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JOINT APPEAL OF CONNECTICUT NATURAL GAS CORPORATION, THE CONNECTICUT LIGHT AND POWER COMPANY, THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY, AND TCI CABLEVISION OF CENTRAL CONNECTICUT FROM EXCAVATION AND RELATED PERMIT FEES IMPOSED BY THE CITY OF HARTFORD

97-07-10

Connecticut Department of Public Utility Control

October 1, 1998

DECISION

By the following Commissioners: Glenn Arthur, Jack R. Goldberg, John W. Betkoski, III

I. INTRODUCTION

A. SUMMARY

In this Decision the Department rules on the reasonableness of three fees imposed by the City of Hartford on public service companies excavating public highways within city limits. The Department determines that the $40 fee for the issuance of a restoration permit, the $75 fee for a survey crew, and a $50 sidewalk laying permit fee are unreasonable. The Department orders the City to calculate and refund to the petitioner utilities that amount of money impermissibly collected by the City from January 1, 1997 though July 11, 1997.

B. BACKGROUND

On July 11, 1997, Connecticut Natural Gas Corporation (CNG), The Connecticut Light and Power Company (CL&P), The Southern New England Telephone Company (SNET) and TCI Cablevision of Central Connecticut (TCI) (collectively referred to as the Companies) filed a Joint Appeal with the Department of Public Utility Control (Department), pursuant to General Statutes of Connecticut § 16-231 (Conn. Gen. Stat.), appealing the imposition of certain excavation and related restoration permit fees by the City of Hartford (City). In the Joint Appeal, the Companies contended that they were aggrieved by the terms and conditions imposed by the City in various excavation and related restoration permits, and in particular that the subject fees are excessive and include reimbursement for costs not properly recoverable under Connecticut law. Joint Appeal, pg. 1.

Conn. Gen. Stat. § 16-229 requires a public service company to obtain a permit before excavating a public highway. The authority having jurisdiction over the maintenance of the highway, herein the City, may require reasonable terms and conditions as to the manner in which such work shall be performed.[1] Conn. Gen. Stat. § 16-231 provides that a company aggrieved by the terms and conditions imposed by the permitting authority may appeal to the Department. The Department may determine whether the terms and conditions are reasonable, and may grant a permit under terms and conditions which the Department finds just and reasonable.[2]

In the Joint Appeal, the Companies stated that there were three specific measures taken by the City to impose additional excavation permit fees to attempt to circumvent the Department's findings and orders in Docket No. 95-10-34, Appeal of Connecticut Natural Gas Corporation from Excavation Permit Fees Imposed by the City of Hartford, Decision dated December 31, 1996 (Decision). The first specific measure contested by the Companies was the City's implementation of a $40 "restoration permit fee." Joint Appeal at p. 5. The City requires that a utility obtain a permit prior to removing temporary pavement and replacing it with permanent pavement. Prefiled Testimony of Bhupen Patel dated November 13,1997, at p. 2-3.

The second specific measure was the imposition of an "add on" fee of $75 for a "survey crew." Joint Appeal, pg. 6. The City requires a "survey crew" when more than four slabs of the sidewalk has to be replaced. For one to four slabs of sidewalk, no "survey crew" is required. The survey crew is required to give the elevations for restoration of the sidewalk to ensure that the sidewalk is reconstructed close to the original elevations with the correct pitch to provide for proper water runoff. Testimony of Ozzie Blint, Tr. 3/3/98, pg. 114-115. The survey crew fee is required pursuant to Section 31-62 of the City of Hartford Municipal Code. The Companies also contest the $50.00 sidewalk laying permit fee contained in Section 31-62 of the City's Municipal Code. Section 31-62 requires that a curb and walk layer secure a sidewalk laying permit before commencing any work. See, Appendix B to Prefiled Testimony of Bhupen Patel dated November 13, 1997.

The third specific measure was to require multiple permits for the same excavation. The Companies believed that the City was assessing the Companies for fees for multiple permits when an excavation was performed at one location but may have technically involved more than one address. Joint Appeal, pg. 7. However, after the hearing on March 3, 1998, the Department received a letter dated March 27, 1998, in which the Companies stated: "Based on a review of the transcript of the March 3, 1998 hearing, particularly the clarifying testimony of Mr. Ozzie Blint at pp. 143-149, the Public Service Companies hereby withdraw without prejudice their third claim in the Joint Appeal relating to the 'multiple permits issue'."

C. CONDUCT OF THE PROCEEDING

The City filed nine preliminary motions in this docket. The Department issued five interim decisions addressing each of the City's motions. See, Decisions dated October 8, 1997[3]; December 3, 1997[4]; January 7,1998[5]; May 27, 1998[6]; and July 1, 1998[7]. Finally, by Motion dated July 7, 1998 the City requested the Department stay any further proceedings in this docket pending the resolution of the Supreme Court proceeding. By letter dated July 16, 1998, the City's request was denied.

The Department took administrative notice of the evidentiary record of the proceeding in Docket No. 95-10-34, Appeal of Connecticut Natural Gas Corporation From Excavation Permit Fees Imposed by the City of Hartford and the Connecticut Superior Court Decision CV 97-0568252, entitled City of Hartford v. Department of Public Utility Control et al. No objection was filed by any of the parties.

The Department pursuant to Conn. Gen. Stat. § 16-2(c) and 16-8(a) designated a member of the Adjudication Division who is a member of the Connecticut bar as the hearing examiner. By Notice of Rescheduled Hearing dated February 19, 1998, a hearing on this matter was held on March 3, 1998, at the offices of the Department, Ten Franklin Square, New Britain, Connecticut. By Notice of Close of Hearing dated June 18, 1998, the Department announced that the hearings in this matter were closed.

The Department issued a draft decision on September 11, 1998. The parties were provided an opportunity to file written exceptions to and present oral arguments on the draft Decision.

D. PARTICIPANTS

The Department designated the following as parties to this proceeding: Connecticut Natural Gas Corporation, P.O. Box 1500, Hartford, CT 06144-1500; TCI Cablevision of Central Connecticut, P.O. Box 4222, Kensington, Connecticut 06037; The Connecticut Light and Power Company, P.O. Box 270, Hartford, Connecticut 06141-0270; The Southern New England Telephone Company, 227 Church Street, New Haven, CT 06510; The City of Hartford; and the Office of Consumer Counsel, Ten Franklin Square, New Britain, CT 06051.

II. DEPARTMENT ANALYSIS

There are three specific terms or conditions at issue in this case:
1. Restoration permit fee of $40;

2. Sidewalk laying permit fee of $50; and

3. Sidewalk survey crew fee of $75.

A. COMPANIES' ARGUMENT

As noted by the parties, the Department, in Docket No. 95-10-34, determined the validity of the City's excavation permit fee schedule ordinance (Hartford Municipal Code Section 31-87). The Department determined that the City could only recover through a fee the reasonable cost of issuing and recording an excavation permit. The Department set that fee, based on the record evidence in Docket No. 95-10-34, at $40. See, Decision dated December 31, 1996. The Companies contend that the imposition by the City of the other fees at issue in this case is an attempt by the City to avoid the application of the Department's earlier decision. Brief p. 2. Joint Appeal at pp.4-5. The Companies' position is that based on the Department's December 31, 1996, decision, "the entire excavation permit issuance process can only support a one-time fee of $40.00." Joint Brief dated July 20, 1998, at p. 8.

Specifically, with regard to the restoration permit fee, the Companies state that restoration is not an "excavation or opening" under Conn. Gen. Stat. § 16-229, but rather a "repair of an 'opening or excavation."' Id. at 10. The Companies state that the record in Docket No. 95-10-34 demonstrates that restoration of pavement is a required condition of work to be performed pursuant to each excavation permit, and is included in the initial permit issued by the City. Id. at pp. 3, 10. Further, the companies note that prior to the Department's December 31, 1996, decision, the City did not impose any fee in relation to the restoration permit. Id. at p. 4; Docket No. 95-10-34, Tr. 6/18/96, pg. 208-209. Indeed, the Companies cite the City of Hartford's Street Excavation Permit Manual (Manual) as stating that there shall be no fee charged for restoration permits. Joint Brief at p. 4.[8]

It is the Companies' position that the $75 survey crew fee imposed by the City for curb and sidewalk layers is impermissible because it is not a fee designed to recover the reasonable clerical costs of issuing a permit. Id. at 13. The Companies believe that the survey crew "is a supervisory, monitoring and inspection function of the City for which it cannot assess a fee." Id.

Finally, in regard to the $50 sidewalk laying permit fee, the Companies contend that sidewalks fall within the definition of public highways as referred to in Conn. Gen. Stat. § 16-229. Joint Reply Brief dated July 27, 1998, at p. 5. Thus, in the opinion of the Companies, the "street excavation permits encompass sidewalk excavation." Id.

B. CITY'S ARGUMENT

With regard to the restoration permit fee, the City contends that the permit is a type of excavation permit which goes through an essentially identical issuance process to that examined by the Department in Docket No. 95-10-34, which resulted in the Department's determination that the 'issuance' costs thereof is $40.00. In express reliance upon the Department's Decision I[9], the City issued a "Notice of Contractors" (Joint Petition, Exhibit 1) which discontinued the City's earlier practice of not collecting any of its recoverable permit program costs at the time of issuance of restoration permits. See, Docket No. 95-10-34. Tr. 6/18/96, p. 208-209. (footnote omitted) Also, Section 31-87 of the City's municipal code expressly requires application for and issuance of a permit (and payment of the applicable permit fee) before any "utility shall dig within the public right-of-way".

Brief at p. 7.[10]

The City's argument in regard to the Companies' challenge to the $50 Sidewalk laying permit fee and sidewalk survey crew fee of $75 is that the companies have failed to sustain their burden of proving that the fees are unreasonable. Brief at p. 9. The City claims that

> the Companies introduced no evidence that the costs incurred by the City in issuing sidewalk laying

> permits are less than the fee required in Section 31-62 of the City's Municipal Code, and introduced no evidence that the City's costs of performing the line and grade survey called for in Section 31-62 are less than the fee therefore required by that provision of the City's Municipal Code.

Id.

Further, the City contends that the survey crew fees and the sidewalk laying permit fee are authorized by Chapter ii, Section 2(f) and (5) of the Hartford Municipal Charter, which was enacted by the legislature in a 1947 Special Act. Reply Brief at p. 9. Section 2 of the Charter addresses the City's "powers in respect of public works and buildings." In particular, subsection (f) authorizes the City "to provide for opening, widening and changing the grade of streets, and the establishment and alteration of curb . . .[and] sidewalk . . . lines". Section 5 grants the City "the power to adopt ordinances not in conflict with the general statutes . . . ." Section 5 goes on to state in part that the City may "require wherever necessary in the execution of its powers permits or licenses and to fix the amount to be paid therefore." The City states that "Section 31-62 of the City's Municipal Code, which requires sidewalk laying permits and line and grade surveys for extended laying of sidewalks, derives its authority directly from these provisions of this Special Act." Reply Brief at 10.

C. DEPARTMENT'S PREEMPTIVE JURISDICTION

Although the City of Hartford has limited jurisdiction over the issue of terms and conditions for a permit, the Department's jurisdiction over public service company plant preempts municipal jurisdiction. See, Jennings v. Connecticut Light and Power Company, 140 Conn. 650 (1954)[11]; Shelton v. Commissioner, 193 Conn. 506, 479 A.2d 208 (1984)(stating that a local ordinance is preempted by a state statute when the legislature has demonstrated an intent to occupy the entire field of regulation of the matter). Clearly, the Department has plenary jurisdiction over all aspects of public service company regulation. Title 16 sets out the comprehensive regulatory oversight of Connecticut's public utilities by the Department. Through Conn. Gen. Stat. § 16-19e(a), the legislature provided a set of guidelines for the Department's decision making which requires the balancing of several public interests that are affected by public utilities: the ratepayers, the utilities' investors, the economy, public safety and the environment. These interests which the Department is charged with considering are far broader than a municipality's understandably self-interested approach to monitoring public service company conduct.

Conn. Gen. Stat. §§ 16-229, 16-230 and 16-231[12] specifically address a utility's obligations when opening a highway in the course of providing public utility service. In deference to the local impact a street excavation has on a community, the Legislature crafted an opportunity for the municipalities to have a role in the excavation process by allowing them the initial opportunity, in § 16-229, to issue a permit for a utility project. Further, as noted by the City, the Hartford Municipal Charter, Chapter II, Section 5, allows the City "to require wherever necessary in the execution of its powers permits or licenses and to fix the amount to be paid therefore." Reply Brief at pp. 9-10. This "permitting power" is a general power not specifically geared toward public service companies.

However, as noted above, municipal power is subject to the Department's authority over public utilities. Indeed, under the current statutory scheme, no municipality is required to exercise its authority. A municipality which refuses to issue a permit leaves the decision up to the Department. If a municipality refuses to grant a permit, the Department is required to issue a permit under terms and conditions the Department finds reasonable. See, Conn. Gen. Stat. § 16-231.

The statutory scheme further gives the Department the authority to reject the municipality's permit and issue one on terms and conditions deemed reasonable by the Department. See, Conn. Gen. Stat. § 16-231. "In effect, § 16-231 allows the department to override the municipality's permit power, granted by § 16-229, if the department determines that the terms and conditions of the municipality's permit are not reasonable." Memorandum of Decision, City of Hartford v. Department of Public Utility Control et al., CV 97 056 82 52, dated January 21, 1998 at p. 2, Maloney, J.[13] The fee associated with the permit is a term or condition. See, Docket No. 97-07-10 Decision dated July 1, 1998. Accordingly, municipalities can charge fees for permits only at the sufferance of the Department.

D. RECOVERABLE COSTS

Traditionally, the Department has allowed a municipality to recover the cost of issuing and recording a permit. See, Welch v. Hotchkiss, 39 Conn. 146 (1872). See also, Decision dated June 7, 1983, in consolidated Docket No. 82-06-07, Hartford Electric Light Company Modifications of Terms and Conditions of Street Excavation permits Issued by the City of Stamford, and Docket No. 82-06-19, Southern New England Telephone Company Modifications of Street Excavation Permits Issued by the City of Stamford; and Decision dated December 31, 1996, in Docket No. 95-10-34. It should be noted, however, that case law specifically prohibits a municipality from using permit fees to raise revenue. City of New Haven v. New Haven Water Company, 44 Conn. 105, 108 (1876)(holding that if the fee is not designed "for the sole purpose of paying the cost of the license," the fee is invalid, as it constitutes "an irregular assessment of taxes for revenue" on the part of the municipality).

In this case the Department is faced with the imposition of a series of fees for various components of the excavation process. Pursuant to law, and prior Department decisions interpreting that law, the City is entitled to recover only its costs based on the administrative burden of issuing and recording a permit in connection with street excavation.

Similar to the inspection fees found impermissible in Decision dated December 31, 1996 in Docket No. 95-10-34,[14] the sidewalk survey crew fee of $75 charged pursuant to Hartford Municipal Code section 31-62 is clearly not intended to recover the costs of issuing a permit. Although a requirement for a survey crew to set the line and grade of a specific project may be a reasonable term or condition of the excavation, the $75 fee is an impermissible term or condition of the excavation permit. As stated by the City itself, "survey crew fees are not authorized under Section 16-229 of the General Statutes. Instead, that fee . . . [is] authorized by . . . the Hartford Municipal Charter . . . ." Reply Brief at p. 9. However, as noted above, the powers outlined in the Municipal Charter are subject to the Department's preemptive authority, and in this case the Department finds the fee unreasonable.

With regard to both the sidewalk laying permit fee and the restoration permit fee, the Department is concerned that the City of Hartford is attempting to separate the excavation process into an infinite number of components and require a permit and fee for each, thus using the permitting process as an impermissible means to raise revenue.[15] The permit required to be applied for by a public service company with regard to both restoration and sidewalk excavation is identical to the permit used in the excavation process. See, Appendix C to Prefiled Testimony of Bhupen Patel, dated November 13, 1997; Joint Appeal, Exhibit No. 5.

Specifically, the City stated in a prior Motion in this docket that in instances where a utility has disturbed sidewalk slabs in connection with a street excavation, the street excavation permit covers both the excavation within the street and the sidewalk. See, Motion to Dismiss dated March 20, 1998, at p. 7.[16] The law has long recognized that sidewalk along a public street is considered to be part of the street. Manchester v. Hartford, 30 Conn. 118, 121 (1861); Hornyak v. Fairfield, 135 Conn. 619 (1949); Bridgeport v. United Illuminating Co., 131 Conn. 368 (1944). Therefore, any information the City requires with regard to excavation of that part of the "public highway" which pertains to the sidewalk should be incorporated in the original excavation permit. No additional fee is recoverable by the City as the cost of issuing such an excavation permit has already been determined.

With regard to the restoration permit, the evidence demonstrates that the restoration permit is merely a means of tracking the utilities' compliance with the terms and conditions of the initial excavation permit, (i.e. an enforcement tool), and not a new permit. The Department notes that restoration is a term and condition of the initial grant of an excavation permit under Hartford Municipal Code section 31-87(b)(2).[17] Further, although the Manual requires that a separate permit must be issued for restoration work, it goes on to state that "[t]here shall be no charge for restoration permits." Manual, at p. 12.

The City requires that restoration of pavement be made "only after the temporary paving has been in place for thirty days . . ." Manual at p.11. Hartford Municipal Code Section 31-95 requires that permanent repair of excavations be completed within a specified time period.[18] The exact start date of the restoration is not consistently included on the restoration permit, and is often conveyed to the City by means of a courtesy telephone call from the contractor. See, Joint Appeal, Ex. No. 5; Docket No. 95-10-34, Tr. 6/18/96, pg. 171. The restoration work itself is likely performed by a different contractor than the initial street excavation. Trans. Docket No. 95-10-34, 6/18/96, pp. 103 and 106. However, the Department notes that it is the utility itself, and not the excavation/restoration contractor who has ultimate responsibility for each excavation/restoration. The contractors are merely acting as agents or subcontractors for the public utility. See e.g., Joint Appeal, Exhibit No. 5 (permits identifying the utility for which the restoration is performed); Trans. Docket No.95-10-34, 6/18/96, p. 116.

Accordingly, all relevant information regarding restoration of permanent paving can be contained in the excavation permit, and no second permit is necessary. This is especially true in light of the fact that permanent pavement repair is required as a condition of the initial excavation permit, and the Manual and other provisions of Hartford's Municipal Code contain the specifications for permanent surface restoration. See, e.g., Hartford Municipal Code Section 31-95 (detailing the City's requirements for restoration and maintenance of pavement, including a repair schedule, extension of such schedule, and area of restoration)[19]; and Manual at pp. 11-16 (detailing permanent repair procedures, permanent surface restoration, and quality of construction and repair work). As with the sidewalk laying permit fee, no additional fee is recoverable by the City as the cost of issuing an excavation permit has already been determined.

With regard to the City's contention that the Companies did not sustain their burden of proof in this proceeding, the Department notes that the bulk of its analysis in this decision is centered around specific legal issues, and not contingent upon a complex set of facts. The cost of issuing a permit was adjudicated previously in Docket No. 95-10-34. The record of that proceeding was administratively noticed in this proceeding. As stated by the City, "the City and Companies are in agreement that the validity of the City's $40 fee for the issuance of a street excavation permit in order to conduct a street restoration ('restoration permit') is exclusively a 'matter of law.'" Reply Brief dated July 27, 1998, at pp. 1-2. See also, Joint Brief dated July 20, 1998, at p. 2 (stating that "the Joint Appeal primarily presents legal issues, rather than factual questions. The only factual determination necessary is that of the City's permit issuance cost, which has already been determined in Docket No. 95-10-34.") With regard to each fee at issue in this case, the Department has determined that it is impermissible as a matter of law. The factual record as established by the parties was more than sufficient for the Department to render this Decision.

III. FINDING OF FACTS

1. The Companies, pursuant to Conn. Gen. Stat. section 16-229, appealed the City's imposition of a restoration permit fee, sidewalk laying permit fee, and sidewalk survey crew fee.
2. The City uses the same process to issue a restoration permit, sidewalk laying permit and excavation permit.

3. The cost of issuance of an excavation permit has been set in a prior Department decision at $40.

4. The City's sidewalk survey crew fee is not intended to recover the cost of issuing and recording a permit.

5. The information contained in a sidewalk laying permit can be contained in the initial excavation permit and does not need to be contained in a separate permit.

6. The information contained in a restoration permit can be contained in the initial excavation permit and does not need to be contained in a separate permit.

IV. CONCLUSION AND ORDERS

A. CONCLUSIONS

By application of law, the Department determines that the restoration permit fee, the sidewalk permit fee and sidewalk survey crew fee are unreasonable. The limit of a municipality's authority in the issuance of excavation permits to utilities are set by statute, and the operation of the pertinent statute has been interpreted by this State's courts. If the City of Hartford is convinced that the statutory scheme is unfair, its course is to seek a change in the law. While the proper equity of section 16-229 may be subject to some debate, the conduct of that debate through multiple proceedings in this forum is wasteful of both the parties' and the Department's resources.

B. ORDERS

1. The Department orders the City to calculate and refund to the petitioner utilities that amount of money impermissibly collected by the City from January 1, 1997 though July 11, 1997.
2. No later than October 30, 1998, the City shall confirm in writing to the Department the amount of refund calculated and that the City has made such refund.

This Decision is adopted by the following Commissioners:

Glenn Arthur

Jack R. Goldberg

John W. Betkoski, III

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Nicholas E. Neeley Acting Executive Secretary Department of Public Utility Control

Footnotes

1 Conn. Gen. Stat. Section 16-229 states:
Any public service company incorporated under the provision 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. Section 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 Department of Public Utility Control, 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 department, grant such permit in writing upon such terms and conditions as to the carrying on of such work as it finds just and reasonable.

3 The first such motions were dated July 27, 1997. The three motions were as follows:
a) The City moved that the Department dismiss so much of the Companies Joint Appeal as relates to permits issued prior to thirty days preceding the filing of the Joint Appeal, for the reason that the Companies' appeal rights expired on June 11, 1997, per the thirty day statute of limitation set forth in Section 16-235 of the Connecticut General Statutes.
b) The City moved that the Department grant the City summary judgment with regard to the Companies' challenge to the imposition by the City of a $40 fee for "restoration permits" for the reason that said fee is wholly in accord as a matter of law with the Department's ruling in its Decision dated December 31, 1996, which expressly found that the City is entitled to recover its "issuance cost" in connection with street excavation permits.
c) The City requested that the Department grant the City summary judgment with regard to the Companies' request that the Department "establish appropriate terms and condition of the subject permits . . . on an on going basis," for the reason that, as a matter of law, under both Sections 16-231 and 16-235, the Companies may only appeal from, and thereby contest the terms and conditions of, issued permits.
The Department issued a Decision on October 8, 1997, in which the first two motions were denied and the third motion was granted.

4 The City by petition dated October 31, 1997, requested that the hearing officer recuse herself from further involvement in this case. The Department denied the request in Decision dated December 3, 1997.

5 By letter dated November 5, 1997, and Motion to Strike dated November 13, 1997, the City requested the Department address two issues. In its November 5, 1997 letter, the City "contests herein the Department's authority to act on the so-called 'third specific measure' alleged in the Joint Appeal (at 7), to the extent that this 'measure' is being contested herein in the absence of a specific issued permit reflecting the alleged unreasonable terms or conditions." In its Motion to Strike, the City requested the Department to strike "all of the copies of various permits submitted to the Department in this proceeding under transmittal letters dated November 5, 1997 by Connecticut Natural Gas Corporation and TCI Cablevision of Central Connecticut . . . because they are expressly outside of the scope of such Joint Appeal." The Department issued a Decision on January 7, 1998, in which the first motion was denied and the second motion was granted.

6 By Motions dated January 21, 1998 and March 20, 1998, the City requested the Department to Dismiss the Companies' Joint Appeal of the $75 Sidewalk Survey Fee imposed pursuant to Section 31-62 of the City's Municipal Code. Further, in its Motion to Dismiss dated March 20, 1998, the City requested the Department dismiss the Companies' appeal of the restoration permit fee and the $50 sidewalk laying permit fee imposed by the City. The City contended that the Department has no jurisdiction over the sidewalk fee and survey fee, and once again raised its argument that based on the Department's earlier decision in Docket No. 94-10-34, the fee related to the restoration permit is not unreasonable. By Decision, Rulings on Motions to Dismiss, dated May 27, 1998, the Motions were denied.

7 By Motion dated May 20, 1998 the City requested the Department to Dismiss the Companies' Joint Appeal of the sidewalk survey fee, the restoration permit fee and the sidewalk laying permit fee imposed by the City based on its argument that the Department does not have jurisdiction over the fees charged by the City for issuing permits. By Decision, Ruling on Motion to Dismiss, dated July 1, 1998, the Department denied the Motion.

8 The Companies alternatively argue, citing the Department's June 25, 1997, decision in Docket No. 95-10-34, that any fee charged by the City for a restoration permit must be deducted from the $40 excavation permit fee. ("The $40.00 per permit cost was calculated based on the number of excavation permits excluding restoration, issued during the relevant time period. If . . . [the] number of permits vary substantially in the future, (for example, because of . . . the charge for restoration permits), the $40.00 permit cost may become too high or too low . . ." Decision at p. 3, n. 3).

9 Decision in Docket No. 95-10-34, dated December 31, 1996.

10 The City further contends that the "Supreme Court now has exclusive jurisdiction over the matters adjudicated in Decision I, and the Department may not interfere with that exclusive exercise of jurisdiction by the Supreme Court by amending or changing the legal conclusion reached by it in Decision I." Reply Brief at p. 2. As the Department in no way alters its holding in the December 31, 1996, decision in Docket No. 95-10-34 in the instant proceeding, the Department need not address this argument here.

11 "It is sound public policy that as between state control and local control of a public utility furnishing statewide service, the local municipal authorities should play a secondary role where a clash of authority appears to exist." Jennings v. Connecticut Light & Power Company, 140 Conn. 650, 663 (1954)(confronting the friction between local authority to site a power pant and the Department's review jurisdiction).

12 Conn. Gen. Stat. Section 16-229 in its present form, and sections of 16-230 and 231 were adopted in the 1929 Public Acts section 230, sections 1, 2,and 3.

13 Judge Maloney's decision dismissing the City's Superior Court appeal of the Department's December 31, 1996, decision in Docket No. 95-10-34 has been appealed by the City to the Appellate Court, and transferred to the Supreme Court. City of Hartford v. Department of Public Utility Control et al, SC 15936.

14 "As inspection fees are not a cost of issuing, and have never been included as such, the Department will not allow such costs of inspection to be included in the excavation permit fee. As prior case law has outlined, a municipality may recover only those costs which reflect the cost of issuance and recording permits through fees." Decision dated December 31,1996, in Docket No. 95-10-34, Appeal of Connecticut Natural Gas Corporation from Excavation permit Fees Imposed by the City of Hartford, at p. 8.

15 The City states that the "permit issuance process has not changed [since Decision dated December 31, 1996, in Docket No. 95-10-34] except to the extent that the City now collects the DPUC authorized street excavation permit fee of $40 on all excavation permits, including street restoration excavation permits." Resp. GP-7. Additionally, the City has stated that "[t]his most recent appeal by the Companies has resulted in our discovery of instances in which we have failed to collect all of the fees or charges

mandated by our Code of Ordinances. We are now in the process or [sic] reviewing our procedures in order to ensure this does not happen in the future." Prefiled Testimony of Bhupen Patel dated November 13, 1997, at p. 5.

16 Several of the permits submitted in Exhibit No. 5 by CNG show that the City charged a $40 restoration permit fee for curb and walk work, and not the $50 sidewalk laying permit fee required by Municipal Code section 31-62. See, e.g., Permit Nos. A70597, A70697, A70797.

17 Section 31-87(b) states in pertinent part: "The applicant must agree that he will: (1) Do the contemplated work in accordance with the rules, regulations and specifications of the director of public works; (2) Maintain the cut pavement with a temporary patch; (3) Restore the pavement as required; (4) Maintain the disturbed area for five (5) years after the permanent pavement repair has been made; and (5) If the work is not done or the surface is not maintained in a condition satisfactory to the director of public works, pay the cost of all repairs thereto which may be made by the director."

18 Hartford Municipal Code Section 31-95 (a)(1) and (2) state in pertinent part: "(1) For openings made from April first through August thirty-first, the permanent repair shall be completed by the following November fifteenth; (2) For openings made from September first through the following March thirty-first, the permanent repair shall be completed by the following June fifteenth."

19 Hartford Municipal Code Sec. 31-95 Subsection (d) states that "No license shall be issued as provided in section 31-87 . . . except on condition that the licensee will comply with the provisions of this section."

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