

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

Quinebaug Solar, LLC petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 50 megawatt AC solar photovoltaic electric generating facility on approximately 561 acres comprised of 29 separate and abutting privately-owned parcels located generally north of Wauregan Road in Canterbury and south of Rukstela Road and Allen Hill Road in Brooklyn, Connecticut. Reopening of this petition based on changed conditions pursuant to Connecticut General Statutes §4-181a(b)

Petition No. 1310A

March 5, 2020

POST-HEARING BRIEF OF QUINEBAUG SOLAR, LLC

Quinebaug Solar, LLC (“Quinebaug Solar” or the “Petitioner”) submits this post-hearing brief in support of its November 12, 2019 Petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need (“Certificate”) is required for the construction, operation and maintenance of a 50 megawatt (“MW”) alternating current (“AC”) ground-mounted solar photovoltaic (“PV”) facility and associated equipment to be constructed in Brooklyn and Canterbury, Connecticut (the “Project”). For the reasons more particularly set forth below, Quinebaug Solar submits that the Council should issue a declaratory ruling approving the Petition.

I. PROCEDURAL HISTORY

A. Pre-Petition History

1. DEEP Requests for Proposals

The Tri-State RFP was jointly issued on November 12, 2015 by the States of Connecticut, Rhode Island and the Commonwealth of Massachusetts to solicit new clean energy projects from

private developers.¹ The Tri-State RFP sought projects that would help the soliciting parties achieve their respective clean energy goals.²

On February 28, 2017, the Department of Energy and Environmental Protection (“DEEP”) Commissioner directed the Connecticut electric distribution companies to negotiate with selected projects, including Quinebaug Solar. As a result, Quinebaug Solar entered into power purchase agreements (“PPAs”) with The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”) and The United Illuminating Company which, once finalized, were submitted to the Public Utilities Regulatory Authority (“PURA”) for review on August 25, 2017 as part of Docket 17-01-10, *PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements*. PURA issued a Final Decision approving the PPAs on September 13, 2017.

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3. Petition 1310

On June 15, 2017, Quinebaug Solar filed a Petition with the Council for a declaratory ruling that a Certificate of Environmental Compatibility and Public Need (“Certificate”) was not required for the construction, operation and maintenance of a ground mounted solar photovoltaic facility of up

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B. Petition 1310A

The Council granted the Petitioner’s Motion to Reopen on December 5, 2019. The Council held an evidentiary hearing on the Project on January 14, 2020, which was continued to and concluded on February 4, 2020. The Council also held a public hearing on January 14, 2020 for submission of comments into the record of this proceeding.

II. PROJECT DESCRIPTION

A. Project Site

The proposed Project location consists of 30 privately-owned parcels, totaling 599 acres, located in the Towns of Brooklyn and Canterbury (“Project Site”) that have been secured through a combination of lease and option to purchase agreements. Quinebaug Solar proposes to develop 227 acres (the “Development Area”). The proposed Development Area is comprised of an efficient Project footprint that results in the lowest level of impact and alteration necessary while still meeting the Project purpose and need.³

The Project Site is generally bounded by Wauregan Road to the south (Canterbury), Blackwell Brook and Cold Spring Brook to the west, Rukstela Road, Allen Hill Road and forested areas to the north (Brooklyn) and the Quinebaug River to the east. The Project Site consists of gently sloping hills, large level areas, and a few moderately to steeply sloping areas that currently

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contain a combination of previously developed areas, overgrown former pasture lands, mixed second-growth woodlands, active gravel mines, and agricultural fields.

B. The Project

The proposed Project is an approximately 50 MW AC fixed-tilt solar PV energy system that will consist of solar modules, inverters, a collector substation, site roads, fencing, buried collection and transmission lines, as well as stormwater management features. The Project will interconnect and deliver energy to the ISO-New England grid at Eversource's Canterbury Switching Station Substation via a line originating from the Project's collector substation, which will be situated adjacent to the Switching Station. Quinebaug Solar will design, construct, own, and maintain the collector substation up to the point of change of ownership located on the collector substation's bus leading to the Eversource switching station ring bus.⁴

The PPAs provide that the energy generated from the Project will be delivered to electric distribution companies in Connecticut, Massachusetts and Rhode Island. In addition to commitments to supply energy, Quinebaug Solar has also participated in the ISO-New England Forward Capacity Market, seeking to supply capacity. On February 3, 2020, as part of Forward Capacity Auction 14, Quinebaug Solar obtained a Capacity Supply Obligation,⁵ which will help ensure that the New England power system will have sufficient resources to meet the future demand for electricity.

Quinebaug Solar will install solar PV modules in linear arrays oriented generally east-west across the Development Area. Arrays will face south and be tilted at approximately 18 degrees.⁶ Each array will consist of modules mounted on fixed vertical posts that will be installed using a pile driver or drill. The Project is proposed to be constructed using a phased approach in order to minimize potential construction-period stormwater impacts. Tree clearing and other pre-construction activities are anticipated to commence in the fourth quarter of 2020. Further site work and land preparation is expected to be complete by the end of the 2nd quarter of 2021. Final Project Site

⁴ Petition, Section 3.8, Electrical Interconnection.

⁵ See Testimony of Mr. DeVarona, Continued Evidentiary Hearing Transcript, Pages 146, 192-194 (February 4, 2020).

⁶ Petition, Section 3.4, Project Description – Modules and Racking.

stabilization, testing, and commissioning is expected to be complete in the Construction is anticipated to conclude in the third quarter of 2021.⁷ Project phasing and construction-period stormwater controls will be installed in accordance with the DEEP General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (“Stormwater General Permit”).

During operation, the Project will be remotely monitored and Quinebaug Solar staff and/or its authorized subcontractors will perform site maintenance and inspections pursuant to the Operations and Maintenance Plan.⁸ At the end of its anticipated 30-year life, Quinebaug Solar will decommission the Project by removing all system components and rehabilitating the Project Site to pre-construction conditions, thereby allowing agricultural uses to resume or forest habitats to regenerate.⁹

C. Public Benefit

Special Session Public Act 05-1, *An Act Concerning Energy Independence*, portions of which were codified in Connecticut General Statutes (“Conn. Gen. Stat.”) § 16-50k, established a rebuttable presumption that there is a public benefit for electric generating facilities selected in RFPs. As the Project was selected in a competitive DEEP RFP, it is presumed to have a public benefit.

In addition, the Project will help foster Connecticut’s goal to develop “renewable energy resources, such as solar and wind energy, to the maximum practicable extent” pursuant to Conn. Gen. Stat. § 16a-35k. Connecticut’s 2018 Comprehensive Energy Strategy states that “over the next thirty years, Connecticut will need to procure more carbon-free power to meet the Global Warming Solutions Act goals of reducing emissions by 80 percent from 2001 levels by 2050.”¹⁰ Quinebaug

⁷ Petition Section 3.5, Construction Schedule and Phasing.

⁸ Petition, Exhibit H, Operations and Maintenance Plan.

⁹ Petition, Exhibit L, Decommissioning Plan.

¹⁰ 2018 Comprehensive Energy Strategy, *available at* https://www.ct.gov/deep/lib/deep/energy/ces/2018_comprehensive_energy_strategy.pdf, Page 28.

Solar will also help the State meet its commitments under the Connecticut Renewable Portfolio Standard to source 40% of its electricity supply from Class I renewable energy sources by 2030.¹¹

Finally, while Quinebaug Solar has undertaken the risk to develop the Project, Connecticut ratepayers will receive significant benefits. One hundred percent of the costs of this project are borne by Quinebaug Solar, and thus all liabilities are borne by Quinebaug Solar.¹² At the conclusion of the Tri-State RFP process, the DEEP Commissioner found the selected projects, including Quinebaug Solar, were in the best interest of Connecticut ratepayers.¹³ During regulatory review of the Tri-State RFP PPAs, including the PPAs related to Quinebaug Solar, DEEP estimated the total forecasted monetary benefits to Connecticut ratepayers would be approximately \$330,000,000.¹⁴ As a result, the Project provides a significant public benefit to the State of Connecticut.

III. LEGAL STANDARD

Pursuant to Conn. Gen. Stat. §§ 16-50k(a) and 4-176(a), and 16-50j-38 *et seq.* of the Regulations of Connecticut State Agencies (“RCSA”), Quinebaug Solar has requested that the Council issue a declaratory ruling that no Certificate is required for the construction, maintenance and operation of the Project. Conn. Gen. Stat. § 16-50k(a) provides:

Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling . . . (B) the construction or location of any . . . grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as: (i) Such project meets air and water quality standards of the Department of Environmental Protection . . .

Conn. Gen. Stat. §§ 16-50k and 4-176 and RCSA § 16-50j-38 *et seq.* provides the Council with authority to approve a petition for declaratory ruling so long as the facility will not have a substantial environmental impact and therefore would not require a Certificate. The Council has

¹¹ Conn. Gen. Stat. § 16-245a(a)(25).

¹² See Testimony of Mr. Mathur, Continued Evidentiary Hearing Transcript, Page 132 (February 4, 2020).

¹³ See Final Decision, PURA Docket 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements, Page 4; see also PURA Docket 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements, DEEP Response to PURA Interrogatory RE-24 (August 25, 2017).

¹⁴ *Id.*; see also PURA Docket 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements, DEEP Final Determination Letter, Page 11 (June 27, 2017).

previously indicated that, in determining whether a facility has a substantial environmental impact, the Council must consider the criteria laid out in Conn. Gen. Stat. § 16-50p, which includes the consideration of:

[t]he nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether along or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife.¹⁵

However, this additional review is specifically limited by the language of section 16-50k, which states that approval shall be granted “[n]otwithstanding the provisions of this chapter or title 16a,” so long as the air and water quality standards of the DEEP are met. The Connecticut Supreme Court has recognized and affirmed the scope of the Council’s jurisdiction under Conn. Gen. Stat. §§ 16-50k and 4-176(a) and its authority pursuant thereto.¹⁶

IV. ARGUMENT

A. The Project meets the criteria for approval by Petition for Declaratory Ruling pursuant to Conn. Gen. Stat. § 16-50k(a)

The Project is a “grid-side distributed resources” facility, as defined in Conn. Gen. Stat. § 16-1(a)(43), because the Project involves “the generation of electricity from a unit with a rating of not more than sixty-five megawatts that is connected to the transmission or distribution system” The record confirms that the Project complies with DEEP air and water quality standards as further discussed below. The language of section 16-50k is equally clear and unambiguous: so long as a grid-side distributed generation project of 65 megawatts or less meets the air and water quality standards of DEEP, the Council shall grant approval of that project by declaratory ruling. Thus, approval of the Project is appropriate under Conn. Gen. Stat. § 16-50k(a). Finally, even if a heightened standard of review is applied to this Petition as discussed above, the record is clear that the Project will not have a substantial environmental impact. Therefore, the Petition must be granted.

¹⁵ Conn. Gen. Stat. § 16-50p(3)(B).

¹⁶ See *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 677-685, 99 A.3d 1038 (2014).

B. The Project as proposed will meet applicable DEEP air and water quality standards

1. Air Quality

The Project will produce minimal emissions of regulated air pollutants and greenhouse gases during construction and no air permit will be required during operation. During construction of the Project, any air emission effects will be temporary, and will be controlled by enacting appropriate mitigation measures (e.g., water for dust abatement and limiting the idling of construction vehicles). Any potential air effects as a result of the Project construction activities will be *de minimis*.

During operation, the Project will not produce air emissions of regulated air pollutants or greenhouse gases (e.g., PM₁₀, PM_{2.5}, volatile organic compounds or ozone), and no air permit will be required. Pursuant to DEEP recommendations, Quinebaug Solar will make reasonable efforts to use regionally available off-road construction equipment that meets the latest U.S. Environmental Protection Agency or California Air Resources Board standards for diesel emissions, as applicable.¹⁷ Quinebaug Solar will further employ industry best practices where possible, including the best available controls on diesel emissions in addition to the use of ultra-low sulfur fuel in an effort to further reduce exhaust emissions during construction. In addition, the Project represents an opportunity for significant emissions reductions in greenhouse gases compared to traditional gas-fired generation.¹⁸ As a result, the Project will not have an adverse impact on air quality.

2. Water Quality

The Project layout has been significantly modified from the original proposal in Petition 1310. As a result, no impacts to surrounding water quality are expected. The Project layout, including the designated herpetofauna protection area, will sufficiently protect the water resources found in the Development Area. Additional water quality protection measures, including monitoring of erosion prone areas, will ensure the proper stormwater controls are in place. These protection

¹⁷ Petition, Section 6.3, Air Quality.

¹⁸ See Petition Exhibit L, Greenhouse Gas Assessment.

measures will ensure that water quality of adjacent watercourses, particularly Blackwell Brook and Cold Spring Brook, are maintained.¹⁹

The Project will not require a dedicated water supply during operation, nor will it require water for the production of energy. Water to be used for dust abatement or module cleaning, if necessary, will be brought to the site. Any water utilized during construction will be minimal and have no impact on the water quality in the vicinity. In addition, no impacts to groundwater quality are anticipated. Thus, no impacts on area water quality or supply are expected during the construction or operation of the Project.

C. The Project will not have an adverse environmental effect

1. Natural Environment and Ecological Balance

The Petitioner conducted comprehensive environmental assessments during the Project's development between 2016 and 2019 which informed the Project's final design, including a northern long-eared bat (*Myotis septentrionalis*) survey, general herpetological survey, eastern spadefoot toad (*Scaphiopus holbrookii*) survey and monitoring, vernal pool survey, and wetland and water course delineations. The Project has been redesigned to avoid and minimize natural resource impacts to the greatest extent practicable, and maximize use of existing cleared and disturbed areas in accordance with permitting guidelines and federal and state regulations.²⁰

Clearing and localized grading activities will be required to prepare the Development Area to support the proposed Project. The Petitioner will utilize existing grades to minimize earthwork where possible. Approximately 71 acres of tree clearing is necessary to construct the Project.²¹ The Petitioner will minimize herbicide use through targeted spot treatments, as needed, and implement environmentally responsible, best management practices (e.g., avoiding application prior to a rain

¹⁹ Petition, Section 6.12, Endangered, Threatened, and Special Concern Species.

²⁰ See Petition, Section 6.16, Avoidance, Minimization and Mitigation Measures.

²¹ Petition, Section, 3.4, Project Description – Vegetation Management.

event).²² In addition, as part of the Project's operation and maintenance activities, the Petitioner will monitor and manage invasive plants at the site.²³

2. Stormwater Management

The Project's stormwater design will manage stormwater runoff and minimize soil movement in order to avoid impacting water quality. The construction and operation of the Project as proposed will not lead to an increased volume or rate of stormwater flow. The Project has been designed in conformance with the DEEP September 2017 Stormwater Management at Solar Farm Construction Projects guidance, and will comply with the 2004 Connecticut Stormwater Quality Manual for both Water Quality and Recharge and the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control.²⁴ Quinebaug Solar will submit a Stormwater Pollution Control Plan for DEEP's review and approval in accordance with the Stormwater General Permit.²⁵

3. Wildlife

The Project as proposed incorporates a number of mitigation measures, including: fencing with a six-inch gap at the bottom to allow for passage of wildlife, cultivation of meadow habitat beneath the solar array, and use of low-impact vegetation management practices. Field surveys for threatened, endangered, and species of special concern were conducted at the Project Site starting in 2016, and continued through 2018 and 2019. These surveys included revised wetland and watercourse delineations, a general herpetological survey, vernal pool surveys, eastern spadefoot toad (*Scaphiopus holbrookii*) surveys, northern long-eared bat presence/absence surveys.²⁶

The results of the environmental surveys informed a complete redesign of the Project layout, including a reduction in the proposed Development Area from 270 acres to 227 acres. These modifications build on the most current regional best practices and include expanded wetland and

²² Petition Section 3.6, Operations and Maintenance.

²³ Petition Exhibit H, Operations and Maintenance Plan.

²⁴ Petition, Section 6.14, Water Quality – Stormwater. DEEP updated the Stormwater Management at Solar Farm Construction Projects guidance in January 2020, after the filing of the instant Petition.

²⁵ See Testimony of Mr. Huntley, Evidentiary Hearing Transcript, Page 66 (January 14, 2020).

²⁶ See Petition Exhibit D, Environmental Reports.

watercourse buffers and setbacks, a herpetofauna protection area, and vernal pool directional buffers. Generally, Quinebaug Solar plans to maintain buffers around all wetlands at a minimum of 100 feet, except in limited circumstances where they occur in the vicinity of existing gravel roads, or in areas that have been heavily impacted by agricultural activities.²⁷

The Petitioner has prepared a comprehensive Avoidance and Mitigation Plan that will minimize impacts to wildlife habitat identified on the Project Site. During the two years of on-the-ground species-specific surveys, three eastern spadefoot toad individuals (*Scaphiopus holbrookii*) were observed on site, and no suitable breeding habitat was identified.²⁸ Nevertheless, in recognition of this important species and other herpetofauna, the Quinebaug Solar Avoidance and Management Plan builds on ecological best practices and proposes a 38-acre herpetofauna protection area.²⁹ Additionally, the proposed construction sequencing plan, and operational practices will be implemented to avoid and minimize adverse impacts to wildlife, including sensitive herpetofauna; water quality, vernal pools, wetlands and watercourses. Quinebaug Solar will develop and implement an environmental monitoring plan that will be prepared and/or reviewed by the biologists and natural resource scientists who conducted field studies at the Project Site. Training of construction and operation personnel, combined with consistent monitoring throughout the construction process will allow for real-time adjustments to be made to ensure protection of natural resources. This comprehensive Avoidance and Mitigation Plan is informed by ecological expertise, site-specific surveys and will serve as a guide to the protection of sensitive species and natural resources at the Project Site.

²⁷ See Testimony of Ms. Nickerson, Evidentiary Hearing Transcript, Page 72 (January 14, 2020); see also Late-Filed Exhibit D.

²⁸ While the eastern spadefoot toad (*Scaphiopus holbrookii*) does not engage in regular breeding cycles, following the conclusion of the Quinebaug Solar site-specific surveys, expert ecologists compared other known eastern spadefoot localities to check for regional activity at three known breeding pools in the towns of Plainfield, Lisbon, and North Stonington. Confirming the presence/absence of spadefoot activity at other sites provides further evidence that the site-specific surveys were conducted during conditions when eastern spadefoot toads are likely to be emerged from their burrows. See Petition Exhibit D, Eastern Spadefoot Toad Survey, Page 5-6 (March 2019).

²⁹ Petition Exhibit D, Environmental Site Conditions Report – Executive Summary, Page ES-2 (April 2019).

Quinebaug Solar has been engaged with DEEP Wildlife Division staff regarding the redesigned project since 2019, including regular in-person expert discussions, telephone conferences and correspondence.³⁰ An Environmental Site Conditions Report was prepared and submitted to NDDB with a request for determination on April 23, 2019. Supplements to the original Environmental Site Conditions report were provided to NDDB on May 30, 2019, August 28, 2019, and January 17, 2020. The Petitioner has provided DEEP NDDB the cumulative results of all field studies completed for the Project as well as the site-specific avoidance and mitigation strategies that will be employed to protect natural resources and sensitive species known to occur or that have the potential to occur on the Project Site. The Petitioner continues to discuss the ultimate resolution of the project with DEEP NDDB, and will continue to update the Council on its discussions, including through any Development and Management Plan, should the Council so require.

D. The Project will not adversely impact historic resources or health and safety

1. Public Health and Safety

The Project will meet or exceed applicable industry, federal, state, and local safety codes and standards, including the National Fire Protection Association, and will not pose a safety concern or create undue hazard to the general public.³¹ Quinebaug Solar will meet with and train first responders as to best prepare for a potential emergency event. The Petitioner's remote monitoring and operations capabilities include the ability to perform real-time equipment diagnostics and remotely shut down all or parts of the facility if needed.

2. Scenic and Historic Values

The Project as proposed will produce minimal reflectivity and glare.³² Visual impacts have been mitigated, as immediate foreground threshold views into the Project Site are limited due to existing or proposed vegetative screening as well as topography. Moreover, the Project will not produce significant noise during operation, and will operate well below the noise limits prescribed by

³⁰ See Petition, Exhibit M, Public Outreach Information.

³¹ Petition Section 6.1, Public Health and Safety.

³² See Petition, Section 6.3, Federal Aviation Administration Determination; *see also* Exhibit P – FAA Correspondence.

Connecticut noise control regulations and the Towns of Brooklyn and Canterbury Code of Ordinances.³³

Finally, the State Historic Preservation Office (“SHPO”) indicates that they concur with the findings and recommendations of the Petitioner’s Phase 1A and 1B Cultural Resources Surveys and Report. “If all of the recommendations can be taken into consideration, SHPO is of the opinion that the project will have no adverse effect on historic properties”³⁴ Accordingly, the Project will not impact any historical, cultural or archeological resources.

V. CONCLUSION

The evidence in the record establishes that the Project will meet DEEP air and water quality standards, provides significant benefits to the Towns of Brooklyn and Canterbury as well as the State of Connecticut and will not have a substantial adverse environmental effect. Accordingly, Quinebaug Solar respectfully submits that the Council must issue a declaratory ruling approving the Petition based on the record in the above-referenced proceeding.

Respectfully submitted,

QUINEBAUG SOLAR, LLC



By: _____

David W. Bogan, Esq.
Kathryn E. Boucher, Esq.
Locke Lord LLP
20 Church Street
Hartford, CT 06103
david.bogan@lockelord.com
kathryn.boucher@lockelord.com
(860) 541-7711
(860) 541-7714

Its Attorneys

³³ See Conn. Gen. Stat. § 22a-67 *et seq.* and RCSA §§ 22a-69-1 through 22a-69-7.4

³⁴ See Correspondence from SHPO (January 9, 2020).

CERTIFICATION

I hereby certify that on March 5, 2020, the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, to all parties and intervenors of record, as follows:

Troy and Meghan Sposato
192 Wauregan Road
Canterbury, CT 06331
megsposato@yahoo.com
tsposato9@yahoo.com

Kathleen M. Shanley
Manager – Transmission Siting
Eversource Energy
P.O. Box 270
Hartford, CT 06141-0270
kathleen.shanley@eversource.com

Jeffery D. Cochran
Senior Counsel
Eversource Energy
P.O. Box 270
Hartford, CT 06141-0270
jeffery.cochran@eversource.com

Marianne Barbino Dubuque
Carmody Torrance Sandak & Hennessey LLP
P.O. Box 1110
Waterbury, CT 06721-1110
mdubuque@carmodylaw.com



Kathryn E. Boucher

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The proposed Project is an approximately 50 MW AC fixed-tilt solar PV energy system that will consist of solar modules, inverters, a collector substation, site roads, fencing, buried collection and transmission lines, as well as stormwater management features. The Project will interconnect and deliver energy to the ISO-New England grid at Eversource's Canterbury Switching Station Substation via a line originating from the Project's collector substation, which will be situated adjacent to the Switching Station. Quinebaug Solar will design, construct, own, and maintain the collector substation up to the point of change of ownership located on the collector substation's bus leading to the Eversource switching station ring bus.⁴

The PPAs provide that the energy generated from the Project will be delivered to electric distribution companies in Connecticut, Massachusetts and Rhode Island. In addition to commitments to supply energy, Quinebaug Solar has also participated in the ISO-New England Forward Capacity Market, seeking to supply capacity. On February 3, 2020, as part of Forward Capacity Auction 14, Quinebaug Solar obtained a Capacity Supply Obligation,⁵ which will help ensure that the New England power system will have sufficient resources to meet the future demand for electricity.

Quinebaug Solar will install solar PV modules in linear arrays oriented generally east-west across the Development Area. Arrays will face south and be tilted at approximately 18 degrees.⁶ Each array will consist of modules mounted on fixed vertical posts that will be installed using a pile driver or drill. The Project is proposed to be constructed using a phased approach in order to minimize potential construction-period stormwater impacts. Tree clearing and other pre-construction activities are anticipated to commence in the fourth quarter of 2020. Further site work and land preparation is expected to be complete by the end of the 2nd quarter of 2021. Final Project Site

⁴ Petition, Section 3.8, Electrical Interconnection.

⁵ See Testimony of Mr. DeVarona, Continued Evidentiary Hearing Transcript, Pages 146, 192-194 (February 4, 2020).

⁶ Petition, Section 3.4, Project Description – Modules and Racking.

stabilization, testing, and commissioning is expected to be complete in the Construction is anticipated to conclude in the third quarter of 2021.⁷ Project phasing and construction-period stormwater controls will be installed in accordance with the DEEP General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (“Stormwater General Permit”).

During operation, the Project will be remotely monitored and Quinebaug Solar staff and/or its authorized subcontractors will perform site maintenance and inspections pursuant to the Operations and Maintenance Plan.⁸ At the end of its anticipated 30-year life, Quinebaug Solar will decommission the Project by removing all system components and rehabilitating the Project Site to pre-construction conditions, thereby allowing agricultural uses to resume or forest habitats to regenerate.⁹

C. Public Benefit

Special Session Public Act 05-1, *An Act Concerning Energy Independence*, portions of which were codified in Connecticut General Statutes (“Conn. Gen. Stat.”) § 16-50k, established a rebuttable presumption that there is a public benefit for electric generating facilities selected in RFPs. As the Project was selected in a competitive DEEP RFP, it is presumed to have a public benefit.

In addition, the Project will help foster Connecticut’s goal to develop “renewable energy resources, such as solar and wind energy, to the maximum practicable extent” pursuant to Conn. Gen. Stat. § 16a-35k. Connecticut’s 2018 Comprehensive Energy Strategy states that “over the next thirty years, Connecticut will need to procure more carbon-free power to meet the Global Warming Solutions Act goals of reducing emissions by 80 percent from 2001 levels by 2050.”¹⁰ Quinebaug

⁷ Petition Section 3.5, Construction Schedule and Phasing.

⁸ Petition, Exhibit H, Operations and Maintenance Plan.

⁹ Petition, Exhibit L, Decommissioning Plan.

¹⁰ 2018 Comprehensive Energy Strategy, *available at* https://www.ct.gov/deep/lib/deep/energy/ces/2018_comprehensive_energy_strategy.pdf, Page 28.

Solar will also help the State meet its commitments under the Connecticut Renewable Portfolio Standard to source 40% of its electricity supply from Class I renewable energy sources by 2030.¹¹

Finally, while Quinebaug Solar has undertaken the risk to develop the Project, Connecticut ratepayers will receive significant benefits. One hundred percent of the costs of this project are borne by Quinebaug Solar, and thus all liabilities are borne by Quinebaug Solar.¹² At the conclusion of the Tri-State RFP process, the DEEP Commissioner found the selected projects, including Quinebaug Solar, were in the best interest of Connecticut ratepayers.¹³ During regulatory review of the Tri-State RFP PPAs, including the PPAs related to Quinebaug Solar, DEEP estimated the total forecasted monetary benefits to Connecticut ratepayers would be approximately \$330,000,000.¹⁴ As a result, the Project provides a significant public benefit to the State of Connecticut.

III. LEGAL STANDARD

Pursuant to Conn. Gen. Stat. §§ 16-50k(a) and 4-176(a), and 16-50j-38 *et seq.* of the Regulations of Connecticut State Agencies (“RCSA”), Quinebaug Solar has requested that the Council issue a declaratory ruling that no Certificate is required for the construction, maintenance and operation of the Project. Conn. Gen. Stat. § 16-50k(a) provides:

Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling . . . (B) the construction or location of any . . . grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as: (i) Such project meets air and water quality standards of the Department of Environmental Protection . . .

Conn. Gen. Stat. §§ 16-50k and 4-176 and RCSA § 16-50j-38 *et seq.* provides the Council with authority to approve a petition for declaratory ruling so long as the facility will not have a substantial environmental impact and therefore would not require a Certificate. The Council has

¹¹ Conn. Gen. Stat. § 16-245a(a)(25).

¹² See Testimony of Mr. Mathur, Continued Evidentiary Hearing Transcript, Page 132 (February 4, 2020).

¹³ See Final Decision, PURA Docket 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements, Page 4; see also PURA Docket 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements, DEEP Response to PURA Interrogatory RE-24 (August 25, 2017).

¹⁴ *Id.*; see also PURA Docket 17-01-10, PURA Review of Public Act 15-107(c) Large-Scale Energy Resource Agreements, DEEP Final Determination Letter, Page 11 (June 27, 2017).

previously indicated that, in determining whether a facility has a substantial environmental impact, the Council must consider the criteria laid out in Conn. Gen. Stat. § 16-50p, which includes the consideration of:

[t]he nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether along or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife.¹⁵

However, this additional review is specifically limited by the language of section 16-50k, which states that approval shall be granted “[n]otwithstanding the provisions of this chapter or title 16a,” so long as the air and water quality standards of the DEEP are met. The Connecticut Supreme Court has recognized and affirmed the scope of the Council’s jurisdiction under Conn. Gen. Stat. §§ 16-50k and 4-176(a) and its authority pursuant thereto.¹⁶

IV. ARGUMENT

A. The Project meets the criteria for approval by Petition for Declaratory Ruling pursuant to Conn. Gen. Stat. § 16-50k(a)

The Project is a “grid-side distributed resources” facility, as defined in Conn. Gen. Stat. § 16-1(a)(43), because the Project involves “the generation of electricity from a unit with a rating of not more than sixty-five megawatts that is connected to the transmission or distribution system” The record confirms that the Project complies with DEEP air and water quality standards as further discussed below. The language of section 16-50k is equally clear and unambiguous: so long as a grid-side distributed generation project of 65 megawatts or less meets the air and water quality standards of DEEP, the Council shall grant approval of that project by declaratory ruling. Thus, approval of the Project is appropriate under Conn. Gen. Stat. § 16-50k(a). Finally, even if a heightened standard of review is applied to this Petition as discussed above, the record is clear that the Project will not have a substantial environmental impact. Therefore, the Petition must be granted.

¹⁵ Conn. Gen. Stat. § 16-50p(3)(B).

¹⁶ See *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 677-685, 99 A.3d 1038 (2014).

B. The Project as proposed will meet applicable DEEP air and water quality standards

1. Air Quality

The Project will produce minimal emissions of regulated air pollutants and greenhouse gases during construction and no air permit will be required during operation. During construction of the Project, any air emission effects will be temporary, and will be controlled by enacting appropriate mitigation measures (e.g., water for dust abatement and limiting the idling of construction vehicles). Any potential air effects as a result of the Project construction activities will be *de minimis*.

During operation, the Project will not produce air emissions of regulated air pollutants or greenhouse gases (e.g., PM₁₀, PM_{2.5}, volatile organic compounds or ozone), and no air permit will be required. Pursuant to DEEP recommendations, Quinebaug Solar will make reasonable efforts to use regionally available off-road construction equipment that meets the latest U.S. Environmental Protection Agency or California Air Resources Board standards for diesel emissions, as applicable.¹⁷ Quinebaug Solar will further employ industry best practices where possible, including the best available controls on diesel emissions in addition to the use of ultra-low sulfur fuel in an effort to further reduce exhaust emissions during construction. In addition, the Project represents an opportunity for significant emissions reductions in greenhouse gases compared to traditional gas-fired generation.¹⁸ As a result, the Project will not have an adverse impact on air quality.

2. Water Quality

The Project layout has been significantly modified from the original proposal in Petition 1310. As a result, no impacts to surrounding water quality are expected. The Project layout, including the designated herpetofauna protection area, will sufficiently protect the water resources found in the Development Area. Additional water quality protection measures, including monitoring of erosion prone areas, will ensure the proper stormwater controls are in place. These protection

¹⁷ Petition, Section 6.3, Air Quality.

¹⁸ See Petition Exhibit L, Greenhouse Gas Assessment.

measures will ensure that water quality of adjacent watercourses, particularly Blackwell Brook and Cold Spring Brook, are maintained.¹⁹

The Project will not require a dedicated water supply during operation, nor will it require water for the production of energy. Water to be used for dust abatement or module cleaning, if necessary, will be brought to the site. Any water utilized during construction will be minimal and have no impact on the water quality in the vicinity. In addition, no impacts to groundwater quality are anticipated. Thus, no impacts on area water quality or supply are expected during the construction or operation of the Project.

C. The Project will not have an adverse environmental effect

1. Natural Environment and Ecological Balance

The Petitioner conducted comprehensive environmental assessments during the Project's development between 2016 and 2019 which informed the Project's final design, including a northern long-eared bat (*Myotis septentrionalis*) survey, general herpetological survey, eastern spadefoot toad (*Scaphiopus holbrookii*) survey and monitoring, vernal pool survey, and wetland and water course delineations. The Project has been redesigned to avoid and minimize natural resource impacts to the greatest extent practicable, and maximize use of existing cleared and disturbed areas in accordance with permitting guidelines and federal and state regulations.²⁰

Clearing and localized grading activities will be required to prepare the Development Area to support the proposed Project. The Petitioner will utilize existing grades to minimize earthwork where possible. Approximately 71 acres of tree clearing is necessary to construct the Project.²¹ The Petitioner will minimize herbicide use through targeted spot treatments, as needed, and implement environmentally responsible, best management practices (e.g., avoiding application prior to a rain

¹⁹ Petition, Section 6.12, Endangered, Threatened, and Special Concern Species.

²⁰ See Petition, Section 6.16, Avoidance, Minimization and Mitigation Measures.

²¹ Petition, Section, 3.4, Project Description – Vegetation Management.

event).²² In addition, as part of the Project's operation and maintenance activities, the Petitioner will monitor and manage invasive plants at the site.²³

2. Stormwater Management

The Project's stormwater design will manage stormwater runoff and minimize soil movement in order to avoid impacting water quality. The construction and operation of the Project as proposed will not lead to an increased volume or rate of stormwater flow. The Project has been designed in conformance with the DEEP September 2017 Stormwater Management at Solar Farm Construction Projects guidance, and will comply with the 2004 Connecticut Stormwater Quality Manual for both Water Quality and Recharge and the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control.²⁴ Quinebaug Solar will submit a Stormwater Pollution Control Plan for DEEP's review and approval in accordance with the Stormwater General Permit.²⁵

3. Wildlife

The Project as proposed incorporates a number of mitigation measures, including: fencing with a six-inch gap at the bottom to allow for passage of wildlife, cultivation of meadow habitat beneath the solar array, and use of low-impact vegetation management practices. Field surveys for threatened, endangered, and species of special concern were conducted at the Project Site starting in 2016, and continued through 2018 and 2019. These surveys included revised wetland and watercourse delineations, a general herpetological survey, vernal pool surveys, eastern spadefoot toad (*Scaphiopus holbrookii*) surveys, northern long-eared bat presence/absence surveys.²⁶

The results of the environmental surveys informed a complete redesign of the Project layout, including a reduction in the proposed Development Area from 270 acres to 227 acres. These modifications build on the most current regional best practices and include expanded wetland and

²² Petition Section 3.6, Operations and Maintenance.

²³ Petition Exhibit H, Operations and Maintenance Plan.

²⁴ Petition, Section 6.14, Water Quality – Stormwater. DEEP updated the Stormwater Management at Solar Farm Construction Projects guidance in January 2020, after the filing of the instant Petition.

²⁵ See Testimony of Mr. Huntley, Evidentiary Hearing Transcript, Page 66 (January 14, 2020).

²⁶ See Petition Exhibit D, Environmental Reports.

watercourse buffers and setbacks, a herpetofauna protection area, and vernal pool directional buffers. Generally, Quinebaug Solar plans to maintain buffers around all wetlands at a minimum of 100 feet, except in limited circumstances where they occur in the vicinity of existing gravel roads, or in areas that have been heavily impacted by agricultural activities.²⁷

The Petitioner has prepared a comprehensive Avoidance and Mitigation Plan that will minimize impacts to wildlife habitat identified on the Project Site. During the two years of on-the-ground species-specific surveys, three eastern spadefoot toad individuals (*Scaphiopus holbrookii*) were observed on site, and no suitable breeding habitat was identified.²⁸ Nevertheless, in recognition of this important species and other herpetofauna, the Quinebaug Solar Avoidance and Management Plan builds on ecological best practices and proposes a 38-acre herpetofauna protection area.²⁹ Additionally, the proposed construction sequencing plan, and operational practices will be implemented to avoid and minimize adverse impacts to wildlife, including sensitive herpetofauna; water quality, vernal pools, wetlands and watercourses. Quinebaug Solar will develop and implement an environmental monitoring plan that will be prepared and/or reviewed by the biologists and natural resource scientists who conducted field studies at the Project Site. Training of construction and operation personnel, combined with consistent monitoring throughout the construction process will allow for real-time adjustments to be made to ensure protection of natural resources. This comprehensive Avoidance and Mitigation Plan is informed by ecological expertise, site-specific surveys and will serve as a guide to the protection of sensitive species and natural resources at the Project Site.

²⁷ See Testimony of Ms. Nickerson, Evidentiary Hearing Transcript, Page 72 (January 14, 2020); see also Late-Filed Exhibit D.

²⁸ While the eastern spadefoot toad (*Scaphiopus holbrookii*) does not engage in regular breeding cycles, following the conclusion of the Quinebaug Solar site-specific surveys, expert ecologists compared other known eastern spadefoot localities to check for regional activity at three known breeding pools in the towns of Plainfield, Lisbon, and North Stonington. Confirming the presence/absence of spadefoot activity at other sites provides further evidence that the site-specific surveys were conducted during conditions when eastern spadefoot toads are likely to be emerged from their burrows. See Petition Exhibit D, Eastern Spadefoot Toad Survey, Page 5-6 (March 2019).

²⁹ Petition Exhibit D, Environmental Site Conditions Report – Executive Summary, Page ES-2 (April 2019).

Quinebaug Solar has been engaged with DEEP Wildlife Division staff regarding the redesigned project since 2019, including regular in-person expert discussions, telephone conferences and correspondence.³⁰ An Environmental Site Conditions Report was prepared and submitted to NDDB with a request for determination on April 23, 2019. Supplements to the original Environmental Site Conditions report were provided to NDDB on May 30, 2019, August 28, 2019, and January 17, 2020. The Petitioner has provided DEEP NDDB the cumulative results of all field studies completed for the Project as well as the site-specific avoidance and mitigation strategies that will be employed to protect natural resources and sensitive species known to occur or that have the potential to occur on the Project Site. The Petitioner continues to discuss the ultimate resolution of the project with DEEP NDDB, and will continue to update the Council on its discussions, including through any Development and Management Plan, should the Council so require.

D. The Project will not adversely impact historic resources or health and safety

1. Public Health and Safety

The Project will meet or exceed applicable industry, federal, state, and local safety codes and standards, including the National Fire Protection Association, and will not pose a safety concern or create undue hazard to the general public.³¹ Quinebaug Solar will meet with and train first responders as to best prepare for a potential emergency event. The Petitioner's remote monitoring and operations capabilities include the ability to perform real-time equipment diagnostics and remotely shut down all or parts of the facility if needed.

2. Scenic and Historic Values

The Project as proposed will produce minimal reflectivity and glare.³² Visual impacts have been mitigated, as immediate foreground threshold views into the Project Site are limited due to existing or proposed vegetative screening as well as topography. Moreover, the Project will not produce significant noise during operation, and will operate well below the noise limits prescribed by

³⁰ See Petition, Exhibit M, Public Outreach Information.

³¹ Petition Section 6.1, Public Health and Safety.

³² See Petition, Section 6.3, Federal Aviation Administration Determination; *see also* Exhibit P – FAA Correspondence.

Connecticut noise control regulations and the Towns of Brooklyn and Canterbury Code of Ordinances.³³

Finally, the State Historic Preservation Office (“SHPO”) indicates that they concur with the findings and recommendations of the Petitioner’s Phase 1A and 1B Cultural Resources Surveys and Report. “If all of the recommendations can be taken into consideration, SHPO is of the opinion that the project will have no adverse effect on historic properties”³⁴ Accordingly, the Project will not impact any historical, cultural or archeological resources.

V. CONCLUSION

The evidence in the record establishes that the Project will meet DEEP air and water quality standards, provides significant benefits to the Towns of Brooklyn and Canterbury as well as the State of Connecticut and will not have a substantial adverse environmental effect. Accordingly, Quinebaug Solar respectfully submits that the Council must issue a declaratory ruling approving the Petition based on the record in the above-referenced proceeding.

Respectfully submitted,

QUINEBAUG SOLAR, LLC



By: _____

David W. Bogan, Esq.
Kathryn E. Boucher, Esq.
Locke Lord LLP
20 Church Street
Hartford, CT 06103
david.bogan@lockelord.com
kathryn.boucher@lockelord.com
(860) 541-7711
(860) 541-7714

Its Attorneys

³³ See Conn. Gen. Stat. § 22a-67 *et seq.* and RCSA §§ 22a-69-1 through 22a-69-7.4

³⁴ See Correspondence from SHPO (January 9, 2020).

CERTIFICATION

I hereby certify that on March 5, 2020, the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, to all parties and intervenors of record, as follows:

Troy and Meghan Sposato
192 Wauregan Road
Canterbury, CT 06331
megsposato@yahoo.com
tsposato9@yahoo.com

Kathleen M. Shanley
Manager – Transmission Siting
Eversource Energy
P.O. Box 270
Hartford, CT 06141-0270
kathleen.shanley@eversource.com

Jeffery D. Cochran
Senior Counsel
Eversource Energy
P.O. Box 270
Hartford, CT 06141-0270
jeffery.cochran@eversource.com

Marianne Barbino Dubuque
Carmody Torrance Sandak & Hennessey LLP
P.O. Box 1110
Waterbury, CT 06721-1110
mdubuque@carmodylaw.com



Kathryn E. Boucher