

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE: :  
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 APPLICATION OF HOMELAND : DOCKET NO. 509  
 TOWERS, 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 : JUNE 16, 2022

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

Mark Buschmann, Trustee, as a 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 files this reply to the “Applicants’ Response to Party/Intervenor Mark Bushmann, Trustee and Mark Bushmann Motion to Dismiss/Motion for Stay of Proceeding.” Mr. Bushmann has moved 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.

In their response, the applicants confuse quorum requirements under UAPA with the statutory mandate of C.G.S. § 16-50j (b) as to the composition of the Siting

Council.<sup>1</sup> Their characterization of § 16-50j (b) as setting “a maximum of nine Council members to be appointed/designated at any one time [with] no required minimum number of members in order for the agency to be properly constituted under the statute” does not comport with the statutory language itself, which states that the Council shall consist of nine members.<sup>2</sup> Further, the applicants do not address that fact that Council Members John Morrisette and Mark Quinlan have “affiliation, past or present, with [a] utility or governmental utility regulatory agency, or with any person owning, operating, controlling, or presently contracting with respect to a facility,” so that their appointment to the Council violates the statutory requirement as to its composition.

The applicants also suggest that by seeking permission to participate in these proceedings as a party or intervenor, Mr. Bushmann has somehow consented to the Council’s jurisdiction and is foreclosed from challenging its constituency on a motion to dismiss. “Subject matter jurisdiction involves the authority of the [tribunal] to adjudicate the type of controversy presented by the action before it.... [A tribunal] lacks discretion to consider the merits of a case over which it is without jurisdiction.... The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the [tribunal] sua sponte, at any stage of the proceedings, including on appeal.” (Internal quotation marks omitted.) *Pine v. Dept. of Public Health*, 100 Conn.

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<sup>1</sup> The Uniform Administrative Procedure Act, C.G.S. § 4-166 et. seq., does not allow for action by a quorum of an improperly constituted agency.

<sup>2</sup> C.G.S. § 16-50j (b) provides: “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.”

App. 175, 180 (2007).

Finally, the applicants contend that “[u]nder the intervenors’ jurisdictional theory, the Council couldn’t even rule on this new Motion [to Dismiss] unless and until the Governor appoints two additional members to the agency.” This contention is inconsistent with “the well established principle of administrative law that an administrative body always has jurisdiction to determine its own jurisdiction to act in a given case. See, e.g., *Cannata v. Dept. of Environmental Protection*, 215 Conn. 616, 623 (1990).

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

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on June 16, 2022.

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s/ David F. Sherwood  
David F. Sherwood  
Commissioner of the Superior Court