STATE OF CONNECTICUT CONNECTICUT SITING COUNCIL

DOCKET NO. 272

APPLICATION TO THE CONNECTICUT SITING COUNCIL FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR A 345 kV ELECTRIC TRANSMISSION LINE FACILITY AND ASSOCIATED FACILITIES BETWEEN SCOVILL ROCK SWITCHING STATION IN MIDDLETOWN AND NORWALK SUBSTATION IN NORWALK.

JOINT FILING BY THE CONNECTICUT LIGHT AND POWER COMPANY AND THE UNITED ILLUMINATING COMPANY JANUARY 19, 2005

RESPONSE TO APPLICANTS' OBJECTION TO CUMULATIVE TESTIMONY OF WOODBRIDGE INSTITUTIONS

Ezra Academy, Congregation B'nai Jacob, The Jewish Community Center of Greater New Haven and The Jewish Federation of Greater New Haven (hereinafter the "Woodbridge Organizations") filed this response to a pleading filed by the Applicants dated January 13, 2005 entitled "Objection to Cumulative Testimony of Woodbridge Institutions" (the "Applicants' Objection"). The Applicants' Objection seeks to bar the pre-filed testimony by Dr. Leonard Bell, Dr. Peter Rabinowitz and Dr. Alan Gerber dated January 12, 2005 on behalf of the Woodbridge Organizations entitled "Testimony Addressing Recent Questions Raised by the Connecticut Siting Council and Witnesses Re: EMF" on two purported grounds: first, that the testimony is cumulative and duplicative of prior testimony and, second, that the testimony is not within the scope of the Council's invitation for "clean-up" testimony.

Both stated grounds for the Applicants' Objection are patently and demonstrably false. Applicants' Objection is another attempt by the Applicants to apply a different set of rules to the Applicants and to all other parties that participate in the above-referenced

Siting Council proceeding. The Applicants repeated attempts to silence their opponents should be vigorously repudiated by the Siting Council.

First, the pre-filed testimony by Drs. Bell, Rabinowitz, and Gerber is not cumulative of prior testimony. In fact, it is in part in response to "Supplemental Testimony III of Dr. William H. Bailey Concerning Magnetic Field Exposure Policy" dated October 12, 2004. Presumably, Dr. Bailey was making "new" points that he had not made previously rather than just restating the prior testimony by Drs. Bailey, Cole and Aaronson. In such Supplemental Testimony by Dr. Bailey, he purported to bring to the Siting Council's attention a newly discovered article by Dr. Linet, an article that had been published a year and a half earlier. The testimony dated January 12, 2005 by Drs. Bell, Rabinowitz and Gerber is in part a response to Dr. Bailey's October 12, 2004 testimony. The testimony by Drs. Bell, Rabinowitz and Gerber is also a response to questions raised by the Siting Council and other witnesses concerning whether the available scientific evidence and analysis supports an increased risk of childhood leukemia at exposure levels between 2 and 5 milliGaus. Of course, if this testimony is simply cumulative, which the Woodbridge Organizations do not believe it is, then, of course, there would be no need for Applicants to request that their witnesses appear again to have the "last word" on this subject.

Second, the testimony of Drs. Bell, Rabinowitz and Gerber is clearly within the scope of the Siting Council's invitation for "clean-up" testimony. In fact, when the Applicants submitted Dr. Bailey's Supplemental Testimony No. III dated October 12, 2004 to the Siting Council, there was a colloquy between Chairman Katz and Attorney Frank on the record of the proceedings of October 14, 2004. To show how clearly the

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Applicants distort the proceedings before this Council in their submissions to the

Council, the relevant portion of the October 14, 2004 transcript is set forth below.

CHAIRMAN KATZ: Okay. So if there's no objection, we'll take administrative notice of that. And we will strike 169 as an exhibit. And that takes us to the new 169, which is the supplemental testimony of Dr. Bailey?

MR. FITZGERALD: Yes. Dr. Bailey, is your Supplemental Testimony III, dated October 12, 2004, true and correct to the best of your knowledge and belief?

DR. WILLIAM BAILEY: Yes.

MR. FITZGERLD: I offer it as a full exhibit.

CHAIRMAN KATZ: Any objection to making it a full exhibit? Mr. Frank.

MR. MONTE P. FRANK: I don't have an objection. I have a comment that –

AUDIO TECHNICIAN: Hang on -

COURT REPORTER: Okay, go ahead.

MR. FRANK: This is a subject matter that I did not understand to be on the agenda for today because the testimony deals primarily with policy issues on EMF, which is the subject that we've had and we dealt with back in May. I don't have an objection to the exhibit coming into evidence or coming into the record. I know that Dr. Bell and his group would like to file a response to it. And so I would just ask that they be permitted to do that so that we can address those issues.

CHAIRMAN KATZ: Okay. And – but I had anticipated Dr. Bailey would be back at cleanup day at the end anyway, so –

MR. FRANK: Or we could – we could do it in December if – we don't have an objection –

CHAIRMAN KATZ: No, no -

MR. FRANK: -- to two days of hearings -

CHAIRMAN KATZ: -- December – December will not expand. Let me just make this clear. December is going to be Glenbrook Cables and hopefully one day on this docket, maybe two, okay, but it's not going to expand beyond a limited subject matter. I really want to wait until we get the ROC group report because I think a lot of the things that are floating out there are going to crystallize once we know what's going on.

MR. FRANK: I agree with that.

CHAIRMAN KATZ: Okay. So with that note from Mr. Frank, if – we will make 169, Dr. Bailey's testimony, a full exhibit.

(Whereupon Applicants' Exhibit No. 169 was received into evidence as a full exhibit.)

Transcript of October 14, 2004 hearing pages 20-22.

As a result of the above, the Applicants' "Objection to Cumulative Testimony of

Woodbridge Institutions" should be denied. Further, any testimony permitted in

response to the testimony of Drs. Bell, Rabinowitz and Gerber dated January 12, 2005

by Applicants' witnesses should be limited to their discussion of the highly relevant

statistical examination of the existing data in metaanalyses focusing on the increased

risks of childhood leukemia in the cases of exposure to EMF at levels of between 2 and

5 milliGaus.

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CERTIFICATE OF SERVICE

This is to certify that on this 19th day of January, 2005 an original and 20 copies of the foregoing were Federal Expressed to the Connecticut Siting Council, 10 Franklin Square, New Britain, Connecticut 06051 and a copy of the foregoing was mailed, postage prepaid, to the parties and Intervenors set forth below. Electronic copies of the foregoing were also sent to the Connecticut Siting Council and all parties and

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<u>s/David R. Schaefer</u> David R. Schaefer

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