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July 2, 2021

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

Re: Petition No. 1406A - Doosan Fuel Cell America, Inc. petition for a declaratory ruling, pursuant to Connecticut General Statutes §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. NuPower Bridgeport FC, LLC Reopening of this petition based on changed conditions pursuant to Connecticut General Statutes §4-181a(b)

Dear Ms. Bachman:

Enclosed for filing with the Connecticut Siting Council (the "Council") is NuPower Bridgeport FC, LLC's ("NuPower") Opposition to Request by Joseph R. Provey for a Public Hearing.

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 this filing. A hard copy of this filing will be mailed to the Council. I certify that a copy hereof has been furnished on this date via electronic mail to all parties, intervenors and participants of record according to the Council's service list.

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bruce L. McDermott".

Bruce L. McDermott

Enclosure

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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Doosan Fuel Cell America, Inc. Petition for a	:	Petition No. 1406A
declaratory ruling, pursuant to Connecticut General	:	
Statutes §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. NuPower	:	
Bridgeport FC, LLC Reopening of this petition based on	:	
changed conditions pursuant to Connecticut General	:	
Statutes §4-181a(b).	:	July 2, 2021

Opposition of NuPower Bridgeport FC, LLC to Request by
Joseph R. Provey for a Public Hearing

NuPower Bridgeport FC, LLC (“NuPower”) opposes the request of Joseph R. Provey (“Provey”) for a public hearing dated June 18, 2021, and supported by Allco Renewable Energy Limited (“Allco”),¹ on the grounds that Provey has failed to demonstrate a need for the hearing, a public hearing is not required by statute, interested parties had numerous opportunities to voice their opinions, and Provey has failed to show how a hearing will aid the Council in determining if the proposed fuel cell facility meets the requirements of Section 16-50k of the Connecticut General Statutes (“CGS”). Accordingly, the Connecticut Siting Council (“CSC” or the “Council”) should not grant Provey’s request for a public hearing.

¹ Petition No. 1406A, Allco Support of Provey Request for a Public Hearing, June 24, 2021.

I. Background

On May 11, 2020, Doosan Fuel Cell America, Inc. filed a petition for a declaratory ruling (“Petition 1406”) 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 in 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 Petition 1406 (the “2020 Decision”).

On March 5, 2021, prior to NuPower taking any action in response to the 2020 Decision, Provey filed a request for intervenor status in his capacity as a representative of the board of directors for Seaside Village, Inc., a cooperative housing development in Bridgeport, Connecticut. On March 31, 2021, NuPower filed a petition for a declaratory ruling (Petition 1406A) that addressed all the deficiencies identified in the 2020 Decision and on April 7, 2021, it filed a Motion to Reopen and Modify Petition 1406. On May 6, 2021, Provey was granted intervenor status. As it is customary for this type of proceeding, interrogatories were issued by the Council and exchanged between participants, and public comments submitted until June 5, 2021.²

On June 18, 2021, approximately three and a half months after filing his request for intervenor status and a little over a year from the time Petition 1406 was filed, Provey requested a public hearing. In his request, Provey indicated that a public hearing was being requested “given the limited notice South End residents have had about the

² On June 4, 2021, the City of Bridgeport, Planning and Zoning Commission approved NuPower’s site plan and coastal site plan for the construction of the Project. Petition No. 1406A, NuPower City of Bridgeport, Planning and Zoning Commission’s Letter Approving Site Plan, June 7, 2021.

proposed fuel cell [facility],” and his belief that “a public hearing would help the Siting Council members, along with [the town’s] local Planning and Zoning commissioners, get a clearer picture of how inappropriate [the] site is and how fervently the community is opposed to it.”³ The request for a hearing followed the June 17, 2021 meeting of the Council during which the Council denied a request by Provey that various public comments be included as part of Provey’s response to NuPower Interrogatory No. 2.

On June 21, 2021, Thomas Melone, on behalf of Allco, filed a petition under CGS §22a-19(a) for party status in Petition No. 1406A. Three days later and prior to the Council deciding on its petition, Allco filed a letter in support of Provey’s public hearing request.

II. Legal Standard

“[A] public hearing is not required by statute and holding a public hearing in a petition proceeding is discretionary to the Council.”⁴ In accordance with Section 16-50j-40 of the Regulations of Connecticut State Agencies (“RCSA”), the Council shall schedule a hearing if the Council deems a hearing necessary or helpful in determining any issue concerning the request for a declaratory ruling. Historically, the Council has granted a request for a hearing where such hearing was necessary to aid the Council in determining whether a project met the requirements of CGS §16-50k or to provide interested parties an opportunity to voice their opinions.⁵ Furthermore, these hearings generally have been for projects involving the construction and operation of solar photovoltaic electric generating facilities, not fuel cell facilities. *Id.*

³ Petition No. 1406A, Provey’s Request for a Public Hearing, June 18, 2021.

⁴ Petition No. 1395A, Council Response to City of Ansonia’s Request for a Hearing, May 10, 2021.

⁵ Petition No. 1410, Hanson Motion for Hearing, July 27, 2020 and Council Decision on Hanson’s Motion for a Public Hearing, August 14, 2020. See *also* Petition 1352, Representative Carol Hall, Representative Greg Stokes and Senator John Kissel Request for Hearing, November 14, 2018.

III. Argument

As previously stated, a public hearing in a petition proceeding is not required by statute, but the Council may schedule one under certain circumstances including when necessary to aid the Council in determining whether a project meets the requirements of CGS §16-50k or to provide interested parties an opportunity to voice their opinions. Provey's request does not fall under either one of these categories.

A. Interested Parties Were Notified About the Project and had Various Opportunities to Voice Their Opinions.

Provey's hearing request indicated that the request for a hearing was being made because of the limited notice South End residents had about the Project and to have an opportunity to demonstrate the community's opposition to the Project.⁶ Based on that stated reason, there is no need for a hearing. The first petition concerning the Project was filed in May of 2020 and at the time notice of the Project was given to abutting property owners and to state and local officials pursuant to RCSA §16-50j-40(a). No requests for intervenor status or a public hearing were filed at the time. In fact, no comments on the project were received by the Council. In March of 2021, when NuPower filed Petition 1406A, notice was again provided to all the above-mentioned parties. Provey has failed to provide any details supporting his statement that there has been limited notice.

Over the next two and a half months that Petition 1406A had been with the Council and three and a half months since Provey filed his request for intervenor status, Provey

⁶ Petition No. 1406A, Provey's Request for a Public Hearing, June 18, 2021.

did not request a public hearing. Nevertheless, he and members of the Seaside Village Homeowners Association had the opportunity to attend an informational meeting at NuPower's Cherry Street fuel cell facility where NuPower responded to numerous questions from residents of Seaside Village concerning equipment safety, emissions, chemicals, EMF, and noise emissions, among others. Additionally, Provey filed interrogatories on behalf of Seaside Village, Inc. to NuPower relating to a variety of aspects of the Project. Lastly, on June 8, 2021, Provey filed a series of mass mailing flyers containing signatures in opposition to the Project that were added to the public comment record of this proceeding. Consequently, the record shows that Provey and members of Seaside Village, Inc. had been aware of the Project for more than a year and had various opportunities, in which some instances they did, to express their opinions on the Project.

B. The Hearing Request was not Made to Determine if the Project Meets the Requirements of CGS §16-50k.

Provey's hearing request also stated that there were many unanswered questions, some of which included the view of the proposed facility from various vantage points that can only be confirmed with the use of a balloon float simulation test and the contradictory statements regarding the height of the Fuel Cell Support Structure. In addition, according to Provey, a hearing would help the Council and the City of Bridgeport, Planning and Zoning Commission get a clearer picture of the inappropriateness of the Project site and the community's opposition to the Project.⁷

⁷ *Id.*

NuPower is under no obligation to answer interrogatories from Provey and NuPower's objections to various interrogatories from Provey are consistent with the Council's Rules of Evidence which provide "The Council may exclude evidence that is not probative or material and that tends not to prove or disprove a matter in issue." RCSA §16-50j-28(b). To the extent NuPower objected to some of Provey's interrogatories, it did so because the interrogatories sought information that was not relevant or likely to lead to the discovery of admissible evidence which would assist the Council's review of the Project.⁸ There is no legal support for Provey's claim that since NuPower objected to an interrogatory a hearing must be held. To state the obvious: should Provey ask the same questions during a hearing, NuPower will renew its objection on the same grounds set forth in the interrogatory responses.

Provey claims that one of the unanswered questions is "the view of the proposed facility from various vantage points." Provey asserts that confusion persists as to whether the proposed facility can be seen from Seaside Village, that NuPower had not determined whether the proposed facility can be seen from residences north of Railroad Avenue or from a new housing complex that is being built on South Avenue and Iranistan Avenue, and that this can only be confirmed with the use of a balloon float simulation test.⁹ There is no confusion. The I-95 bridge next to the Project site ranges in elevation from 67.5' to 58.8' from east to west along the Project site. The total height of the Project site with the cooling fans will be approximately 70.6'. Petition No. 1406A at 8. As stated in the Petition

⁸ Petition No. 1406A, Provey Interrogatories to NuPower, May 19, 2021 (Interrogatory JP-12: "Have any principals of NuPower or Doosan been investigated, admonished, sued or banned from equity roles in past Connecticut green energy projects because of a history of project failure...?").

⁹ Petition No. 1406A, Provey's Request for a Public Hearing, June 18, 2021.

and interrogatory responses, the proposed facility will not be visible from Seaside Village and contrary to what Provey alleges in his request for a hearing no statement to the contrary has ever been made by NuPower. As provided in Petition 1406A:

Similarly, property to the south of the Project site on the opposite side of I-95 is similarly zoned Industrial Light. The block immediately to the south of the Project site is occupied by an auto repair and gas station, car wash, car rental and a storage and waste hauling business. Beyond that Industrial Light zone is a residential area in the Residential – C Multi Family Zone (R-C). See Figure 6. The R-C zone is approximately 350' feet from the Project site.

See Interrogatory JP-9 for a representation of the modelled views of the project from the southeast corner of Iranistan Avenue and South Avenue. Furthermore, it should be noted that there is no statutory or regulatory requirement mandating that the project site not be visible from any nearby street. The visual impact from the Project will be minimal and the Project site will be compatible with the surrounding industrial buildings. Lastly, balloon float simulation tests are used to demonstrate how high a project component is going to be. Here that answer is already known: the project will be the same height as I-95 and the view of the Project site will largely be blocked by I-95. See Interrogatory Response JP-9.¹⁰

Finally, Provey asserts that a hearing is needed to help the Council and the City of Bridgeport, Planning and Zoning Commission get a picture of the inappropriateness of the Project site and the community's opposition to the Project. Provey fails to mention

¹⁰ Provey also claims NuPower has made contradictory statements regarding the height of the Project. NuPower's statements at the City of Bridgeport, Planning and Zoning Commission meeting (which are not part of the record of this proceeding) were consistent with prior statements. Provey fails to recognize the differences in statements about the height are due to the use of different reference points, and do not represent any changes to the design of the building or any Project studies previously assessed.

that the City of Bridgeport, Planning and Zoning Commission has already reviewed and approved NuPower's site plan and coastal site plan for the construction of the Project. Additionally, Provey is attempting to use the Council's hearing process as a way to correct its untimely filing of various form statements in opposition to the Project. The Council ruled at its last meeting that Provey's June 8, 2021 public comment filing will not be part of Provey's response to NuPower Interrogatory 2 to Provey, but rather would be added to the public comment record of this proceeding. The public comment filing is in the public comment record and as such there is no need to convene a hearing for the purpose of having individuals state orally that which was provided in writing.

IV. Conclusion

Provey's request for a hearing is without merit and Provey has failed to show how a hearing will aid the Council in deciding if a petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need should be issued. Accordingly, as for the reasons set forth above, NuPower respectfully requests that the Council deny Provey's request for a public hearing.

Respectfully Submitted,

NuPower Bridgeport FC, LLC



By: _____

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