

**MINUTES OF THE
HVCEO MEETING
OF DECEMBER 10,1999
AT BROOKFIELD, CT TOWN HALL**

MEMBERS AND ALTERNATES IN ATTENDANCE

Brookfield. First Selectman Martin Foncello
Danbury Mayor Gene Eriquez
New Fairfield. First Selectman Patricia Gay
New Milford. Mayor Arthur Peitler, Vice Chair
Ridgefield. Alternate Peter Yanity
Sherman. First Selectman Donna Tuck

OTHERS IN ATTENDANCE

State Representatives Jeanne Garvey, David Scribner, Mary Ann Carson and Robert Godfrey. Also Lynn Waller of Danbury, Fred Benedikt of Southbury, Attorneys Dan Casagrande and Ted Backer of Pinney Payne, and Cheryl Reedy of Congressman Maloney's Office.

Representing the Connecticut Light and Power Company were William Stax, Raul DeBrigard, Robert Head, Dan Venora and Bill Smagula. Representing the Candlewood Lake Authority were Harold Mayer, Bruce Lockhart and Larry Marsicano. Representing the Housatonic Valley Association were Ruth Malins and Elaine LaBella. From the News Times were Mary Connolly and Jon Chesto.

Also, Attorney Francis Collins, Wally Choi of J. P. Morgan, from the HVCEO staff Camille Acquanita, David Hannon and Jonathan Chew, and various citizens.

CALL TO ORDER

The meeting was opened by Vice Chair Arthur Peitler at 12:40 P.M. He summarized the purpose today, which was to finalize and celebrate the closing for the Candlewood Lake Conservation Restriction. Attorney Ted Backer then served as master of ceremonies.

Attorney Backer introduced each speaker. Those making comments included all of the elected officials and many in attendance. There were numerous thanks and commendations for good work. Reimbursement for municipal legal fees was received, and the restriction was made available for filing at municipal officers.

ADJOURNMENT

The meeting was then adjourned by Vice Chair Art Peitler at 2:10 P.M.

**SUMMARY OF CONSERVATION RESTRICTION
FOR CANDLEWOOD LAKE
BY ATTORNEY TED BACKER
PREPARED DECEMBER 1, 2005**

The Candlewood Lake Conservation Restriction overlays the requirements of the present and future FERC license(s), but also provides permanent protection for the Lake after FERC licensing ends. The Conservation Restriction runs with the land in perpetuity under the authority of CT State Statute Sections 47-42a thru 47-42c, which enables such conservation restrictions.

The perspective in the area on the need for this reassurance was based upon the fact that

Candlewood Lake has traditionally had three levels of protection, 1) state and local environmental regulation, 2) DPUC regulation of the utility owner, and 3) federal regulation of the utility owner through FERC. The worry was that with the DPUC no longer regulating power generators (the whole point of deregulation), and FERC jurisdiction possibly removed thru decommissioning, risks of negative change could dramatically increase, thus the need for this new form of additional protection.

CL&P granted the Conservation Restriction and then collected the \$2 million purchase price via the CT DPUC Systems Benefit Charge. The major protection features of the Candlewood Lake conservation restriction are summarized below:

--- To preserve Candlewood Lake generally in its condition at the time of the Conservation Restriction. To continue to use the Lake for hydropower but "at the same time helping to ensure that the Lake remains for this and future generations as a recreational, environmental and aesthetic resource."

--- The utility company "shall maintain the water level of Candlewood Lake consistent with the recreational and scenic purposes of the Lake, including, during the summer months, the recreational activity of boating and swimming at levels set forth by the FERC license," etc. The utility "shall not lower the water level of Candlewood Lake below the 41 8 foot contour line" except for very limited exceptions such as safety, maintenance or a power emergency.

--- Prohibited uses below the 418 foot contour, unless operation or maintenance are involved, include buildings, advertising displays, removal of trees or plants or use of herbicides without municipal or DEP permission, filling or excavating, dumping, construction of underground storage tanks, erosion causing activities, and activities that degrade water quality or that are detrimental to habitat preservation.

--- The five lakeside municipalities receive the right of entry to the body of the Lake within the 418 foot contour, and the right to make "scientific and education observations" for the purpose of enforcing the Conservation Restriction; and, also the right of enforcement to prevent violation of the Conservation Restriction.

--- The five municipalities also receive the Right of First Refusal to purchase and the State of Connecticut receives the Right of Second Refusal to purchase both the area within the Conservation Restriction defined above and all appurtenant utility property within the FERC boundary in the event the utility owning the Lake sells and gives up the FERC license subject to the Utility retaining all land, equipment and rights of way that it deems necessary for the continued monitoring of other hydroelectric facilities. But, if they do not wish to purchase, and then there are no acceptable offers from private sources, the utility may require the five municipalities to purchase the property, at no cost.

--- Protecting the municipalities from costs in the case of the forced purchase scenario above is the requirement that there be "no outstanding order of any state or federal agency having jurisdiction finding that the Transfer Property is in noncompliance with applicable laws and regulations pertaining to the safety, stability and environmental condition of such Transfer Property."

--- Another aspect of the Conservation Restriction that has not to date been utilized, but arguably is occurring at the Candlewood Lake Authority, is that Northeast Generation and the Towns agreed to establish a joint committee "for the purpose of establishing a joint process for the purposes of discussing common goals and practices for the management of the Project Property (including weed control ...). The parties agree to work cooperatively and in good faith to carry out the provisions of this subparagraph ©)".

— Question: Clarify the Right of First Refusal to Purchase the Lake. Is it available only when there

is no private sector purchaser?

The Right of First Refusal DOES NOT APPLY to any sale that is not in conjunction with or after surrender of the FERC License. Stated more simply, the Right of First Refusal would not apply where the Lake will be continued as a hydroelectric impoundment regulated by FERC pursuant to a FERC license.

Specifically, the Restriction provides: "In the event that Grantor, in its sole discretion, determined that it wishes to sell the Transfer Property to an unaffiliated third party in conjunction with or after Grantor's surrender of the FERC License, Grantor shall provide to Grantees and to the State of Connecticut ninety (90) days prior notice of such intended sale."

— Question: Concerning the Geographic Extent of the Right of First Refusal, does it include the power generating portion of the Project on the Housatonic?

In the Conservation Restriction, Grantor Utility gives a Right of First Refusal to the municipality and a Right of Second Refusal to the State for "all of the Grantor's right, title and interest in and to the Transfer Property". The Transfer Property means the Rocky River Property and such related appurtenances in existence at the time of the transfer that are necessary to maintain Candlewood Lake as a lake except as otherwise provided in paragraph 11 (d).

The Rocky River Property is described on a recorded Map filed simultaneously with the Conservation Easements, Map No. 3128 New Fairfield Land Records.

That Map shows not only the property within 418 contour line but also the South Lanesville Dike, Middle Lanesville Dike, North Lanesville Dike, Main Dam, Canal Entrance, Canal Dike, intake structure, penstock and Power House.

In my non-engineering view all of the above described features "are necessary to maintain Candlewood Lake as a lake and would therefore be included in the Right of First Refusal". However, the Conservation Restriction gives the Utility the right but not the obligation to exclude from a sale all land, equipment and rights of way that it deems necessary or convenient in its absolute discretion for the continued monitoring and operating of other hydroelectric facilities.

— Question: Will the Federal Energy Regulatory Commission or the Department of Public Utility Control have jurisdiction to approve the sale?

FERC will have to approve the Transfer of the License from the Seller, Northeast Generation Company to the new purchaser. As to whether the Connecticut Department of Public Utility Control has jurisdiction or will assert jurisdiction, I do not have an opinion at this time. There may be issues, facts or circumstances that arise as the transaction develops that may require the DPUC to have jurisdiction.