and its distribution is not limited.

CONCLUSION

We wish to express our appreciation for the cooperation and courtesy extended to our representatives by the Connecticut Siting Council during this examination.

Virginia A. Spencer
Principal Auditor

Approved:

Kevin P. Johnston
Auditor of Public Accounts

Robert G. Jaekle
Auditor of Public Accounts

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