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April 22, 2021

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

Re: Petition 1406 and Petition 1406A

Dear Ms. Bachman:

NuPower Bridgeport FC, LLC ("NuPower") hereby submits to the Connecticut Siting Council ("Council") its Opposition to a Request by Joseph R. Provey for Intervenor Status.

Given that the Council has waived all hard copy filing requirements as part of its response to the COVID-19 pandemic, by this letter, NuPower submits to the Council an electronic copy of its Opposition. A hard copy of the Opposition will be mailed to the Council.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,



Bruce L. McDermott

Enclosure

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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Doosan Fuel Cell America, Inc. Petition for a Declaratory Ruling, Pursuant to Connecticut Conn. Gen. Stat. §4-176 and §16-50k, for the Proposed Construction, Maintenance and Operation of a Grid-side 9.66-Megawatt Fuel Cell Facility and Associated Equipment to be Located at 600 Iranistan Avenue, Bridgeport, Connecticut, and Associated Electrical Interconnection to The United Illuminating Company's Existing Congress Street Substation	:	Petition 1406
	:	
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	:	
	:	April 22, 2021

Opposition of NuPower Bridgeport FC, LLC to Request by
Joseph R. Provey for Intervenor Status

The petitioner, NuPower Bridgeport FC, LLC (“NuPower”), hereby opposes the request of Joseph R. Provey (“Provey”) for intervenor status dated March 2, 2021 (the “Request”) on the grounds that Provey cannot meet the statutory requirements for intervenor status required by Connecticut General Statutes (“Conn. Gen. Stat.”) § 4-177a¹ and/or Conn. Gen. Stat. § 22a-19.² Specifically, Provey’s Request (1) fails to factually

¹ While Provey also cites to a third statutory provision, Conn. Gen. Stat. § 16-50n, as authority for his Request, this section expressly incorporates the same standard set forth in Conn. Gen. Stat. § 4-177a: “The council may permit any person to participate as an intervenor, *in accordance with the provisions of section 4-177a*, in a certification or amendment proceeding or a declaratory ruling proceeding.” Conn. Gen. Stat. § 16-50n(b) (emphasis added). Accordingly, NuPower does not address this section separately from its Conn. Gen. Stat. § 4-177a analysis.

² On April 10, 2021, Provey amended his intervenor request “to include CT Gen Stat § 16-258e (2018).” Conn. Gen. Stat. §16-258e does not provide a grounds for a party to obtain intervenor status and therefore will not be addressed in this Opposition.

demonstrate that his participation is in the interests of justice and will not impair the orderly conduct of the proceedings as required by Conn. Gen. Stat. § 4-177a(b), and (2) fails to satisfy Conn. Gen. Stat. §22a-19's verified pleading requirements by failing to state specific factual allegations of environmental harm. Accordingly, the Connecticut Siting Council (the "Council") should not afford Provey intervenor status under any of these provisions.

I. BACKGROUND

On May 11, 2020, Doosan Fuel Cell America, Inc. filed a petition for a declaratory ruling for the proposed construction, maintenance, and operation of a grid-side 9.66-megawatt fuel cell facility and associated equipment to be located at 600 Iranistan Avenue, Bridgeport, Connecticut, and associated electrical interconnection to The United Illuminating Company's existing Congress Street Substation (the "Project"). On December 18, 2020, the Council voted to deny without prejudice. On March 31, 2021, NuPower filed its petition (the "Petition") with the Council and a Motion to Reopen and Modify Petition 1406 was filed with the Council on April 7, 2021.

Significantly, on March 2, 2021, 29 days *before* NuPower had even filed its Petition, Provey filed his Request, seeking to act as an intervenor in the Council proceedings in his capacity as a representative of the board of directors for Seaside Village, Inc., a co-operative housing development of 600 residents in Bridgeport. NuPower opposes that Request for all of the reasons set forth herein.

II. LEGAL STANDARD

Conn. Gen. Stat. § 4-177a(b) provides that a presiding officer over an administrative proceeding "may grant any person status as an intervenor in a contested

case if that officer finds that: (1) Such person has submitted a written petition to the agency and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings."

In turn, Conn. Gen. Stat. § 22a-19 provides that "[i]n any administrative, licensing or other proceeding, and in any judicial review thereof made available by law . . . any person, partnership, corporation, association, organization or other legal entity may intervene as a party on the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of *unreasonably* polluting, impairing or destroying the public trust in the air, water or other natural resources of the state." Conn. Gen. Stat. § 22a-19(a)(1) (emphasis added). Importantly, the verified pleading must "contain *specific* factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates an issue within the reviewing authority's jurisdiction." Conn. Gen. Stat. § 22a-19(a)(2) (emphasis added). "A [verified pleading] does not sufficiently allege standing by merely reciting the provisions of § [22a-19], but must set forth facts to support an inference that unreasonable pollution, impairment or destruction of a natural resource will probably result from the challenged activities unless remedial measures are taken." *Finley v. Inland Wetlands Commission*, 289 Conn. 12, 35 (2008). Moreover, the requirement to allege a sufficient factual predicate comports with the pleading standards of the Practice Book, which requires a pleading to contain the material facts upon which

the pleader relies. *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 164 (2002); Practice Book § 10-1.

III. ARGUMENT

A. Provey's Request Fails to Demonstrate that His Participation is in the Interests of Justice and will not Impair the Orderly Conduct of the Proceedings Pursuant to Conn. Gen. Stat. § 4-177a(b).

First, Provey's Request does not satisfy the requirements of Conn. Gen. Stat. § 4-177a(b)(2) because it does not state facts demonstrating that his participation is in the interests of justice and will not impair the orderly conduct of the proceedings in this matter.

As a practical matter—and in a significant omission—the Request does not provide any necessary background information as to where Seaside Village is located in relation to the site of NuPower's proposed fuel cell facility and equipment. While a residential property owner whose land abuts the area at issue may have a strong argument for being deemed an intervenor "in the interests of justice," with regard to Provey and Seaside Village, this is simply not the case. Rather, Provey lives down the street from the Project, a location which requires traversing Iranistan Avenue for some ways, including under a large I-95 highway overpass, in order to reach. In fact, as set forth at length in NuPower's Petition, there are no residential properties that abut the proposed site, which parcel measures only .51 acres total; is zoned Light Industrial by the City of Bridgeport; and is surrounded to the North by the Metro North rail line, to the South by I-95, and to the West by Iranistan Avenue. Moreover, the site cannot be seen or heard from the location of the Seaside Village housing development.

Given the relative distance of Seaside Village from the proposed fuel cell site and the nature of the use for the site, it is difficult to ascertain what “interests of justice” Provey’s participation in the proceedings would serve. Nor does Provey attempt to set forth facts to support such an argument. Rather, the Request vaguely references his intent to “introduce a number of reasons why the NuPower/Doosan fuel cell tower proposed site location will be detrimental to [the] health, safety, and wellbeing of Seaside Village residents” without actually stating those alleged reasons. See Request, p. 1. Similarly, Provey broadly claims on the last page of his Request that he believes “the installation of a large fuel cell tower will undermine [Seaside Village’s] historic and culture value, and affect the well-being of its residents,” without setting forth any facts to support these generalities. *Id.* at 3. to the extent Provey briefly mentions concerns about “pollution” and “greenhouse gas emissions” in his Request, it bears emphasizing that the proposal is for fuel cell technology, which serves as a *clean, renewable energy source* that will ultimately bring environmental benefits to the state. See *also* Section III.B, *infra*.

For these reasons, Provey’s Request fails to demonstrate that his participation as an intervenor would be in the interests of justice. Likewise, Provey’s participation would impair the conduct of the proceedings by raising irrelevant issues that go beyond the scope of the Petition and would only aim to distract. Accordingly, the Request does not satisfy the intervenor requirements of Conn Gen. Stat. § 4-177a.

B. Provey’s Request Fails to Satisfy the Verified Pleading Requirements Under Conn. Gen. Stat. § 22a-19.

Next, Provey’s Request does not comport with the pleading requirements established by Conn. Gen. Stat. § 22a-19 and Practice Book § 10-1. It is skeletal at best. In fact, most—if not all—of the allegations do not even relate to environmental issues

within the purview of Conn. Gen. Stat. § 22a-19. Other than asserting vague claims related to the fuel cell tower being “detrimental to [the] health, safety and wellbeing of Seaside Village residents,” the only sentence in the Request that might come close to encompassing an environmental issue related to the destruction of a natural resource as required by Conn. Gen. Stat. § 22a-19 is the following: “A former editor of several national science and building design magazines, I [Provey] am able to understand the pros and cons of fuel cells, the effect of greenhouse gas emissions, and the impact to our urban landscape.” See Request, p. 1. However, this allegation is deficient under Conn. Gen. Stat. § 22a-19 for several reasons. First, this allegation merely describes Provey’s background. It does not affirmatively assert that NuPower, as the petitioner in this action, is engaging in any wrongful conduct involving any of the environmental issues encompassed by the statute. Second, this allegation does not contain *specific* factual allegations setting forth the nature of any wrongful conduct. Rather, it simply strings together general references to “fuel cells” and “greenhouse gas emissions” in the same sentence, without setting forth any cohesive, material facts to support an inference that such pollution will probably result from the challenged fuel cell activities unless remedial measures are taken. See *Finley*, 289 Conn. at 35. Third, and perhaps most significantly, this allegation does not sufficiently claim that NuPower’s construction, maintenance, and operation of the fuel cell would *unreasonably* pollute, impair, or destroy “natural resources” of the state. Nor could Provey make such an argument in good faith given the very nature and purpose of fuel cells, which are aimed at serving as an

environmentally-friendly alternative to conventional fossil fuels (as outlined at length in NuPower's Petition).³

In Connecticut, the General Assembly has listed fuel cells as a Class I renewable energy source in the state pursuant to Conn. Gen. Stat. § 16-1(a)(20), (21), and (38). This is because a fuel cell converts the chemical energy of fuels such as hydrogen into electricity in a more efficient way that results in lower air emissions and noise levels than traditional combustion technologies. See Comments of the National Fuel Cell Research Center in PURA Docket No. 19-08-17, *Petition by Allco Renewable Energy Limited & Vineyard Sky LLC for Declaratory Rulings Related to the Low and Zero Emissions Renewable Energy Credit Program*, at 2. Additionally, fuel cell projects can be configured to capture waste heat and reuse it, thereby increasing the overall efficiency of the unit, or use the captured heat on fuel burning units on site. *Id.* at 3. Accordingly, fuel cells generate electricity that is cleaner than the grid electricity they displace, resulting in reduced greenhouse gas emissions in commercial, industrial, multi-unit residential buildings, and other facilities. *Id.* For these reasons and more, the United Nations District Energy Initiative has identified district energy systems, which distribute thermal energy created through sources such as fuel cell technology, as the “best practice approach to providing a local, affordable and low carbon energy supply.” UNITED NATIONS ENV'T PROGRAMME, DISTRICT ENERGY IN CITIES: UNLOCKING THE POTENTIAL OF ENERGY EFFICIENCY AND RENEWABLE ENERGY 3 (2015), available at http://www.districtenergyinitiative.org/sites/default/files/report_pdf/DE_Executive%20Su

³ Perhaps if Provey had waited to file his Request until *after* NuPower filed its Petition, he would have had the opportunity to thoroughly review those aspects of its Petition that address at length the lack of environmental impact of the proposed fuel cell installation.

mmary12pages_print2.pdf; see also Final Decision in PURA Docket No. 18-08-14, *PURA Review of the Combined Heat and Power Project Solicitation Pursuant to Conn. Gen. Stat. Section 16-258e*. Therefore, NuPower would urge that the irony of Provey's Request to intervene pursuant to the environmental provisions of Conn. Gen. Stat. § 22a-19 not be lost on this Council.

Accordingly, Provey's Request does not, and cannot, set forth specific facts to support that NuPower's proposed activities will result in unreasonable pollution, impairment, or destruction of a natural resource of this state, as required to constitute a verified pleading under Conn. Gen. Stat. § 22a-19.

IV. CONCLUSION

For the foregoing reasons, NuPower respectfully requests that the Council deny Provey's Request for Intervenor Status in its entirety.

Respectfully Submitted,

NUPOWER BRIDGEPORT FC, LLC



By: _____

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