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VIA ELECTRONIC MAIL AND MESSENGER

February 2, 2007

The Honorable Daniel Caruso, Esq.
Chairman
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: **Petition 784 - Petition of Plainfield Renewable Energy LLC for a Declaratory Ruling that No Certificate of Environmental Compatibility and Public Need Is Required for the Construction, Maintenance, and Operation of a 37.5 MW Wood Biomass Staged Gasification Generating Project in Plainfield, Connecticut**

Dear Chairman Caruso:

At its January 18, 2007 meeting, the Connecticut Siting Council (the "Council") began deliberations on the petition for declaratory ruling filed by the Plainfield Renewable Energy, LLC ("Plainfield") biomass generating project in accordance with the General Assembly's 2005 amendments to Conn. Gen. Stat. § 16-50k. In those deliberations, the Council began discussing the potential impacts of the Plainfield project on endangered species, cultural resources and wetlands. Additionally, the Council discussed whether the standards for granting a petition for declaratory ruling differ from standards for granting an application for a certificate of environmental compatibility and public need.

While it is not customary for a petitioner or applicant to respond to Council comments made during deliberations, we are writing this letter on behalf of Plainfield to address both sets of issues (the effects and the standards for consideration). I have been authorized by counsel for The Connecticut Light and Power Company ("CL&P"), Bob Golden, to inform the Council that CL&P (the only intervenor/party in this proceeding other than Plainfield) does not object to the filing of this letter with the Council.

Potential Environmental Impacts

Endangered Species – Discussion at the January 18, 2007 meeting suggested that information concerning impacts of the Project on endangered species had not been provided to the Council. A study documenting that no rare, threatened, or

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endangered species are present at the biomass gasification plant site and that the proposed plant development should not impact habitats for the three identified species in the vicinity of the project site was included as Exhibit C of the Petition. A second study for the proposed water intake / discharge site in Canterbury and the pipeline route between the sites was performed after the date of the August 2006 Petition submittal to the Council. This study determined that suitable habitat for the identified rare, threatened, or endangered species in the area did not exist on this site. The Council was informed of Plainfield's intention to file these reports with the Department of Environmental Protection ("DEP") at the November 16, 2006 hearing. This was done, and was submitted to the Council on December 14, 2006. On that date, consistent with discussion with the Council's staff, Plainfield filed with the Council one copy of the Project's correspondence to the DEP regarding Plainfield's site surveys and habitat assessments of (i) the proposed facility site; and (ii) the proposed water intake and discharge locations (the "Terrestrial Reports"). I have enclosed with this letter an additional twenty (20) copies of the complete December 14, 2006 filing.¹

Cultural Resources – At the November 16, 2006 hearing, Mr. Whiting testified that while no schedule had been developed in response to a letter from the State Historic Preservation Officer, the Project would not object to an order from the Council requiring the Project to follow the recommendation of the Connecticut Commission on Culture and Tourism and hire an archeologist (11/16/06 Tr. at 42).

The Council has in the past conditioned its approval of projects on the completion of archeological assessments *prior to construction* (and after the Council's decision approving the project). For example, in Docket 311 (Wilton Substation) the Council stated, "The Certificate Holder shall conduct archeological reconnaissance prior to construction, and implement the State Historic Preservation Officer's mitigation measures as noted in CL&P's April 6, 2006 letter." Order, Paragraph 2. Similarly, in Docket 272 (Middletown/Norwalk) the Council stated, "The Certificate Holders shall conduct a Phase II Archeological Reconnaissance Survey in consultation with the Connecticut Historical Commission prior to construction." Order, Paragraph 21.

Plainfield respectfully requests that the Council follow the precedent of the two dockets cited above and order Plainfield to complete the additional work requested in the Connecticut Commission on Culture and Tourism's November 2, 2006 letter prior to the start of construction.

¹ Draft Finding of Fact 88, which presently states that a 1999 wildlife study of the site that did not identify any federally or state listed rare, threatened or endangered species is irrelevant given the age of the study, can be modified to reference information contained in the December 14th filing.

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Wetlands: The record demonstrates that wetlands protection and enhancement are design factors in the development of the Project plans. Wherever possible, direct wetlands impacts were avoided during site design. The total permanent impact to wetlands at the plant site is less than 0.1 acre. At the water intake/discharge location, all wetlands impacts are anticipated to be temporary; less than 0.1 acre of State and less than 0.01 acre of Army Corps wetlands are anticipated to be temporarily impacted. In addition, less than 0.1 acre of temporary impact in the river will occur during installation of the intake and outlet structures. If impacts are unavoidable, then measures will be implemented to enhance quality and function of existing wetlands as described in the Terrestrial Reports included with this submission. Finally, wetlands mitigation or replacement is proposed.

To protect and enhance the quality of the existing wetlands and proposed stormwater basins, buffer zones will be established around each of the identified wetlands. Wetlands W3, which is described as degraded and of little productive value, will be cleaned of debris, expanded, and protected. These actions should enhance its overall quality, productivity, and function. Wetland W6 will be better protected and will be expanded to compensate for impacts from construction of the emergency access road (this access road was not an original design feature of the plant layout, but rather was added in response to public request during the February 2, 2006 public informational meeting at Plainfield Town Hall). Moreover, as shown on the site plans, additional stormwater detention basins will be created on the site which will serve to control flooding, provide for sediment removal to limit impacts to other nearby wetlands, and may also provide some wildlife habitat functions. Plainfield Exhibit 1 at 102; Plainfield Exhibit 4 (Response to CSC-14); 11/16/06 Tr. at 48-49, 52-54.

Wetlands W3 (one of the isolated wetlands) – This wetland is near Mill Brook Road and was created during the construction of Mill Brook Road. Plainfield Exhibit 4 (Response to CSC-14); 11/16/06 Tr. at 53. The proposed development plan requires disturbance of only 260 square feet of Wetland W3. Plainfield Exhibit 4 (Response to CSC-14). The impacts from proposed construction activities to isolated wetlands, including Wetland W3, are discussed in Section 4.2.1 of the Kleinschmidt Environmental Report – Terrestrial Ecology for a Proposed 37.5MW Biomass Facility (Facility Siting), August 2006 (the “Kleinschmidt Report”) and presented as Attachment C in the Petition. The Kleinschmidt ecologist who examined Wetland W3 described it as “*extremely degraded and during the time of the field investigation tires, roadway runoff (sand), and other waste types were observed. Combined with the immediate proximity to Mill Brook Road, this degraded habitat is providing little to no wildlife habitat*”. Kleinschmidt Report at 37. [emphasis added].

The report goes on to state that the impacts to Wetland W3 were unavoidable given the need to construct the facility access road off of Mill Brook Road rather than State Route 12 and the proximity to the more productive, vernal pool habitats identified

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in nearby Wetland W2. *Id.* at 38. Additionally, Section 4.2.1 of the report states that “wetland functions associated with the disturbed isolated wetland, e.g. flood storage, will be greatly improved with a combination of wetland restoration and the construction of the detention basin. Furthermore, it also seems plausible that wetland functions that are not currently present in this wetland, e.g. wildlife habitat will be enhanced somewhat”. *Id.*

Section 5.2.1 of the Kleinschmidt Report provides a mechanism for the restoration of the wetland W3 and the construction of the stormwater detention basin. The two will be integrated. The resulting wetland will be planted with a palustrine emergent wetland plant community with a scattering of berry-bearing shrubs as a structural element for wildlife. Herbaceous species effective at out-competing invasive wetlands plants will be utilized. Buffer zone plantings around the edge of this wetland will also stabilize the banks of the wetlands and provide biofiltration of overland runoff. *See* Kleinschmidt Report Section 5.2.3. Naturally, the restoration plan for Wetland W3 will also include removal of the tires, accumulated sand, and other debris from the wetland.

The proposed restoration measures and the construction of a stormwater detention pond adjacent to this wetland will enhance its overall quality and function as well as increasing its size.

Wetland W6 – This wetland is the red forested maple wetland on the northern end of the property. Direct impacts to this wetland are discussed in Section 4.2.1 of the Kleinschmidt Report under the heading “Forested Wetland Impacts”. The impacts to this wetland are minor and are due to construction of an emergency access road. The impact will involve filling along the very edge of the wetlands, where a shrub and herb-dominated fringe is present. Approximately 0.05 acre (2,200 square feet) will be disturbed. Plainfield Exhibit 4 (Response to CSC-14); 11/16/06 Tr. at 48-49. Given the large size of this wetland (it extends significantly to the north of the Project property and covers approximately 2.03 acres on the Project property) “it is unlikely that wetlands functions, e.g. wildlife habitat, will be severely compromised.” Kleinschmidt Report at 38.

Sections 5.2.2 and 5.2.3 of the Kleinschmidt Report provide mechanisms for the restoration of the wetland W6. Buffer zone plantings will be installed to protect the existing wetlands and improve the quality of stormwater runoff to this wetland. Additionally, an area *comparably-sized to the impact* will be excavated to restore the size of this wetland. Finally, the area will be planted with a palustrine emergent

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wetland plant community and a scattering of berry-bearing shrubs as structural elements for wildlife.²

Wetlands at the Water Intake/Discharge – The site has been designed so that the gravel access road and pump house will be located outside of State and federal wetlands located on the site. Retaining walls and grading will be utilized to ensure that no filling (i.e., direct impact) of nearby wetlands will be required. Erosion and sedimentation controls will be installed prior to commencement of construction activities to protect downslope wetlands.

State and federal wetlands will be disturbed during construction of the water lines from the pump house to the intake and discharge locations. The proposed layout of these lines was designed to minimize the area of wetlands impacted. Initially, they will run in the same trench for approximately 220 feet, then they will split to run the remaining length (approximately 180 feet each to the center of the Quinebaug River). It is anticipated that 3,050 square feet (0.08 acres) of State and 350 square feet of federal regulated wetlands (0.008 acres) will be *temporarily* disturbed during construction.³

These areas will be restored to existing conditions and re-planted with appropriate target plant communities and shrubs. These target plant communities are described in the Kleinschmidt Report. Consequently, there is anticipated to be no permanent impacts to wetlands at the water intake/discharge location.

² The exact location of the transmission pole(s) that will be located off Plainfield property has not yet been determined. However, the pole(s) will not be placed within the land use restriction area. 11/16/06 Tr. at 50. Rather, the pole(s) will be placed on property owned by the Town of Plainfield (the Town has provided a conservation easement for the property to the U.S. Army Corps of Engineers ("ACOE")). The Project is currently coordinating the location of the pole(s) with the Town and ACOE. Another pole location will be on the Intermark Fabric Corporation property (no wetlands on this property will be impacted). Plainfield will provide the location of the pole(s) as part of the final site plan submission – which is included typically in the development and management plan.

³ During the November 16, 2006 hearing the Project indicated that 8,000 square feet of State wetlands will be disturbed. 11/16/06 Tr. at 66. Further detailed engineering has reduced the amount of disturbance to 3,050 square feet.

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180 Day Time Limitation

Conn. Gen. Stat. §4-176 arguably establishes a 180 day limit for an agency to make a determination on a request for a declaratory ruling.⁴ To the extent the Council considers that section applicable to the Plainfield petition, the 180 day period would end on February 9, 2007. Plainfield agrees to a three month extension of the time period for issuing a declaratory ruling on this matter, if required by the Council. I have been authorized by Attorney Golden to represent to the Council that CL&P does not object to the extension of time.

The No Substantial Adverse Environmental Impact Standard

Plainfield's petition seeks a declaratory ruling that a certificate of environmental compatibility and public need is not needed for the construction, operation and maintenance of the Project because the Project will not have a *substantial* adverse environmental impact. Public Act 05-01 (June Special Session), *An Act Concerning Energy Independence* (the "Energy Independence Act"), amended Conn. Gen. Stat. §16-50k to provide explicitly for the siting of small generators such as Plainfield through a petition process rather than a certificate proceeding. The amendment to §16-50k was part of the legislature's goal in Public Act 05-01 of encouraging the construction of generation projects,⁵ and the ability to use the petition process is one way the legislature saw to assist in the speedy installation of new generation. Neither the statute nor the legislative history suggest that a petition needs to be more thorough, contain additional information or otherwise be more complete than an application for a certificate. Rather, it is Plainfield's belief that regardless of whether an applicant files a petition or an application the requirement is the same: there must be a demonstration that the project will not have a significant adverse environmental impact. See Conn. Gen. Stat. §16-50k.

⁴ Conn. Gen. Stat. §4-176(i) provides: "If an agency does not issue a declaratory ruling within one hundred eighty days after the filing of a petition therefor, or within such longer period as may be agreed by the parties, the agency shall be deemed to have decided not to issue such ruling."

⁵ While the legislative history does not address specifically the provision that amends the Council's statute, it does provide insight as to why the legislature saw fit to allow the siting of small generation projects through the Council's petition process: "For the most part, I think this Bill attempts to do what's right. It understands that the wholesale generation market needs certain mechanisms in place for new generation to happen... There are enumerable sections in this Bill where, for example, businesses will get credits to install distributive generation, to make it easier for that to happen." Rep. DelGobbo, June 23, 2005, page 14, 15; see also Sen. Fonfara, June 28, 2005, page 10 ("[W]e provide incentives to the utilities to assist in the installation of new customer side distributed generation and with larger generation project").

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The "no substantial adverse environmental impact" requirement is equal for projects to be sited by petition and projects to be sited by certificate. There is no statutory provision that requires projects approved by petition to have less adverse environmental impact than projects approved by application, or to have no impact at all. Under the statutes, the entity requesting siting approval – whether by application or petition – must demonstrate to the Council that its project will not have a substantial adverse impact on the environment. Plainfield respectfully submits that the record demonstrates that its project does not have a substantial adverse environmental impact, and accordingly the Council should issue a declaratory ruling.

Please do not hesitate to contact me should you have any questions concerning this Plainfield Renewable Energy filing.

Very truly yours,



Linda L. Randell

cc: Service List

Enclosure

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