107 Selden Street, Berlin, CT 06037
P.O. Box 270, Hartford, CT 06141-0270

Vincent P. Pace
Associate General Counsel

(860) 665-5426
vincent.pace@eversource.com

January 19, 2018

VIA ELECTRONIC MAIL

Mr. Ernie Orgera
Director of Operations
City of Stamford
Stamford Government Center
888 Washington Boulevard, 10th Floor
Stamford, CT 06901
E-mail: EOrgera@ci.stamford.ct.us

Operations Committee
City of Stamford
Stamford Government Center
888 Washington Boulevard, 10th Floor
Stamford, CT 06901

Re: January 23, 2018 Meeting of the City of Stamford Operations Committee

Agenda Item No. 3: O30.004: Proposed Amendment to Section 214-29, Excavation Permits –Street Opening Permit Procedures

Objection of Eversource Energy to the City's Proposed Amendments to Section 214-29 concerning the Road Excavation Permit Process

Dear Mr. Orgera and Members of the Operations Committee:

I am legal counsel for The Connecticut Light and Power Company and Yankee Gas Services Company, each doing business as Eversource Energy (collectively, "Eversource"). Eversource also recently acquired the Aquarion Water Company of Connecticut.

I am submitting this letter in response to Item No. 3 (O30.004) on the agenda for the January 23, 2018 meeting of the City of Stamford Operations Committee, which proposes amendments to street opening permit requirements. The proposed amendments are unreasonable, unnecessary and violate the Connecticut law. For the following reasons, Eversource opposes these amendments, and requests that you incorporate this objection into your municipal record for this meeting.

As you are aware, to the greatest extent possible, Eversource already collaborates with the City to coordinate its utility work to minimize impacts on the City. Eversource also recognizes that the City must periodically evaluate the reasonableness of the permit process to determine whether any reasonable adjustments are necessary. However, in this case, the proposed amendments are unreasonable, unnecessary and violate Connecticut law. Specifically, Eversource objects to the following proposed amendments:

- Shortening the term of permits to 90-days, which will require multiple permits to be obtained for most construction jobs.

- Requiring a special permit for work on a road or sidewalk last paved or substantially reconstructed within 60 months.
- The proposed new language for a permit for the repair/restoration of any road or sidewalk which does not pass City inspection within 30 days of completion of work.
- The proposed new language requiring for a permit for the correction of temporary or permanent patch or restoration within 6 years after the expiration of the most recent permit, where the City determines there is a patch or restoration deficiency that requires correction.
- The proposed new language for city completion of work pursuant to Section 214-29E.

Before the Operations Committee and the City make their final decision on the proposed amendments, Eversource wants to ensure they have all of the necessary information to make an informed decision.

1. **The Proposed Amendments That Impose Additional Costs and Fees on Eversource Violate State Law**

Proposed amendments to municipal permitting regulations, which are similar to those now being proposed for Stamford, were rejected by the Connecticut Superior Court as being in violation of Connecticut law.

In the case of the City of Hartford v. Dep't of Pub. Util. Control, No. CV 970568252, 1998 WL 61916, 21 Conn. L. Rptr. 359 (Conn. Super. Ct. Jan. 21, 1998), the Superior Court concluded that the excavation permit fees charged by the City of Hartford were unreasonable. In the case, the Court first explained that Connecticut General Statute Section "§ 16-229 does not explicitly grant a municipality the authority to impose a fee upon issuance of an excavation permit." (Id. at *4.) The Court then concluded that – based on its analysis of decisions from our Supreme Court and the text of § 16-229 – the fee a municipality charges for an excavation permit can only recover the administrative cost the City incurs to *issue* the permit, which is referred to as the "cost of issuance". The Court said, "Based on the decisions of our Supreme Court and its own prior decisions, . . . the [excavation permit] fees charged by Hartford in this case were not authorized by law because they were not confined to the cost of issuance." (Id.) Because the City of Hartford's attempt to recover its cost of having the excavation work inspected was unrelated to the cost of issuing an excavation permit, the Superior Court stated that the City could not recover the cost of inspection. (Id.) The Court therefore affirmed PURA's conclusion that "General Statutes § 16-229 does not authorize a municipality to charge a public service company, as part of the fee for an excavation permit, the cost of inspecting and monitoring the excavation project." (Id. at *2.)

PURA has defined the "cost of issuance" of an excavation permit to mean that a municipality is "entitled to recover only its costs based on the ***administrative burden of issuing and recording a permit*** in connection with street excavation." Joint Appeal of Connecticut Nat. Gas Corp., the Connecticut Light & Power Co., the S. New England Tel. Co., & Tci Cablevision of Cent. Connecticut from Excavation & Related Permit Fees Imposed by the City of Hartford, Docket Nos. 97-07-10, 1998 WL 34338230 (Oct. 1, 1998) (emphasis added).

Based on the Connecticut law cited above, the City's proposal to charge Eversource additional fees and charges are impermissible because they are not "costs based on the administrative burden of issuing and recording a permit". (Id.) For example, the City's proposal to charge Eversource $500 to obtain a permit to excavate a road or sidewalk that was reconstructed within the past 60 months, which is double the cost of a standard $250 excavation permit, will be invalidated by a Court because charging this extra amount is unrelated to the City's administrative cost to issue a permit.

In addition, the City's proposal to recover "$250 in addition to City costs" for "City completion of work pursuant to Section 214-29E" will also be invalidated by a Court because it is unrelated to the administrative cost of issuing a permit to excavate in a road or sidewalk.

Moreover, the City provides no explanation as to why a new permit is needed every 90 days. Connecticut General Statutes §§ 16-229[1] and 16-231[2] require the terms and conditions of a municipal excavation permit to be "reasonable". The intent behind this provision appears to be to generate additional revenue for the City by imposing an unreasonably short duration on permits, thereby forcing utilities to seek renewals every 90 days.

2. <u>Conclusion and Reservation of Right to Appeal the City's Decision to PURA</u>

For all of these reasons, Eversource requests that the proposed amendments be rejected.

Connecticut General Statutes § 16-231 authorizes any Connecticut utility company, including Eversource, to appeal unreasonable or unsubstantiated excavation permit conditions to PURA. Through this letter, Eversource reserves its right to appeal to PURA any potential amendments to the City's current permitting process.

Thank you for your consideration of these comments.

Sincerely,
Vincent P. Pace
Vincent P. Pace
Associate General Counsel
On Behalf of CL&P, Yankee Gas and Aquarion Water Company

cc: Karl L. Petschauer (via e-mail) (Eversource)
Albert J. Dias (via e-mail) (Eversource)

[1] Conn. Gen. Stat. § 16-229 states, "Any public service company incorporated under the provisions of the statutes or by special act for the purpose of transmitting or distributing gas, water or electricity or for telephone purposes, desiring to open or make any excavation in a portion of any public highway for the carrying out of any purpose for which it may be organized other than the placing or replacing of a pole or of a curb box, shall, if required by the authority having jurisdiction over the maintenance of such highway, make application to such authority, which may, in writing, grant a permit for such opening or excavation upon such terms and conditions as to the manner in which such work shall be carried on as may be reasonable."

[2] Conn. Gen. Stat. Ann. § 16-231 states, "Any such company aggrieved by the neglect or refusal of the authority having such jurisdiction to grant such permit, or by the terms and conditions therein imposed, may appeal to the Public Utilities Regulatory Authority, which may, upon giving reasonable notice of such appeal and of the time and place where it will be heard, determine whether such permit ought to be granted, or such terms and conditions altered, and may, subject to such right of appeal to the Superior Court as provided in the case of other orders, authorizations and decisions of the Public Utilities Regulatory Authority, grant such permit in writing upon such terms and conditions as to the carrying on of such work as it finds just and reasonable."