



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

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VIA ELECTRONIC MAIL

April 19, 2021

Paul Zagorsky, Esq.
Law Offices of Zagorsky, Zagorsky & Galske, P.C.
73 East Main Street
P.O. Box 218
Plainville, CT 06062-0218
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RE: **PETITION NO. 1424** - Southington Solar One, 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 4.725-megawatt AC solar photovoltaic electric generating facility located at 1012 East Street, Southington, Connecticut, and associated electrical interconnection.

Dear Attorney Zagorsky:

The Connecticut Siting Council (Council) is in receipt of your correspondence, dated April 16, 2021, submitted on behalf of the Intervenor/Connecticut Environmental Protection Act (CEPA) Intervenor, the Karabins, requesting a public hearing on the above-referenced petition for a declaratory ruling (Petition) that was submitted to the Council on July 29, 2020.

Please be advised that the Karabins' request for a public hearing 261 days after the Petition was submitted to the Council is moot due to the passage of the 60-day agency action deadline under Connecticut General Statutes (CGS) §4-176(e), as extended by state emergency orders.¹

In compliance with Regulations of Connecticut State Agencies (RCSA) §16-50j-40, on or about July 23, 2020, Southington Solar One (SSO) notified Town of Southington (Town) officials, state officials and agencies, the property owner, and abutting property owners of the proposed solar facility.

In compliance with CGS §4-176(c), on July 30, 2020, the Council gave notice to all persons to whom notice is required by law, including, but not limited to, the Town and state agencies.² The Council also posted the Petition on its website and issued a proceeding schedule identifying the 30-day comment deadline (8/28/20), **60-day agency action deadline (12/26/20)**, and 180-day final decision deadline (4/25/21), as extended by state emergency orders. (Emphasis added).

On September 10, 2020, the Council granted the Karabins Intervenor and CEPA Intervenor status limiting their participation under CGS §4-177a(d) to environmental matters that are jurisdictional to the Council, which include potential impacts to agriculture, but do not include the evaluation and/or determination of rights under any lease with the property owner of the proposed site.

¹ Governor Lamont, Executive Order No. 7, March 10, 2020.

² Council July 30, 2020 correspondence to Town and State Agency Comment Request Memo.

The Council issued four sets of interrogatories to SSO on September 1, 2020, September 3, 2020, March 9, 2021 and April 1, 2021. The Karabins issued one set of interrogatories to SSO on September 25, 2020. SSO responded to all of the interrogatories.

Pursuant to the Uniform Administrative Procedure Act (UAPA), an administrative agency is required to take an action on a petition for a declaratory ruling within 60 days of receipt. CGS §4-176(e) states:

“Within sixty days after receipt of a petition for a declaratory ruling, an agency in writing shall: (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, **(3) agree to issue a declaratory ruling by a specified date**, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.” (Emphasis added).

December 26, 2020 was the deadline for agency action on this Petition under CGS §4-176(e), as extended by state emergency orders. On December 3, 2020, pursuant to CGS §4-176(e), the Council voted to set the date by which to render a decision on the Petition as no later than April 25, 2021, which was the 180-day statutory deadline for a final decision under CGS §4-176(i), as extended by state emergency orders.

The Council is an agency with limited jurisdiction.³ It must obey the statutory commands of the UAPA.⁴ **There is no provision in the UAPA that provides for any extension of the 60-day deadline within which the Council must act on the Petition.**⁵ Pursuant to CGS §4-176(e)(3), on December 3, 2020, the Council agreed to issue a declaratory ruling by April 25, 2021. Therefore, the Karabins’ April 16, 2021 request for a public hearing is moot.

Please also be advised that on February 22, 2021, pursuant to CGS §4-176(i), the Council requested an extension of time to render a final decision on the Petition. SSO and the Karabins agreed to grant the Council an extension of time to October 22, 2021 to render a final decision on the Petition.

Enclosed please find a revised proceeding schedule with a final deadline of **April 26, 2021** for the exchange of interrogatories between participants.

Thank you.

Sincerely,

s/Melanie A. Bachman

Melanie A. Bachman
Executive Director

c: Service List dated September 11, 2020

Enclosure: Revised Schedule

³ *Tilcon Conn., Inc. v. Commissioner of Environmental Protection*, 317 Conn. 628 (2015); *Kleen Energy Sys., LLC v. Commissioner of Environmental Protection*, 319 Conn. 367 (2015); *Wheelabrator Lisbon, Inc. v. Department of Public Utility Control*, 283 Conn. 672 (2007).

⁴ *Salmon Brook Convalescent Home, Inc. v. Commission on Hospitals and Healthcare*, 177 Conn. 356 (1979).

⁵ *A. Gallo v. McCarthy*, 2010 Conn. Super. LEXIS 1788 (Conn. Super. 2010) (Engrafting a tolling provision by regulation onto the statute to be applied within the sole discretion of the agency undermines the streamlined procedure contemplated by the statutory scheme.)



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REVISED SCHEDULE

PETITION NO. 1424 - Southington Solar One, 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 4.725-megawatt AC solar photovoltaic electric generating facility located at 1012 East Street, Southington, Connecticut, and associated electrical interconnection.

Petition received	07/29/20
Council Interrogatories	
• Set One Issued	09/01/20
• Set One Responses due	09/22/20
• Set Two Issued	09/03/20
• Set Two Responses due	09/24/20
• Set Three Issued	03/09/21
• Set Three Responses due	03/30/21
• Set Four Issued	04/01/21
• Set Four Responses due	04/08/21
Public Comment Period Deadline	08/28/20
Deadline for Exchange of Interrogatories between Participants	10/02/20
Responses to Participant Interrogatories due	10/16/20
Final Deadline for Exchange of Interrogatories between Participants	04/26/21
Responses to Participant Interrogatories due	05/10/21
Deadline for Action	09/27/20
Council 60-day Action - Set Date for Decision to 04/25/21	12/03/20
90-day extension for Deadline for Action per Executive Order No. 7DDD	12/26/20
Deadline for Decision	01/25/21
90-day extension for Deadline for Decision per Executive Order No. 7DDD	04/25/21
180-day extension of Deadline for Decision pursuant to CGS §4-176(i) (with consent of Parties and Intervenors)	10/22/21