

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF HOMELAND TOWERS, LLC AND  
NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T FOR  
A CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR THE  
CONSTRUCTION, MAINTENANCE, AND OPERATION  
OF A TELECOMMUNICATIONS FACILITY AT  
1837 PONUS RIDGE ROAD,  
TOWN OF NEW CANAAN, CONNECTICUT

DOCKET NO. 509

June 15, 2022

**APPLICANTS' RESPONSE TO PARTY/ INTERVENOR MARK BUSCHMANN,  
TRUSTEE AND MARK BUSCHMANN MOTION TO DISMISS/  
MOTION FOR STAY OF PROCEEDING**

Applicants, Homeland Towers, LLC and New Cingular Wireless PCS LLC (“AT&T”), hereby submit this response to the May 31, 2022 Motion to Dismiss/Motion for Stay of Proceeding by Mark Buschmann, Trustee as party and Mark Buschmann as intervenor in this proceeding (“Motion”). As set forth below, the current membership of the Siting Council is properly designated and appointed pursuant to the Public Utilities Environmental Standards Act (PUESA) such that the agency has jurisdiction to preside over and issue a Certificate of Environmental Compatibility and Public Need (Certificate) in Docket 509.

Pursuant to Section 16-50j(b) of PUESA<sup>1</sup>, the Siting Council’s seven current members include: (1) the designee of the Commissioner of Energy and Environmental Protection, Kenneth Collette, (2) the designee of the Commissioner of the Public Utilities Regulatory Authority, Quat Nguyen, (3) one designee of the speaker of the House, Robert Silvestri and one designee of the president pro tempore of the Senate, Daniel P. Lynch, and (4) three appointees of the Governor: John Morrisette, Louanne Cooley and Mark Quinlan. Ms. Cooley has experience in the field of ecology. If and when the Governor appoints two more members to the Siting Council, we expect that one of those additional members will have experience in the field of ecology in accordance with C.G.S. §16-50j(b).

---

<sup>1</sup> C. G. S. §16-50j(b): Except for proceedings under chapter 445, this subsection and subsection (c) of this section, the council shall consist of (1) The Commissioner of Energy and Environmental Protection, or his designee; (2) the chairperson of the Public Utilities Regulatory Authority, or the chairperson’s designee; (3) one designee of the speaker of the House and one designee of the president pro tempore of the Senate; and (4) five members of the public, to be appointed by the Governor, at least two of whom shall be experienced in the field of ecology, and not more than one of whom shall have affiliation, past or present, with any utility or governmental utility regulatory agency, or with any person owning, operating, controlling, or presently contracting with respect to a facility, a hazardous waste facility as defined in section 22a-115, or an ash residue disposal area.

Notably, Section 16-50j(b) of PUESA sets a maximum of nine Council members to be appointed/designated at any one time and the statute has no required minimum number of members in order for the agency to be properly constituted under the statute. Indeed, there is only the general requirement for a quorum in order to conduct agency business as set forth in the Uniform Administrative Procedures Act (UAPA)<sup>2</sup>. Here, a quorum is achieved by five out of a maximum of nine Council members presiding over the Certificate application in Docket 509. The cases cited in the Motion are simply not applicable to the Siting Council and its statutory jurisdiction under PUESA. In DuBaldo v. Department of Consumer Protection, State Electrical Work Examining Board, 209 Conn. 719 (1989), the reviewing board lacked members with backgrounds or experience as required by state enabling statutes. All the current Siting Council appointees and designees have the requisite experience and background as required by C.G.S. §16-50j(b) for their specific appointments and designations. In Block v. Statewide Grievance Committee, 47 Conn. Supp. 5 (2000), the committee lacked the minimum number of members required by the state enabling statute which expressly stated that: “the Statewide Grievance Committee shall consist of *at least* three members...”. PUESA does not include similar language, let alone state that any one of the specific nine members listed in the statute must actually be appointed/designated in order for the agency as a whole to be statutorily constituted.

It is interesting to note that the parties making this motion already submitted to the Siting Council’s jurisdiction in this proceeding when they moved to intervene on the merits of Docket 509. Yet, the intervenors now assert that the same seven member Siting Council which granted their motion to intervene has no statutory jurisdiction at all to consider Docket 509. Under the intervenors’ jurisdictional theory, the Council couldn’t even rule on this new Motion unless and until the Governor appoints two additional members to the agency.

We submit that the Motion is untimely without merit and wholly unsupported by PUESA, case law or the rules of statutory construction. The Siting Council is statutorily constituted pursuant to Section 16-50j(b) of PUESA and has full authority to preside over and rule on the Certificate application presented in Docket 509.

Respectfully submitted



Lucia Chiochio, Esq.  
Kristen Motel, Esq.  
Cuddy & Feder LLP  
445 Hamilton Ave, 14<sup>th</sup> Floor  
White Plains, NY 10601  
(914)-761-1300  
Attorneys for the Applicants

---

<sup>2</sup> C.G.S. § 4-166 et. seq.

**CERTIFICATE OF SERVICE**

I hereby certify that on this day the foregoing was sent electronically and one (1) original and fifteen (15) hard copies were sent overnight mail to the Connecticut Siting Council and sent electronically to the parties on the service list as noted below.

Kenneth C. Baldwin, Esq.  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103-3597  
[kbaldwin@rc.com](mailto:kbaldwin@rc.com)

David F. Sherwood, Esq.  
Moriarty, Paetzold & Sherwood  
2230 Main Street, P.O. Box 1420  
Glastonbury, CT 06033-6620  
Phone (860) 657-1010  
[dfsherwood@gmail.com](mailto:dfsherwood@gmail.com)

Justin Nishioka  
60 Squires Lane  
New Canaan, CT 06840  
Phone (510) 913-3476  
[Justin.nishioka@gmail.com](mailto:Justin.nishioka@gmail.com)

Dated: June 15, 2022



Lucia Chiocchio, Esq.  
Kristen Motel, Esq.  
Cuddy & Feder LLP  
445 Hamilton Ave, 14<sup>th</sup> Floor  
White Plains, NY 10601  
(914)-761-1300

cc: Homeland  
AT&T  
APT  
Smartlink  
C Squared