

State of Connecticut Siting Council

DOCKET NO. 488 —

Homeland Towers, LLC and New Cingular Wireless PCS, LLC d/b/a AT&T application for Certificate of Environmental Compatibility and Public Need for construction, maintenance, and operation of a telecommunications facility located at one of two sites: Kent Assessor ID #M10, Block 22, Lot 28 “Bald Hill Road” or 93 Richards Road, Kent, Connecticut.

: July 31, 2020

RESPONSE TO SITING COUNCIL FOIA DENIAL AND MOTION TO AMEND NON-DISCLOSURE AGREEMENT

The Bald Hill Road Neighbors (“BHRN”) hereby respond to the correspondence from the Executive Director of the Siting Council, dated July 30, 2020.

Dear Executive Director Bachman:

We are in receipt of your July 30, 2019 denial of the BHRN’s FOIA request. The BHRN on July 28, 2020 filed an Objection to the Protective Order and proposed Non-Disclosure Agreement (“NDA”) on the basis that the NDA, as currently drafted, created ethical concerns and impediments to our ability to adequately represent our clients on the issue of areas of environmental concern on the Site A property.

As presented to the parties, the NDA in Paragraph 4 states, “[o]nly individuals, and not entities may be Recipients of Confidential Information under this paragraph.” As presented, the NDA makes it so that the recipient must be an attorney or independent expert witness for a party or intervenor in this proceeding. Paragraph 4 seemingly precludes the sharing of this information with any of the individuals who comprise the BHRN, which poses a problem under attorney ethics rules cited in our July 28, 2020 objection and motion.

In addition, Paragraph 5(c) states that the “Recipients”, “may not in any manner disclose the Confidential Information to any person and that he/she may not use the Confidential Information for the benefit of any person except in *this Council proceeding* and in accordance with the terms of this Protective Order.” [emphasis added] Thus, as presented, the language of

Paragraph 5(c) appears to preclude counsel for the Bald Hill Neighbors from using this information in any subsequent appeal of the Siting Council's final decision and would preclude counsel from using this information in any potential civil action.

The Bald Hill Neighbors are amenable to revisions to the NDA and Protective Order that ensure that the parties' rights are not abridged in either this proceeding or any other potential litigation. This would include a closed evidentiary hearing specifically limited to the full Phase I on September 3, 2020.

Footnote 1 of your July 30 letter cites *FairwindCT, Inc. v. Connecticut Siting Council* (313 Conn. 669, 732 (2014)). It is worth noting a key distinction between the information protected in *FairwindCT* and the Site A Phase 1 report in the present case. Whereas in *FairwindCT* the information subject to the protective order was related to wind resources, wind speeds, wind generation and related information obtained by the applicant from its supplier-manufacturer General Electric, the information being protected in the present case relates directly to environmental aspects of the Site A property. As the court in *FairwindCT* found, the wind material was proprietary because among other reasons, it had economic value "that if generally known, would be a disadvantage to GE and the applicants, and would be an advantage to market competitors and future wind project proponents." Such competitive and market advantage factors do not apply to potential contamination at the Bald Hill site, a site the Applicants willingly subjected to Siting Council review. By the Applicants' own admission, there are substantial areas of environmental concern on the Site A property (see e.g., Applicants' Response to Siting Council Interrogatories Set Two, Attachment 5). Lastly, our concerns as to the conditions contained in both the NDA and Protective Order are not "tactical decisions" as alluded to in the *FairwindCT* decision. Rather, the existing conditions and areas of potential contamination on Site A are vital to the Bald Hill Neighbors' ability to fully participate in this case and to use said information in this proceeding and any appeal therefrom.

Paragraph 8 of the Council's July 23, 2020 Protective Order provides that the NDA can be amended, "by motion". Thus, the BRHN move that the text of the NDA be amended to specifically include clients (i.e., the individual BHRN members) in the closed proceeding; and, in addition to use in this Council proceeding, to allow use of the Phase 1 in any appeal of this Siting Council matter (whether or not *in camera* in the Superior Court, as the Court may choose to proceed). If the Council is amenable to changes to the NDA, the BHRN can provide such proposed changes as

a “redlined” draft (e.g., Microsoft Word, “Track Changes” function) of a modified NDA to the Council.

Respectfully Submitted,

The Bald Hill Neighbors.

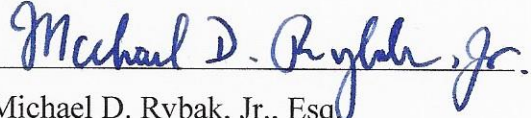
By


Anthony F. DiPentima, Esq.

July 31, 2020

Date

By


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CERTIFICATE OF SERVICE

I hereby certify that a true, original copy, of the foregoing were placed in the U.S. Mail on this 31st day of July 2020 and addressed to:

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

I further certify that an electronic copy of the foregoing was sent to:

siting.council@ct.gov

And I certify that electronic copies of the foregoing were sent to:

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