

January 28, 2020

VIA E-MAIL and HAND DELIVERY

Attorney Melanie Bachman
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: **PETITION NO. 1310A** – Quinebaug Solar, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required 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

Dear Attorney Bachman:

On behalf of The Connecticut Light and Power Company d/b/a Eversource Energy (“Eversource”), in accordance with the Siting Council’s Procedures for Filing Proprietary Information Under Protective Order (Procedures), I submit with this letter Eversource’s Response to CSC Interrogatory #8, together with a Motion for Protective Order and the required supporting documentation.

As required by the Procedures, one copy of the document listed above has been placed in a sealed envelope bearing the document’s descriptive title and labeled “CONFIDENTIAL – CEII **Subject to Non-Disclosure Agreement and Protective Order** - Connecticut Siting Council Petition No. 1310A Confidential Filing Submitted By The Connecticut Light and Power Company Doing Business As Eversource Energy January 28, 2020 Eversource’s Response to CSC Interrogatory #8. This envelope is not to be opened and the contents to be displayed or revealed except pursuant to the pertinent Protective Order issued in Petition No. 1310A.”

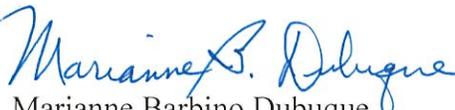
As further required by the Procedures, I enclose an original and 15 copies of this letter and the following documents in consecutive order:

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- a. A Motion for Protective Order and a Memorandum of Law describing the legal standards upon which the motion is based;
- b. An affidavit of Jacob E. Lucas stating specifically why the information should be protected;
- c. A proposed Protective Order for signature by the Presiding Officer;
- d. A proposed Non-Disclosure Agreement for signature by requesters of the proprietary information; and
- e. A proposed Request for Information for completion by persons seeking access to the proprietary information.

Very truly yours,


Marianne Barbino Dubuque

MBD/mkw
Enclosures

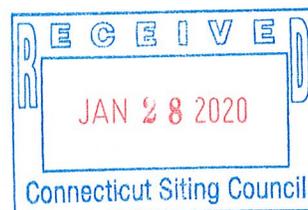
cc: (with copies of encls. (a) – (e)): CSC Service List dated January 15, 2020

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	<input checked="" type="checkbox"/> E-mail	Quinebaug Solar, LLC	<p>David W. Bogan, Esq. Locke Lord LLP 20 Church Street Hartford, CT 06103 Phone: (860) 541-7711 Fax: (866) 877-2145 david.bogan@lockelord.com</p> <p>Kathryn E. Boucher, Esq. Locke Lord LLP 20 Church Street, 20th Floor Hartford, CT 06103 Phone: (860) 541-7714 kathryn.boucher@lockelord.com</p> <p>Hagen Lee Quinebaug Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard, E5E/JB Juno Beach, FL 33408 Phone: (561) 694-4012 hagen.lee@nexteraenergy.com</p>
Party (Approved 9/19/17)	<input checked="" type="checkbox"/> E-mail	Troy and Meghan Sposato 192 Wauregan Road Canterbury, CT 06331 megsposato@yahoo.com tsposato9@yahoo.com	
Party (Approved 1/2/20)	<input checked="" type="checkbox"/> E-mail	The Connecticut Light and Power Company d/b/a Eversource Energy	<p>Marianne Barbino Dubuque, Esq. Carmody Torrance Sandak Hennessey LLP 50 Leavenworth Street P.O. Box 1110 Waterbury, CT 06702 Phone: (203) 578-4218 MDubuque@carmodylaw.com</p> <p>Kathleen M. Shanley Manager-Transmission Siting Eversource Energy P.O. Box 270 Hartford, CT 06141-0270 Phone: (860) 728-4527 Kathleen.shanley@eversource.com</p>

			Jeffery D. Cochran Senior Counsel Eversource Energy P.O. Box 270 Hartford, CT 06141-0270 Phone: (860) 665-3548 jeffery.cochran@eversource.com

CONNECTICUT SITING COUNCIL



PETITION NO. 1310A – Quinebaug Solar, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required 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

PETITION NO. 1310A

ORIGINAL

January 28, 2020

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

The Connecticut Light and Power Company doing business as Eversource Energy (“Eversource”) hereby respectfully submits this Memorandum in support of its Motion for Protective Order (the “Motion”) filed on even date herewith, seeking to protect from public disclosure certain sensitive, critical energy infrastructure information (“CEII”) submitted as Eversource’s Response to CSC Interrogatory #8 in this proceeding.

I. BACKGROUND

The Motion filed in connection with this memorandum seeks protection for documents that contain CEII. CEII is defined by the Federal Energy Regulatory Commission (“FERC”) as:

Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:

1. Relates details about the production, generation, transportation, transmission, or distribution of energy;
2. Could be useful to a person in planning an attack on critical infrastructure;
3. Is exempt from mandatory disclosure under the [Federal] Freedom of Information Act; and
4. Does not simply give the general location of the critical infrastructure.

18 CFR § 388.113(c)(1). In turn, “critical infrastructure” is defined as:

Existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

18 CFR § 388.113(c)(2).

The information disclosed in Eversource’s Response to CSC Interrogatory #8 relates to Eversource’s transmission network. That system qualifies as “critical energy infrastructure.” This information would identify specific weaknesses and vulnerabilities of portions of the system. Such information could be useful to a person planning an attack on critical infrastructure because it discloses these specific weaknesses and vulnerabilities.

A. FERC Protection of CEII

As historical background, concern regarding CEII arose after the terrorist attacks of September 11, 2001. In response to that event, the FERC implemented procedures to protect information submitted to it that contained CEII. In October 2001, FERC issued a Policy Statement whereby documents containing CEII that previously had been available to the public were removed from easy access. COMM-OPINION-ORDER, 97 FERC ¶61,130 (2001), Treatment of Previously Public Documents, 66 Fed. Reg. 52917 (Oct. 18, 2001), Docket No. PL02-1-000 (Oct. 11, 2001). In order to accomplish this goal quickly, FERC staff identified broad categories of documents that were likely to contain CEII, and removed them from public access. The public was directed to use the Freedom of Information Act (“Federal FOIA”) request procedure to obtain the information. *Id.* Over time, FERC determined that the Federal FOIA process was not well-suited for handling CEII requests, and that in addition, some parties have legitimate needs for CEII that would be exempt from disclosure under the Federal FOIA. 68 Fed. Reg. 9857 (March 3, 2003) (Supplementary Information to Order 630).

In response to these determinations, FERC subsequently issued a number of orders, resulting in the current version of 18 C.F.R. § 388.113(d), which sets forth detailed procedures that must be followed to obtain access to CEII. 18 C.F.R. § 388.113. Order 630, 68 Fed. Reg. 9870 (2003), as amended by Order 630-A, 68 Fed. Reg. 46460 (2003); Order 649, 69 Fed. Reg. 48391, (2004); Order 662, 70 Fed. Reg. 37036 (2005); Order 683, 71 Fed. Reg. 58273 (2006); Order 702, 72 Fed. Reg. 63985 (2007); Order 769, 77 Fed. Reg. 65477 (2012). These procedures include investigations as to the identity of the party requesting the information, whether the party has a legitimate or valid need for the information, whether the party poses a security risk or the request should be denied for other reasons, as well as procedures for ensuring that certain requesters sign non-disclosure agreements. See 18 C.F.R. § 388.113(d).

In its Order 890, ¶ 404, 72 Fed. Reg. 12266 (issued February 16, 2007), FERC made Transmission Owners such as Eversource responsible for identifying CEII and developing a standard disclosure procedure to facilitate access to it by appropriate entities, which may include a non-disclosure agreement. As set forth in Part C below, Eversource has complied with that directive, and has filed the Motion pursuant to that CEII policy.

B. ISO-NE protection of CEII

Significantly, following FERC's lead, ISO-New England Inc. ("ISO-NE"), the entity charged with responsibility for the planning of the New England Bulk Power Supply system, has also adopted CEII restrictions. For instance, with respect to ISO-NE's Planning Advisory Committee, planning-related materials that are determined to be CEII are posted on ISO-NE's password protected website. Governmental employees and energy industry personnel¹ seeking

¹Industry personnel include authorized market participants or representatives and their consultants, state and federal governmental agency employees and their consultants, Personnel of the ERO, NPCC, other regional transmission organizations or independent system operators, and transmission owners from neighboring regions. Appendix 1 to Attachment K, subsec. 2.4(d).

to obtain access to CEII material must take certain steps, as applicable, that include contacting ISO-NE's Customer Service department, signing non-disclosure agreements and complying with governing agreements, rules and protocols. For CEII filed with FERC, ISO-NE policy states that non-governmental or energy industry personnel may obtain access pursuant to the FERC CEII procedures. For CEII not filed with FERC, the requestor must comply with ISO-NE's CEII procedures, which are similar to the FERC procedures. ISO-NE FERC Electric Tariff No. 3, Transmission, Markets, and Services Tariff, Attachment D (Information Policy), Section II, Open Access Transmission Tariff, Attachment K, Regional System Planning Process, Appendix 1 – Attachment K – Local: Local System Planning Process, Section 2 (Planning Advisory Committee), subsection 2.4 (d) (Access to Planning-Related Materials that Contain CEII) (eff. Dec. 10, 2019) <http://www.iso-ne.com/participate/rules-procedures/tariff/oatt>.

C. Transmission Owners' Adoption of CEII Policies

In response to Order 890, the New England public utilities that own electric transmission assets, known as the New England Participating Transmission Owners ("PTOs"), adopted rules for the disclosure of CEII, which are posted on the Eversource website. See, https://www.eversource.com/content/docs/default-source/Transmission/pto_ceii_procedure.pdf Similar to ISO-NE's procedures for CEII, CEII is password restricted. Upon written request to the New England PTO CEII Coordinator, passwords are issued for access to CEII after execution of a non-disclosure agreement and "upon satisfaction that the disclosure is consistent with FERC policy, FERC regulations, including CEII regulations, and any other applicable law." In furtherance of the FERC, ISO-NE, and New England Transmission Owners' policies, Eversource has also adopted CEII guidelines that are consistent with all of the CEII disclosure procedures

described above. Eversource, Administrative Procedure, Procedures for Handling CEII Materials and Information M2-TP-2007, Rev. 0, Effective Date: 05/20/2019.

The Council's CEII Policy

Recognizing the policies discussed above, the Council has adopted its Procedures for the Protection of CEII, which are published on its website. The Procedures incorporate FERC's definition of CEII and provide for the protection Eversource now seeks. Pursuant to the Procedures, the Council grants protective orders such as that sought here in appropriate cases. *See, e.g.,* Protective Orders approved in Dockets 370A, 424, 468 and 474.

II. DISCUSSION

The information in Eversource's Response to CSC Interrogatory #8, for which the Motion seeks protection, could be useful to a person planning an attack on critical infrastructure and does more than simply provide the general location of critical infrastructure. Moreover, consistent with the definition of CEII, the Confidential Information is exempt from mandatory disclosure under the Connecticut Freedom of Information Act (C.G.S. § 1-200 *et seq.*) ("CT FOIA").²

In particular, the Confidential Information is exempt under C.G.S. § 1-210(b)(19) of the CT FOIA, which exempts records when there are reasonable grounds to believe that its disclosure may result in a safety risk to any facility of a public service company.³

² Since the CEII definition is contained in a rule of a federal agency subject to the Federal FOIA, it refers to the Federal FOIA. However, the Siting Council, as a Connecticut State Agency, is subject to the CT FOIA.

³ "As used in this section, 'government-owned or leased institution or facility' includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1..." with certain exceptions. Such exceptions do not apply to Eversource. "Such records include, but are not limited to:

(i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;

Eversource's Response to CSC Interrogatory #8 submitted herewith, contains CEII, the disclosure of which may result in a significant safety risk for the general public and Eversource's facilities. Maintaining security for such sensitive information is the goal of the detailed CEII protections established by FERC, ISO-NE, the New England PTOs and Eversource, and recognized in the CT FOIA. Eversource respectfully requests that the Council grant its request for a Protective Order with respect to this information.

Respectfully submitted,
THE CONNECTICUT LIGHT AND POWER
COMPANY DOING BUSINESS AS
EVERSOURCE ENERGY

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Its Attorney

cc: Service List dated January 15, 2020

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
(v) Internal security audits of government-owned or leased institutions or facilities;
(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
(vii) Logs or other documents that contain information on the movement or assignment of security personnel; and
(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official." C.G.S. §1-210(b)(19).