

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

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| Doosan Fuel Cell America, Inc. Petition for a |) | |
| Declaratory Ruling, Pursuant to Connecticut Conn. Gen. |) | Petitions 1406 and 1406A |
| 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, |) | September 7, 2021 |
| Bridgeport, Connecticut |) | |

**ALLCO RENEWABLE ENERGY LIMITED’S MOTION TO COMPEL INTERROGATORY
RESPONSES FROM TO NUPOWER BRIDGEPORT FC LLC AND DOOSAN FUEL CELL
AMERICA, INC. AND MOTION TO STRIKE**

On July 28, 2021, Allco Renewable Energy Limited (“Allco”) propounded interrogatories to NuPower Bridgeport FC, LLC (“NuPower”) and Doosan Fuel Cell America, Inc. (“Doosan”) (collectively, the “Petitioner”). Many interrogatories Petitioner refused to answer on the basis that Allco’s intervention was limited to “potential impact on air, water or natural resources of the state” and the unanswered interrogatories did not relate “the Project’s potential impact on air, water or natural resources of the state.” Other interrogatory answers were non-responsive. Allco moves the Connecticut Siting Council for an order compelling the Petitioner to provide complete response to all Allco’s interrogatories. All of Allco’s interrogatories relate to environmental issues.

Petitioner claims at page 2 of its petition that “the construction, operation and maintenance of the Project satisfies the statutory elements of Conn. Gen. Stat. §16-50k(a) project [i.e., air and water quality] and will not have a substantial adverse environmental effect [which is also a statutory element under Conn. Gen. Stat. §16-50k(a)].” The Petitioner then states: “Accordingly, this Petition for a Declaratory Ruling should be approved by the Council.” The Petition then goes on make many claims that surely in Petitioner’s view are relevant to the inquiry just enunciated, which are all issues that are covered by party status under CGS § 22a-19. *See, e.g., Fairwindct, Inc. v. Conn. Siting Council*, 313 Conn. 669, 700 fn.35 (2014). Alternatively, Allco moves to strike all claims and assertions made by the Petitioner in the Petition of purported positive attributes of the Project that relate to interrogatories that were either

unanswered or to which a non-responsive answer was provided. The requested relief is necessitated by the Petitioner’s failure to timely respond to Allco’s discovery requests concerning critical issues in this proceeding, and is essential to Allco’s right of participation in this proceeding.

Tellingly, many of the questions that the Petitioner *did* answer confirm that the Petitioner conflates its political sway with the Legislature with scientific fact. The Petitioner’s responses claim that its natural gas fuel cell is a renewable energy source merely because fuel cells are classified as “Class I renewable energy resource” under CGS §16-1(20). But putting a label of “renewable energy” for purposes of the Connecticut electric distribution companies’ compliance with the RPS, does not change the science—Petitioner’s fuel cell is the problem, not the solution. The Petitioner’s sole reliance on that statutory RPS definition is Petitioner’s concession that it cannot rely on science, because as we know (even if the Petitioner does not) natural gas, and Projects like the Petitioner’s, are destroying the environment.

If West Virginia designated coal as part of their Class I renewables, it wouldn’t eliminate the adverse climate and health impacts from coal. The same is true with natural gas fuel cells in Connecticut.

Natural gas fuel cells are not “green” nor are they “clean.” Sure, they are “cleaner” than a coal-fired power plant (but not by much when fracking is accounted for), and they produce lower levels of certain toxic emissions than a mega-size natural-gas power plant, but they cannot be called “clean” or “green.” “A Clean natural gas fuel cell” is, like “clean coal”, an oxymoron.

Natural gas-fueled fuel cells may be the “Marlboro lights” of the fossil fuel industry, but smoking a couple of packs a day of Marlboro lights instead of Marlboros produces the same end result—they still kill you. Moreover, natural gas fuel cells contribute to the demand for natural gas, which in turn contributes to fracking and the release of methane into the atmosphere, which is more than 80 times worse than regular CO₂ emissions.

Natural gas fuels cells raise energy and health care costs for CT ratepayers and residents. The energy from natural gas fuel cells costs more than solar. There are also *extra hidden costs* from natural

gas fuel cells from the utilities building out more natural gas infrastructure and rate-basing it as additional costs to ratepayers. And last, but certainly not least, are the adverse health and climate costs that would be caused by these fossil fuel generators.

Natural gas fuel cells such as the Project, also produce hazardous materials, such as benzene, lead, arsenic, chromium and other emissions that the residents and school-age children in the area of the fuel cell would be exposed to.

Making matters even worse, as is the case here, these natural gas fuel cells frequently end up being proposed in environmental justice communities that already have some of the highest rates of emergency room visits for asthma in CT, and these natural gas fuel cells will further aggravate a bad situation for those residents.

On July 27, 2021, Governor Ned Lamont stated:

“If an air quality alert in CT caused by smoke traveling cross country from western wildfires isn’t a sign that we must take climate action now at all levels of government, I don’t know what is.

Let’s address this crisis — for our children, grandchildren, and future generations.”

Any member of the Siting Council that votes to approve this project must do so with the clarity that although natural gas fuel cells contribute to climate destruction and adverse health consequences for CT residents (such as asthma) and natural gas fuel cells displace true renewables, you are ok with those costs and those adverse effects simply because fuel cell companies employ some people in CT.

I. Motion to Compel Answers to the Interrogatories the Petitioner Failed To Answer Based Upon CGS § 22a-19.

Allco seeks to compel answers to the following interrogatories: Q-1a-f, Q2b-d, Q3, Q-5, Q-6a-k, Q-7, Q-9, Q-11a-c, Q-15a-d, Q-16a-i, Q-17, Q-18a-d, Q-19a, Q-21, Q-22a-h, Q-25a-b, Q-26, Q-27a-b, Q-29a-e, Q-34, Q-35, Q-62a-b, Q-64, Q-65, Q-66, Q-67.

CGS §22a-19(a)(1) that provides, in part, “In any administrative, licensing or other proceeding ... any person ... 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.” Once admitted as a party, the statute does not restrict the party’s participation to certain subjects.

Moreover, in *Fairwindet, Inc. v. Conn. Siting Council*, 313 Conn. 669 (2014), the Connecticut Supreme Court observed that a party admitted under CGS section 22a-19(a)(1) is not only entitled to raise issues related to air and water quality but “by virtue of their status as intervenors pursuant to § 22a-19, the plaintiffs could raise other environmental issues, including excessive noise.” *Id.* at 700, fn. 35. “It is clear that one basic purpose of [§22a-19] is to give persons standing to bring actions to protect the environment.” (Citation omitted; internal quotation marks omitted.) *Red Hill Coalition, Inc. v. Town Plan & Zoning Commission*, 212 Conn. 727, 734, 563 A.2d 1347 (1989). Cf., 40 C.F.R. §1508.14 (“Human environment’ shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. … When … economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.”)

All Allco’s interrogatories relate to environmental issues. All Allco’s interrogatories relate to claims made by the Petitioner in support of, or related to, its environmental assertions in support of its requested approval.

For example, issues related to potential traffic deaths (and related issues) from the additional icing and fog (i.e., changes to the environment) that Petitioner’s expert concluded the project would cause on I-95 is an environmental issue, *see*, Q-1a through f. Claims related to alleged reliability and competitiveness (i.e., effect of the electrical grid on the environment in which ratepayers live) is an environmental issue otherwise the Petitioner would not have used it to support its claims that the project meets the environmental criteria of Conn. Gen. Stat. §16-50k(a). *See*, Q2b-d, and Q-3. *See also*, e.g., 40 C.F.R. §1508.14 discussed *supra*.

The Petitioner has referred to the Cherry Street Lofts fuel cell as a reference to support its petition here. The Petitioner intends to install dozens of the type of fuel cell installed at Cherry Street. The actual performance of that fuel cell is highly relevant (indeed crucial) to know how the fuel cells that comprise the Project will affect the environment. *See, Q6a-k.* Questions related to the physical structure are interrelated to all environmental issues. *See, Q7.* Whether and why the project proposes to operate on natural gas versus renewable hydrogen is an issue that undeniably is an environmental issue. *See, Q9.* The interconnection relates to the human environment. *See, Q11.* The other questions the Petitioner refused to answer on the basis of CGS 22a-19 also relate to the environment under *Fairwindct, Inc. v. Conn. Siting Council*, 313 Conn. 669 (2014).

II. Motion to Compel Answers to the Interrogatories to Which the Petitioner Provided Non-Responsive Answers.

The bulk of the remainder of the Petitioner's responses were, in fact, non-responsive. For these, the Petitioner generally "parroted" that fuel cells are an RPS Class I source. But that response avoided, rather than answered the interrogatories.

For example, the first non-responsive answer is to Q2a, e through g. Q2a asked: "Explain how the project would contribute to the greenhouse gas emissions goals in Conn. Gen. Stat. 22-200a?" Q2e through g asked:

e. How do you reconcile your claim that the Project furthers the renewable energy goals of the State of Connecticut with DEEP's assertion in the DEEP Brief at 12 that bringing the Project online would be "causing Connecticut to backslide on its climate goals"?

f. How do you reconcile your claim that the Project furthers the renewable energy goals of the State of Connecticut with DEEP's assertion in the DEEP Brief at 12 that bringing the Project online "undermines the state's ability to meet th[e] statutory targets" of Conn. Gen. Stat. § 22a-200a?"

g. Do you have any independent third-party, science-based analyses that reach the conclusion that using natural gas for electricity generation would contribute to the greenhouse gas emission goals of Conn. Gen. Stat. §22-200a? If so, please provide it.

Petitioner's response to all those questions is: "Pursuant to Conn. Gen. Stat. Section 16-1(a)(20) fuel cells are a Class I renewable energy source."

Petitioner's answer is non-responsive. The Petitioner is required to answer the question. The Petitioner provided similar non-responses to the other questions that Allco seeks to compel actual responsive answers. Allco moves to compel responses to Q-2a, Q2e-g, Q-12a-d, Q-13a-c, Q-14d-e, Q19b-c, A-20a-q, Q-23, Q-24, Q-25c-e, Q-29a-e, Q-31, Q-32, Q-36, Q-37, Q-38, Q-39, Q-40, Q-41, and Q-59.

III. Motion to Compel Response to Q-4b, Q-10, Q-42, Q-43, Q-44, Q-45, Q-46, Q-47, Q-48, Q-49, Q-50, Q-51, Q-52, Q-73.

Several of the Petitioner's responses were non-responsive for a different reason. The Petitioner just refused to answer based upon its bogus claim that the questions, if properly and completely answered, would not lead to relevant information. Thus, the Petitioner claimed that whether or not its design modifications to mitigate the risk of an explosion were incorporated on other projects was not relevant. Of course, that is relevant to learn whether those modifications are performing well, or whether the Petitioner's design for this Project is an untested, unverified, experimental set of modifications. Third-party reports are also relevant. Petitioner claims that various third-party reports regarding various Petitioner claims are irrelevant. But, of course, third-party reports are relevant. Were it not for the initial Trinity third-party report, the Project's creation of hazardous driving conditions on I-95 may not have been revealed. Questions related to climate change are clearly relevant. Questions related to DEEP's statements in other proceeding about the adverse environmental effect of this Project are also clearly relevant. If the Petitioner refuses to answer those questions, it is conceding the accuracy of DEEP's statements that this Project will have a substantial adverse effect on the environment. Allco moves to compel

responses to Q-4b, Q-10, Q-42, Q-43, Q-44, Q-45, Q-46, Q-47, Q-48, Q-49, Q-50, Q-51, Q-52, Q-73.

CONCLUSION

For the reasons stated above, Allco requests that the Council issue an order to the Petitioner compelling the Petitioner to provide complete responsive answers to Q-1a-f, Q2b-d, Q3, Q-5, Q-6a-k, Q-7, Q-9, Q-11a-c, Q-15a-d, Q-16a-i, Q-17, Q-18a-d, Q-19a, Q-21, Q-22a-h, Q-25a-b, Q-26, Q-27a-b, Q-29a-e, Q-34, Q-35, Q-62a-b, Q-64, Q-65, Q-66, Q-67, Q-2a, Q2e-g, Q-12a-d, Q-13a-c, Q-14d-e, Q19b-c, A-20a-q, Q-23, Q-24, Q-25c-e, Q-29a-e, Q-31, Q-32, Q-36, Q-37, Q-38, Q-39, Q-40, Q-41, Q-59, Q-4b, Q-10, Q-42, Q-43, Q-44, Q-45, Q-46, Q-47, Q-48, Q-49, Q-50, Q-51, Q-52, and Q-73. Alternatively, Allco moves to strike all claims and assertions made by the Petitioner in the Petition of purported positive attributes of the Project that relate to the above-listed interrogatories.

Respectfully submitted,

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