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August 19, 2021

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

Re: Petition 1458 - Homestead Fuel Cell 1, 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 grid-side 8.4-megawatt fuel cell facility located at 441 Homestead Avenue, Hartford, Connecticut, and associated electrical interconnection to Eversource Energy's existing Northwest Hartford Substation.

Dear Ms. Bachman:

Homestead Fuel Cell 1, LLC hereby submits to the Connecticut Siting Council ("Council") its Opposition to a Request by Allco Renewable Energy Limited for Intervenor Status.

The original and fifteen (15) hard copies of the Opposition will be mailed to the Council.

Should the Council 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

Homestead Fuel Cell 1, LLC petition for a declaratory ruling, : Petition 1458  
pursuant to Connecticut General Statutes §4-176 and §16- :  
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operation of a grid-side 8.4-megawatt fuel cell facility :  
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Energy’s existing Northwest Hartford Substation. :  
: August 19, 2021

Opposition of Homestead Fuel Cell 1, LLC to Request by  
Allco Renewable Energy Limited for Intervenor Status

The Petitioner, Homestead Fuel Cell 1, LLC (“HFC1”), a wholly-owned subsidiary of FuelCell Energy, Inc. (“FCE”), hereby opposes the request of Allco Renewable Energy Limited (“Allco”) for intervenor status dated August 9, 2021 (the “Request” or “Allco’s Request”) on the grounds that Allco does not meet the statutory requirements for intervenor status outlined in Connecticut General Statutes (“CGS”) § 22a-19(a). Specifically, the Request fails to satisfy the verified pleading requirements of CGS § 22a-19(a) by failing to state specific factual allegations of environmental harm concerning the proposed fuel cell facility and the issues raised are outside the Connecticut Siting Council’s (“Council”) jurisdiction. Accordingly, the Council should not grant Allco’s Request for intervenor status.

**I. Background**

On July 13, 2021, HFC1 filed a petition for a declaratory ruling that a Certificate of Environmental Compatibility and Public Need is not required for the installation of a 8.4 megawatt fuel cell power generating facility and all associated equipment to be located

at 441 Homestead Avenue in Hartford, Connecticut (“the Project”). On August 9, 2021, in accordance with CGS § 22a-19(a), Allco filed its Request, seeking to act as a Connecticut Environmental Protection Act (“CEPA”) intervenor in the Connecticut Siting Council (“Council”) proceedings in its capacity of an advocate for laws that encourage solar development and the eradication of “natural gas generation projects, including natural gas fuel cells”,<sup>1</sup> among others.

## II. Legal Standard

In accordance with CGS § 22a-19(a), “[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.” CGS § 22a-19(a) (emphasis added). A verified pleading shall 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.*” CGS § 22a-19(a)(2) (emphasis added).

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<sup>1</sup> Paragraph 3 of Allco’s Request in part states that “[no] new natural gas generation projects, including natural gas fuel cells, should be approved anywhere.” Petition No. 1458, Allco Request for Status at 2, August 9, 2021.

As set out in *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 788 (2002), CGS § 22a-19(a) permits a party to intervene in an administrative proceeding to raise environmental issues when two conditions are met. “First, intervenors must only raise environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceedings into which the party seeks to intervene and second, to qualify as a verified pleading, the petition must contain specific factual allegations setting forth the environmental issue that the intervenor intends to raise.” *Keiser v. Zoning Commission*, 72 Conn. App. 721, 725, (2002). Lastly, CGS § 22a-19 “is not intended to expand the jurisdictional authority of an administrative body whenever an intervenor raises environmental issues... Other environmental impacts must be raised before other appropriate administrative bodies, if any...”. *Connecticut Coal. Against Millstone v. Rocque*, 267 Conn. 116, 131, (2003).

### **III. Argument**

#### **A. Allco’s Request Fails to Satisfy the Verified Pleading Requirements Under CGS § 22a-19.**

Allco’s Request fails to satisfy the verified pleading requirements of CGS § 22a-19(a) because it does not state specific factual allegations of environmental harm concerning the Project. As stated in paragraph 8 of the Request, part of the company’s mission is “to combat climate change... challenge laws and policies that restrict or burden solar development, and fight the devastating environmental impacts from burning fossil fuels...”. Petition No. 1458, Allco Request for Status, August 9, 2021 (“Allco Request”). Consistent with these goals, the Request goes on to list almost ten pages worth of excerpts from articles, administrative proceedings and related literature

that discuss the health and environmental impacts of climate change, the ways natural gas fuel cells displace “true renewable energy projects, such as solar” and the negative effects of fossil fuels. *Id.* No specific allegations as to how construction, maintenance, and operation of the Project will unreasonably pollute, impair or destroy the natural resources of the state are mentioned other than repeatedly stating without any factual basis that the proposed units are “climate destroying natural gas fuel cell[s].” *Id.*

Even if the claims about the negative effects of fossil fuels were to be considered, Allco fails to substantiate these claims with specific factual information relating to the Project. Allco’s Request fails to provide evidence that the Project will not meet the applicable federal, state, and local environmental restrictions and/or ordinances. Allco merely recites generalizations<sup>2</sup> about the use of fossil fuels that typically apply to fossil fuel combustion sources, not natural gas fuel cells. Furthermore, in some instances, Allco quotes statements made by environmental agencies or organizations, but only quotes portions of these statements that fit certain narrative, thereby altering their intended meaning. For example, paragraph 23 of the Request alleges that the “Department of Energy and Environmental Protection [(“DEEP”)] has stated that bringing natural gas fuel cells online ‘would increase CO<sub>2</sub> emissions when compared with the expected emissions from the grid over the next 20 years, causing Connecticut to backslide on its climate goals.’” *Id.* However, DEEP made those statements in reference to a specific set of natural gas fuel cells,<sup>3</sup> not all fuel cells in general, and acknowledged that the analysis

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<sup>2</sup> “The continued use of fossil fuels endangers the public health, safety and welfare of Connecticut and the Northeastern United States... Fossil fuels are destroying the planet...”. Allco Request at 9 and 11.

<sup>3</sup> “This means that bringing *this project* on line would increase carbon dioxide emissions when compared with the expected emissions from the grid...”. Docket No. 18-08-14, *PURA Review of the Combined Heat and Power Project Solicitation Pursuant to Conn. Gen. Stat. § 16-258e*, Brief of the Department of Energy and Environmental Protection at 12, June 7, 2019 (emphasis added).

behind these conclusions was based on a forecasted model designed from a series of assumptions relating to the future state of Connecticut's grid.<sup>4</sup> In a similar manner, paragraph 15 of the Request states that "[t]he severe adverse health effects in Connecticut from fossil fuel generators *such as the proposed facility* are also acknowledged in DEEP's draft IRP at p. 107: 'Connecticut experiences some of the worst ozone pollution in the United States.'" *Id.* (emphasis added). Yet, page 107 of the referenced document stated that "[p]artially due to emissions from electric generators sited here to provide power to other states, Connecticut experiences some of the worst ozone pollution in the United States." DEEP's 2020 Draft Integrated Resources Plan at 107. Again, DEEP's assertions were with respect to a subset of electric generating sources that did not include the Project.<sup>5</sup>

Lastly, Allco's Request repeatedly states that the Project is comprised of "climate destroying natural gas fuel cell[s]." However, fuel cells generate electricity through an electrochemical reaction, not combustion.<sup>6</sup> For this reason, unlike traditional sources of combustion energy generation, fuel cell systems provide a clean, efficient, and reliable source of power. Accordingly, in Connecticut, fuel cells are classified as a Class I renewable energy source pursuant to CGS § 16-1(a)(20). In addition, Connecticut programs such as the "Statewide Shared Clean Energy Facility" program and the "Low-

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<sup>4</sup> "The Department believes that comparing the project's emissions against a reasonable forecast of the future rather than the current grid mix is the prudent comparison to make... The future grid is unknown, but it is more likely to reflect the assumptions in the Aurora model run by LAI than it will today's grid." *Id.* at 12, footnote 12.

<sup>5</sup> "The proposed facility will be a 'grid-side distributed resources' facility pursuant to Conn. Gen. Stat. Section 16-1." Petition No. 1458, Petition Filing at 8, July 13, 2021.

<sup>6</sup> "A fuel cell uses the chemical energy of hydrogen or other fuels to cleanly and efficiently produce electricity." *Fuel Cells*, Hydrogen and Fuel Cell Technologies Office, Office of Energy Efficiency and Renewable Energy, Accessed at <https://www.energy.gov/eere/fuelcells/fuel-cells>.

emissions Renewable Energy Credit” program, among others, actively promote the construction and installation of fuel cell systems across the state. Most recently, the Connecticut General Assembly passed Public Act No. 21-162, *An Act Concerning the Solicitation of New Fuel Cell Electricity Generation Projects*, which directs the State’s electric distribution companies to solicit proposals to acquire new fuel cell electricity generation projects; demonstrating that Connecticut recognizes the benefits of fuel cell systems and remains committed to promoting the installation of such units.

Consequently, aside from generalizations about fossil fuel combustion sources, questionable assertions about the environmental impacts of fuel cells allegedly made by other environmental organizations, and falsely claiming that the proposed fuel cells are “climate destroying natural gas fuel cell[s];” the Request fails to set forth specific factual allegations that HFC1’s Project will result in unreasonable pollution, impairment, or destruction of a natural resource of this state, as required to constitute a verified pleading under CGS § 22a-19.

B. The Issues Raised in Allco’s Request are Outside the Council’s Jurisdiction.

As set forth in paragraph 3 of the Request, which in part states that “[n]o new natural gas generation projects, including natural gas fuel cells, should be approved anywhere,” Allco makes it clear that it is not intervening in this proceeding merely out of a concern for the unreasonable pollution or destruction of a natural resource of this state (that this Project might bring), but to prevent the construction and installation of all fuel cell projects in Connecticut. Allco Request at 2. This is not the appropriate venue to

evaluate such a request and the imposition of a prohibition on the construction and installation of fuel cell systems in Connecticut is outside the Council's jurisdiction.

If there is any doubt that the abovementioned outcome is what Allco hopes to accomplish, the company's past participation in other proceedings, as well as its corporate mission illustrate that Allco is seeking to eliminate any renewable energy project that is not solar. In accordance with paragraph 8 of the Request, part of Allco's corporate mission is to "enforce laws that encourage solar development and challenge laws and policies that restrict or burden solar development." *Id.* Consistent with this mission, over the past few years, Allco, its subsidiaries and its affiliates have aggressively sought to impede the development of any renewable technology that is not solar. Be it in the Connecticut courts,<sup>7</sup> the Public Utilities Regulatory Authority,<sup>8</sup> or the Council,<sup>9</sup> Allco and its subsidiaries have relentlessly tried to prevent the construction of fuel cell projects in Connecticut, sometimes availing themselves to non-environmental arguments to try to stop these projects.<sup>10</sup>

Furthermore, Allco's opposition to other renewable energy projects has not been limited to fuel cell projects or to Connecticut. There is pending litigation in the

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<sup>7</sup> Jefferson Solar, LLC v. FuelCell Energy, Inc. et al, No. NNHCV206108672S, 2021 WL 2020620 (Conn. Super. Ct. Apr. 30, 2021) (Jefferson initiated a lawsuit against FuelCell Energy and SCEF1 FC in the Superior Court for the Judicial District of New Haven claiming that the defendants do not have site control as required by the RFP, thus making their fuel cell proposal improper.).

<sup>8</sup> Docket No. 19-07-01, *Review of Statewide Shared Clean Energy Facility Program Requirements*, Motion of Jefferson Solar LLC for a Ruling Disqualifying the Bid of FuelCell Energy Inc. for a 2.8 MW SCEF Project in Derby, October 12, 2020; Motion of Jefferson Solar LLC for an Order to Show Cause Why the Bid of FuelCell Energy Inc. for a 2.8MW Project in Derby Should Not Be Disqualified, October 8, 2020.

<sup>9</sup> Petition No. 1406A, Allco Request for Status, June 21, 2021.

<sup>10</sup> Docket No. 18-08-14, *PURA Review of the Combined Heat and Power Project Solicitation Pursuant to Conn. Gen. Stat. § 16-258e*, Motion for Participant Status of Allco Renewable Energy Limited, August 3, 2021. ("On July 31, 2021, NuPower filed a request for clarification regarding the treatment of tax equity. Allco is particularly positioned to assist the Authority in its review of the proposed tax equity structure and how it should be treated under the allowed return on equity...").



Massachusetts District Court challenging the federal review and approval of the Vineyard Wind offshore wind project, the country's first utility-scale offshore wind farm. *Allco Renewable Energy Limited et al v. Haaland et al*, Case No. 1:21-cv-11171 (D. Mass., filed July 18, 2021). Prior to that, Allco's proprietor sued the Massachusetts Department of Public Utilities in two separate proceedings relating to the approval of an agreement between the Massachusetts Electric Company and the Nantucket Electric Company to purchase power from Cape Wind Associates, LLC (from an offshore wind-powered energy generating facility that was ultimately not constructed). *Thomas Melone v. Department of Public Utilities*, 462 Mass. 1007, May 9, 2012. And in 2018, Allco sued the U.S. Forest Service over its approval of the (now abandoned) Northern Pass transmission line that was proposed to bring hydroelectric power to New England from Quebec. *Allco Renewable Energy Ltd. v. USDA Forest Service*, Docket No. 1:18-cv-00445-JL (D. N.H. filed May 24, 2018). Ironically, Allco's proprietor is also engaged in several legal battles throughout the country using "scorched earth" tactics against municipalities, agencies, or local environmental groups that have *opposed various projects* and threatened the financial bottom line of the development—demonstrating a pattern of "development-for-me-and-not-for-thee."

Thus, given that CGS § 22a-19 only allows intervenors to raise environmental concerns that are within the jurisdiction of the particular administrative agency conducting the proceedings and the Council does not have the authority to ban the construction and installation of fuel cell projects across Connecticut; Allco's Request does not comport with the requirements of CGS § 22a-19 and should be denied.

Lastly, Allco alleges that it is the company's mission to "challenge laws and policies that restrict or burden solar development and fight the devastating environmental impacts from burning fossil fuels." Allco Request at 2. Yet, there are also environmental impacts associated with solar power. "As with any type of power plant, large solar power plants can affect the environment near their locations. Clearing land for construction and the placement of the power plant may have long-term effects on the habitats of native plants and animals."<sup>11</sup> Allco is certainly aware of these problems given the company's enforcement history with the Vermont Public Utility Commission relating to unauthorized site tree clearing and the destruction of rare local species of plants in connection with its site development for various solar projects.<sup>12</sup> As such, it is difficult to understand how Allco argues that one renewable technology is superior to the other and warrants its prohibition.

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<sup>11</sup> *Solar Explained*, Solar energy and environment, U.S. Energy Information Administration, accessed at <https://www.eia.gov/energyexplained/solar/solar-energy-and-the-environment.php> ("Some toxic materials and chemicals are used to make the photovoltaic (PV) cells that convert sunlight into electricity. Some solar thermal systems use potentially hazardous fluids to transfer heat. Leaks of these materials could be harmful to the environment.").

<sup>12</sup> "In this Order, the Vermont Public Utility Commission ("Commission") adopts the following proposal for decision and imposes a civil penalty in the amount of \$5,000 on Otter Creek Solar LLC ("OCS") for violating Commission Rule 5.408...". PUC Case No. 19-1596-INV, *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into alleged violation of Otter Creek Solar, LLC's certificates of public good issued in Cases 8797 and 8798*, Final Order Adoption Proposal for Decision at 1, April 1, 2021; see also, PUC Case No. 20-1611-INV, *Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)* (in which the Vermont Agency of Natural Resources stated in its Brief In Support of Permanent Injunction against an Allco affiliate, "To make matters worse, the [Allco affiliate] then continued site clearing activities for several hours on June 27, 2020, despite being told by the [Vermont Public Utility Commission] to cease clearing at the conclusion of the June 26, 2020 [temporary restraining order] hearing and despite issuance of the [temporary restraining order] on June 26 by the [Vermont Public Utility Commission]. Such an act can only be viewed as conscious and deliberate" and that "rare plants which once existed at the Apple Hill site are now gone; they have been destroyed by the [Allco affiliate]'s site clearing activities).

#### IV. Conclusion

For the foregoing reasons, HFC1 respectfully requests that the Council deny Allco's Request for CEPA intervenor status.

Respectfully Submitted,

Homestead Fuel Cell 1, LLC



By: \_\_\_\_\_

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