

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford

July 7, 2006

VIA FACSIMILE 401-709-4526

Bruce DiGennaro
The Essex Partnership
65 Main Street
Ivoryton, CT 06442

RE: *Northeast Generating Services –Housatonic River Project - Draft Shoreline Management Plan*

Dear Mr. DiGennaro:

Enclosed please find my further comments concerning the Northeast Generating Services (NGS) draft Shoreline Management Plan (SMP) related to the Housatonic River Project. I urge NGS to consider these comments as it finalizes the SMP for submittal to the Federal Energy Regulatory Commission.

Should you need additional information please do not hesitate to contact me.

Very truly yours,


RICHARD BLUMENTHAL

RB/pas
Enclosure

**COMMENTS OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
Re: Northeast Generating Services
Draft Shoreline Management Plan
Housatonic River Project**

The Shoreline Management Plan (SMP) for the Housatonic River Project, including Candlewood Lake and Lake Lillinonah, should be substantively and significantly changed to eliminate the assessment of fees for property owners with deeded property rights and to prohibit the raising of the lake water level. The Federal Energy Regulatory Commission (FERC) should require these changes as part of its approval process should the SMP fail to adequately protect the shoreline and the residents of these lakes.

Although NGS has made changes to the SMP, there are several areas that require additional clarification and revision. First, serious issues remain with respect to the charging of fees to parties with deeded property rights. In a recent letter to me, NGS states that the one time registration fee of \$500 will be waived for property owners with deeded rights. This is an important and appropriate change. Nevertheless, there are ambiguities in the SMP that suggest other fees may be charged to owners with deeded rights. It is imperative that NGS specify that owners with deeded property rights will not be charged any fee for these rights. Additionally, NGS must clarify that these property owners' rights will be respected in the future. NGS should not be allowed to make changes to deeded rights or licenses that have already been granted to property owners.

Second, while there may be some authority for the assessment of an annual administrative fee, any fee must be reasonable. NGS must provide a detailed accounting of the full basis of any proposed fee. Furthermore, NGS should include in the SMP an annual review of the assessment amount, so that it may be reduced and excess funds returned if actual legitimate expenses are less than NGS's costs of administering the SMP. There may be a time when the amount collected on the fee exceeds the amount spent to administer the project. It is troubling that in the current draft, the fee structure will remain in place without further review for the foreseeable future. The need for such a reassessment is all the more critical because the SMP is unclear regarding the fee structure after 2010. This problem should be addressed by NGS in the final SMP.

Finally, while NGS has agreed to absorb litigation costs in 2006 and 2007, it states that in the future it will pass on this cost to the property owners. Any fees charged by NGS must be reasonable. It is unreasonable for property owners exercising their rights to have to bear the litigation costs of NGS.

Many residents have used and enjoyed Candlewood Lake and the surrounding water bodies and should be allowed to do so unencumbered by the implementation of this SMP. The right to manage the lake and the possession of

a license to do so should not be permitted to become a means of generating a profit from local residents. NGS owes a duty and responsibility to be fair to the public in finalizing the SMP in order to ensure the least impact on citizens who use and enjoy this precious water body.

NGS has indicated that it will likely raise the water level of Lake Lillinonah to the upper part of the approved 4.5 foot range. Historically, the lake levels have been consistently in the lower half of that range, with only occasional, temporary increases in the water level. Decades of shoreline vegetation and tree growth have adapted to this regular cycle of water level. Consistently maintaining water levels at more than 2 feet higher than current levels will have a significant impact on shoreline vegetation and tree growth. This impact deserves-- and indeed the FERC licensing requirements demand -- more than the dismissive comments contained in section 6.2.11 of the SMP.

The SMP should include a long-term historical analysis of the water level cycles of Lake Lillinonah along with any anticipated changes to this historical water level cycle. If there are any changes to this cycle, the SMP should document the impacts on vegetation and tree growth along the shoreline as a result of the proposed changes.

The FERC license requirements do not contemplate the destruction of shoreline vegetation and tree growth by increasing the water levels of the lake. Rather, the FERC license encourages conservation and increases to shoreline vegetation and tree growth. Specifically, the FERC license requires the SMP include "identification of a vegetated buffer zone around reservoir shorelines and riverfront lands" and an identification of the "potential for revegetation and provisions to re-vegetate these areas within the project boundaries." Finally, the SMP must review and include discussion of conservation and of the important resource and environmental qualities of the lands surrounding the project's shorelines. See, FERC order re: Project Nos. 2576-022, 2597-019, dated June 23, 2004, Article 407

The SMP, therefore, should specify that NGS will not increase water levels on Lake Lillinonah in the future in order to preserve the ecology of the existing shoreline.

I urge NGS to do the right thing and listen to the citizens concerning the management of this lake and surrounding waters.