

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

IN RE PETITION OF UNITED	:	
ILLUMINATING COMPANY	:	DOCKET NO. 516
CERTIFICATE OF ENVIRONMENTAL	:	
COMPATIBILITY AND PUBLIC NEED	:	
FOR THE FAIRFIELD TO CONGRESS	:	
RAILROAD TRANSMISSION LINE	:	
115-KV REBUILD PROJECT THAT	:	
EXTENDS FROM FAIRFIELD TO	:	
BRIDGEPORT, CONNECTICUT	:	NOVEMBER 27, 2023

**MOTION TO DISMISS AND/OR STAY PROCEEDINGS**

The Grouped Intervenor, 2190 POST ROAD, LLC, INVEST II, INTERNATIONAL INVESTORS, PEQUOT REALTY, LLC, 1916 POST ROAD ASSOCIATES, LLC, SF STATION STREET, LLC, MAURA J. GARYCH, AS TRUSTEE UNDER THE MAURA J. GARYCH REVOCABLE TRUST AGREEMENT DATED MAY 23, 2002, 461 BROAD STREET, LLC, METRO HOLDING COMPANY LLC, PACI RESTAURANT, SG PEQUOT 200, LLC, AND TREFZ CORP. (collectively the “Grouped Intervenor”), as intervenors in this proceeding pursuant to Connecticut General Statutes (“C.G.S.”) Sections 4-177a and 16-50n (a), and Regulations of Connecticut State Agencies (“R.C.S.A.”) section 16-50j -14, and as an intervenors in this proceeding pursuant to C.G.S. section 22a-19, hereby move to dismiss the United Illuminating Company’s (“UI”) application because the current membership of the Connecticut Siting Council (the “Council”) is not properly constituted as required by its enabling legislation, C.G.S. § 16-50j (b). The Council *must* include at least two public members “experienced in the field of ecology.” Currently, the Council’s membership includes only one member experienced in the field of ecology. As such, the Application should be dismissed. Alternatively, the Grouped Intervenor move for a stay of the Council's consideration of the above-referenced application until such time as the statutorily required members are appointed to

the Council.

## ARGUMENT

### A. THE COUNCIL IS NOT PROPERLY CONSTITUTED BECAUSE IT LACKS TWO MEMBERS EXPERIENCED IN THE FIELD OF ECOLOGY

The Council is a multi-member Connecticut state agency established by the Public Utility Environmental Standards Act (“PUESA”), Conn. Gen. Stat. § 16-50g, *et seq.* Pursuant to C.G.S. § 16-50j, five of the Council’s members are appointed by the Governor from the general public, two of whom **must** be experienced in the field of ecology. *See* C.G.S. § 16-50j (b). The appointment of at least two members experienced in the field of ecology is mandatory. *See* Correspondence dated June 23, 2022 from Melanie A. Bachman to David F. Sherwood, Esq., enclosing Memorandum to Council Members dated June 23, 2022 (attached hereto as Exhibit A). The Council’s enabling legislation, C.G.S. § 16-50j (b), governs membership of the Council. Section 16-50j (b) provides as follows:

Except for proceedings under chapter 445, this subsection and subsection (c) of this section, the council shall consist of: (1) The Commissioner of Energy and Environmental Protection, or his designee; (2) the chairperson of the Public Utilities Regulatory Authority, or the chairperson's designee; (3) one designee of the speaker of the House and one designee of the president pro tempore of the Senate; and (4) five members of the public, to be appointed by the Governor, ***at least two of whom shall be experienced in the field of ecology***, and not more than one of whom shall have affiliation, past or present, with any utility or governmental utility regulatory agency, or with any person owning, operating, controlling, or presently contracting with respect to a facility, a hazardous waste facility, as defined in section 22a-115, or an ash residue disposal area.

C.G.S. § 16-50j (b) (emphasis added). “By statute, at least two Council members appointed by the Governor shall be experienced in the field of ecology and not more than one member shall have an affiliation with any utility, government utility regulatory agency, or facility under the Council’s jurisdiction.” *See* <https://portal.ct.gov/CSC/Membership/Membership/Connecticut->

Siting-Council-Membership#31235 (last visited Nov. 27, 2023).

The Council itself recognizes that the Governor's appointment of *at least* two members experienced in the field of ecology is mandatory. See Exhibit A; see also, *Block v. Statewide Grievance Comm.*, Conn. Supp. 5, 13 (Conn. Super. 2000). According to the Council's website, currently Council membership is as follows:

1. Brian Golembiewski (appointed by the Commissioner of Energy and Environmental Protection);
2. Quat Nguyen (appointed by the Chairperson of the Public Utility Regulatory Authority);
3. Daniel P. Lynch, Jr. (appointed by the President Pro Tempore of the Senate);
4. Robert Silvestri (appointed by the Speaker of the House);
5. **John Morissette (appointed by the Governor);**
6. **Robert Hannon (appointed by the Governor).**

See <https://portal.ct.gov/CSC/Membership/Membership/Council-Membership---Energy> (last visited Nov. 27, 2023) (emphasis added). As reflected on the Council's website, currently only two members of the Council were appointed by the Governor -- Mr. Morissette and Mr. Hannon. See Exhibit B (appointment letters). However, of the Governor's two appointees, only Mr. Hannon is "experienced in the field of ecology." *Id.*; see also, Connecticut Siting Council, Council Membership, Energy and Telecommunications, available at: <https://portal.ct.gov/CSC/Membership/Membership/Council-Membership---Energy> (last visited Nov. 27, 2023).

As such, the Council's current membership includes two appointees of the Governor, only one of whom has experience in the field of ecology. Therefore, unless and until *at least* one other member is appointed by the Governor that has experience in the field of ecology, the Council's membership violates the Council's enabling legislation, C.G.S. § 16-50j (b). The appointment of *at least two* members experienced in the field of ecology is

mandatory. See Exhibit A; *Block v. Statewide Grievance Committee*, 47 Conn.Supp. 5, 16-17 (Nov. 3, 2000) (*Satter, JTR*) (“this court concludes the reviewing committee hearing the plaintiff’s case was improperly constituted when it acted without a public member”).

Accordingly, the application must be dismissed or stayed until such time as the Council’s membership complies with its statutorily required membership and the Governor appoints at least one other member “experienced in the field of ecology.”

This is similar to the circumstances that were at issue in *DuBaldo v. Department of Consumer Protection, State Electrical Work Examining Board*, 209 Conn. 719 (1989). In *DuBaldo*, an electrical contractor appealed from a decision of the electrical work examining board of the Department of Consumer Protection that suspended his unlimited electrical contractor’s license. The applicable statute in *DuBaldo* that established the electrical work examining board, § 20-331, required that “[e]ach such board ... shall consist of seven members who shall be residents of this state, two of whom shall be unlimited contractors, two of whom shall be unlimited journeymen, engaged in and licensed for such occupation under this chapter, and three of whom shall be public members.” *Id.* at 721-22. The plaintiff argued that the two board members who were the unlimited journeymen were not engaged in the occupation of electrical contracting and, therefore, the board failed to meet the statutory requirements set forth in § 20-331. *Id.* at 722. The trial court dismissed the appeal, and the contractor appealed. *Id.* at 721. The Supreme Court held that examining board was not properly constituted as required by its enabling legislation because it included two unlimited journeymen who were not engaged in the occupation of electrical contracting. *Id.* at 723. As such, in *DuBaldo*, the Supreme Court held that the board lacked statutory authority to suspend the contractor’s license. *Id.* Similarly, in this instance, because the Council lacks two public

members appointed by the Governor that are “experienced in the field of ecology” the Council is not properly constituted pursuant to its enabling legislation.

Similarly, in *Block v. Statewide Grievance Committee*, 47 Conn. Supp. 5 (2000), the court considered whether a reviewing committee of the Statewide Grievance Committee was properly constituted. The court relied upon *DuBaldo v. Department of Consumer Protection, State Electrical Work Examining Board*, 209 Conn. 719 (1989) and held that the reviewing committee was improperly constituted when it acted without a public member. See *Block*, 47 Conn. Supp. at 16-17. In *Block*, the court remanded to the reviewing committee for a hearing before a properly constituted reviewing committee. *Id.* at 17. Here, similar to *Block*, the Council’s membership is statutorily mandated to include *at least* two members “experienced in the field of ecology” and the failure to have two members experienced in the field of ecology renders the Council without authority to act. See *id.* at 16. To properly act, the Council must have at least two public members appointed by the Governor experienced in the field of ecology.

### CONCLUSION

For the foregoing reasons, the Grouped Intervenors respectfully move for UI’s application to be dismissed because the membership of the Connecticut Siting Council does not comply with the statutory requirements of C.G.S. §16-50j. Alternatively, the Council should stay consideration of UI’s application until such time as its membership satisfies the requirements of C.G.S. § 16-50j by consisting of *at least* two members experienced in the field of ecology.

Respectfully submitted,

**THE GROUPED INTERVENORS**

By: \_\_\_\_\_

  
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**CERTIFICATE OF SERVICE**

This is to certify that on the above date a true copy of the foregoing has been sent via electronic mail and U.S. Mail, first-class, postage pre-paid, to the following parties of record:

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Connecticut Siting Council  
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New Britain, CT 06051  
Email: [melanie.bachman@ct.gov](mailto:melanie.bachman@ct.gov)

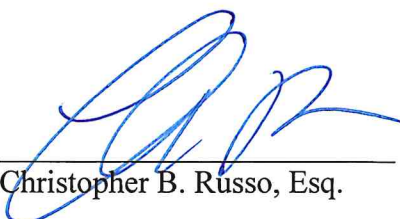
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Christopher B. Russo, Esq.

# **EXHIBIT A**





STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

**VIA ELECTRONIC MAIL**

June 23, 2022

David F. Sherwood, Esq.  
Moriarty, Paetzold & Sherwood  
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Glastonbury, CT 06033-6620  
[dfsherwood@gmail.com](mailto:dfsherwood@gmail.com)

RE: **DOCKET NO. 509** - Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1837 Ponus Ridge Road, New Canaan, Connecticut. **Motion to Dismiss/Motion for Stay of Proceeding.**

Dear Attorney Sherwood:

At a public meeting held on June 23, 2022, the Connecticut Siting Council (Council) considered and denied Mark Buschmann, Trustee, and Mark Buschmann's Motion to Dismiss, or in the alternative, Motion for Stay of Proceedings, dated May 31, 2022, on the basis that the Council is properly constituted under its enabling statute and has the power to act.

In compliance with the Public Utility Environmental Standards Act,<sup>1</sup> the Council has at least two public members with experience in the field of ecology and no more than one public member with a past affiliation with a utility. In compliance with state appointive officer statutes,<sup>2</sup> it has one-third public membership, all of whom had no professional affiliation with the energy and/or telecommunications industries for three years preceding their appointment.

Enclosed is a copy of the staff report on this Motion, dated June 23, 2022.

Thank you for your attention and cooperation.

Sincerely,

Melanie A. Bachman  
Executive Director

MAB/RM/laf

Enclosure: Staff report dated June 23, 2022

c: Service List, dated May 26, 2022

<sup>1</sup> Connecticut General Statutes §16-50g, *et seq.* (2021).

<sup>2</sup> Connecticut General Statutes §4-9a (2021).



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

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Web Site: [portal.ct.gov/csc](http://portal.ct.gov/csc)

DATE: June 23, 2022

TO: Council Members

FROM: Melanie A. Bachman *MAB*  
Executive Director/Staff Attorney

RE: **DOCKET NO. 509** - Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1837 Ponus Ridge Road, New Canaan, Connecticut. **Mark Buschmann Motion to Dismiss/Motion for Stay of Proceeding –Staff Report**

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On April 13, 2022, pursuant to Connecticut General Statutes (CGS) §16-50k, Homeland Towers, LLC and New Cingular Wireless, PCS, LLC (Applicants), submitted an application to the Connecticut Siting Council (Council), for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1837 Ponus Ridge Road, New Canaan, Connecticut.

On April 18, 2022, pursuant to CGS §16-50gg, the Council sent correspondence to the Town of New Canaan and the City of Stamford, which is located within 2,500 feet of the proposed facility site, requesting comments and inviting the municipalities to participate in the Council's public hearing process.

During a meeting held on May 12, 2022, the Council deemed the application complete and approved the schedule for the proceeding, including a public hearing on June 28, 2022.<sup>1</sup> The Council also granted Intervenor status to Cellco Partnership d/b/a Verizon Wireless.

During a meeting held on May 26, 2022, the Council granted the Applicants' Motion for Protective Order; Party and Connecticut Environmental Protection Act (CEPA) Intervenor status to the New Canaan Neighbors; Party status to Jamie Buschmann, Trustee; Party status to Mark Buschmann, Trustee; CEPA Intervenor status to Mark Buschmann; and grouped the Buschmanns in their various capacities, pursuant to CGS §16-50n, based on similar interests and common counsel.

On June 1, 2022, in both his trustee and individual capacities, Mark Buschmann (MB), submitted a Motion to Dismiss, or in the alternative, Motion for Stay of Proceeding (Motion) on the basis that the Council is improperly constituted under its enabling statute. The Motion requests the application be dismissed because the Council is improperly constituted and lacks the power to act on the application, or in the alternative, requests the application proceeding be postponed until the Council is properly constituted and has the power to act on the application.

On June 15, 2022, the Applicants objected to MB's Motion as untimely and unsupported by law.

In its Motion, MB claims that of the three public members currently appointed to the Council by the Governor, only one "may be" experienced in the field of ecology while the other two "are affiliated with the energy sector."

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<sup>1</sup> Notice of the Council's public hearing was published in the *New Canaan Advertiser* on May 19, 2022.

In support of its Motion, MB cites to cases related to membership on state licensing boards for electricians and lawyers and attaches a copy of the Council member biographies that are posted on the Council's website. The cases are distinguishable on the facts and the biographies are not the official Council member appointment letters issued by the Governor. Contrary to MB's claims, the Council is properly constituted under its enabling statute.

In 1970, the proposed construction of an electric transmission line facility over 75 miles of southwest Connecticut, a nuclear electric generating facility on an island off the shores of Norwalk and an oil-fired electric generating facility at Stamford Harbor prompted the passage of the Public Utility Environmental Standards Act (PUESA), the Council's enabling statute.<sup>2</sup> PUESA created the Council to address the energy-environment conflict in the state.<sup>3</sup> Its purpose is to balance the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state.

In harmony with PUESA's purpose, membership on the Council is intentionally balanced and consists of:

- (1) The Commissioner of Energy and Environmental Protection, or her designee;
- (2) the Chairperson of the Public Utilities Regulatory Authority, or the Chairperson's designee;
- (3) one designee of the speaker of the House and one designee of the president pro tempore of the Senate; and
- (4) *five members of the public*, to be appointed by the Governor, *at least two of whom shall be experienced in the field of ecology, and not more than one of whom shall have affiliation, past or present, with any utility or governmental utility regulatory agency*, or with any person owning, operating, controlling, or presently contracting with respect to a facility, a hazardous waste facility, as defined in section 22a-115, or an ash residue disposal area. (Emphasis added.)

PUESA requires categories of Council members.<sup>4</sup> The categories are not mutually exclusive. For the public member category, the Governor *must* appoint at least two members experienced in the field of ecology and *may* appoint no more than one member with an affiliation with a utility or governmental utility regulatory agency. The appointment of *at least two* members experienced in the field of ecology is mandatory. The appointment of *no more than one* member with a past or present affiliation with a utility or a governmental utility regulatory agency is permissive. Consistent with PUESA, the Council currently has two public members experienced in the field of ecology and one public member with a past affiliation with a utility.

Council membership has been frequently debated since the Council's creation over 50 years ago.<sup>5</sup> The legislative intent was to establish a Council with 50% public members with expertise in ecology and electric system planning.<sup>6</sup> A co-author of PUESA stated, "Ideally, affiliation with the utility industry would enhance one's awareness and knowledge of the energy-environment conflict, and one's sensitivity to the obligation to use that awareness and knowledge in the public interest."<sup>7</sup> Under PUESA, affiliation "with any utility or governmental

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<sup>2</sup> Public Act 71-575, "An Act Concerning the Power Facility Evaluation Council;" Conn. Gen. Stat. §16-50g, *et seq.* (2021) (Initially formed as the Power Facility Evaluation Council, jurisdiction was limited to energy facility siting. Renamed the Council in 1981, jurisdiction was expanded to include cable television and telecommunications tower siting.)

<sup>3</sup> *Id.*, Lowenthal, John, "Prometheus, Meet the Power Facility Evaluation Council," 46 Conn. Bar Journal 379-421 (1972).

<sup>4</sup> *Block v. Statewide Grievance Comm.*, Conn. Supp. 5, 13 (Conn. Super. 2000) (Enabling statute determines composition).

<sup>5</sup> Legislative proposals over the years included, but aren't limited to, creating a veto for the DEEP Commissioner over the votes of the other eight members, increasing membership to eleven with two direct appointments by the DEEP Commissioner, removing the two legislative appointments, excluding members with any past or present affiliation with a utility, adding a "local representative," and adding a member "with knowledge of agriculture."

<sup>6</sup> Public Act 71-575, Environment Committee Transcript, March 17, 1971, at pages 458-507.

<sup>7</sup> Public Act 71-575, Senate Session Transcript, May 13, 1971, at pages 1855-1888; Lowenthal, *supra* note 3 at 408.

utility regulatory agency” does not include public members’ status as electric ratepayers in the state. Such a broad interpretation of affiliation is absurd, but the issue arose during legislative deliberations in 1971.<sup>8</sup>

In 2011, Council membership was modified to include the Commissioner of the Department of Energy and Environmental Protection (DEEP) in lieu of the Commissioner of the Department of Environmental Protection (DEP) and to include the Chairperson of the Public Utilities Regulatory Authority (PURA) in lieu of the Chairperson of the Department of Public Utility Control (DPUC). Public Act 11-80 created DEEP as the merged successor to DEP and DPUC, which was reconstituted as PURA and placed within DEEP.<sup>9</sup> It transferred the environment and energy related powers and duties of DEP and DPUC to DEEP. The Act established DEEP’s energy goals to ensure the reliability and safety of the state’s energy supply; increase the use of clean energy; and develop the state’s energy-related economy. The Act established DEEP’s environmental goals to conserve, improve and protect the natural resources and environment of the state, and preserve the natural environment while fostering sustainable development.

These energy and environment goals are inextricably linked with the Council’s purpose under PUESA. To exclude the appointment of a public member with a past or present affiliation with DEEP would be just as absurd as excluding the appointment of members based on their status as electric ratepayers in the state. Like the Council, DEEP was created to address the energy-environment conflict in the state. Since the creation of DEEP and modification of Council membership in 2011, public member appointments to the Council included members with a past or present affiliation with DEEP.

The Governor’s appointment of public members to state boards and commissions, including the Council, is regulated under CGS §4-9a, which states, “**Public members** shall constitute *not less than one-third* of the members of each board and commission within the Executive Department, ... Public member means an elector of the state who has no substantial financial interest in, is not employed in or by, and is not professionally affiliated with, any industry, profession, occupation, trade or institution regulated or licensed by the relevant board or commission, and *who has had no professional affiliation with any such industry, profession, occupation, trade or institution for three years preceding his appointment* to the board or commission.”<sup>10</sup> (Emphasis added.)

Consistent with CGS §4-9a the five public members appointed to the Council under PUESA constitute five-ninths, or approximately 56%, of the total Council membership. At present, the three public members appointed to the Council under PUESA constitute one-third of the total Council membership and three-sevenths, or approximately 43%, of the current total Council membership.

Also consistent with CGS §4-9a, the three public members currently appointed to the Council had no affiliation with the energy or telecommunications industries for three years preceding their appointment to the Council:

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<sup>8</sup> Public Act 71-575, Senate Session Transcript, May 13, 1971 at page 1865 (“This is so broad that it could be interpreted that if you’re contracting to buy electricity for your home, you can’t serve on this commission.”)

<sup>9</sup> Public Act 11-80, “An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut’s Energy Future”; Unlike PURA, the Council remains an autonomous agency affiliated with DEEP for administrative purposes only pursuant to Conn. Gen. Stat. §4-38f(2021) (“An agency assigned to a department for administrative purposes only shall: (1) Exercise any quasi-judicial, rule-making or regulatory authority, licensing and policy-making functions which it may have independent of such department and without approval or control of the department; (2) prepare its budget, if any, and submit its budgetary requests through the department; and (3) hire its own personnel or enter into contracts, if authorized by law, or if the general assembly provides or authorizes the expenditure of funds therefor.”)

<sup>10</sup> Public Act 77-614, “An Act Concerning the Reorganization of the Executive Branch of State Government;” *Block v. Statewide Grievance Comm.*, 47 Conn. Supp. 5 (Conn. Super. 2000).

1. Mr. Morissette was appointed as a public member in 2019. He retired from Eversource Energy in 2016. Prior to Mr. Morissette's 2019 appointment to the Council, Mr. Ashton, a former CEO of Yankee Gas, served as the public member with a past affiliation with a utility. He passed away in 2017. Copies of the appointment letters issued by the Governor for the appointments of Mr. Morissette and Mr. Ashton are attached.
2. Mrs. Cooley was appointed as a public member with experience in the field of ecology in 2021. She is a legal fellow at the Connecticut Institute for Resilience and Climate Adaptation (CIRCA).<sup>11</sup> Prior to Mrs. Cooley's 2021 appointment to the Council, Dr. Klemens, an active environmental consultant,<sup>12</sup> served as one of the public members with experience in the field of ecology. He resigned in 2019. Copies of the appointment letters issued by the Governor for the appointment of Mrs. Cooley and Dr. Klemens are attached.
3. Mr. Quinlan was appointed as a public member with experience in the field of ecology in 2021. He retired from DEEP in 2017.<sup>13</sup> Prior to Mr. Quinlan's 2021 appointment to the Council, Mr. Harder, a retired DEEP regulator, served as one of the public members with experience in the field of ecology. He resigned in 2021. Copies of the appointment letters issued by the Governor for the appointments of Mr. Quinlan and Mr. Harder are attached.

The Council's current membership is consistent with the legislative intent to establish a Council with 50% public membership with expertise in ecology and electric system planning under PUESA, and it is consistent with the requirements for the Governor's appointment of public members to boards and commissions under CGS §4-9a. There is no prohibition on the appointment of public members who are experienced in the field of ecology from having a past affiliation with any utility or governmental utility regulatory agency under PUESA. The limitation to one public member with a past affiliation with a utility or governmental utility regulatory agency applies to the no more than three other public members who are not specifically appointed with experience in the field of ecology.<sup>14</sup> Currently, one of the public members who was not specifically appointed with experience in the field of ecology has a past affiliation with a utility and one of the public members who was specifically appointed with experience in the field of ecology has a past affiliation with a governmental utility regulatory agency. The other public member who was specifically appointed with experience in the field of ecology has a present affiliation with a collaboration between a state university and a governmental utility regulatory agency.

With respect to the Motion to Dismiss, MB cites to two cases where the plaintiffs appealed the suspension of their occupational licenses by the respective state boards responsible for issuing those licenses on the basis that the boards were improperly constituted and therefore, did not have the power to act. One case relates to the lack of a public member and the other case relates to the lack of public members with professional qualifications. Neither of these scenarios apply to the Council.

In *Block*, a three member board acted to reprimand a licensee without the one public member required by statute. The Court held it was an improperly constituted board when it acted without the one public member. Under CGS

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<sup>11</sup> CIRCA is a collaboration between the University of Connecticut and DEEP.

<sup>12</sup> Dr. Klemens recused from voting on any matter in which he was retained by an interested party as an environmental consultant while serving on the Council. See Docket 192B; Petition 983; and Petition 1312.

<sup>13</sup> Mr. Quinlan recuses from voting on any matter in which he was involved with a DEEP Request for Proposals before serving on the Council. See Docket 492 and Petition 1443A.

<sup>14</sup> A public member with experience in the field of ecology appointed in 2016 had a past affiliation with a governmental utility regulatory agency. He was a former Bureau Chief for DEEP's Water Permitting and Enforcement Division, Serving at the same time, a public member who was not experienced in the field of ecology appointed in 2007 had a past affiliation with a utility. He was a former CEO of Yankee Gas.

§4-9a, the one public member amounts to one-third of the three-member board. The absence of the one public member deprived the board of its power to act. The Council currently has three public members. Unlike the scenario in *Block*, under CGS §4-9a, the three public members amount to one-third of the nine-member Council. The Council is properly constituted with public members and has the power to act.

In *DuBaldo*, a seven member board acted to suspend an electrical contractor license with two members who did not “engage” in the occupation of unlimited journeymen required by statute. The Court held it was an improperly constituted board when it acted without two members who were “engaged” in the occupation of unlimited journeymen. “Engaged” was defined by the Court as “employed; occupied; busy.” The Council’s statute requires at least two members who are “experienced” in the field of ecology. Unlike the scenario in *DuBaldo*, under PUESA, the Council currently has two members experienced in the field of ecology. “Experience” is defined as “direct observation of or participation in events as a basis of knowledge.”<sup>15</sup> The Council is properly constituted with at least two members experienced in the field of ecology and has the power to act.

The *Block* and *DuBaldo* cases were decided in accordance with the common law rule that in the absence of evidence to the contrary, boards are assumed to be properly constituted.<sup>16</sup> Evidence to the contrary existed in those cases based on actions taken by a board lacking a public member and a board lacking public members with professional qualifications required by statute. Here, evidence to the contrary does not exist. The Council meets the requirements for the number of public members and public members with professional qualifications. The appointment letters issued by the Governor for the public members under PUESA and compliance with the requirements for public members under CGS §4-9a evidence proper constitution of the Council.

With respect to the alternative Motion for Stay of Proceeding until the Council is properly constituted, the other two most recent public members appointed to the Council by the Governor, Mr. Murphy and Mr. Edelson, resigned in 2019 and 2021, respectively. Both gentlemen were former public officials, one a state legislator and the other a town First Selectman. Both appointments remain vacant at this time, but these vacancies do not deprive the Council of the power to act.

In a case cited by *DuBaldo*, the Connecticut Supreme Court held that “the failure of the Governor to appoint public members to a multi-member board does not deprive the board of the power to act where a quorum equal to a majority of the members of the board exists during transaction of the business involved.”<sup>17</sup> A quorum of the Council is five members. Currently, the Council consists of seven members. If one or two members were absent or recused from an action on a jurisdictional matter, a quorum of Council members would exist during the transaction of the business involved.

Therefore, based on the consistency of current Council membership with the requirements of PUESA and CGS §4-9a, and based on the existence of a quorum of Council members to act on the subject application in accordance with PUESA, Council staff recommends the Motion to Dismiss and its alternative be denied.

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<sup>15</sup> Defined by Webster’s American Heritage Dictionary, which was used by the Court in *DuBaldo*.

<sup>16</sup> *Furtney v. Zoning Commission*, 159 Conn. 585 (1970) (plaintiff in zoning appeal claimed a board member was improperly appointed because no oath was taken, but the Court held that although the member had not taken the oath, the member was a de facto officer and the board had the power to act); *Hebb v. Zoning Board of Appeals*, 150 Conn. 539 (1963) (plaintiff in zoning appeal claimed a board was improperly constituted because two alternates acted in place of two regular members, but the Court held that although the alternates designations should have been recorded, the statute permitted alternates designation and the board had the power to act.)

<sup>17</sup> *Levinson v. Conn. Board of Chiropractic Examiners*, 211 Conn. 508 (1989) (plaintiff in license suspension appeal claimed board was improperly constituted because the board did not consist of one-third public members, but the Court held that although the public membership was not filled, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body.)



M. JODI RELL  
GOVERNOR

STATE OF CONNECTICUT  
EXECUTIVE CHAMBERS

RECEIVED  
DEC 14 2007

CONNECTICUT  
SITING COUNCIL

December 4, 2007

Philip T. Ashton  
39 Daffodil Lane  
Meriden, Connecticut 06450

Dear Mr. Ashton:

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, it is my pleasure and privilege to reappoint you as a member of the Connecticut Siting Council, to serve at the pleasure of the Governor, for a term coterminous with my term, or until a successor is appointed and has qualified, whichever is longer.

Sincerely,

A handwritten signature in black ink that reads "M. Jodi Rell".

M. Jodi Rell  
Governor

cc: Honorable Susan Bysiewicz, Secretary of the State  
cc: Honorable Nancy S. Wyman, Comptroller  
cc: Messrs. Kevin P. Johnston and Robert G. Jackle, Auditors of Public Accounts  
cc: Ms. Susan Southworth, Legislative Library  
cc: Department of Public Utility Control  
cc: Commissioner Gina McCarthy, Department of Environmental Protection  
cc: Honorable James A. Amann, Speaker of the House  
cc: Honorable Donald E. Williams, Jr., President Pro Tempore  
cc: Honorable Dan Caruso, Chairman, Connecticut Siting Council  
cc: S. Derek Phelps, Executive Director, Connecticut Siting Council



**Ned Lamont**  
GOVERNOR  
STATE OF CONNECTICUT

October 21, 2019

John Morissette  
10 Susan Road  
Vernon, CT 06066

Dear Mr. Morissette:

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, it my honor and privilege to appoint you as a member of the Connecticut Siting Council, to serve at the pleasure of the Governor, for a term coterminous with my term, or until a successor is appointed and qualified, whichever is longer.

Sincerely,

A handwritten signature in cursive script that reads "Ned Lamont".

Ned Lamont  
Governor

cc: Honorable Denise W. Merrill, Secretary of the State  
Honorable Kevin P. Lembo, Comptroller  
Messrs. John C. Geragosian and Robert J. Kane, Auditors of Public Accounts  
Carrie Lisitano, Legislative Library  
Commissioner Katie Dykes, Department of Energy and Environmental Protection  
Commissioner Marissa Paslick Gillett, PURA  
Melanie Bachman, Executive Director, CT Siting Council





**Dannel P. Malloy**  
GOVERNOR  
STATE OF CONNECTICUT

October 16, 2013

Michael W. Klemens  
P.O. Box 506  
Salisbury, CT 06068

Dear Mr. Klemens:

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, it is my pleasure and privilege to appoint you as a member of the Connecticut Siting Council, as a person experienced in the field of ecology, to serve at the pleasure of the Governor, for a term coterminous with my term, or until a successor is appointed and has qualified, whichever is longer, in succession to Colin Tait, who resigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Dannel P. Malloy".

Dannel P. Malloy  
Governor

cc: Honorable Denise Merrill, Secretary of the State  
cc: Honorable Kevin Lembo, Comptroller  
cc: Messrs. John Geragosian and Robert Ward, Auditors of Public Accounts  
cc: Christine Graesser, Legislative Library  
cc: Arthur House, Chair, Public Utility Regulatory Authority  
cc: Commissioner Daniel C. Esty, Department of Energy and Environmental Protection  
cc: Honorable Donald E. Williams, Jr., Senate President Pro Tempore  
cc: Honorable Brendan J. Sharkey, Speaker of the House of Representatives  
cc: Robert Stein, Chairman, Connecticut Siting Council  
cc: Melanie Bachman, Staff Attorney, Connecticut Siting Council



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STATE OF CONNECTICUT  
**GOVERNOR NED LAMONT**

---

March 15, 2021

Luanne Cooley  
17 Hillside Circle  
Storrs, CT 06268

Dear Ms. Cooley:

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, I have the honor and privilege to appoint you to the Connecticut Siting Council, as a member experienced in the field of ecology, for a term coterminous with my term, or until a successor is appointed and qualified, whichever is longer.

Sincerely,

A handwritten signature in blue ink that reads "Ned Lamont".

Ned Lamont  
Governor

cc: Honorable Denise W. Merrill, Secretary of the State  
Honorable Kevin P. Lembo, Comptroller  
Mr. John C. Geragosian, Auditor of Public Accounts  
Carrie Lisitano, Legislative Library  
Commissioner Katie Dykes, Department of Energy and Environmental Protection  
Melanie Bachman, Acting Executive Director, Connecticut Siting Council



**Dannel P. Malloy**  
GOVERNOR  
STATE OF CONNECTICUT

March 30, 2016

Michael Harder  
61 Prentice Hill Road  
Hebron, CT 06248

Dear Mr. Harder,

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, it is my pleasure and privilege to appoint you as a member of the Connecticut Siting Council, as a person experienced in the field of ecology, to serve at the pleasure of the Governor, for a term coterminous with my term, or until a successor is appointed and has qualified, whichever is longer.

Sincerely,

A handwritten signature in cursive script that reads "Dannel P. Malloy".

Dannel P. Malloy  
Governor

- cc: Honorable Denise Merrill, Secretary of the State
- cc: Honorable Kevin Lembo, Comptroller
- cc: Messrs. John Geragosian and Robert Ward, Auditors of Public Accounts
- cc: Carrie Rose, Legislative Library
- cc: Arthur House, Chair, Public Utility Regulatory Authority
- cc: Commissioner Robert Klee, Department of Energy and Environmental Protection
- cc: Honorable Martin M. Looney, Senate President Pro Tempore
- cc: Honorable Brendan J. Sharkey, Speaker of the House of Representatives
- cc: Robert Stein, Chairman, Connecticut Siting Council
- cc: Melanie Bachman, Staff Attorney, Connecticut Siting Council



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STATE OF CONNECTICUT  
**GOVERNOR NED LAMONT**

October 28, 2021

Mark Quinlan  
52 Sunset Terrace  
Collinsville, CT 06019

Dear Mr. Quinlan:

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, I have the honor and privilege to appoint you to the Connecticut Siting Council, as a member with experience in ecology, to serve a term coterminous with my own, or until a successor is appointed and has qualified, whichever is longer.

Sincerely,

A handwritten signature in blue ink that reads "Ned Lamont".

Ned Lamont  
Governor

- cc: Honorable Denise W. Merrill, Secretary of the State  
Honorable Kevin P. Lembo, Comptroller  
John C. Geragosian and Clark J. Chapin, Auditors of Public Accounts  
Carrie Lisitano, Legislative Library  
Katie Dykes, Commissioner, Department of Energy and Environmental Protection  
Melanie Bachman, Executive Director, Connecticut Siting Council

# **EXHIBIT B**



**Ned Lamont**  
GOVERNOR  
STATE OF CONNECTICUT

October 21, 2019

John Morissette  
10 Susan Road  
Vernon, CT 06066

Dear Mr. Morissette:

Pursuant to Sections 4-1a and 16-50j of the Connecticut General Statutes, it is my honor and privilege to appoint you as a member of the Connecticut Siting Council, to serve at the pleasure of the Governor, for a term coterminous with my term, or until a successor is appointed and qualified, whichever is longer.

Sincerely,

A handwritten signature in cursive script that reads "Ned Lamont".

Ned Lamont  
Governor

cc: Honorable Denise W. Merrill, Secretary of the State  
Honorable Kevin P. Lembo, Comptroller  
Messrs. John C. Geragosian and Robert J. Kane, Auditors of Public Accounts  
Carrie Lisitano, Legislative Library  
Commissioner Katie Dykes, Department of Energy and Environmental Protection  
Commissioner Marissa Paslick Gillett, PURA  
Melanie Bachman, Executive Director, CT Siting Council



STATE OF CONNECTICUT

## GOVERNOR NED LAMONT

### Corrected Letter

June 14, 2023

Robert J. Hannon  
6 Greencrest Drive  
Farmington, CT 06032

Dear Attorney Hannon,

Pursuant to Connecticut General Statutes §§ 4-1a, 4-9a, and 16-50j, I have the honor and privilege to appoint you to the Connecticut Siting Council, as a member of the public experienced in the field of ecology, in succession to Louanne Cooley, for a term that is coterminous with my own, and until a successor is appointed and qualified.

Sincerely,

A handwritten signature in cursive script that reads "Ned Lamont".

Ned Lamont  
Governor

cc: Honorable Stephanie Thomas, Secretary of the State  
Honorable Sean Scanlon, Comptroller  
Messrs. John C. Geragosian and Clark J. Chapin, Auditors of Public Accounts  
Carrie Lisitano, Legislative Library  
Honorable Martin M. Looney, Senate President Pro Tempore  
Honorable Matt Ritter, Speaker of the House of Representatives  
Melanie Bachman, Executive Director, Connecticut Siting Council  
Katie Dykes, Commissioner, Department of Energy and Environmental Protection  
Marissa Gillett, Chairman, Public Utilities Regulatory Authority



STATE OF CONNECTICUT  
HOUSE OF REPRESENTATIVES  
HARTFORD, CONNECTICUT 06106-1591

J. BRENDAN SHARKEY  
SPEAKER OF THE HOUSE

September 22, 2016

Robert Silvestri  
1140 Mount Carmel Avenue  
Hamden, CT 06518-1610

Dear Mr. Silvestri:

Pursuant to section 16-50j and section 4-1a of the Connecticut General Statutes, it is my pleasure and privilege to appoint you as a member of the Connecticut Siting Council. Your term is effective immediately and is coterminous with my appointing authority, or until a successor has been appointed.

I am confident that the knowledge and experience that you bring to this position will be of great value. Thank you for your willingness to accept the challenge of serving the people of Connecticut as a member of this important position.

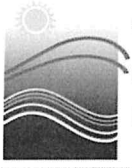
Sincerely,

A handwritten signature in black ink, appearing to read "J. Brendan Sharkey".

J. Brendan Sharkey  
Speaker of the House of Representatives

cc: Governor, Dannel Malloy  
Secretary of State, Denise Merrill  
Senate President, Martin Looney  
Senate Majority Leader, Bob Duff  
House Majority Leader, Joe Aresimowicz  
Senate Republican Leader, Len Fasano  
House Republican Leader, Themis Klarides  
Auditor of Public Accounts, John Geragosian  
Senate Clerks, Garey Coleman  
House Clerks, Martin Dunleavey  
Legislative Library, Carrie Rose  
CT Siting Council, Melanie Bachman





August 2, 2022

Sent Electronically to [Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)

Ms. Melanie Bachman  
Executive Director & General Counsel  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

Dear Ms. Bachman:

Effective immediately, Brian Golembiewski, an employee of the Department of Energy and Environmental Protection, has kindly agreed to serve as my designee, until a replacement designee is identified, on the Connecticut Siting Council pursuant to Conn. Gen. Stat. § 16-50j(b), following the recent departure from the Department of my prior designee. Mr. Golembiewski is a Supervising Environmental Analyst within the Land & Water Resources Division of the Bureau of Water Protection and Land Reuse. He is already familiar with the business and operations of the Connecticut Siting Council, having served as a prior commissioner's designee. I appreciate Mr. Golembiewski's willingness to serve and am confident that he will be able to quickly familiarize himself with the ongoing matters of the Council.

Sincerely,

A handwritten signature in cursive script that reads 'Katie S. Dykes'.

Katie S. Dykes  
Commissioner

Cc: Nora Dannehy, General Counsel to Governor Lamont  
Brian Golembiewski, DEEP



**STATE OF CONNECTICUT**  
**PUBLIC UTILITIES REGULATORY AUTHORITY**

Marissa P. Gillett, Chairman  
John W. Betkoski III, Vice Chairman  
Michael A. Caron, Commissioner

October 9, 2020

Melanie A. Bachman, Esq.  
Executive Director/ Staff Attorney  
Siting Council  
10 Franklin Square  
New Britain, CT 06051

Dear Executive Director Bachman,

I designate Quat Nguyen to be the designee for normal business on the Siting Council when needed effective October 13, 2020. Quat will keep me apprised of Siting Council matters and will attend meetings as PURA's representative on certain occasions.

While Quat will fulfill the duties as my designee, I am available to meet with you to discuss Siting Council matters at any time.

Sincerely,

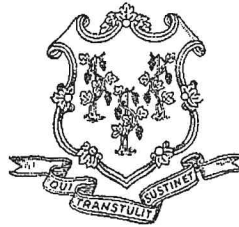
A handwritten signature in cursive script that reads "Marissa P. Gillett".

Marissa P. Gillett  
Chairman  
Public Utilities Regulatory Authority

Cc: Quat Nguyen  
Scott Muska  
Linda Guliuzza

SENATOR MARTIN M. LOONEY  
PRESIDENT PRO TEMPORE

Eleventh District  
*New Haven, Hamden & North Haven*



State of Connecticut  
SENATE

State Capitol  
Hartford, Connecticut 06106-1591  
132 Fort Hale Road  
New Haven, Connecticut 06512  
Home: 203-468-8829  
Capitol: 860-240-8600  
Toll-free: 1-800-842-1420  
[www.SenatorLooney.cga.ct.gov](http://www.SenatorLooney.cga.ct.gov)

March 26, 2015

Mr. Daniel P. Lynch  
26 Middlesex Drive  
Enfield, CT 06082

Dear Mr. Lynch:

Pursuant to Connecticut General Statute 16-50j it is my pleasure to reappoint you a member of the **Connecticut Siting Council** to serve as my designee. Your term is effective immediately and it coterminous with my appointing authority or until a successor is appointed.

I am confident that your experience and knowledge will continue to be of great value to the Council. I appreciate your willingness to renew this commitment to public service.

Very truly yours,

A handwritten signature in cursive script that reads "Martin M. Looney".

Martin M. Looney  
Senate President Pro Tempore

Cc: Dannel P. Malloy, Governor  
Denise W. Merrill, Secretary of State  
Bob Duff, Senate Majority Leader  
Brendan Sharkey, Speaker of the House  
Joe Aresimowicz, House Majority Leader  
Len Fasano, Senate Minority Leader  
Themis Klarides, House Minority Leader  
Gary E. Coleman, Senate Clerk  
Martin J. Dunleavy, House Clerk  
Benjamin Barnes, Office of Policy and Management  
Carrie Rose, Legislative Library  
Office of Legislative Research  
Robert Stein, Chairman, CT Siting Council  
Melanie Bachman, Acting Executive Dir., CT Siting Council  
Arthur House, Chairman, PURA

# **EXHIBIT C**

209 Conn. 719  
Supreme Court of Connecticut.

Robert V. DuBALDO  
v.  
DEPARTMENT OF CONSUMER PROTECTION,  
STATE ELECTRICAL WORK EXAMINING  
BOARD.

No. 13470.  
|  
Argued Nov. 10, 1988.  
|  
Decided Jan. 31, 1989.

### Synopsis

Contractor appealed from a decision of the Electrical Work Examining Board of the Department of Consumer Protection which suspended his unlimited electrical contractor's license. The Superior Court, Judicial District of Hartford-New Britain, Ripley, J., dismissed the appeal, and the contractor appealed. The Supreme Court, Covello, J., held that Electrical Work Examining Board, which included two unlimited journeymen who were not engaged in the occupation of electrical contracting, was improperly constituted as required by its enabling legislation and therefore lacked statutory authority to suspend contractor's unlimited electrical contractor's license.

Error; further proceedings.

### Attorneys and Law Firms

**\*813 \*719** Richard L. Barger, with whom was Steven B. Kaplan, Hartford, for appellant (plaintiff).

Michael A. Arcari, Asst. Atty. Gen., with whom were Robert M. Langer, Asst. Atty. Gen., and, on the brief, Joseph I. Lieberman, Atty. Gen., for appellee (defendant).

Before ARTHUR H. HEALEY, CALLAHAN, GLASS, COVELLO and HULL, JJ.

### Opinion

**\*720** COVELLO, Associate Justice.

This is an appeal from a decision of the Superior Court

dismissing the plaintiff's appeal from a decision of the state electrical work examining board (board) suspending the plaintiff's electrical contractor's license. We find error in the Superior Court's dismissal of the appeal.

Examination of the record discloses that the plaintiff, Robert V. DuBaldo, is a principal in the firm of DuBaldo Electric Company, Inc., a non-union electrical contractor. The plaintiff has held an unlimited electrical contractor's license since 1972.

On June 20, 1983, a representative of the department of consumer protection (DCP) inspected the plaintiff's job site in Plainfield, **\*\*814** and found that electrical work was being done by four men, one with an E-2 electrical license and three who were registered with the labor department as apprentices. On December 16, 1983, the DCP issued a complaint alleging that the plaintiff had permitted apprentices to perform electrical work without the direct supervision of the required number of licensed electrical contractors or journeymen as required by the Regulations of Connecticut State Agencies that deal with the licensing of electrical contractors.<sup>1</sup> The plaintiff denied these allegations and a hearing was held before the state electrical work examining board.

<sup>1</sup> Section 20-332-15(a) of the Regulations of Connecticut State Agencies provides in relevant part: "Nothing in chapter 393 of the general statutes shall be construed to prohibit the employment of one apprentice by a licensed electrical contractor and an additional apprentice for a licensed electrical journeyman employed by a contractor. An electrical contractor employing more than one journeyman may employ an additional apprentice for each additional three journeymen employed by him."

On April 24, 1984, the board found that the plaintiff had violated § 20-332-15 of the agency regulations and ordered that the plaintiff's license be suspended for ninety days. The plaintiff appealed the decision to the **\*721** Superior Court. On March 25, 1988, the trial court rendered judgment dismissing the appeal. The plaintiff appealed the decision to the Appellate Court and on August 3, 1988, this court transferred the appeal to itself pursuant to Practice Book § 4023.

The plaintiff claims that the trial court erred by failing to conclude: (1) that the board was improperly constituted as required by its enabling legislation, General Statutes § 20-331; (2) that the statutory penalties provisions,

General Statutes §§ 21a-9(c) and 21a-7(7), and the participation of union officials as board members violated federal and state due process standards; (3) that the penalty which the board imposed was arbitrary and capricious and its application of General Statutes §§ 21a-9(c) and 21a-7(7) was unconstitutional; (4) that the board's decision was clearly erroneous; (5) that the board's chairman improperly participated in the decision; and (6) that the board's actions were invalid because a quorum was not present.

The plaintiff first claims that the board, as constituted, did not comply with the requirements of § 20-331, and therefore its decision was invalid.<sup>2</sup> We agree.

<sup>2</sup> General Statutes (Rev. to 1983) § 20-331 provides in part: "EXAMINING BOARDS.... Each such board, except the elevator installation, repair and maintenance board, shall consist of seven members who shall be residents of this state, two of whom shall be unlimited contractors, two of whom shall be unlimited journeymen, engaged in and licensed for such occupation under this chapter, and three of whom shall be public members."

At the time of the hearing, § 20-331 required that "[e]ach such board ... shall consist of seven members who shall be residents of this state, two of whom shall be unlimited contractors, two of whom shall be unlimited journeymen, engaged in and licensed for such occupation under this chapter, and three of whom shall \*722 be public members." (Emphasis added.)<sup>3</sup> The plaintiff claims that the two board members who were the unlimited journeymen were not engaged in the occupation of electrical contracting and therefore the board failed to meet the statutory requirements set forth in § 20-331.

<sup>3</sup> Subsequent to the hearing, Public Acts 1985, No. 85-352 revised General Statutes § 20-331 to include a general contractor among its members, thereby increasing the membership from seven to eight. General Statutes § 20-331 now provides in relevant part: "EXAMINING BOARDS . There shall be in the department of consumer protection separate examining boards for each of the following occupations: (a) Electrical work; (b) plumbing and piping work; (c) heating, piping and cooling work; (d) elevator installation, repair and maintenance work.... The electrical board shall consist of eight members who shall be residents of this state one of whom shall be a general contractor, two of whom shall be unlimited contractors, two of whom shall be

unlimited journeymen, engaged in and licensed for such occupation under this chapter, and three of whom shall be public members."

The phrase "engaged in" is not defined in the applicable statutes. In the absence of an express definition words of a statute are to be given the commonly approved \*\*815 meaning unless a contrary intent is clearly expressed. *Federal Aviation Administration v. Administrator*, 196 Conn. 546, 550, 494 A.2d 564 (1985); *Holmquist v. Manson*, 168 Conn. 389, 393, 362 A.2d 971 (1975); *Southern New England Telephone Co. v. Public Utilities Commission*, 144 Conn. 516, 522, 134 A.2d 351 (1957). "Engaged" is defined as "employed; occupied; busy." Webster's American Heritage Dictionary. The members in question, Richard Panagrossi and Frank J. Carroll, were both licensed unlimited journeymen at the time of the hearing. They were not, however, engaged in the occupation of electrical work.

Examination of the record discloses that neither man considered his occupation to be that of an electrician. Both men were employees of the Local 488 of the International Brotherhood of Electrical Workers Union. Carroll last worked as an electrician in 1978. As he \*723 stated: "I differentiate between ... being an electrician and a member of [local] 488 and working as a—as an officer or business agent or manager of [local] 488." Panagrossi had not been employed as an electrician since 1972. As he stated: "My current title is a general representative to the International president." "It is a full-time position for me." "But I do continue to do things for people that are friends of mine."

General Statutes § 20-330(2) specifically defines "electrical work" as "the installation, erection, maintenance, alteration or repair of any ... apparatus, fixture or equipment which ... uses electrical energy for light, heat, power or other purposes...." It is evident that Carroll and Panagrossi considered themselves to be full-time union employees. They were not "engaged in [the] occupation" of electrical work as required by § 20-331 and defined by § 20-330(2).

"In the absence of evidence to the contrary, we may assume that the [board] was properly constituted." *Furtney v. Zoning Commission*, 159 Conn. 585, 596, 271 A.2d 319 (1970); *Hebb v. Zoning Board of Appeals*, 150 Conn. 539, 545, 192 A.2d 206 (1963). Under the circumstances presented here, however, it is clear that the board was not properly constituted. Since neither man was "engaged in" the occupation of electrical work the board's decision to suspend the plaintiff's license was

without statutory authority. *Finn v. Planning & Zoning Commission*. 156 Conn. 540, 546, 244 A.2d 391 (1968).

There is error, the judgment is set aside and the case is remanded with direction to return it to the board to be proceeded with according to this opinion.

In this opinion the other Justices concurred.

**All Citations**

209 Conn. 719, 552 A.2d 813

47 Conn.Supp. 5  
Superior Court of Connecticut.  
Philip M. BLOCK

v.

STATEWIDE GRIEVANCE COMMITTEE.

No. CV990495866S.

|  
Nov. 3, 2000.

### Synopsis

Attorney appealed decision of the statewide grievance committee recommending discipline. The Superior Court, Judicial District of New Britain, Robert Satter, J., held that reviewing committee of two lawyers that recommended attorney discipline was improperly constituted when it acted without a public member.

Remanded.

**Procedural Posture(s):** On Appeal.

### Attorneys and Law Firms

\*\*282 Philip M. Block, pro se, the plaintiff.

Cathy A. Dowd, assistant bar counsel, for the defendant.

### Opinion

Hon. ROBERT SATTER, Judge Trial Referee.

\*6 This is an appeal from a decision of the statewide grievance committee (the statewide committee) issuing a reprimand of the plaintiff, attorney Philip M. Block, for violating the following three Rules of Professional Conduct: First, rule 1.1., by failing to possess the requisite knowledge and skill; second, rule 1.5.(b), by failing to provide a written retainer agreement to a client; and third, rule 1.16.(d), by failing to return a file to the client within a reasonable time after termination.

The procedural history of this matter is as follows. On May 16, 1997, Betty Lou Emerson, a former client of the plaintiff, filed a grievance with the statewide committee that was forwarded to the grievance panel for the judicial district of Hartford–New Britain, geographical areas thirteen and fourteen (local panel). Emerson subsequently

supplemented her complaint, and the plaintiff submitted a response to it. The local panel, based on the material submitted to it, but without a hearing, found no probable cause that the plaintiff had violated the Rules of Professional Conduct and \*7 forwarded that determination to the statewide committee on August 13, 1997. Emerson objected in writing to the local panel's determination. The statewide committee convened a reviewing committee and, on October 23, 1997, that reviewing committee found that probable cause existed that the plaintiff had violated rules 1.5(b), 1.1, 1.3, 1.2(a) and 1.16(d) of the Rules of Professional Conduct. On May 28, 1998, the complainant and the plaintiff were notified that a hearing would be held before a second reviewing committee. On July 9, 1998, the hearing on the complaint commenced before that second reviewing committee, which consisted of attorneys Vincent D'Angelo and Anne Hoyt. The public member of the second reviewing committee, Mary Smith, neither attended the hearing nor participated in the decision. At the hearing, Emerson testified briefly and submitted exhibits, and the plaintiff also testified and submitted exhibits. On March 24, 1999, the second reviewing committee, consisting of the aforementioned two attorneys, issued its proposed decision finding that the plaintiff violated rules 1.5(b), 1.1 and 1.16(d) of the Rules of Professional Conduct and recommended that the statewide committee reprimand the plaintiff. It also recommended \*\*283 that the statewide committee order the plaintiff to return to Emerson her entire file within sixty days of the statewide committee's final decision. On April 16, 1999, the committee adopted the proposed decision of the second reviewing committee, issued a reprimand against the plaintiff, and ordered him to return Emerson's file to her before June 15, 1999. The facts upon which the statewide committee rendered its decision are as follows. On September 24, 1993, Emerson authorized the plaintiff to investigate the possibility of bringing suit to enjoin her neighbors from using pesticides on their lawns that adversely affected her health. Emerson paid the plaintiff an initial cash retainer of \$250 at that time.

The facts upon which the statewide committee rendered its decision are as follows. On September 24, 1993, Emerson authorized the plaintiff to investigate the possibility of bringing suit to enjoin her neighbors from using pesticides on their lawns that adversely affected her health. Emerson paid the plaintiff an initial cash retainer of \$250 at that time. From October, 1993, \*8 through March, 1994, the plaintiff undertook to investigate Emerson's medical condition, talk to her doctors, and research possible causes of action. On April 22, 1994, he



determined she had a cause of action and proposed a formal retainer agreement, agreed to by Emerson, to initiate an action on her behalf. The plaintiff requested a \$2000 retainer toward his hourly fee of \$175. Emerson made periodic payments towards the retainer between June, 1994, and May, 1996.

In September, 1995, the plaintiff drafted an application for prejudgment remedy and temporary injunction and submitted it to Emerson for her review. In April, 1996, the plaintiff filed the prejudgment remedy application and a verified complaint, signed by Emerson, seeking damages and a temporary and permanent injunction against the use of lawn pesticides by Emerson's neighbors. The plaintiff did not file an affidavit with the prejudgment remedy application, as required by General Statutes § 52-278c (2), because he believed that the verified complaint was sufficient to satisfy the affidavit requirement.

A hearing on the prejudgment remedy application was set for May 13, 1996. Emerson could not appear because of her disability. At that hearing, one of the defendants in the pesticide suit filed a motion to dismiss the prejudgment remedy application on the ground that the plaintiff had failed to file an affidavit with the application. The plaintiff telephoned Emerson after the hearing and advised her about the motion to dismiss, recommended that he not pursue the prejudgment remedy application and only move forward on the complaint for injunctive relief. Emerson, having lost confidence in the plaintiff, wrote to him on May 14, 1996, discharged him, authorized him to withdraw his appearance, requested him to present an accounting of fees paid and expenses incurred, and said, "I will be acting pro se until other arrangements can be made." \*9 The plaintiff submitted a bill for his services for 21.2 hours at the rate of \$175 per hour, totalling \$3710. Of that sum, the plaintiff, for the first time, billed Emerson for 8.5 hours of services rendered between October, 1993, and March, 1994, the period before the retainer agreement was entered into.

On October 19, 1996, the court granted the defendant's motion to dismiss the prejudgment remedy application in the pesticide case on the ground that the plaintiff failed to provide an affidavit. The decision, however, did not become effective until March 27, 1997, when the parties were notified of the court's decision. In May, 1997, a year after the plaintiff had \*\*284 withdrawn his appearance and when Emerson was acting on her own behalf as a pro se, the defendants, in that case, moved to dismiss the underlying complaint on two grounds: First, that the writ of summons and complaint was not served after the prejudgment remedy application was denied; and, second,

because the complaint lacked a certificate of financial responsibility, as required by statute. The court granted that motion to dismiss on October 28, 1997, on those grounds.

At the time Emerson discharged the plaintiff, she requested her file back. The plaintiff promptly returned all the pleadings in the case but did not return copies of magazine articles, news items and other documents, of which Emerson had the originals. He did not refuse to turn them over to Emerson, because she did not pay his bill. Rather, he simply did not bundle up the material and mail it to her. There is no evidence he would not have given the balance of the file to Emerson if she had appeared at his office for it.

The reviewing committee concluded that the plaintiff engaged in ethical misconduct in connection with the representation of Emerson in the following manner: First, the plaintiff violated \*10 rule 1.5.(b) of the Rules of Professional Conduct by undertaking to research the possibility of her having a cause of action in September, 1993, and not obtaining a written retainer agreement until April, 1994; second, the plaintiff violated rule 1.1. of the Rules of Professional Conduct by filing a prejudgment remedy application with a verified complaint but not an affidavit, which led to the dismissal of the pre judgment remedy application, and eventually, because Emerson did not serve the defendants with a summons and complaint in the pesticide action after the denial of the prejudgment remedy, led to dismissal of the underlying injunction complaint; third, the plaintiff violated rule 1.16.(d) of the Rules of Professional Conduct by failing to return Emerson her file within a reasonable time after termination of his representation.

Based upon these determinations, the reviewing committee recommended the plaintiff be reprimanded, and that recommendation was adopted by the statewide committee.

At the outset of the hearing before this court, this court raised what it considered a jurisdictional issue and gave the parties the opportunity to submit postargument briefs on it. The issue was whether the reviewing committee of the statewide committee that heard the complaint in the present case and recommended disciplinary action to the statewide committee, was properly constituted. The court did so because General Statutes § 51-90g(a) and Practice Book § 2-35 provide that a reviewing committee authorized to hold a hearing and submit a proposed decision to the statewide committee shall consist of at least three members, including, in the words of the statute, "at least one-third who are not attorneys," and the record

clearly reveals the reviewing committee members in the present case consisted of two attorneys and no lay persons.

A number of Superior Court decisions have upheld decisions of reviewing committees of the statewide \*11 committee proceeding without a lay member. *Statewide Grievance Committee v. Egbarin*, CV980585474S Superior Court, judicial district of Hartford, (June 22, 1999) (Berger, J.); *Braunstein v. Statewide Grievance Committee*, CV950548149S Superior Court, judicial district of Hartford New Britain at Hartford, (October 24, 1997) (McWeeny, J.) (20 Conn. L. Rptr. 467); *Statewide Grievance Committee v. Tyler*, CV970568610 Superior Court, judicial district of Hartford–New Britain at Hartford, (September 12, 1997) (Lavine, J.); *Cramer \*\*285 v. Statewide Grievance Committee*, CV960562467 Superior Court, judicial district of Hartford New Britain at Hartford, (January 31, 1997) (McWeeny, J.); *Hanson v. Statewide Grievance Committee*, CV960560411 Superior Court, judicial district of Hartford–New Britain at Hartford, (January 30, 1997) (McWeeny, J.). All of these cases invoke rule 7F of the rules of procedure of the statewide committee to the effect that a majority of a committee shall constitute a quorum, and rely upon two Supreme Court decisions: *Lewis v. Statewide Grievance Committee*, 235 Conn. 693, 669 A.2d 1202 (1996) and *Levinson v. Board of Chiropractic Examiners*, 211 Conn. 508, 560 A.2d 403 (1989).

In *Lewis*, the reviewing committee recommending a reprimand of an attorney consisted of two attorneys and one lay person. The two attorneys attended all the hearings; the lay person attended none of the hearings and resigned from the committee before reading the record and casting a vote. The two attorneys split as to recommending a reprimand. The matter was referred to another lay person, who reviewed the record and eventually voted to reprimand the attorney.

The plaintiff in *Lewis* claimed that he was deprived of due process because: (1) he did not have a hearing before a full reviewing committee of three members in \*12 violation of § 51–90g(a) and Practice Book § 2–35; and, (2) the member of the reviewing committee who cast the deciding vote against him had not attended the grievance hearings. *Lewis v. Statewide Grievance Committee, supra*, 235 Conn. at 705, 669 A.2d 1202. As to the first claim, the Supreme Court held that the fact that the reviewing committee consisted of fewer than three members did not violate the statute and the Practice Book section. It said: “Contrary to the plaintiff’s claim, however, neither [§ 51–90g(a) and Practice Book § 2–35] requires that all designated members of a reviewing committee attend

grievance hearings. In fact, statewide grievance committee rule of procedure 7F establishes that, once empowered to act, a quorum of the reviewing committee can act for the whole, although a majority vote is needed for a proposed decision.” *Id.* at 707, 669 A.2d 1202.

The court further held that the lay person who voted did not personally have to attend the grievance hearings and could vote after reading the record.

Thus, *Lewis* did not deal with the requirement of § 51–90g(a) and Practice Book § 2–35 that a three member reviewing committee have at least one lay member. More significantly, *Lewis* is not dispositive of the issue of whether or not a lay person must participate in the decision of the reviewing committee because in *Lewis*, the lay person, in fact, did participate.

In *Levinson*, a chiropractor was suspended by a board of chiropractic examiners consisting of two practicing chiropractors and no public member. The plaintiff in *Levinson* claimed a violation of General Statutes § 19a–8, which stated, at that time, that not less than one third of the members of any of the boards listed in General Statutes § 19a–14, including the chiropractic examining board, shall be public members. In rejecting that claim, the court applied the common law rule that “[a] board may act as long as there exists a quorum equal to a majority of all the actual members of the board.” *Levinson v. Board of Chiropractic Examiners*, \*13 *supra*, 211 Conn. at 539, 560 A.2d 403. The court noted that “[t]here is no provision in chapter 372 of the General Statutes, which creates the board of chiropractic examiners, that abrogates the common law rule.” *Id.*

The court cited in support of the common law rule as to a quorum, *Lee v. Board \*\*286 of Education*, 181 Conn. 69, 83–84, 434 A.2d 333 (1980), and *Strain v. Mims*, 123 Conn. 275, 281, 193 A. 754 (1937). *Lee* involved a local board of education and *Strain* a local zoning commission. The laws creating neither board nor commission require categories of members, so those cases are distinguishable from the facts in *Levinson*, where § 19a–8 requires professional and lay members on the chiropractic examining board.

The *Levinson* court noted that the public member slot on the chiropractic examining board had not been filled, and cited *U.S. Vision, Inc. v. Board of Examiners for Opticians*, 15 Conn.App. 205, 213, 545 A.2d 565 (1988) for the proposition that a vacancy on a board does not deprive the board of the statutory authority to act. *Levinson* differs from the present case because here, the lay member of the reviewing committee had been

appointed and was serving, but declined to participate.

The most significant aspect of *Levinson* is that it deals with the number of board members qualified to act, and not with the composition of the board members qualified to act. A law requiring professional and public members on a professional board does not abrogate, as the *Levinson* court asserts, the common law rule as to what constitutes a quorum on a homogeneous board. The common law rule as to a quorum of a board, relied upon by the *Levinson* court, and rule 7F of the rules of procedure of the statewide committee as to a quorum of a reviewing committee, relied upon by the *Lewis* court, are clearly superseded by a statutory mandate \*14 that there be a prerequisite percentage of nonprofessional members on these boards and committees.

It may be noted that General Statutes § 20–25, providing for professional and public members on the state board of chiropractic examiners, was amended in 1998 to provide: “A majority of the members of the board shall constitute a quorum.” Clearly that amendment permits a majority of the board to act, regardless of the composition of the acting board. Thus, the legislature knows how to resolve the matter of a quorum on a composite board. It has chosen not to do in § 51–90g(a).

Rather than relying on *Lewis* and *Levinson*, this court finds *DuBaldo v. Dept. of Consumer Protection*, 209 Conn. 719, 552 A.2d 813 (1989) more directly on point concerning the issue of composition of board members. In *DuBaldo*, an electrical work examining board suspended the license of an electrical contractor. At the time of the hearing, General Statutes (Rev. to 1983) § 20–331 required that the examining board consist of seven members, at least “two of whom shall be unlimited journeymen, engaged in and licensed for such occupation....” The court found that two journeymen on the board were union officials and not engaged in electrical work, as required by § 20–331. The court, therefore, held that “it is clear that the board was not properly constituted. Since neither man was ‘engaged in’ the occupation of electrical work the board’s decision to suspend the plaintiff’s license was without—statutory authority.” *DuBaldo v. Dept. of Consumer Protection*, supra, at 723, 552 A.2d 813.

*DuBaldo* implicitly effectuates the mandate that professional boards be constituted as required by statute. In 1977, the legislature passed a sweeping act that—reorganized state executive departments, provided a mechanism for termination of agencies, boards, and commissions that could not justify their continuance, \*15 and, relevant here, provided for public members on

professional boards and commissions. Public Acts 1977, No. 77–614; see, e.g., General Statutes § 19a–8.

**\*\*287** The purpose of the latter provision was to achieve, as then State Senator Joseph I. Lieberman remarked on the Senate floor, “accountability and openness and public interest [in] the placement of members of the public on state regulatory bodies. That, in my opinion, is a small revolution that is accomplished by this bill.” 20 S. Proc., Pt. 7, 1977 Sess., p. 2683.

Section 51–90g(a), was amended in 1986 to provide for three member reviewing committees, “at least one-third who are not attorneys,” to hear complaints against attorneys and render a proposed decision to the state wide committee. The legislative history of the law is slight because it was adopted on the consent calendar in the Senate, and with no debate on that provision in the House. See 29 S. Proc., Pt. 9, 1986 Sess., pp. 3126–29, 3178–79; 29 H.R. Proc., Pt. 12, 1986 Sess., pp. 4196–4203, 4460–70. Clearly, the statutory composition of the reviewing committees of the statewide committee was designated to serve the same purposes of accountability and openness as the 1977 government reorganization act for other regulatory boards. When reviewing committees consist solely of lawyers, the public perception can be that lawyers are protecting themselves. Participation by a nonattorney belies such a perception and, thus, enhances public confidence in disciplinary decisions of the statewide committee.

The defendant argues that the requirement in § 51–90g(a) that the reviewing committee consist of “at least one-third who are not attorneys” is directory, and not mandatory. In support of this, the defendant cites *Doe v. Statewide Grievance Committee*, 240 Conn. 671, 694 A.2d 1218 (1997). In *Doe*, the Supreme Court construed the provision in § 5–90g (c), \*16 that a statewide grievance subcommittee render its proposed decision ninety days from the date of a local grievance panel’s determination of probable cause, to be directory rather than mandatory. *Id.*, at 685, 694 A.2d 1218. The decision is consistent with the principle that time restraints are sometimes designed to “secure order, system and dispatch in the proceedings”; *Jones v. Mansfield Training School*, 220 Conn. 721, 727, 601 A.2d 507 (1992); and are not matters of substance. Here, however, the statutory provision that a reviewing committee be composed of at least one third who are not attorneys goes to the committee’s very authority to act, may be jurisdictional in nature, and must be construed as mandatory.

The defendant further argues that the reviewing committee only made a recommendation to the statewide

committee and the statewide committee voted the reprimand of the plaintiff. Not even the Supreme Court in *Lewis* sustained the action of the reviewing committee of the statewide committee on that basis, nor do any of the Superior Court decisions previously cited. Such an interpretation would render superfluous the provisions of § 51-90g(a) relating to the composition of the reviewing committee and, thus, counter the well established canon of statutory interpretation that the legislature has a purpose for each provision of a statute and care must be taken to effectuate all of them. *General Motors Corp. v. Dohmann*, 247 Conn. 274, 287, 722 A.2d 1205 (1998).

Thus, this court concludes the reviewing committee hearing the plaintiff's case was improperly constituted when it acted without a public member. When the *DuBaldo* court reached a similar conclusion, it neither dismissed the case for lack of jurisdiction, nor sustained

the appeal, but remanded the case to the electrical worker examining board "to be proceeded with according to this opinion." *DuBaldo v. Dept. of Consumer Protection*, *supra*, 209 Conn. at 723, 552 A.2d 813. This court \*\*288 \*17 interprets that phrase to mean that the Supreme Court directed that the electrical work board should act when it was properly constituted. Likewise, here, this court remands the present case to the statewide committee for the reviewing committee to act on the complaint against the plaintiff by two lawyers and one public member, as required by § 51-90g(a) and Practice Book § 2-35.

#### All Citations

47 Conn.Supp. 5, 771 A.2d 281, 29 Conn. L. Rptr. 54

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