

STATE OF CONNECTICUT

SITING COUNCIL

Re: The Connecticut Light and Power Company and) Docket 272
The United Illuminating Company Application for a)
Certificate of Environmental Compatibility and)
Public Need for the Construction of a New 345-kV)
Electric Transmission Line and Associated)
Facilities Between Scovill Rock Switching Station)
in Middletown and Norwalk Substation in Norwalk,)
Connecticut Including the Reconstruction of)
Portions of Existing 115-kV and 345-kV Electric)
Transmission Lines, the Construction of the Beseck)
Switching Station in Wallingford, East Devon)
Substation in Milford, and Singer Substation in) December 15, 2005
Bridgeport, Modifications at Scovill Rock)
Switching Station and Norwalk Substation and the)
Reconfiguration of Certain Interconnections)

**Supplemental Hearing Pursuant to Conn. Gen.
Stats. § 4-183(h)**

CERTIFICATE HOLDERS' POST-HEARING BRIEF

I. PRELIMINARY STATEMENT

On November 30, 2005, as authorized by an order of the Superior Court, The Connecticut Light and Power Company ("CL&P") and The United Illuminating Company ("UI") (collectively, the "Certificate Holders") offered, and the Council accepted, evidence supplementing the administrative Record in this proceeding. This additional evidence supports the Council's April 7, 2005 Decision and Order ("D&O"), Findings of Fact ("FOF") and Opinion in this matter (collectively, "the Decision papers"). The Council must now make a supplemental return of the Record, so that the additional evidence will be before the Superior Court as it reviews the Council's decision.

Further, the Council must now consider whether to modify portions of the Decision papers relating to the Royal Oak Bypass, so as to clarify and elaborate upon the Council's basis for specifying in the D&O that "the Certificate Holders shall utilize the Royal Oak Bypass..." D&O, p. 1 ¶ 4.

The Certificate Holders suggest that, while the addition of the recently submitted evidence into the record, with no change to the Decision papers, would be sufficient to support the Council's D&O with respect to the Royal Oak Bypass, it would be helpful to the Court for the Council to make minor clarifying and explanatory modifications to paragraph 538 of the FOF and to Section XVI(a) of the Opinion. The Certificate Holders respectfully suggest that no changes to the D&O or the Certificate need be, or should be, made.

II. STATEMENT OF THIS PROCEEDING

The Council issued its FOF, Opinion, D&O, and Certificate of Environmental Compatibility and Public Need ("Certificate") in this matter on April 7, 2005. The D&O directed the Certificate Holders to utilize the "Royal Oak Bypass." D&O, p. 1 ¶ 4. The Council explained this choice in section XVI (a) of its Opinion. The Opinion first notes that "in the area of the Royal Oaks subdivision on the Middletown/Durham town line, residences have gradually developed up to the existing transmission line ROW"; and that the Royal Oak Bypass had been requested to "skirt the neighborhood slightly to the north." The Opinion then goes on to explain:

Initially, the Council may not have considered deviating from an existing electric transmission line right-of-way. However, because the Royal Oaks neighborhood and existing right-of-way are intertwined specifically via a special agreement between CL&P and the Royal Oak neighbors for vegetation

management within the ROW; the Council interprets this as a unique “residential” area.

The portion of the Opinion quoted above was apparently premised, at least in part, on FOF ¶538, which provides in its entirety:

The Royal Oak Bypass is supported by the towns of Middletown, Durham and Middlefield. There is an agreement in place since 1997 between the residents of Royal Oak Subdivision and Northeast Utilities to preserve vegetation along this unique ROW in this area. The Applicants do not oppose construction of the Royal Oak Bypass. (Brief of City of Middletown, 3/16/05, p.6; Tr. 2/27/04, p. 59; Tr. 3/31/05, p. 218, p. 221, 263)

The citations for this Finding are to a lawyer’s brief; a public statement by Ed Schwartz of Citizens for Responsible Energy (“CFRE”) at the Council’s public hearing at the Middletown High School in February, 2004¹, before the evidentiary phase of this proceeding began; and to statements made in final argument by Trish Bradley of CFRE and by Anthony Fitzgerald, counsel for CL&P, after the evidentiary portion of this proceeding had concluded. None of the cited sources would normally be considered evidence. *Gallant v. Cavallaro*, 50 Conn. App. 132, 138, 139, 717 A.2d 283 (1998) (Unsworn representations of counsel or pro se parties have no evidentiary weight.)

Linda D. Wilson and Ralph E. Wilson, Trustee (the “Wilsons”), owners of one of the parcels of land that would be crossed by the Royal Oak Bypass, appealed to the Superior Court from the Council’s decision. In their appeal, the Wilsons assert that the Council erred in ordering the Royal Oak Bypass because the Council based its decision on a fact not in evidence, that is: “that the Applicants had an agreement with the Town of Durham for the preservation of vegetation.” Complaint, ¶ 16(a). The reference in the

¹ FOF #538 misstates the date of this hearing as February 27, 2004. In fact, it was on February 24, 2004. See, FOF # 4; Tr., 2/24/04. The page references are correct.

Wilson Complaint to an agreement with the Town of Durham is obviously a mistake. There is, of course, no such finding. This mistaken and inartful claim of error must refer to the Council's finding that Northeast Utilities has an "agreement" with "the residents of Royal Oak" to preserve vegetation on the right-of-way.

Although the Council's finding concerning the "agreement" that was instrumental in producing the unusual "intertwined" condition of the subdivision with the right-of-way was likely not essential to the D&O, the Certificate Holders thought it would be useful and efficient to document the existence of such an "agreement" by admissible evidence. There is, in fact, an "agreement" concerning vegetation management on the Royal Oak right-of-way; however, it is the type of agreement that consists of an informal arrangement or understanding reflected by consistent practice, rather than a formal legal contract. At the same time, the Certificate Holders thought that it would be useful to the Superior Court to have a fuller explanation of what the Council meant by the "intertwining" of the subdivision and the right-of-way. The Council's meaning is clear to anyone who sat through the whole proceeding: although houses in the Royal Oak subdivision have been built very close to the edge of the right-of-way, the transmission structures and conductors are nevertheless barely visible from those properties and from elsewhere in the subdivision, because of the careful vegetation management along the right-of-way. Nevertheless, that meaning may not be immediately apparent to a reader of the Council's decision papers (including the reviewing court). Accordingly, the Certificate Holders, later joined by the Council itself, asked the Superior Court to authorize the Council to consider additional evidence with respect to the Royal Oak

subdivision, and to elaborate on its FOF and Opinion, pursuant to section 4-183(h) of the Uniform Administrative Procedure Act. Section 4-183(h) provides:

If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

The Superior Court granted the motions of the Certificate Holders and the Council², thus enabling the Council “to consider new evidence and to modify its decision as necessary.” Conn. Gen. Stats. §4-183(h); *Salmon v. Department of Public Health and Addiction Services*, 259 Conn. 288, 319, 788 A.2d 1199 (2002). Administrative Notice Item 3, Court Tr. 11/8/05 at 23, 24, 38, 39 (Cohn, J.). Thereafter, on November 30, 2005, the Certificate Holders presented supplemental pre-filed testimony of Patricia Bradley (Applicants’ Ex. 203) and Anthony Johnson (Applicants’ Ex. 204); a video on DVD showing the “intertwining” of the CL&P and the Royal Oaks subdivision (Applicants’ Ex. 205); and a copy of instructions that Northeast Utilities Service Company issues to vegetation management contractors with respect to the right-of-way that passes through Royal Oak (Applicants’ Ex. 206). At the Supplemental Hearing on November 30, 2005, Ms. Bradley and Mr. Johnson provided additional testimony. (11/30/05 Tr.)

² Supplemental Hearing Administrative Notice Item No. 3 (Transcript of argument and court’s decision.)

III. SUMMARY OF EVIDENCE PRESENTED AT SUPPLEMENTAL HEARING

A. The "Agreement"

There is in effect an understanding or arrangement between CL&P and its agent Northeast Utilities Service Company ("NUSCO"), on the one hand, and property owners in the Royal Oak subdivision on the other. Pursuant to this understanding or arrangement, NUSCO does not employ its standard right-of-way maintenance practices on the right-of-way through Royal Oak (such as the removal of all woody vegetation and the use of herbicides), as it is entitled to do by the terms of the CL&P easements. Rather, NUSCO permits the landowners to perform vegetation maintenance themselves pursuant to certain specifications designed to avoid interference with the CL&P transmission lines, while allowing more and denser vegetation within the right-of-way than would be allowed by CL&P's normal maintenance practices. If the adjoining landowner fails to perform the required maintenance, NUSCO will step in and maintain the right-of-way itself. However, even then, NUSCO does not employ its standard vegetation maintenance practices, as it could do. Rather, NUSCO consults with the landowner with respect to its plans; uses selective hand cutting to trim or remove hazardous limbs or trees rather than "clear cutting;" and does not use herbicides. Applicants' Ex. 204 (Testimony of Johnson, at 2-5); 11/20/04 Tr., at 40-42; 45, 46; 51, 54, 55 (Johnson)

This arrangement or understanding derives from a meeting between a CL&P representative and a group of Royal Oak homeowners in 1997, and subsequent communications. Applicants' Ex. 204 (Testimony of Johnson, at 4-5); Applicants' Ex. 203 (Testimony of Bradley, at 4-5). While NUSCO, on behalf of CL&P, sent letters to three landowners to memorialize their understanding, NUSCO follows uniform

vegetation management practices with respect to the entire portion of the right-of-way through Royal Oaks, notwithstanding the absence of a legal contract binding it to do so. Applicants' Ex. 204 (Testimony of Johnson, at 4-5); 11/30/05 Tr. at 38, 52-55 (Johnson); Applicants' Ex. 206 (Instruction Sheets for Vegetation Management Contractors).

B. The "Intertwining" of the Right-of-Way and the Royal Oak Subdivision

The video presented at the Supplemental Hearing (Applicants' Ex. 205) vividly demonstrates the conditions described by Mr. Schwartz in the February, 2004 public hearing, and by Ms. Bradley in her final argument. Mr. Schwartz asserted:

[I]n spite of the fact that the town line and the existing power lines that are there run through the center of [Royal Oak], our neighborhood is cohesive and beautiful ... This is a single neighborhood carved from two communities, drawn together by the beauty of the surroundings as well as the spirit of the residents ... Royal Oak homes are closer to the easement than at any other point along the right-of-way. There are homes that are only three feet from the easement. There are points where the homes are within the easement ... In parts of this neighborhood the existing power lines on 47 to 57-foot wooden H-frame poles are barely visible. In fact, when leaves are on the trees, one barely notices the lines ... With 100-plus foot poles at an elevation of 490 feet, I see a scarred neighborhood visible from Haddam to Middlefield..."

(2/24/04 Tr. at 58, 59; cited at FOF ¶ 538)

Similarly, Ms. Bradley asserted:

The unsightliness of [the proposed] massive towers will not be the only impact to the aesthetics of Royal Oak, the easement is not a cleared right-of-way, but is a thickly wooded area through the center of the neighborhood providing the neighborhood with mature beauty, a privacy wall, and a sanctuary for an abundance of wildlife...The existing 43-foot to 61-foot wooded H-frame poles blend into their surroundings and are barely noticeable.

(3/31/05 Tr. at 220, 221)

Thus, the video, which is legal evidence (and can be conveniently reviewed by the court on appeal), establishes the contentions previously made in a form that was not legal evidence, but which the Council may have relied upon in part in making FOF ¶ 538.

IV. ADDITIONAL RELEVANT EVIDENCE IN THE RECORD NOT CITED OR DISCUSSED IN THE COUNCIL'S DECISION PAPERS

As members of the Council pointed out at the Supplemental Hearing of November 30, 2005, there was, even before the hearing, significant legal evidence in the record concerning the “intertwining” of the right-of-way and the subdivision, and the aesthetic impact that would accompany replacement of the existing wood H-frames by much taller steel monopoles. 11/30/05 Tr. at 21 (Mr. Murphy); 26-28 (Messrs. Murphy and Ashton). The Application included a “before and after” photo-simulation showing the comparative visual impact of the two pole types. Applicants’ Ex. 1, Application, vol. 8, “Typical Cross Section 2, Town of Durham and Middletown”.³ The testimony of Ms. Bradley on behalf of CFRE included some photographs showing the proximity of residences to the right-of-way. (CFRE Ex. 1) The Council also considered a profile drawing showing the right-of-way with the existing H-frames (represented by dotted lines) and with the proposed steel pole (represented by solid lines). Applicants’ Ex. 1, Application, vol. 10, Dwg. XS-001, Figure 2. Most significant, on February 24, 2004, the Council members made a field trip to Royal Oak and observed the conditions themselves. Evidence obtained from such a “view” by a fact finder “is substantive evidence and can independently support a factual finding.” Tait, Connecticut Evidence (3d Ed. 2001), p.

³ While the photo-simulation showed the “Cross Section” of the right-of-way that includes Royal Oak, it was not taken within Royal Oak itself. Accordingly, the right-of-way vegetation in the photosimulation is that typical of CL&P rights-of-way, rather than that in Royal Oak.

805. The information obtained from a view “is evidence of the condition of the property which may be considered as any other evidence.” *Dooley v. Leo*, 184 Conn. 583, 587, 440 A.2d 236 (1981). The view is “as much evidence as the evidence presented...by the witnesses under oath” *White Oak Excavators, Inc. v. Burns*, 172 Conn. 478, 484, 374 A.2d 1097 (1977); and the evidence of the trier’s “own senses” must be regarded as “equally reliable” as photographic evidence. *Greenberg v. City of Waterbury*, 117 Conn. 67, 73, 167 A. 83 (1933).

However, none of this evidence was cited in support of the Council’s finding concerning the “intertwining” of the subdivision and the right-of-way; nor did the Council elaborate on what it meant by “intertwined.” Record evidence may be used to support a finding whether or not it is cited in support of a particular finding; and the materials referenced in the findings and D&O may be consulted to shed light on any ambiguities in those documents. Nevertheless, the Council may wish to take this opportunity to include in its findings additional previously available record citations, as well as the new evidence now received; and the Council may wish to elaborate on the implications – plain to its members and staff, but perhaps not to the reviewing court – of the statement that the right of way and the subdivision are “intertwined.”

V. SUGGESTED AMENDMENTS TO THE DECISION PAPERS

The Certificate Holders suggest that the Council make the following amendments to the Decision papers, to make clear that its findings and conclusions are based on legal evidence, and to explain those conclusions more amply:

A. Finding of Fact 538

As it presently stands, FOF ¶ 538 provides:

The Royal Oak Bypass is supported by the towns of Middletown, Durham and Middlefield. There is an agreement arrangement in place since 1997 between the residents of Royal Oak Subdivision and Northeast Utilities to preserve vegetation along this unique ROW in this area. The Applicants do not oppose construction of the Royal Oak Bypass. (Brief of City of Middletown, 3/16/05, p.6; Tr. 2/27/04, p. 59; Tr. 3/31/05, p. 218, p. 221, 263)

The Certificate Holders suggest that this paragraph be amended using either of the following alternatives⁴:

Alternative 1:

The Royal Oak Bypass is supported by the towns of Middletown, Durham and Middlefield. There is an arrangement [agreement] in place since 1997 between [the] residents of Royal Oak Subdivision and Northeast Utilities to preserve vegetation along this [unique] ROW in this area. As a result of this arrangement, the right-of-way through Royal Oaks supports more and denser vegetation than is typical of CL&P rights of way, which substantially screens the existing wood H-frame transmission structures, and the conductors they support, from view. In contrast, the proposed steel monopoles, which would exceed 100 feet in height, would be prominently visible throughout the subdivision. The Applicants do not oppose construction of the Royal Oak Bypass. (Brief of City of Middletown, 3/16/05, p.6; [Tr. 2/27/04, p. 59; Tr. 3/31/05, p. 218, p. 221, 263] Applicants Ex. 1, Application, vol. 8, "Typical Cross Section 2, Town of Durham and Middletown" (photosimulation); Applicants' Ex. 1, Application, vol. 10, Dwg. XS-001, Figure 2 (comparative drawing); CFRE Ex. 1 (Testimony of P. Bradley, attached photographs); Council's View of Royal Oak Park Subdivision, 2/24/04; Applicants' Ex. 203 (Testimony of P. Bradley, 11/22/05); Applicants' Ex. 204 (Test. of A. Johnson, 11/22/05); Applicants' Ex. 205, (Video of Royal Oaks); Applicants' Ex. 206 (Vegetation Management Contractors' Direction Sheets))

⁴ Additional language is indicated by underlining, and deleted language is bracketed. Source descriptions in parenthesis are for the convenience of the Council. The only difference between Alternatives 1 and 2 is that Alternative 2 includes additional proposed language in the second sentence.

Alternative 2 (modifying Alternative 1 by adding the language “which is unique for the overhead right-of-way for this project” to the second sentence:

The Royal Oak Bypass is supported by the towns of Middletown, Durham and Middlefield. There is an arrangement [agreement] in place since 1997 between [the] residents of Royal Oak Subdivision and Northeast Utilities to preserve vegetation along this [unique] ROW in this area, which is unique for the overhead right-of-way for this project. As a result of this arrangement, the right-of-way through Royal Oaks supports more and denser vegetation than is typical of CL&P rights of way, which substantially screens the existing wood H-frame transmission structures, and the conductors they support, from view. In contrast, the proposed steel monopoles, which would exceed 100 feet in height, would be prominently visible throughout the subdivision. The Applicants do not oppose construction of the Royal Oak Bypass. (Brief of City of Middletown, 3/16/05, p.6; [Tr. 2/27/04, p. 59; Tr. 3/31/05, p. 218, p. 221, 263] Applicants Ex. 1, Application, vol. 8, “Typical Cross Section 2, Town of Durham and Middletown” (photosimulation); Applicants’ Ex. 1, Application, vol. 10, Dwg. XS-001, Figure 2 (comparative drawing); CFRE Ex. 1 (Testimony of P. Bradley, attached photographs); Council’s View of Royal Oak Park Subdivision, 2/24/04; Applicants’ Ex. 203 (Testimony of P. Bradley, 11/22/05); Applicants’ Ex. 204 (Test. of A. Johnson, 11/22/05); Applicants’ Ex. 205, (Video of Royal Oaks); Applicants’ Ex. 206 (Vegetation Management Contractors’ Direction Sheets)

In addition to adding citations to legal evidence in the Record, both pre-existing the November 30 supplemental hearing and received at the hearing, the proposed changes clarify the Decision papers as follows:

- While the term “agreement” is broad enough to include an informal, non-binding “arrangement” or “understanding,” as well as a legal contract (*See*, dictionary definitions attached as Exhibit A), the use of the term “arrangement” clearly reflects the nature of the understanding and practice established by the evidence and will avoid haggling over the question whether the Council found there to be a binding contract between CL&P and each of the landowners in Royal Oak.
- Arrangements with landowners concerning vegetation maintenance are not “unique” in the strict sense of the term, which means only one of a kind in the world. *See*, e.g., Tr. 11/30/05 at 51 (Johnson). While the Council may have meant to use the term in the colloquial sense of “unusual” or “special,” it could be the cause of confusion. Alternative 1 above simply

deletes the term “unique” to eliminate the potential for such confusion. On the other hand, the intent of the language may have been to indicate that such an arrangement covering an entire subdivision or neighborhood is “unique” within the context of the overhead right-of-way for this project. There was no evidence of any other arrangement of that scope. If the Council had meant to use the term in this sense, the language set forth in Alternative 2 above would express that thought clearly.

- The suggested new language concerning the impact of the vegetation in screening the existing lines, and the aesthetic impact that the new, taller structures would have, states explicitly the implications of the statement in the Opinion that the right-of-way and the subdivision are “intertwined.”

B. Opinion Section XVI (a)

Section XVI (a) of the Council’s opinion, with the suggested modifications, is set forth below, with the suggested modifications indicated in the same format used for FOF

¶ 538:

Alternative 1:

- a. Royal Oak. In the area of the Royal Oaks subdivision on the Middletown/Durham town line residences have gradually developed up to the existing transmission line right of way. However, because of the vegetation management policies implemented along the Royal Oaks section of the right-of-way, the existing 85’ tall wood H-frame transmission structures, and the conductors they support, are not prominently visible from the residences. The City of Middletown and the Town of Durham have asked that the transmission line bypass the Royal Oaks neighborhood. This detour, as [proposed] developed by the Applicants, has been labeled the Royal Oak Bypass, which would skirt the neighborhood slightly to the north across undeveloped land across Route 17 and turn south to rejoin the existing right-of-way. This would require acquisition of a new 1.1 mile long by 125 foot wide right-of-way from six land owners, potentially impact wetlands and undiscovered cultural resources, and bisect a property proposed as a 25 home subdivision.

Initially, the Council may not have considered deviating from an existing electric transmission line right-of-way. However, because the Royal Oaks neighborhood and existing right-of-way are intertwined specifically via a special [agreement] arrangement between CL&P and the Royal Oak neighbors for vegetation management within the ROW,

as a result of which the existing transmission structures and conductors are substantially screened; the Council [interprets] considers this as a [unique] special and unusual “residential” area. Moreover, the undeveloped area north of the Royal Oaks neighborhood is essentially uninhabited [and provides a reasonable corridor to protect the public health and safety of an existing neighborhood]. The suggested bypass appears rational, appropriate, and the Applicant does not object to it; therefore, the Council will order the construction of the Royal Oak Bypass which shall include rights-of-way not to exceed a total of 165 feet in width of the proposed 345-kV transmission line and leave the existing 115-kV ROW in place. Furthermore, the minimum buffer zone is the existing right-of-way.

Alternative 2 :

Alternative 2 is the same as Alternative 1, except that the phrase “*considers this as a unique ‘residential area’ within the context of this project*” would be substituted for the phrase in Alternative 1, “*considers this as a special and unusual ‘residential area’*” in the second sentence of the second paragraph.

The reasons for the proposed changes are:

- The new language describing the vegetation screening makes clear the implications of the statement that residences have gradually developed up to the existing right-of-way.
- CL&P did not “propose” the by-pass; at the direction of the Council, CL&P developed a feasibility plan for the bypass after it had been proposed by others.
- “Arrangement” is substituted for “agreement” for the reasons previously discussed.
- The use of the term “unique” is clarified.
- The reference to the bypass as providing “a reasonable corridor to protect the public health and safety of an existing neighborhood” is deleted. Had the line been built as proposed, the projected magnetic fields on the Royal Oak Section of the ROW (12.4 mG on each side of the line) would have been very close to the modeled fields associated with the existing line under the same line loading. (9.2 mG on one side and 13.9 mG on the other.) Applicants’ Ex. 124, Ex. 1 to Supplemental Test. of W.H. Bailey, 7/19/04, p. 3 of 26. The essential and sufficient justification for the bypass is social and aesthetic.

V. RESPONSE TO WILSONS' OBJECTION TO SUPPLEMENTAL HEARING

At the November 30, 2005 hearing, counsel for the Wilsons asserted that, notwithstanding the order of the Superior Court authorizing the Council to proceed, the Council should not do so, because any change to the Council's decision at this point would violate the directive of Conn. Gen. Stat. § 16-50p that the Council's decision on an application must be made within twelve months or, with the consent of the applicant, within eighteen months of the date the application is filed. Letter dated November 29, 2005 from T. Armstrong to P. Katz. This assertion is based on the premise that § 16-50p, part of the Public Utilities Environmental Standards Act ("PUESA"), exists in a different universe than § 4-183(h), which is part of the Uniform Administrative Procedure Act, so that the provisions of § 4-183(h) do not "override" those of § 16-50p. *Id.*, p. 1, ¶3.

This is a preposterous argument. Section 16-50q of PUESA provides that "any party may obtain judicial review of an order issued on an application for a certificate...*in accordance with the provisions of section 4-183...*" Thus, § 4-183 (including 4-183(h)) is explicitly incorporated by reference in PUESA. No better example can be found of the principle that "when two statutes relate to the same subject matter every effort should be made to find a reasonable field for the operation of both statutes and where there is a reasonable field of operation for each statute which does not impinge on the domain of the other, it is the court's duty to give them concurrent effect." *Gallant v. Cavallaro*, *supra*, 60 Conn. App. at 135.

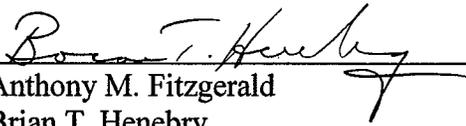
Moreover, it bears noting that even though § 4-183(h) authorizes modifications to an agency's D&O, the Certificate Holders are not asking for any such modification, but rather only modifications to the Council's FOF and Opinion.

VI. CONCLUSION

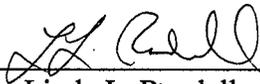
The Certificate Holders respectfully suggest that it would be helpful to the court for the Council to file with the Superior Court a supplement to the certified agency Record, consisting of Exhibits 203, 204, 205, 206, and the Transcript of the November 30, 2005 Supplemental Hearing. The Council may also wish to make clarifications or elaborations to FOF ¶ 538 and to Section XVI(a) of its Opinion, and the Certificate Holders have therefore proffered language for the Council's consideration.

Respectfully submitted,

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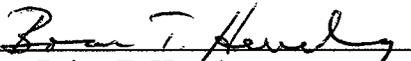

Brian T. Henebry

EXHIBIT A



S Ninth New Collegiate Dictionary

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ig
nent
fr. Gk *ha-*, a-
mpound (as a
glycoside
orn in addition
1 : a relative
2 : a paternal
1 male descent
kestan] (1939)
knowledge (fr.
nore at KNOW]
-no-mens [L,
an additional
as in honor of
ance, fr. *a-* +
1 of the ability
age
nknowable, fr.
KNOW] (1870)
is God) is un-
-ism\ *n*,
gnostic or the
: [ME, fr. LL,
ical prayer ad-
en with a halo
ss away, fr. OE
BIDE, GO] (14c)
f intense inter-
discotheque in
nightclub for
gus promoting
igogon, fr. Gk,
otes the secre-
ONFLICT; *specif*
iterary work
ssociated with
fr. *a-* + *gōnia*
assing through
re a freely sus-
k *agōnistēs*, fr.
t is engaged in
cle that is con-
paired *b* : a
is receptor and
to the athletic
iving for effect
efensive social
ndividuals usu.

graphein to write — more at CARVE] (1890) : sayings of Jesus not in the canonical gospels but found in other New Testament or early Christian writings
agraph-ia \(')ā-'graf-ē-ə\ *n* [NL, fr. *ἄ-* + Gk *graphein* to write] (1871) : the pathologic loss of the ability to write
agrari-ism \ə-'grer-ē-əm, -'grar-\ *adj* [L *agrarius*, fr. *agr-*, *ager* field — more at ACRE] (1618) 1 : of or relating to fields or lands or their tenure 2 *a* : of, relating to, or characteristic of the farmer or his way of life *b* : organized or designed to promote agricultural interests (an ~ political party) (<~ reforms>)
agrarian *n* (1818) : a member of an agrarian party or movement
agrari-ism \-ē-ə-'niz-əm\ *n* (1830) : a social or political movement designed to bring about land reforms or to improve the economic status of the farmer
agree \ə-'grē\ *vb* agreed; agree-ing [ME *agreen*, fr. MF *agreer*, fr. *a-* (fr. L *ad-*) + *gre* will, pleasure, fr. L *gratum*, neut. of *gratus* pleasing, agreeable — more at GRACE] *vt* (15c) 1 : ADMIT, CONCEDE 2 : to settle on by common consent : ARRANGE ~ *vi* 1 : to accept or concede something (as the views or wishes of another) typically after resolving points of disagreement 2 *a* : to achieve or be in harmony (as of opinion, feeling, or purpose) *b* : to get along together... *c* : to come to terms 3 *a* : to be similar : CORRESPOND (both copies ~) *b* : to be consistent (the story ~s with the facts) 4 : to be fitting, pleasing, or healthful : SUIT (this climate ~s with him) 5 : to have an inflectional form denoting identity or a regular correspondence other than identity in a grammatical category (as gender, number, case, or person)
syn AGREE, CONCUR, COINCIDE mean to come into or be in harmony regarding a matter of opinion. AGREE implies complete accord usually attained by discussion and adjustment of differences (on some points we all can agree) CONCUR tends to suggest cooperative thinking or acting toward an end (for the creation of a masterwork of literature two powers must concur, the power of the man and the power of the moment — Matthew Arnold) but sometimes implies no more than approval (as of a decision reached by others). COINCIDE used more often of opinions, judgments, wishes, or interests than of people, implies an agreement amounting to identity (their wishes coincide exactly with my desire) *syn* see in addition ASSENT
agree-able \ə-'grē-ə-bəl\ *adj* (14c) 1 : pleasing to the mind or senses esp. as according well with one's tastes or needs (an ~ companion) (an ~ change) 2 : ready or willing to agree or consent 3 : being in harmony : CONSONANT — *agree-abil-ity* \-'grē-ə-'bil-ət-ē\ *n* — *agree-able-ness* \-'grē-ə-bəl-nəs\ *n* — *agree-ably* \-blē\ *adv*
agree-ment \ə-'grē-mənt\ *n* (15c) 1 *a* : the act or fact of agreeing *b* : harmony of opinion, action, or character : CONCORD 2 *a* : an arrangement as to a course of action *b* : COMPACT, TREATY 3 *a* : a contract duly executed and legally binding *b* : the language or instrument embodying such a contract
agri-business \ə-'grī-'biz-nəs, -nəz\ *n* [agriculture + business] (ca. 1955) : a combination of the producing operations of a farm, the manufacture and distribution of farm equipment and supplies, and the processing, storage, and distribution of farm commodities
agri-cul-tur-al \ə-'grī-'kəlch-(ə-)rəl\ *adj* (1776) : of, relating to, used in, or concerned with agriculture. — *agri-cul-tur-al-ly* \-ē\ *adv*
agri-cul-ture \ə-'grī-'kəl-chər\ *n* [ME, fr. MF, fr. L *agricultura*, fr. *ager* field + *cultura* cultivation — more at ACRE, CULTURE] (15c) : the science or art of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation of these products for man's use and their disposal (as by marketing) : FARMING — *agri-cul-tur-ist* \ə-'grī-'kəlch-(ə-)rəst\ or *agri-cul-tur-al-ist* \-(ə-)rə-ləst\ *n*
agri-mo-ny \ə-'grī-'mō-nē\ *n*, *pl* -nies [ME, fr. MF & L, MF *aigremoine*, fr. L *agrīmonia*, MS var. of *argemonia*, fr. Gk *argemōnē*] (14c) : any of a genus (*Agrimonia* and esp. *A. eupatoria*) of herbs of the rose family with compound leaves that bear slender spikes of small yellow flowers and fruits like burs

THE
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ly; hence, the place of assembly, market-place.

ho·bia. 1873. [mod.L.: see prec. A.] *Path.* Morbid dislike of public

blood. 1580. [A *prep.* 1: see In or with clotted blood -1609.

-ty (ägū'ti). Also **aguti.** 1731. *aguti*, native Indian.] A genus of the Guinea-pig family.

obs. var. of **AGGRACE** *v.*

(ägræ'f). 1707. [a. Fr. *agrafe*, hook.] A hook, which fastens to as a clasp.

ä (ägræ'fiä). 1871. [Gr. ä + *Med.* Inability to write (a form of e). Hence **Agra·phic** *a.* charac-

ä (ägrē'riän). 1618. [f. L.

A. adj. 1. *Rom. Hist.* Relating epithet of a law (*Lex agraria*) for of conquered lands. 2. Hence,

with landed property 17..; or with und, or its cultivation 1792. 3. g wild in the fields 1843.

outrage, one originating in discord lords and tenants. An *a.* war 1833. he *a.* society 1792.

An agrarian law 1656. 2. One a redistribution of the land 1818. hree hours standing **SOUTHEY.**

ism (ägrē'riäniz'm). 1808. [f.

The principle of an equal division 2. Political agitation or dissension dissatisfaction with the existing land 1861.

ize (ägrē'riänəiz), *v.* 1846. [f.

1. To apportion land by an (Mod. Dicts.) 2. To imbue **ism** 1883.

[a. OFr. *agriër* (cf. *aigrir*); see vex. **CAXTON.**

dv. 1502. [A *prep.* 1 + **GREAT** *gros.*] In gross; by the lot -1632.

v. ME. only. [a. Fr. *à gré*: -L. idly, in good part. Phr. *To take a.*

rī), *v.* ME. [a. OFr. *agreer* *gratare*. Aphet. as **GREE.**] †1.

75; to accept favourably (F. *pren-* 42. †2. To reconcile, arrange,

persons or things) -1785. Still of To concert -1718. 3. *refl.*

To accede, consent to, grant. *absol.* with *cl.* ME.

Miss BURNLEY.

Agreeable (ägrī'äb'l), *a.*; also **agreeable.**

ME. [a. Fr. *agréable*, *f. agreer*; see **AGREE.**

1. To one's liking; pleasant. 2. Having a liking (*to*); pleased, contented (*to do*). Now *colloq.* 1467. †3. Agreeing together -1601.

4. †Suitable, fitting -1692; †consistent (*with*) -1783; conformable (*unto, to*) ME. 5. *adv.*

= **AGREEABLY** 1549. †6. *sb.* [sc. *person.*] *pl.* [sc. *things.*] Cf. *An incapable*; *eatables.* -1822.

1. An *a.* man—he who agrees with us **DISRAELI.** *A.* to my likyng **CHAUCER.** 2. If Ann's *a.*, I say ditto **THACKERAY.** 4. Very *a.* with your general kindness **BOSWELL.** *A.* to all experience **BAIN.** 5.

The Earl entered, *a.* to the Prince's summons **SCOTT.** Hence **Agree·ableness**, the quality of being *a.*, pleasingness. **Agree·ably** *adv.* in a way which is pleasing, suitable *to*, or in conformity *with*; †correspondingly; †similarly; †fittingly.

Agreed (ägrī'd), *ppl. a.* ME. [f. the *vb.*]

†1. Contented; made pleasing. ME. only. 2. Brought into harmony; united in feeling or sentiment ME. 3. At one in opinion 1613.

4. Settled by common consent. Now *agreed on.* 1596. 5. As a rejoinder: Consented to. = 'I agree to the proposal' 1794.

2. Can two walke together except they be *a.* **Amos** iii. 3. 3. Are you all *a.*, **Lords SHAKS.** 4. It stands *a.* by all voices **SHAKS.** Your dowry 'greed on *Tam. Shr.* II. i. 272.

Agreement (ägrī'měnt). ME. [a. OFr. *agreement*; see **AGREE.**] †1. The action of pleasing -1494; consenting -1483; setting at one, atoning -1577. 2. A coming into accord; a mutual understanding; a covenant, or treaty 1400. 3. *Law.* A contract duly executed and legally binding 1536. 4. Accordance in sentiment, action, etc.; absence of dissension 1528; mutual conformity of things, affinity ME. 5. *Gram.* Concord; see **AGREE** *v.* 7. 6. *Usu. pl.* Agreeable qualities, etc. = Fr. *les agréments.* 1692.

2. Were not of the *a.* with the King **LD. BERNERS.** 4. You loued better. discorde then agremente 1548. What *a.* hath the Temple of God with idoles 2 *Cor.* vi. 16. 6. The charms and Agreements natural to women **DRYDEN.** var. †**Agree·ance.**

†**Agre·st**, *a.* ME. [a. Fr. *agreste*, *a.* It. :-L. *agrestis.*] Belonging to the country, wild; rustic, rude -1775. As *sb.* A rustic -1480. Hence †**Agre·sted** *ppl. a.* countrified.

Agrestial (ägre'stiäl), *a.* 1607. [f. L. *agrestis.*] Inhabiting the fields or open country; wild, uncouth; *spec.* in *Bot.* growing wild in cultivated land. vars. **Agre·stian** *a.* (and *sb.*) **Agre·stic** *a.*

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†**Ag**

Cf. 2

-146

horn

||**Ag**

AIGR

||**A·g**

India

of the

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ment

†**Ag**

grobe

||**Ag**

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know

Ag

[f. pr

Agro

Agro

as pre

grasse

sto·log

†**Ag**

grot a

Agro

prep. 1

-1562.

bottom

Also f

2. We

SOUTHE

||**Ag**

ä·ppum

Ag

Gr. ä·γ

Ag

[a. Fr

hypnot.

thing v

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acuta,

†1. Ar

fever, v

hot, an

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appropriate, pleasing, or healthful: *Spicy food does not agree with me.* **7. Grammar** To correspond in gender, number, case, or person. — *tr.* To grant or concede: *My parents agreed that we should go.* [Middle English *agreen*, from Old French *agreer*, from Vulgar Latin **aggrātāre*: Latin *ad-*, *ad-* + Latin *grātus*, pleasing; see **g^{were-}2** in Appendix.]

SYNONYMS: *agree, conform, harmonize, accord, correspond, coincide.* These verbs all indicate a compatible relationship between people or things. *Agree* may indicate mere lack of incongruity or discord: *The testimony of all the witnesses agrees on that point.* Often, however, it suggests acceptance of ideas or actions and thus accommodation: *We finally agreed on a price for the house.* *Conform* stresses correspondence in essence or basic characteristics, sometimes as a result of accommodation to established standards: *The kinds of books in her library conform to her level of education.* *Students are required to conform to the rules.* *Harmonize* implies a relationship of unlike elements combined or arranged to make a pleasing whole: *Beige harmonizes with black.* *Accord* implies harmonious relationship, unity, or consistency, as in feeling or essential nature: *"The creed [upon which America was founded] was widely seen as both progressive and universalistic: It accorded with the future, and it was open to all"* (Everett Carl Ladd). *Correspond* refers either to actual similarity in form or nature (*The dots on the pattern correspond with the seam allowance on the cut fabric*) or to similarity in function, character, or structure: *The Diet in Japan corresponds to the American Congress.* *Coincide* stresses exact agreement in space, time, or thought: *"His interest happily coincided with his duty"* (Edward A. Freeman). See also Synonyms at **assent**.

ANTONYM: *disagree.*

a·gree·a·ble (ə-grē'ə-bəl) *adj.* **1.** To one's liking; pleasing. See Synonyms at **amiable**. **2.** Suitable; conformable. **3.** Ready to consent or submit. — **a·gree'a·bil'i·ty**, **a·gree'a·ble·ness** *n.* — **a·gree'a·bly** *adv.*

a·gree·ment (ə-grē'mənt) *n.* **Abbr. agt.** **1.** The act of agreeing. **2.** Harmony of opinion; accord. **3.** An arrangement between parties regarding a method of action; a covenant. **4. Law. a.** A properly executed and legally binding compact. **b.** The writing or document embodying this compact. **5. Grammar.** Correspondence in gender, number, case, or person between words.

agri. *abbr.* **1.** Agricultural. **2.** Agriculture.

agri- *pref.* Variant of **agro-**.

ag·ri·a (äg'rē-ə) *n.* An extensive pustular eruption. [From Greek *agrios*, wild. See **agro-** in Appendix.]

ag·ri·busi·ness (äg'rə-biz'nīs) *n.* Farming engaged in as a large-scale business operation embracing the production, processing, and distribution of agricultural products and the manufacture of farm machinery, equipment, and supplies.

agric. *abbr.* **1.** Agriculture. **2.** Agriculturist.

ag·ri·chem·i·cal (äg'rī-kēm'i-kəl) *n.* Variant of **agro-**

Agriculture: *agr*
in Appendix.]

ag·ro·bi·ol·o
nutrition and g
determine ways
(-ə-lōj'ik), *ag'*
ly adv. — **ag'ro**

ag·ro·chem·i
(äg'rī-) *n.* **1.** A
insecticide, that
or product, such

ag·ro·in·dus
to the producti
power, for agric

a·grol·o·gy
relation to crop
cal adj. — **ag'ro**

a·gron·o·my
soil and plant sc
scientific agricu
nom'i·cal adj.

ag·ros·tol·o
[Greek *agrōstis*
AGRO-) + -LOC

a·ground (ə-g
or the bottom of
aground offshor
aground.

agt. *abbr.* **1.** A

a·gua·ca·te
Spanish, from N

A·gua·dil·la
Puerto Rico on
landed at the sit

A·guas·ca·lie
Mexico northeas
system of tunnel
itants. Populatio

a·gue (ā'gyōō
alternating peri
reference to the
of shivering. [
sharp (fever), fro
inine of *acūtus*
— **a'gu·ish·ly**

A·gui·nal·do
leader of a rebel
uprising against
his capture and
States.

Agulhas

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1969

agrafe 1

ok, eyelet, or other device
as to prevent the section
from vibrating 3 a: a
stones together b: relief
n arch 4: the iron clamp
paigne bottle or the closure

r. *Agra*, India, where it was
sh used for trimming

\ n -s [ISV *agrammat-* (fr.
2a- + *grammat-*, *gramma*
agrammatismus — more at
ty to use words in gram-

\ n -s [ISV 2a- + *granulo-*
cytoplasmic granules: a
ce GRANULOCYTE
sid-ik\ n: GRANULOCYTO-

n, pl *agranulocyto-ses*
yte + NL -osis] 1: GRAN-
PENIA

. pl. of *agraphos* unwritten,
o write) — more at CARVE]
the canonical gospels but
estament or in early Chris-

(fr. 2a- + -*graphia* -graphy]
ity to write — *agraph-ic*

ar-\ *adj* [L *agrarius* (fr.
E -an — more at ACRE]
nded property (a policy of
t — G.A.Craig) 2 a: of,
r or his way of life (the
ustrial economy — Lloyd
1 to promote agricultural
original impulse from the
L.Penniman) 3: growing
riantly *adv*

: who favors agrarianism;
or movement

: the doctrine of an equal
of landed property b: a
ed to bring about land re-
atus of the farmer 2: the
onomy and country towns
in industrial economy

t., approval, fr. *agrēer* to
dure by which a state de-
posed envoy will be accept-
re AGRÉMENT

agreeing; agrees [ME
(-) + *gré* will, pleasure, fr.
lear, agreeable — more at
an opinion) : ADMIT (all
) b: to indicate willing-
nterpretation of the court
o settle upon by arrange-
rticles were *agreed* — Sir
to settlement (they have
give assent : express ap-
to or with and sometimes
opinion) (I ~ . . . in . . .
2 a: to achieve harmony
: become of one mind (no
their selection of charac-
with classical antiquity
worth frequent use — C.F.

phenomena of the heavens — G.C.Sellery) (such mor-
tal impulses were so very difficult to *harmonize* with the eternal
beatitude which consisted in the cognition and love of God —
H.O.Taylor) ACCORD suggests a general compatibility, a
capacity for fitting, matching, or accompanying without fric-
tion, discord, difficulty (the common doctrine of liberty
accorded with the passions released by the Revolution — V.L.
Parrington) (the splendid moving ritual, with a Queen who so
perfectly *accorded* with its spirit, lifted the people of Britain
out of their normal selves — *Britain Today*) *JIBE* is more
colloquial than the preceding; it suggests matching, fitting, or
accord without serious difficulty or contradiction (that the
attempts at "reconciliation" were futile, that common sense
and science simply wouldn't *jibe*, was not Mill's fault — Gail
Kennedy) *syn* see in addition ASSENT

agree-a-bil-i-ty \ə,grē'abiləd-ē, -ətē, -i\ n -ES : the quality or
state of being agreeable

1 agree-a-ble \ə'grēəbəl\ *adj* [ME *agreable*, fr. MF, fr. *agreer* +
-able] 1 a: pleasing to the mind or senses : to one's liking
: PLEASANT (an ~ manner) (an ~ garden) (~ people) (an
occupation ~ to his tastes) b of an odor : FRAGRANT
2 : ready or willing to agree or consent : favorably disposed
(~ to the plan) 3 : in harmony or keeping : CONSISTENT,
CONSONANT (the theory . . . was ~ to the general evolutionary
conceptions of the period — S.F.Mason) *syn* see PLEASANT

2 agree-able \ " \ n -s : an agreeable person or thing — usu. used
in pl. (superficial advantages and outside ~s — S.T.Coleridge)

agree-a-ble-ness n -ES : AGREEABILITY

agree-able to *prep* : in accordance with the requirements of
: as provided by : according to (chose officers *agreeable to* the
laws of that province — *Amer. Guide Series: Vt.*)

agree-a-bly \-'lē, -i\ *adv* [ME *agreably*, *agreably*, fr. *agrēable*
+ -ly] 1 : in an agreeable manner : PLEASANTLY 2 *obs* : in
the same way : SIMILARLY

agree-ably to *prep* : in conformity with : as provided by : ac-
cording to (disobedience of orders in not attacking the enemy
. . . *agreeably to* repeated instructions — H.E.Scudder)

agreed *past of* AGREE

agreed case n : CASE STATED

agreed rate n : an esp. low rate granted by a carrier to a shipper
in return for the allocation of a high proportion of the shipper's
freight to that carrier

agreed valuation n : the value of articles or shipments agreed
upon by shipper and carrier in order to obtain a specific rating
or limited liability — compare RELEASED VALUATION

agreed weight n : the weight per package or unit agreed upon
by shipper and carrier to avoid weighing each package or unit

agreeing *pres part of* AGREE

agreeingly *adv* : in an agreeing manner

agree-ment \ə'grēmənt\ n -s [ME *agrement*, fr. MF, fr. *agreer*
to please, agree + -ment — more at AGREE] 1 a : the act of
agreeing or coming to a mutual arrangement (never any solemn
~ amongst themselves — John Locke) b : oneness of opinion,
feeling, or purpose : harmonious understanding : CONCORD
(with which religious tradition . . . must come to some sort of
~ — W.R.Inge) c : the state of agreeing or being in accord
: HARMONY, CORRESPONDENCE (~ between the measured
ionospheric data and the indications of practical communica-
tion experience — *London Calling*) 2 a : an arrangement (as
between two or more parties) as to a course of action (entered
into an ~ . . . to assist in planting a colony — R.J.Stanley)
b : a compact entered into by two or more nations or heads of
nations : COVENANT, TREATY 3 a : a contract duly executed
and legally binding on the parties entering into it — see CON-
TRACT, MEETING OF THE MINDS b : the written or oral phrase-
ology embodying reciprocal promises c : the written instru-
ment that is the evidence of an agreement 4 : the fact of
agreeing grammatically (the ~ of the English personal pro-
noun with its antecedent in gender and number)

agrees *pres 3d sing of* AGREE

agré-ga-tion \əgrə'gāsyōn\ n, pl *agré-gations* \ " \ n -s [F, lit.,
admittance, fr. ML *aggregation-*, *aggregatio* act of collecting,
fr. I. *aggregatus* (past participle of *aggregare*)