

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
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 :
 APPLICATION OF HOMELAND TOWERS, : DOCKET NO. 509
 LLC FOR A CERTIFICATE OF :
 ENVIRONMENTAL COMPATIBILITY AND :
 PUBLIC NEED FOR THE :
 CONSTRUCTION, MAINTENANCE AND :
 OPERATION OF A :
 TELECOMMUNICATIONS FACILITY AT :
 1837 PONUS RIDGE ROAD, NEW :
 CANAAN, CONNECTICUT : MAY 31, 2022

MOTION TO DISMISS/MOTION FOR STAY OF PROCEEDING

Mark Buschmann, Trustee, as party in this proceeding pursuant to Connecticut General Statutes ("C.G.S.") Sections 4-177a and 16-50n (a), and Regulations of Connecticut State Agencies ("R.C.S.A.") Section 16-50j -14, and Mark Buschmann, as an intervenor in this proceeding pursuant to C.G.S. Section 22a-19, hereby moves to dismiss the above-referenced application because the Connecticut Siting Council is improperly constituted as required by its enabling legislation; C.G.S. § 16-50j (b); or, in the alternative, for a stay of the Siting Council's consideration of the above-referenced application until such time as the statutorily required members are appointed to the Council.

The required constitution of the Connecticut Siting Council is set forth in C.G.S. § 16-50j (b), which provides as follows:

Except for proceedings under chapter 445,1 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.

According to the Connecticut Siting Council website, the members of the siting council are Kenneth Collette, appointed by the Commissioner of Energy and Environmental Protection, Quat Nguyen, appointed by the Chairperson of the Public Utility Regulatory Authority, Daniel P. Lynch, Jr., appointed by the President Pro Tempore of the Senate, Robert Silvestri, appointed by the Speaker of the House, and John Morissette, Louanne Cooley and Mark Quinlan, appointed by the Governor. Of the Governor's three appointees, only Ms. Cooley may be considered "experienced in the field of ecology." Mr. Morissette and Mr. Quinlan both have been affiliated with a "utility or governmental utility regulatory agency." See Exhibit A and Connecticut Siting Council, Council Membership, Energy and Telecommunications, available at <https://portal.ct.gov/CSC/Membership/Membership/Council-Membership---Energy>.

The Siting Council, which currently includes three appointees of the Governor, two of whom are affiliated with the energy sector and only one of whom has experience in the field of ecology, is improperly constituted as required by its enabling legislation and therefore lacks statutory authority to consider this application.


A similar situation arose in DuBaldo v. Department of Consumer Protection, State Electrical Work Examining Board, 209 Conn. 719 (1989). An electrical contractor appealed from a decision of the Electrical Work Examining Board of the Department of Consumer Protection which suspended his unlimited electrical contractor's license. At the time of the hearing, C.G.S. § 20-331, which established the Electrical Work Examining Board, required that "[e]ach such board ... shall consist of seven members who shall be residents of this state, two of whom shall be unlimited contractors, two of whom shall be unlimited journeymen, engaged in and licensed for such occupation under this chapter, and three of whom shall be

public members.” *Id.*, 722. The plaintiff claimed that the two board members who were the unlimited journeymen were not engaged in the occupation of electrical contracting and therefore the board failed to meet the statutory requirements set forth in § 20–331. The trial court dismissed the appeal, and the contractor appealed. The Supreme Court held that Electrical Work Examining Board, which included two unlimited journeymen who were not engaged in the occupation of electrical contracting, was improperly constituted as required by its enabling legislation and therefore lacked statutory authority to suspend the contractor's unlimited electrical contractor's license. See also Levinson v. Connecticut Bd. of Chiropractic Examiners, 211 Conn. 508, 540-41 (1989) (Covello, J. Concurring).

In Block v. Statewide Grievance Committee, 47 Conn. Supp. 5 (2000), an appeal of a Grievance Committee recommendation of attorney discipline, the court raised *sua sponte* the issue of whether the reviewing committee of the Statewide Grievance Committee that heard the complaint in that case and recommended disciplinary action to the Statewide Grievance Committee was properly constituted. The court noted that General Statutes § 51–90g(a) and Practice Book § 2–35 provide that a reviewing committee authorized to hold a hearing and submit a proposed decision to the Statewide Grievance Committee shall consist of at least three members, including, in the words of the statute, “at least one-third who are not attorneys,” and the record revealed the reviewing committee members in that case consisted of two attorneys and no lay persons. The court, citing DuBaldo v. Department of Consumer Protection, held that the reviewing committee was improperly constituted when it acted without a public member, and remanded to the Statewide Committee for a hearing before a properly constituted reviewing committee. See also Opinions, Conn. Atty. Gen. No. 95-014 (April 7, 1995).

Therefore, as set forth above, the application should be dismissed because the Connecticut Siting Council is improperly constituted, or, in the alternative, the Siting Council's consideration of the above-referenced application should be postponed until such time as the composition of the Council accords with the requirements of its enabling statute.

RESPECTFULLY SUBMITTED,
PARTY, MARK BUSCHMANN, TRUSTEE
INTERVENOR, MARK BUSCHMANN

By 
David F. Sherwood
Moriarty, Paetzold & Sherwood
2230 Main Street, P.O. Box 1420
Glastonbury, Connecticut 06033-6620
Tel. (860) 657-1010
Fax (860) 657-1011
Juris No. 412152
His Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on May 31, 2022.

Lucia Chiocchio, Esq.
Kristen Motel, Esq.
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
Phone (914) 761-1300
lchiocchio@cuddyfeder.com
kmotel@cuddyfeder.com

Raymond Vergati
Manuel Vicente
Homeland Towers, LLC
9 Harmony Street, 2nd Floor
Danbury, CT 06810
rv@homelandtowers.us
mv@homelandtowers.us

Brian Leyden
Harry Carey
AT&T
84 Deerfield Lane
Meriden, CT 06067
bl5326@att.com
hc3635@att.com

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Phone (860) 275-8200
kbaldwin@rc.com

Justin Nishioka
60 Squires Lane
New Canaan, CT 06840
Phone (510) 913-3476
Justin.nishioka@gmailcom



David F. Sherwood
Commissioner of the Superior Court

EXHIBIT A

Connecticut Siting Council^(/CSC)

[CT.gov Home](#) [\(/\)](#) [Connecticut Siting Council](#) [\(/CSC\)](#) Council Membership - Energy

Energy and Telecommunications

Chairman

Appointed by the Governor

(position currently vacant)

Commissioner Katie Dykes
Department of Energy and Environmental Protection
Designee: Kenneth Collette

Mr. Collette was designated as DEEP's representative to the Siting Council by Commissioner Dykes on February 4, 2022. Ken is a staff attorney with DEEP and has 14 years of experience with the Department's multiple bureaus and divisions, including traditional regulatory programs governing air, water, waste, and coastal resources as well as natural resource programs with responsibility for forestry, fisheries, and wildlife. Prior to joining DEEP, he was legal counsel for multiple state agencies in the Commonwealth of Massachusetts, including the Department of Conservation and Recreation, the Executive Office of Energy and Environmental Affairs, and the Department of Agricultural Resources. He is a graduate of Suffolk University Law School and The Pennsylvania State University.

Photo Not Available

Marissa Gillett, Chairman
Public Utilities Regulatory Authority
Designee: Quat Nguyen

Photo Not Available



Daniel P. Lynch, Jr.

Appointed by the President Pro Tempore

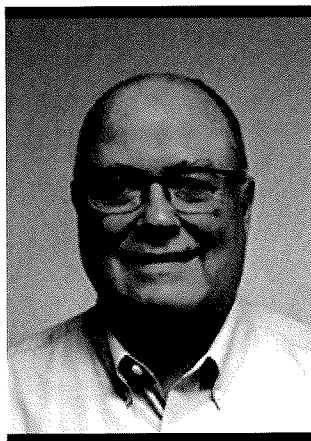
Mr. Lynch is a Managing member of Carpe Diem Enterprises, LLC (turnaround management); Partner DLD Agency (insurance); consultant and board member Resorts Holding International Limited (Glastonbury, CT and London, UK), marketing consultant to the Nutmeg State Games; member of Connecticut Siting Council, 1988 to 1995 (first term), and advisory board member for United States Veterans.



Robert Silvestri

Appointed by the Speaker of the House

Mr. Silvestri is the Former Manager of Environmental Operations and Safety for The United Illuminating Company, Environmental Operations Leader for Wisvest Connecticut - Wisconsin Energy, Manager of Environmental Compliance and Programs for PSEG Power Connecticut; Creator and Publisher of "Air Waves;" Connecticut Department of Energy & Environmental Protection Green Circle Award recipient; Connecticut Secretary of State Public Service Award recipient.



John Morissette
Member
Appointed by the Governor

Mr. Morissette retired from Eversource Energy having responsibilities that included: Manager of Siting and Permitting, Supervisor - Distributed Resources for Connecticut Light and Power, Manager - Asset Management, Manager - Contract Administration, Wholesale Power Marketer for Select Energy, and Principal for the first commercial wind plant in Central America for Charter Oak Energy. Mr. Morissette is also the Chairman for the Town of Vernon's Risk Management Advisory Committee.



Louanne Cooley
Member
Appointed by the Governor

Louanne Cooley, Commissioner for Town of Mansfield Planning and Zoning Commission and Inland Wetlands Agency. Legal Fellow at University of Connecticut, Connecticut Institute for Resilience and Climate Adaptation. J.D from UConn School of Law, Certificate in Energy & Environmental Law. B.S. and M.S in Biology from Bowling Green State University and pursued Ph.D. studies at the University of Michigan while teaching and doing fieldwork at the University of Michigan Biological Station. Prior to attending law school, Louanne taught at the University of Connecticut in the Department of Ecology and Evolutionary Biology.

Photo Not Available

Mark Quinlan
Member
Appointed by the Governor

Mark Quinlan worked for over forty years for the State of Connecticut on a broad range of energy issues. He began his career at the Energy Division of the Office of Policy and Management working on the state's energy conservation programs. He then moved to the Department of Public Utility Control and later became the Supervisor of Technical Analysis for the electric unit. In that position, he oversaw the regulation of the

state's electric utilities. When the Department of Energy and Environmental Protection was created, he focused on procuring energy resources and developing state energy policy as the Director of Energy Supply for DEEP. Mark is also a member of the Canton Energy Committee.