



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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VIA ELECTRONIC MAIL

May 26, 2020

Daniel E. Casagrande, Esq.
Cramer & Anderson LLP
30 Main Street, Suite 204
Danbury, CT 06810

RE: **PETITION NO. 1312** - Candlewood Solar LLC Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 20 megawatt AC (26.5 megawatt DC) solar photovoltaic electric generating facility located on a 163 acre parcel at 197 Candlewood Mountain Road and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road in New Milford, Connecticut.

Dear Attorney Casagrande:

The Connecticut Siting Council (Council) is in receipt of Rescue Candlewood Mountain (RCM) and the Town of New Milford's (Town) May 19, 2020 request for an extension or waiver of Regulations of Connecticut State Agencies (RCSA) §16-50j-60(d) (Request).

Similar to the Town's February 28, 2019 Petition for a Declaratory Ruling (Petition 1362) for a Council determination that Candlewood Solar's (CS) Development and Management Plan (D&M Plan) conflicts and/or is inconsistent with the Council's December 21, 2017 final decision on Petition 1312 (Declaratory Ruling), the subject Request is separated into two parts:

1. **The Request seeks extension or waiver of the following provisions of RCSA §16-50j-60(d):**
 - a. The Council shall approve, modify, or disapprove each section of the D&M Plan not later than 60 days after receipt of it; and
 - b. If the Council does not act to approve, modify, or disapprove the D&M Plan or a section thereof within 60 days after receipt of it, the D&M Plan shall be deemed approved.

Specifically, RCM and the Town seek an extension or waiver of both provisions "until at least sixty (60) days after the Department of Energy and Environmental Protection (DEEP) decides whether to issue an individual permit for the project and that the Council schedule and hold a public hearing on the Revised D&M Plan within that period if an individual permit is issued."

2. **If the Council declines to grant the extension and/or waiver sought above, the Town and RCM alternatively request that:**
 - a. they be given sixty (60) days from the date of any Council ruling on this request to submit comments on the Revised D&M Plan; and
 - b. when and if DEEP issues an individual permit for the project, that they be given an additional period of thirty (30) days following issuance of such an individual permit to submit comments on any Revised D&M Plan Candlewood Solar thereafter submits to the Council.

Or, if the Council denies the extension and/or waiver sought above, the Town and RCM request that the Council disapprove the D&M Plan Revisions for reasons recited within DEEP's General Permit disapproval decision and its accompanying technical memorandum.

The record reflects that on December 21, 2017, the Council issued the Declaratory Ruling to CS for construction, maintenance and operation of the solar electric generating facility. Condition 1 of the Declaratory Ruling required CS to prepare a D&M Plan to be provided to the service list for comment and submitted to and approved by the Council prior to the commencement of facility construction. RCM filed an appeal of the Council's Declaratory Ruling in Superior Court.

On January 28, 2019, CS provided its D&M Plan to the service list for comment and submitted it to the Council for approval in compliance with Condition 1 of the Declaratory Ruling. On February 28, 2019, in lieu of submitting comments on the D&M Plan, the Town submitted Petition 1362. It was denied.¹ The Town filed an appeal of the Council's final decision in Superior Court.

On April 25, 2019, the Council approved CS's D&M Plan with the following conditions:

1. Pursuant to RCSA §16-50j-62, submit the **applicable revisions** including, but not limited to, the solar array layout, clearing limits, fence design and stormwater management plan prior to commencement of construction; and
2. Submit a copy of the DEEP General Permit (Stormwater Permit) and DEEP-approved stormwater management plan prior to commencement of construction. (Emphasis added)

On April 13, 2020, CS submitted the applicable revisions to its approved D&M Plan in compliance with Condition 1 of the April 25, 2019 D&M Plan approval. On April 27, 2020, in lieu of submitting comments on the applicable revisions, RCM and the Town submitted a Motion for Stay of Construction Activities.² On May 15, 2020, the Motion for Stay of Construction Activities was withdrawn without prejudice. On May 19, 2020, RCM and the Town submitted this Request.

The request for an extension or waiver of RCSA §16-50j-60(d) is denied. With regard to the extension or waiver, the record is clear that the revised project plans approved by the Council in the Declaratory Ruling necessitate a modified stormwater design.³ The Council reiterated this necessity in its June 6, 2019 Opinion for the Court-Ordered Remand Regarding Visibility, which states, "Any changes to the stormwater management plans in the DEEP General Permit application process that result in a project redesign would be submitted to the Council as D&M Plan revisions."⁴

Connecticut General Statutes (CGS) §22a-430 and 22a-430b *independently* require DEEP Stormwater Permit approval, regardless of any action taken by the Council.⁵ Condition 2 of the April 25, 2019 D&M Plan approval requires CS to submit a copy of a DEEP Stormwater Permit and DEEP-approved stormwater management plan prior to commencement of construction. There is no timeline or deadline for compliance with Condition 2.

With regard to a public hearing on the D&M Plan Revisions, **a D&M Plan is not the subject of a proceeding.** It is a condition of a final decision in a proceeding that must be met in order to commence

¹ Petition 1362, Declaratory Ruling, *available at*

https://www.ct.gov/csc/lib/csc/pending_petitions/3_petition_1301through1400/pe1362/pe1362-20190426-dcltr.pdf

² On April 21, 2020, RCM and the Town submitted a Motion for Stay to the Superior Court in their pending appeal.

³ Petition 1312, Finding of Fact ¶196; Opinion at page 9, *available at*

https://www.ct.gov/csc/lib/csc/pending_petitions/3_petition_1301through1400/pe1312candlewoodsolar/remand/remanddecdocs/pe1312-remand-decisionpackage1.pdf

⁴ Petition 1312, Court Ordered Remand Regarding Visibility Opinion at page 10, *available at*,

https://www.ct.gov/csc/lib/csc/pending_petitions/3_petition_1301through1400/pe1312candlewoodsolar/remand/remanddecdocs/pe1312-remand-decisionpackage1.pdf; See also pages 54 and 73 for corrections to the statements

attributed to Presiding Officer Silvestri on page 2 of the Request.

⁵ Petition 1362, Declaratory Ruling, *supra* note 1.

facility construction. **A DEEP Stormwater Permit may be the subject of a proceeding.** “In her discretion, the DEEP Commissioner may hold a public hearing prior to approving or denying any Stormwater Permit application.⁶ RCM and the Town may file an appeal of DEEP’s decision on CS’s Stormwater Permit in Superior Court.

The request for an extension to comment is mooted in part and denied in part. The request for the 60-day extension from the date of the ruling on this Request is rendered moot by Governor Lamont’s Executive Order No. 7M (EO) that extends all statutory and regulatory administrative deadlines for a period not to exceed 90 days. The RCSA §16-50j-60(d) 60-day deadline for approval, modification or disapproval of the D&M Plan Revisions would be June 12, 2020 without the EO extension. The deadline for approval, modification or disapproval of the D&M Plan Revisions is **September 10, 2020** with the EO extension. This is 47 days later than the requested extension.

The request for an additional 30 day extension to submit comments on D&M Plan Revisions that *may be submitted* in the future *when and if* DEEP issues a Stormwater Permit is denied. Condition 1 of the Council’s Declaratory Ruling and RCSA §16-50j-61(d) require CS to provide the service list with notice of **any** D&M Plan Revisions for comment. Requests for extensions of time to comment may be submitted in the future when and if D&M Plan Revisions are provided.

The request for disapproval of the D&M Plan Revisions for reasons recited within DEEP’s General Permit disapproval decision and its accompanying technical memorandum is denied. CGS §22a-430 and 22a-430b *independently* require DEEP Stormwater Permit approval, regardless of any action taken by the Council.

Please be advised that any voluntary withdrawal, in whole or in part, of CS’s April 13, 2020 D&M Plan Revisions would have no effect on the denial of this Request.

Thank you.

Sincerely,

s/Melanie A. Bachman

Melanie A. Bachman
Executive Director

MAB/MP/lf

c: Parties and Intervenors
Council Members

⁶ Conn. Gen. Stat. §22a-430 (2019).