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September 30, 2021

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

Re: Petition 1406A - Opposition to Motion to Change the Procedural Schedule
and Motion to Stay Proceedings

Dear Ms. Bachman:

NuPower Bridgeport FC, LLC ("NuPower") hereby submits to the Connecticut Siting Council ("Council") its Opposition to Allco Renewable Energy Limited's Motion to Change the Procedural Schedule and Motion to Stay Proceedings. An original and fifteen (15) copies of NuPower's Opposition will be hand delivered to the Council.

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

Very truly yours,



Bruce L. McDermott

Enclosures

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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Doosan Fuel Cell America, Inc. Petition for a declaratory : Petition No. 1406A
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). : September 30, 2021

Opposition of NuPower Bridgeport FC, LLC to Allco Renewable Energy Limited's
Motion to Change the Procedural Schedule to Allow for Additional Discovery and Motion
to Stay Proceedings Until an Environmental Impact Evaluation is Prepared

NuPower Bridgeport FC, LLC (“NuPower” or the “Company”) hereby opposes the Motion to Change the Procedural Schedule to Allow for Additional Discovery (the “Motion to Change”) and the Motion to Stay Proceedings Until an Environmental Impact Evaluation is Prepared (the “Motion to Stay”) (collectively the “Motions”) filed by Allco Renewable Energy Limited (“Allco”) on September 21, 2021 and September 23, 2021, respectively, on the grounds that all relevant information has been disclosed and the construction of the Iranistan Avenue fuel cell facility (the “Project”) is not an action that may significantly affect the environment.

In a letter dated July 16, 2021, pursuant to Section 22a-19 of the Connecticut General Statutes (“CGS”), the Council granted Connecticut Environmental Protection Act (“CEPA”) intervenor status to Allco. In accordance with CGS § 22a-19 and as further explained by the Council, “CEPA is an intervention statute that limits participation to

consideration of unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state.”¹ This does not extend to consideration of all aspects of the Project that Allco disagrees with, including the fact that the proposed construction is for a fuel cell facility, a Class I renewable energy technology in Connecticut.

I. Allco’s Motion to Change the Procedural Schedule to Allow for Additional Discovery Should be Denied Because All Relevant Information Has Been Disclosed.

In its Motion to Change, Allco claims without providing any support that NuPower’s expert, Trinity Consultants, conceded that the source-induced fog and ice from the Project’s exhaust streams were the creation of life-threatening hazardous driving conditions.² Yet, in the excerpt of Petition No. 1406A that was included in Allco’s motion, it clearly states that Trinity Consultants concluded that “[d]uring the period 2016-2020 the modeled plume-induced conditions produced only one hour of icing conditions and three total hours of fog *over the five year period.*”³ (emphasis added). For this reason, NuPower’s expert concluded that the Project “will have a negligible contribution to plume-induced fogging/icing induced impact on the nearby Interstate 95.”⁴ Nevertheless, in an effort to eliminate all possible instances of project-induced fog or icing and contrary to Allco’s assertion that NuPower “[sought] a third bite at the apple,” the Company in concert with Doosan Fuel Cell America evaluated different options that could enhance the project design and eliminated all induced-fog or ice, without compromising the results

¹ Petition No. 1406A, Council Decision on Allco Motion to Compel Interrogatory Responses from NuPower Bridgeport FC LLC and Doosan Fuel Cell America, Inc. and Motion to Strike, September 24, 2021.

² Petition No. 1406A, Allco Motion to Change the Procedural Schedule to Allow for Additional Discovery at 2, September 21, 2021.

³ *Id.*

⁴ Petition No. 1406A, Petition Filing, Attachment B at page 9, March 31, 2021.

of any environmental studies previously conducted (e.g., sound, safety, etc.). NuPower did not attempt to correct a problem with the Project but the Company sought to refine the Project.

In addition, Allco argues that “more discovery is necessary which would, at a minimum, include serving additional interrogatories...”.⁵ Yet, as of this date, seven sets of interrogatories have been served to the Company, five of which came from the Council. Furthermore, the seventh set of interrogatories (from Allco to NuPower) included seventy-three (73) multi-part interrogatories and the Council recently denied Allco’s Motion to Compel Interrogatory Responses and Motion to Strike.⁶ As such, all information which is either relevant and/or reasonably tailored to lead to the discovery of admissible evidence has been provided at this time. In light of the fact that Allco has failed to show that there are any unresolved problems with the Project, NuPower respectfully requests that the Council deny Allco’s Motion to Change.

II. The Motion to Stay Proceedings Until an Environmental Impact Evaluation is Prepared Should be Denied Because Approval of the Project is not an Action That may Significantly Affect the Environment.

In its Motion to Stay, Allco argues that the preparation of an environmental impact evaluation is required pursuant to CGS § 22a-1b(c) for “actions which may significantly affect the environment,” as that term is defined in CGS § 22a-1c.⁷ Allco reasons that the Council’s approval of the Project could be considered an “action which may significantly affect the environment” because according to Allco, the Project could serve short term to

⁵ Petition No. 1406A, Allco Motion to Change the Procedural Schedule to Allow for Additional Discovery at 5, September 21, 2021.

⁶ Petition No. 1406A, Council Decision on Allco Motion to Compel Interrogatory Responses from NuPower Bridgeport FC LLC and Doosan Fuel Cell America, Inc. and Motion to Strike, September 24, 2021.

⁷ Petition No. 1406A, Allco Motion to Stay Proceedings until an Environmental Impact Evaluation is Prepared at 6, September 23, 2021.

the disadvantage of long term environmental goals by “[displacing] true renewable projects” and the Project is funded in whole or in part by the state. *Id.* at 6-7. Allco is incorrect in both accounts.

Despite Allco’s arguments to the contrary, the Council reiterated during its September 23, 2021 public meeting that fuel cells are classified as a Class I renewable energy source pursuant to CGS § 16-1(a)(20).⁸ Other than repeatedly stating without any factual basis that the Project is comprised of “climate destroying natural gas fuel cell[s]” and quoting excerpts from articles, administrative proceedings and related literature that discuss the health and environmental impacts of climate change and fossil fuels, Allco fails to show how the Project will serve to the disadvantage of long term environmental goals. Furthermore, the State of Connecticut promotes the construction of fuel cell facilities, as evidenced by the recent passing of Public Act No. 21-62, An Act Concerning the Solicitation of New Fuel Cell Electricity Generation Projects. Thus, the Project will not serve to the disadvantage of long-term environmental goals.

Additionally, Allco’s claim that the Project is funded in part by the State because “[e]ach and every state agency...that uses electricity supplied by UI will be assessed a specific, directly traceable charge for the cost of this Project”⁹ is factually inaccurate and inconsistent with the intent of the statute. This proceeding is for the construction of a fuel cell facility, a project that is being paid in its entirety by private funds, not the State. Paying for electricity costs does not equate to paying for the construction of every power plant

⁸ Petition 1406A, Council Decision on Allco Motion to Compel Interrogatory Responses from NuPower Bridgeport FC LLC and Doosan Fuel Cell America, Inc. and Motion to Strike, September 24, 2021.

⁹ Petition No. 1406A, Allco Motion to Stay Proceedings until an Environmental Impact Evaluation is Prepared at 7, September 23, 2021.

that supplies electricity. Otherwise, an environmental impact evaluation would have to be prepared for every conceivable electric generating project, including solar projects. Furthermore, the Supreme Court of Connecticut in *Connecticut Energy Marketers Association v. Department of Energy & Environmental Protection*, stated that

[t]he legislative history of [CGS § 22a-1b] indicates that the purpose of the legislation was to ‘[put] our state government and [its] agencies on the same footing in responsibility as our public and private industries... When the proposed activities are to be undertaken by private entities, there would be no reason to apply the act to the activities because private entities are already held responsible for the environmental impact of their activities under other laws.

324 Conn. 362, 374–75 (2016). Thus, CGS § 22a-1c was enacted with the purpose of policing state entities, not private entities that are already regulated by other laws. Given that the construction of the Project is neither an activity undertaken by a state agency or funded in whole or in part by the state, and Allco’s subjective opinion on fuel cells is insufficient to show that the Project could serve to the disadvantage of long term environmental goals, the preparation of an environmental impact evaluation pursuant to CGS § 22a-1b(c) is not warranted under the circumstances and the Motion to Stay should be denied.

III. Conclusion

For the foregoing reasons, NuPower respectfully requests that the Council deny Allco's Motions.

Respectfully Submitted,

NuPower Bridgeport FC, LLC



By: _____

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