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April 11, 2023

VIA ELECTRONIC MAIL & FIRST CLASS MAIL

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

Re: Petition No. 1339: Wallingford Renewable Energy 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 19.99 MW AC ground-mounted solar photovoltaic electric generating facility located on approximately 158 acres of 3 contiguous parcels consisting of the former Wallingford Landfill and 2 parcels owned by the Materials Innovation and Recycling Authority west of Pent Road and associated electrical interconnection to Wallingford Electric Division's Wallingford Substation in Wallingford, Connecticut

Dear Ms. Bachman:

On behalf of the petitioner, Wallingford Renewable Energy, LLC ("Wallingford") enclosed please find an original and 15 copies of Wallingford's Final Report, as required by Conn. Agencies Reg. § 16-50j-62(c).¹

¹ By letter dated February 24, 2023, the Council was informed that Wallingford's ownership had been transferred from Lendlease Energy Development, LLC to DG LF Portfolio 2020, LLC ("DG 2020"), an indirect subsidiary of NextEra Energy Resources, LLC.

Conn. Agencies Reg. § 16-50j-62(c) states that the "facility owner or operator shall provide the Council with a final report for the facility not later than 180 days after completion of all site construction and site rehabilitation. The Council's April 3, 2018 decision approving Wallingford's petition further provided that the Council be notified in writing that construction had been completed within 45 days after completion of construction. See, Ltr. From M. Bachman to L. Hoffman at Condition No. 4. DG 2020 recently learned that the final report required by the regulation and the decision had not been provided to the Council. Accordingly, DG 2020 respectfully moves the Council for a waiver of these requirements, for good cause shown.

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Because the Report contains financial information representing “trade secrets” as defined in Conn. Gen. Stat. § 1-210(b) and Conn. Agencies Regs. §§ 16-50j-22a(d)(1) and 16-50j-62(d), it is filed on a confidential basis subject to the enclosed Motion for Protective Order.

Please feel free to contact me should you have any questions or require additional information.

Very truly yours,



David W. Bogan

DWB/
Enclosures

PETITION NO. 1339 – Wallingford Renewable Energy 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 19.99 MW AC ground-mounted solar photovoltaic electric generating facility located on approximately 158 acres of 3 contiguous parcels consisting of the former Wallingford Landfill and 2 parcels owned by the Materials Innovation and Recycling Authority west of Pent Road and associated electrical interconnection to Wallingford Electric Division’s Wallingford Substation in Wallingford, Connecticut

*Connecticut
Siting
Council*

April 11, 2023

MOTION FOR PROTECTIVE ORDER

Wallingford Renewable Energy, LLC (“Wallingford” or the “Petitioner”) respectfully moves the Connecticut Siting Council (the “Council”) for a Protective Order to ensure that confidential financial information provided by Wallingford in its Final Report, as required by Conn. Agencies Regs. § 16-50j-62(c) for the above-referenced project, is protected from public disclosure, in accordance with Conn. Gen. Stat. § 1-210(b) and Conn. Agencies Regs. §§ 16-50j-22a(d)(1) and 16-50j-62(d).

Pursuant to Conn. Gen. Stat. § 1-210(b), the Council is authorized to protect from public disclosure “trade secrets,” which for purposes of the Freedom of Information Act are defined as information, including compilations and cost data “that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Conn. Gen. Stat. § 1-210(b)(5)(A); Conn. Gen. Stat. § 35-51(d). The Council is also authorized to protect from public disclosure “[c]ommercial and financial information given in confidence, not required by statute.” Conn. Gen. Stat. § 1-210(b)(5)(B); See, Department of Public Utilities v. Freedom of Information Comm’n, 29 Conn. L. Rptr. 215, 2001 WL 79833, at *3 (Conn. Super. Ct. January 12,

2001); see also *Chief of Staff v. Freedom of Information Comm'n*, 25 Conn. L. Rptr. 270, 1999 WL 643373, at *2-3 (Conn. Super. Ct. August 12, 1999).

Wallingford is seeking protective treatment of the construction costs of the above-referenced facility. Specifically, the cost of site clearing and access, construction and associated equipment, site rehabilitation, and property acquisition for or access to the project site (the “Confidential Information”).

The Confidential Information is financial information that is commercially valuable and market-sensitive and not publicly available. Public disclosure of the Confidential Information would give competitors insight into the Wallingford’s internal costs and would allow competitors to extrapolate information about Wallingford’s, and its corporate parent’s, internal finances and business strategies. Hence, the Confidential Information derives actual and potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, persons who can obtain economic value from its disclosure and use. Therefore, any disclosure of the Confidential Information would detrimentally and irreparably harm Wallingford’s business interest and place in the competitive market. For that reason, Wallingford, and its corporate parent, have historically vigorously protected the Confidential Information, and would not make such information available absent the regulatory requirements of Conn. Agencies Regs. § 16-50j-62(c). Additionally, only those employees who require such information to perform their duties are given access to the Confidential Information.

Neither federal law nor Connecticut statutes require that Wallingford submit the Confidential Information and/or require the Confidential Information to be filed in the public record. In fact, the Council’s regulations expressly allows “certificate holder, or facility owner or operator, [to] file a motion for a protective order pertaining to commercial or financial information related to the site or

access to the site.” Conn. Agencies Regs. § 16-50j-62(d). In prior proceedings, the Council has protected such proprietary cost information from public disclosure. See Petition Nos. 1150, 1181, 1192, Tesla Energy Operations, Inc., Council Decisions on Motion for Protective Order (July 19, 2018); see also Petition No. 1352, Nutmeg Solar, Council Decision on Motion for Protective Order (January 17, 2019).

Attached to this Motion is the Affidavit of Timothy Garcia, Senior Business Manager, NextEra Energy Resources, LLC, who oversees operations for Wallingford, attesting to the need for protective treatment for the Confidential Information.

For the reasons described above, the Confidential Information qualifies as both a trade secret and as commercial financial information given in confidence, not required by statute, and therefore should be exempt from disclosure. Wallingford requests the Council grant this request for protective treatment consistent with the attached Protective Order.

Respectfully Submitted,
WALLINGFORD RENEWABLE ENERGY,
LLC



By _____
David W. Bogan, Esq.
Day Pitney, LLP
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Hartford, CT 06103
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Its Attorney

PETITION NO. 1339 – Wallingford Renewable Energy 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 19.99 MW AC ground-mounted solar photovoltaic electric generating facility located on approximately 158 acres of 3 contiguous parcels consisting of the former Wallingford Landfill and 2 parcels owned by the Materials Innovation and Recycling Authority west of Pent Road and associated electrical interconnection to Wallingford Electric Division’s Wallingford Substation in Wallingford, Connecticut

*Connecticut
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Council*

PROTECTIVE ORDER CONCERNING WALLINGFORD RENEWABLE ENERGY, LLC’S PROVISION OF CONFIDENTIAL COMMERCIAL AND FINANCIAL INFORMATION

WHEREAS, Wallingford Renewable Energy, LLC (the “Company”) has been required to provide the Connecticut Siting Council (the “Council”) with certain cost information related to the construction of the above-referenced facility (the “Confidential Information”) that would result in the disclosure of commercially valuable financial information that is given in confidence and not required by statute to be filed in the public record, and/or which information the Company contends constitutes a trade secret within the meaning of Connecticut General Statutes § 1-210(b)(5);

NOW, THEREFORE, it is hereby ordered, that the following procedures are adopted for the protection of the Confidential Information provided by the Company:

1. All Confidential Information provided by the Company, whether in documentary form or otherwise, shall be identified as follows: “Wallingford Renewable Energy, LLC Confidential Cost Information”, and will be governed by the terms of this Order. This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies, or otherwise.

2. All Confidential Information made available pursuant to this Order shall be given to Members and staff of the Council, upon execution of the Acknowledgment referenced

below (each a “Signatory” and collectively, the “Signatories”). Any parties to Petition No. 1339 will separately be provided the Confidential Information upon (i) consent of the Company and (ii) execution of the Nondisclosure Agreement in the form attached hereto as Exhibit 1 (each also a “Signatory” and collectively, the “Signatories”).

3. Upon execution of the Nondisclosure Agreement, Confidential Information will be marked as such and delivered in sealed envelopes to the Council. A statement in the following form shall be placed prominently on each envelope:

CONFIDENTIAL-PROPRIETARY - PETITION NO. 1339

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the pertinent Protective Order issued in Petition No. 1339.

4. Any Confidential Information made available pursuant to this Order shall be part of the record in the docket cited above, subject to the same relevancy and other evidentiary considerations as non-confidential information and subject to the conditions stated in Paragraphs Five and Six of this Order.

5. If the Confidential Information is used in any manner in any interrogatory, letter, petition, brief or other writing (each a “Document”), all reference to the Confidential Information in the Document shall be either:

- (a) in a separate document, prominently labeled “Proprietary Information”, which document shall be safeguarded in accordance with the Order and distributed only to Members and staff of the Council, and to Signatories; or
- (b) solely by title or exhibit reference in a manner reasonably calculated not to disclose the Confidential Information.

6. If the Confidential Information is used in any manner in any Council proceeding or during the course of a public hearing before the Council (a “Hearing”), the Hearing shall not be held before, nor any record of it made available to, any party or other

person or entity not a Signatory, other than the appropriate representatives of the Council. No record shall be disclosed, nor any communication made, of use of the Confidential Information in the Hearing to any person or entity not a Signatory, Member of the Council or Council staff. Any transcript or other recording of the Hearing that relates to the Confidential Information shall be placed in sealed envelopes or containers and a statement in the following form shall be placed prominently on such envelope or container:

CONFIDENTIAL-PROPRIETARY - PETITION NO. 1339

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the pertinent Protective Order issued in Petition No. 1339.

7. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this Council proceeding or at any hearing or trial. Further, nothing herein shall be considered a waiver of any party's right to assert at a later date that the Confidential Information is or is not proprietary or privileged. A party seeking to change the terms of this Order shall by motion give every other party five (5) business days' prior written notice. No information protected by this Order shall be made public until the Council rules on any such motion to change the terms of this Order. Confidential Information otherwise properly discovered, even though also subject to the terms of this Order, shall not be considered protected by this Order.

8. All copies of such Confidential Information shall be returned to the Company no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding

CONNECTICUT SITING COUNCIL

By: _____

Title:

Dated:

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order, and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from Wallingford Renewable Energy, LLC.

RECIPIENT: _____

REPRESENTING:

DATE:

RECIPIENT: _____

REPRESENTING:

DATE:

RECIPIENT: _____

REPRESENTING:

DATE:

RECIPIENT: _____

REPRESENTING:

DATE:

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

EXHIBIT 1

**PETITION NO. 1339
WALLINGFORD RENEWABLE ENERGY, LLC**

NONDISCLOSURE AGREEMENT

Wallingford Renewable Energy, LLC (the “Company”) agrees to make available to _____ (“Recipient”) confidential and proprietary information filed in Connecticut Siting Council Petition No. 1339 (“Confidential Information”) subject to restrictions stated herein.

1. Any information provided to Recipient and labeled “Confidential Information” by the Company shall be Confidential Information subject to this Nondisclosure Agreement.
2. The Confidential Information is received by Recipient in confidence.
3. The Confidential Information shall not be used or disclosed by the Recipient except in accordance with the terms contained herein and in the Connecticut Siting Council’s Protective Order in Petition No. 1339.
4. Only individuals, and not entities, may be Recipients of Confidential Information under this paragraph. The Recipient must be an attorney or independent expert witness for a party in this Council proceeding. The Recipient acknowledges that he/she now represents or in the future may represent competitors or potential competitors of the Company and that disclosure of confidential and proprietary information of the Company to competitors or use of such information for the benefit of competitors of the Company could adversely affect the Company and its customers. By executing this Nondisclosure Agreement, each Recipient certifies that he/she meets the requirements of this paragraph.
5. The following conditions shall apply to each Recipient:
 - a) Each Recipient shall receive one (1) numbered, controlled copy of the Confidential Information. The Recipient shall not make any copies thereof or provide the Confidential Information to any individual or entity.
 - b) The Recipient shall maintain a log of all persons granted access to the Confidential Information.
 - c) The Recipient, by signing this Nondisclosure Agreement acknowledges that he/she may not in any manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the benefit of any person

except in this Council proceeding and in accordance with the terms of the Protective Order.

- d) The Recipient acknowledges that any violation of this Nondisclosure Agreement may subject the Recipient to civil actions for violation hereof. Additionally, any Recipient who is an attorney acknowledges his/her ethical obligations under the Rules of Professional Conduct to abide by this Nondisclosure Agreement and to handle properly confidential information that is subject to a protective order.
- e) Within thirty (30) days of the final decision in this Proceeding, Recipient shall return the Confidential Information to the Company.

RECIPIENT: _____
DATE: _____