



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: [siting.council@ct.gov](mailto:siting.council@ct.gov)

[www.ct.gov/csc](http://www.ct.gov/csc)

### VIA ELECTRONIC MAIL

March 3, 2020

Eric W. Callahan, Esq.  
Richard S. Cody, Esq.  
Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.  
2 Union Plaza, Suite 200  
P.O. Box 1591  
New London, CT 06320  
[ecallahan@sswbgg](mailto:ecallahan@sswbgg)  
[rcody@sswbgg](mailto:rcody@sswbgg)

**RE: Freedom of Information Act Request, dated February 19, 2020**

**PETITION NO. 1214** - Groton Fuel Cell 1, LLC Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 5.6 megawatt fuel cell combined heat and power electric generating facility located at the Pfizer Groton campus, 445 Eastern Point Road, Groton, Connecticut.

Dear Attorney Callahan and Attorney Cody:

The Connecticut Siting Council (Council) is in receipt of Attorney Callahan's correspondence of February 26, 2020 and Attorney Cody's (Amended) Petition for Reconsideration of February 28, 2020, copies of which are attached for your convenience.

**February 19, 2020 Freedom of Information Act Request**

The Council received correspondence regarding the February 19, 2020 Freedom of Information Act (FOIA) request for the above-referenced Declaratory Ruling on February 26, 2020. Thank you for acknowledging that we discussed this request on February 20, 2020 and for acknowledging that you received the February 20, 2020 letter in response to your request. During our telephone conversation of February 20, 2020 on the subject FOIA request, you indicated, "I will call you back." I had been awaiting your return call for direction. Instead of a return call, I received your February 26, 2020 correspondence.

The four e-mails responsive to the FOIA request that we discussed during our February 20, 2020 telephone conversation and that are referenced in your February 26, 2020 correspondence are attached hereto. They consist of the following:

1. March 7, 2016 e-mail from Michael Boucher;
2. March 7, 2016 e-mail from Aundre Bumgardner;
3. November 16, 2016 e-mail from Lindsay Leveen; and
4. January 25, 2018 e-mail from Jennifer Arasimowicz.

The Petition 1214 record, specifically the March 4, 2016 Declaratory Ruling, as well as the March 23, 2016 correspondence regarding the determination of the State Historic Preservation Office, May 5, 2016 Commencement of Construction letter, July 29, 2016 Pipeline Procedures letter, and November 21, 2016 Construction Completion letter, all of which are posted on the Council's project webpage, and the four e-mails attached hereto constitute all of the documents within the Council's possession that are responsive to your February 19, 2020 request for records.

Please be advised that I did not acknowledge during our phone conversation on February 20, 2020 that Ms. Gardner contacted me 3 years ago. That is purportedly what Ms. Gardner told you in a separate conversation. I acknowledged that Ms. Gardner contacted me with questions about the fuel cell and the Council's jurisdiction. Please refer to the January 25, 2018 e-mail correspondence from Jennifer Arasimowicz provided in response to your February 19, 2020 FOIA request for when that contact actually occurred. I also mentioned to you during our phone conversation on February 20, 2020 that I had most recently spoken to Jennifer Arasimowicz about the fuel cell in Groton around the holidays.

The February 14, 2020 correspondence that you characterize as "simply not accurate and wholly inappropriate" will not be retracted in part or in its entirety per your demand. The correspondence is factually and legally accurate as it relates to the Council's exclusive jurisdiction over the construction, maintenance and operation of fuel cell facilities in the state.<sup>1</sup> Additionally, the February 14, 2020 correspondence is not a "decision" by the Council, which you acknowledge on the first page of your February 26, 2020 correspondence. The February 14, 2020 correspondence is an opinion letter regarding the Council's jurisdiction over fuel cell facilities authored by its Executive Director and Staff Attorney.

### **February 28, 2020 Petition for Reconsideration**

The Council is also in receipt of Attorney Cody's "Petition for Reconsideration" submitted on behalf of the Town of Groton (Town) on February 28, 2020. In the Petition for Reconsideration, the Town requests the Council to "reconsider and vacate its February 14, 2020 purported ruling or decision."

Fuel Cell Energy, Inc. (FCE) properly submitted a petition for a declaratory ruling (Petition) to the Council pursuant to Connecticut General Statutes (CGS) §4-176 and §16-50k on January 26, 2016 for the construction, operation and maintenance of two 2.8 megawatt (MW) fuel cells at Pfizer's Groton campus located at 445 Eastern Point Road. On January 27, 2016, the Council sent correspondence to the Town requesting comments on the Petition by February 26, 2016. On February 11, 2016, the Town requested party status.<sup>2</sup> The Council granted the Town's request for party status on February 18, 2016.

The Council provided notice of a February 22, 2016 public field review of the fuel cell site on February 16, 2016. Town representatives were invited to participate in the public field review, but no Town representatives attended the public field review.

On March 2, 2016, the day before the Council's regular meeting when Petition 1214 was on the agenda for a final decision, the Town submitted a Statement of Concerns and a Request for Continuance. FCE submitted an objection to the Request for Continuance on March 3, 2016. During the Council's public meeting held on March 3, 2016, the Council denied the Town's Request for a Continuance on the basis that the Town's concerns relative to violation of the Town's municipal franchise rights and Town

<sup>1</sup> See Conn. Gen. Stat. §16-50i(a)(3) and Conn. Gen. Stat. §16-50k.

<sup>2</sup> Attorney Stephen Studer submitted the Town Request for Party Status and an appearance on behalf of the Town.

contractual provisions are outside the scope of the Council's proceeding. Also during the March 3, 2016 public meeting, the Council rendered a final decision on the Petition to issue a Declaratory Ruling to FCE for the construction, maintenance and operation of the jurisdictional fuel cell facility at the Pfizer campus.

The Council's final decision on Petition 1214 was rendered on March 4, 2016. A "final decision" is defined under the Uniform Administrative Procedure Act (UAPA) as an agency determination in a contested case, a declaratory ruling issued by an agency pursuant to section 4-176 or an agency decision made after reconsideration.<sup>3</sup>

The Council's February 14, 2020 correspondence is not a "final decision" as that term is clearly defined under the UAPA. The Council's February 14, 2020 correspondence is an opinion letter regarding the Council's jurisdiction over fuel cell facilities authored by its Executive Director and Staff Attorney. The Council's February 14, 2020 jurisdictional opinion letter is also not a declaratory ruling pursuant to CGS §4-176 as no party or intervenor submitted a separate request for a declaratory ruling to the Council. Lastly, the Council's February 14, 2020 jurisdictional opinion letter is not an agency decision made after reconsideration. Therefore, the Council's February 14, 2020 jurisdictional opinion letter is not subject to reconsideration under CGS §4-181a because it is not an agency determination in a contested case, a declaratory ruling issued by an agency pursuant to section 4-176 or an agency decision made after reconsideration.

Under CGS §4-181a, a party in a contested case may, within 15 days after the mailing of the final decision, file with the agency a petition for reconsideration of the decision on the ground that: (A) an error of fact or law should be corrected, (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding, or (C) other good cause has been shown.

First, the final decision in Petition 1214 was mailed on May 4, 2016. The Town's Petition for Reconsideration was submitted to the Council on February 28, 2020 - 1,457 days after the mailing of the Council's final decision. According to the statute, the date by which a petition for reconsideration under CGS §4-181a should have been submitted was within 15 days after the mailing of the final decision, which was March 19, 2016.

Second, the grounds presented for the Town's Petition for Reconsideration are the grounds for an appeal of an agency final decision to Superior Court pursuant to CGS §4-183. They are not the grounds for a petition for reconsideration under CGS §4-181a. An appeal to Superior Court is required to be submitted within 45 days after the mailing of the final decision. The final decision was mailed on March 4, 2016. According to CGS §4-183, the date by which an appeal of the Council's final decision in Petition 1214 should have been submitted was within 45 days after the mailing of the final decision, which was April 18, 2016.

Third, the Town makes several blind assertions and blatantly false statements in an attempt to support its flawed and defective Petition for Reconsideration. As evidenced by the January 25, 2018 e-mail correspondence provided in response to Attorney Callahan's February 19, 2020 FOIA request, the public officer of the Town did in fact ask for an explanation of the Council's jurisdiction. Contrary to the Town's representations in its Petition for Reconsideration, the statements in the Council's February 14, 2020 jurisdictional opinion letter are not false. As evidenced by the plain language of the UAPA, the February 14, 2020 jurisdictional opinion letter was not a final decision of the Council and therefore, no notice was required to be provided to the Town or any other party. Contrary to the Town's representation

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<sup>3</sup> Conn. Gen. Stat. §4-166(3).

in its Petition for Reconsideration, the Council's February 14, 2020 jurisdictional opinion letter is not a "decision."

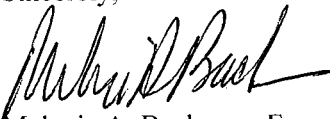
Finally, the Town's vexatious allegations and claims of illegality, predisposition and bias on the part of the Council are completely bogus and conceivably malicious. Given that litigation is currently pending in the Superior Court, it is quite plausible that the intent of submitting this purported Petition for Reconsideration in a closed administrative matter to which the Town was a party, but did not timely exhaust its administrative remedies, is an unsavory litigation tactic.<sup>4</sup> The Town also outright accuses the Council of "becoming a de facto party to private litigation to assist the economic interests of an industry party therein." Certainly, the intent of making such accusations and frivolous administrative filings could not have been to knowingly make a false statement of material fact to a third person in the course of representing a client.

The Council's jurisdiction, as more fully described in the Council's February 14, 2020 jurisdictional opinion letter, as well as in the Connecticut General Statutes that the Town's counsel appears not to have read, includes, but is not limited to, the siting of fuel cell facilities throughout the state. To the extent that the Town is under the impression that it properly filed a request for reconsideration of the Council's March 4, 2016 Declaratory Ruling in Petition 1214, the request fails on its face to meet the legal requirements for the proper submission of a request for reconsideration under the Council's Rules of Practice and the General Statutes and therefore, no properly filed request for reconsideration exists.<sup>5</sup>

Perhaps the Town should request an opportunity to brief the issue related to the Council's jurisdiction from the Superior Court in its pending tax appeal rather than harass the Council for more process that is aligned with the Town's position in the litigation when the Town clearly failed to exhaust its administrative remedies four years ago at the time the final decision was rendered in Petition 1214.

Thank you.

Sincerely,



Melanie A. Bachman, Esq.  
Executive Director

MAB/laf

cc with Enclosures: Council Members  
Petition No. 1214 Service List  
Assistant Attorney General Robert L. Marconi, Esq.

<sup>4</sup> *Liberty Mobilehome Sales, Inc. v. Cassidy*, 6 Conn. App. 723 (1986) (The doctrine of exhaustion is grounded in a policy of fostering an orderly process of administrative adjudication and judicial review and a party should not be allowed to interject unnecessary and potentially confusing elements into an otherwise well-defined area of the law.)

<sup>5</sup> Conn. Gen. Stat. §4-181a and Regulations of Connecticut State Agencies §16-50j-22a.

# Suisman Shapiro

Attorneys-At-Law

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Eric W. Callahan  
Michael P. Carey  
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Jeanette M. Dostie  
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Theodore W. Heiser  
Jeffrey W. Hill  
Carolyn P. Kelly  
Kristi D. Kelly  
Nicholas F. Kepple  
Robert B. Keville  
Jillian K. Miller  
Roger T. Scully  
Robert G. Tukey  
Kyle J. Zrenda  
  
In Memoriam  
Andrew J. Brand  
James F. Brennan  
James J. Courtney  
L. Patrick Gray, III  
Michael V. Sage  
Max M. Shapiro  
Matthew Shafner  
Charles J. Suisman  
Thomas B. Wilson  
Louis C. Wool  
  
Of Counsel  
Hinda K. Kimmel  
Jay B. Levin  
Richard A. Schatz

February 26, 2020

VIA E-MAIL: [Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)  
Ms. Melanie A. Bachman  
Executive Director  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

Re: FOIA Request, dated February 19, 2020

Dear Ms. Bachman:

This is to confirm receipt of your fax dated February 20, 2020 responding to my FOIA request dated February 19, 2020. Thank you for also contacting me by phone on February 20, 2020 in response to my FOIA Request.

In your fax, you indicate that the "entire record of Petition No. 1214" is available online for inspection. You make no mention of the anticipated timing of your making available the other documents responsive to my request. I therefore interpret your fax to mean that it is the position of both you and the Connecticut Siting Council that all documents responsive to my FOIA request are already available online for inspection.

My FOIA request is not limited to, and is much broader than, a request for the documents that you claim constitute the formal "record" of Petition No. 1214. In fact, you confirmed during our phone conversation that you possess emails responsive to my request that are not available for inspection online, but you did not forward same to me. Moreover, the letter you faxed to the Town of Groton dated February 14, 2020 is not posted online, which further confirms my belief that additional documentation outside the "record", but responsive to my request, is within your possession and not available online for inspection. I hereby reiterate my request that you and the Connecticut Siting Council make available all documents responsive to my FOIA request available for inspection as soon as possible. Please carefully note the date range of the documentation requested.

I also hereby demand that you retract your letter dated February 14, 2020 in its entirety because it is simply not accurate and is wholly inappropriate. You assert in your letter that both Attorney Arasimowicz of Fuel Cell Energy and Mary Gardner, the Tax Assessor of the Town of Groton, contacted you over the "past several months" to inquire about the Siting Council's jurisdiction with respect to property owned by Groton Fuel Cell 1, LLC in Groton. During our conversation, you

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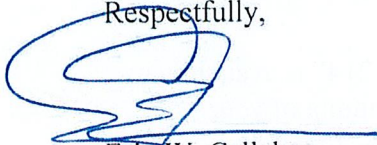
Ms. Melanie A. Bachman  
February 26, 2020  
Page 2

acknowledged that Ms. Gardner has not been in contact with you in approximately three years. You confirmed, however, that Attorney Arasimowicz did contact in November, 2019 and discussed with you that her company was involved in tax appeal litigation with the Town of Groton concerning the property that is the subject of your letter. The Siting Council rendered its decision regarding the subject property in 2017 and no formal request has been made to re-open or articulate that decision. There was absolutely no need, nor any request by the Town of Groton, for the Siting Council to revisit or issue a letter discussing such decision.

Due to the ambiguity in that your letter appears to be a “decision” by the Siting Council, we will have no choice but to commence a formal request for reconsideration pursuant to C.G.S. § 4-176 and appeal to the Superior Court under C.G.S. § 4-183. The decision is fraught with legal and process issues, including apparent favoritism. If it is the Siting Council’s position that your letter is not a “decision” by the Siting Council, please confirm same with me in writing.

Please let me know your position as soon as possible.

Respectfully,



Eric W. Callahan

# Suisman Shapiro

Attorneys-At-Law

Robert A. Avena

Raymond L. Baribeault, Jr.

James P. Berryman

Michael A. Blanchard

Eric W. Callahan

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Robert B. Keville

Jillian K. Miller

Roger T. Scully

Robert G. Tukey

Kyle J. Zreida

February 28, 2020

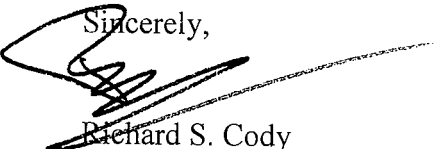
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

Re: Corrected Petition for Reconsideration by Town of Groton

To Whom it May Concern:

Please find attached an original and 15 copies of a corrected Petition for Reconsideration filed on behalf of the Town of Groton. The attached exhibit was inadvertently omitted from the Petition that was emailed and hand-delivered today.

Sincerely,



Richard S. Cody

RSC/lkm  
Enclosures

in Memoriam

Andrew J. Brand

James F. Brennan

James J. Courtney

L. Patrick Gray, III

Michael V. Sage

Max M. Shapiro

Matthew Shafner

Charles J. Suisman

Thomas B. Wilson

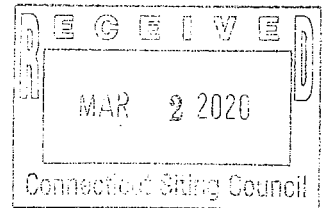
Louis C. Wool

Of Counsel

Trinda K. Kimmel

Jay B. Levin

Richard A. Schatz



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**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

In the Matter of Petition No. 1214

Declaratory Ruling regarding a Certificate of Environmental Compatibility;  
Pfizer Groton campus, 445 Eastern Point Road, Groton, Connecticut

Connecticut Siting Council

February 28, 2020

**TOWN OF GROTON'S PETITION FOR RECONSIDERATION**

The Town of Groton respectfully requests, pursuant to Conn. Gen. Stat. § 4-181a, that the Siting Council (the "Council") reconsider and vacate its February 14, 2020 purported ruling or "decision" (hereinafter "Decision"), a copy of which is attached hereto. The Decision was issued to the Town of Groton, which presumably was made a party to this docket proceeding *ex parte*, and it adversely and substantially affects the legal and financial interests of the Town.

The reasons for the Petition are manifold, and include the following:

1. The asserted reason for the Decision is that a public officer of the Town of Groton "(o)ver the past several months" "asked" to explain "jurisdiction" of the Connecticut Siting Council. These statements are false.

2. The Council provided no notice to the Town of Groton of the pendency of this proceeding, did not offer or permit the Town of Groton to submit evidence and argument, and in re-opening this proceeding and issuing the Decision the Council violated its own rules of practice, the applicable Connecticut General Statutes, and the legal requirements of fundamental fairness.

3. The Council lacked all jurisdiction to have rendered the Decision. This docketed proceeding was closed several years ago. The Council therefore is illegally using this docket as an open platform to make further decisions, orders and modifications, to add parties at will and without notice, to advance private commercial interests, and to affect the legal rights of parties, all without following proper legal process.

4. Based upon information and belief, the Decision is designed to assist the financial interests of a party that has brought litigation against the Town, litigation which does not involve the Council and which litigation is pending currently in the Superior Court of the State of Connecticut. This therefore is being done to disadvantage of the Town and affect the judicial

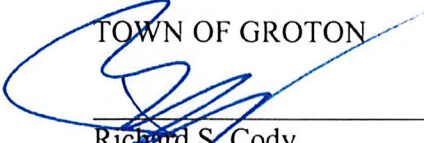


process and the rights of the parties therein. The Decision is *ultra vires*, and demonstrates predisposition and bias in favor of a private, commercial interest.

5. The Town of Groton therefore contests the findings, terms and conditions of the Decision, and challenges the legal authority upon which the Decision was issued. In general, the grounds for the Petition are that the administrative findings, inferences, conclusions and decisions supporting the Order are:

- (i) in violation of constitutional or statutory provisions;
- (ii) in excess of the statutory authority of the agency;
- (iii) made upon unlawful procedure;
- (iv) affected by other errors of law;
- (v) clearly erroneous in view of the reliable, probative and substantial evidence of the whole record;
- (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and
- (vii) issued in the absence of regulatory provision and on unauthorized regulatory purpose, that being an effort by the Council administratively to become a *de facto* party to private litigation and to assist the economic interests of an industry party therein.

The Town of Groton therefore requests an opportunity to be heard on this matter, to correct the underlying facts, and requests that the Council vacate the Decision as void *ab initio*.

TOWN OF GROTON  
  
Richard S. Cody  
Suisman, Shapiro, Wool, Brennan  
Gray & Greenberg, P.C.  
P.O. Box 1591  
New London, CT 06320  
Phone: 860-442-4416  
Fax: 860-442-0495  
Email: [rcody@sswbgg.com](mailto:rcody@sswbgg.com)  
Its Attorneys

**CERTIFICATION**

I hereby certify that a copy of the foregoing document was sent via electronic mail to the following service list on February 28, 2020:

Jennifer D. Arasimowicz, Esq.  
Vice President, Managing Counsel  
FuelCell Energy, Inc.  
3 Great Pasture Road Danbury, CT 06810  
[jarasimowicz@fce.com](mailto:jarasimowicz@fce.com)

Dmitriy Kamenetskiy  
Project Manager  
FuelCell Energy, Inc.  
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Richard S. Cody



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

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[www.ct.gov/csc](http://www.ct.gov/csc)

February 14, 2020

Mary Gardner, Assessor  
City of Groton  
45 Fort Hill Road  
Groton, CT 06340

Jennifer D. Arasimowicz, Esq.  
Executive Vice President, General Counsel, Chief  
Administrative Officer and Corporate Secretary  
FuelCell Energy  
3 Great Pasture Road  
Danbury, CT 06810

Re: **PETITION NO. 1214** - Groton Fuel Cell 1, LLC Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 5.6 megawatt fuel cell combined heat and power electric generating facility located at the Pfizer Groton campus, 445 Eastern Point Road, Groton, Connecticut.

Dear Ms. Gardner and Attorney Arasimowicz:

Over the past several months, I have been asked by each of you to confirm and/or explain the jurisdiction of the Connecticut Siting Council (Council) over FuelCell Energy's (FCE) two 2.8 megawatt (MW) fuel cell combined heat and power generating units at the Pfizer Groton campus (the "Project"). This letter is written to explain why the Council has jurisdiction over the Project – including the thermal energy produced by the Project, which is provided for use in Pfizer's existing thermal distribution system.

In summary, fuel cells are either available or being developed in a number of applications that include, but are not limited to, commercial and industrial combined heat and power, pure electrical generation, and back-up and portable power systems. Fuel cells are a specific subset of cogeneration units and as such, fuel cells are afforded different treatment under applicable Connecticut statutes. Regardless of the application of the fuel cell, pursuant to Connecticut General Statutes (CGS) §16-50k, the Council has exclusive jurisdiction over the fuel cell facility. Moreover, the equipment associated with and ancillary to the fuel cell generating units or any other type of generating units, such as the heat recovery system, water treatment system, pipes, etc., constitute "associated equipment" that is part of the fuel cell facility and also under the jurisdiction of the Council. There is no statutory or regulatory provision that exempts a fuel cell from the Council's jurisdiction or removes its designation as a Class I renewable energy source simply because the thermal energy produced by the fuel cell is used for other purposes.<sup>1</sup> CGS Sections 16-50g to 16-50// (known as the Public Utility Environmental Standards Act, or "PUESA"), govern the siting of electric and gas transmission lines, generating facilities, telecommunication towers,

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<sup>1</sup> The City of Groton was a party to Petition No. 1214, but did not raise the Council's jurisdiction over the Project as an issue in the proceeding.

and electric switching stations and substations operating at 69-kilovolts or above. See CGS §16-50i. It is through the PUESA that the Council has exclusive jurisdiction over the construction, maintenance, operation and modification of electric generating facilities in the state.<sup>2</sup> Under CGS §16-50i(a)(3), the Council has jurisdiction over “*any electric generating facility... using any fuel... including associated equipment for furnishing electricity...*” (Emphasis added). The Project is an electric generating facility over which the Council has exclusive jurisdiction and for which the Council is required by statute to approve its construction, maintenance and operation.

Additionally, CGS. §16-50x(a) states that, “Notwithstanding any other provision of the general statutes to the contrary,... the council shall have exclusive jurisdiction over the location and type of facilities and over the location and type of modifications of facilities subject to the provisions of subsection (d) of this section... *Whenever the council certifies a facility pursuant to this chapter, such certification shall satisfy and be in lieu of all certifications, approvals and other requirements of state and municipal agencies....*” (Emphasis added).

The Council has jurisdiction over the two 2.8 MW fuel cell combined heat and power generating units because they are fuel cells and constitute a “facility” pursuant to CGS §16-50i(a). The Council's jurisdiction is not limited by the fact that the units generate usable thermal energy and parts or equipment related to that process would be “associated equipment,” which is also under the Council's jurisdiction. It is the opinion of the Council that the units remain fuel cell facilities even though they produce usable thermal energy. If the fuel cells were cogeneration facilities, they would fall outside of the Council's jurisdiction.<sup>3</sup>

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<sup>2</sup> The Council has jurisdiction over facilities utilizing cogeneration technology with a generating capacity of 25 MW or more. Conn. Gen. Stat §16-50i(a)(3)(C). Thus, if the fuel cell installation at the Pfizer campus were cogeneration, the Council would not have jurisdiction as the fuel cell has a generating capacity of only 5.6 MW.

<sup>3</sup> “The Council has considered numerous generating projects that consisted of combined heat and power generating units and the Council's jurisdiction over those projects has not been challenged. *See* (i) **Petition No. 805** - Ansonia Generation LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a 58.4 MW combined heat and power natural gas-fired electric generating facility and transmission line tap located at 75 Liberty Street, Ansonia, Connecticut; (ii) **Petition No. 813** - Kimberly- Clark Corporation petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance, and operation of a combined heat and power electric generating facility, located at 58 Pickett District Road, New Milford, Connecticut; (iii) **Petition No. 994** - Algonquin Power Windsor Locks, LLC Petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for construction, maintenance, and operation of a 15 MW combined heat and power unit at an existing cogeneration facility located at 26 Canal Bank Road, Windsor Locks, Connecticut; (iv) **Petition No. 1005** - New Britain Renewable Energy, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the installation of a 1.4 MW Fuel Cell combined heat and power generating facility located at Central Connecticut State University, New Britain, Connecticut; (v) **Petition No. 1067** - The Hartford Steam Company petition for declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 1.4 MW Fuel Cell combined heat and power cogeneration facility at Hartford Hospital located at 19 Jefferson Street, Hartford, Connecticut; (vi) **Petition No. 1202** - FuelCell Energy, Inc. petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 1.4 MW fuel cell combined heat and power electric generating facility located at Pepperidge Farm, Inc., 1414 Blue Hills Avenue, Bloomfield, Connecticut; (vii) **Petition No. 1219**- Quantum Biopower Southington, LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and

Finally, I will note that on December 7, 2016 the Public Utilities Regulatory Authority determined that pursuant to CGS §16-1(a)(20), the facility qualifies as a Class I renewable energy source.<sup>4</sup>

Should you have any further questions, please feel free to contact me at your convenience.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melanie A. Bachman", with a horizontal line extending to the right.

Melanie A. Bachman  
Executive Director

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operation of a 1.1 megawatt anaerobic digestion and combined heat and power electric generating facility located at 49 DePaolo Drive, Southington, Connecticut.

<sup>4</sup> CGS §16-1(a)(20) provides that a "Class I renewable energy source" means electricity derived from (i) solar power, (ii) wind power, (iii) a fuel cell..."

## Bachman, Melanie

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**From:** Fontaine, Lisa  
**Sent:** Monday, March 7, 2016 8:06 AM  
**To:** 'Michael Boucher'  
**Cc:** CSC-DL Siting Council  
**Subject:** RE: Petition no 1214  
**Attachments:** pe1214-dcltr-fuelcell-groton.pdf

Good Morning Mr. Boucher,

The Connecticut Siting Council rendered a decision on Petition No. 1214 on March 3, 2016. Because of this, the petition was moved from the Pending Proceedings Page to the Decision/Petitions Page on our website. The link to new location on our website is <http://www.ct.gov/csc/cwp/view.asp?a=958&Q=247756#PE1214> (The path from our home page is Decisions/Petitions/Petition No. 1214).

I am attaching the decision on this petition for your convenience.

Lisa Fontaine  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051  
(860) 827-2969  
(860) 827-2950 fax  
[Lisa.fontaine@ct.gov](mailto:Lisa.fontaine@ct.gov)

**From:** Michael Boucher [mailto:boucher1953@gmail.com]  
**Sent:** Saturday, March 05, 2016 9:34 AM  
**To:** CSC-DL Siting Council  
**Subject:** Petition no 1214

To the Connecticut Siting Council

I was following petition no 1214 and now it has been removed from your web site. I wish to be kept up to date on Petition 1214. How do I now go about this since you have removed petition 1214 from your CSC web page and are keeping taxpayers from viewing this information?

Thank you Michael R Boucher

## Bachman, Melanie

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**From:** zRepresentative Aundre Bumgardner <Aundre.Bumgardner@housegop.ct.gov>  
**Sent:** Monday, March 7, 2016 2:38 PM  
**To:** Bachman, Melanie  
**Subject:** RE: Pfizer/Groton Fuel Cell vs City of Groton/ Groton Utilities

Thank you for the clarification. I appreciate you getting back to me so quickly.

Aundre

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**From:** Bachman, Melanie [mailto:Melanie.Bachman@ct.gov]  
**Sent:** Monday, March 07, 2016 2:36 PM  
**To:** zRepresentative Aundre Bumgardner  
**Subject:** RE: Pfizer/Groton Fuel Cell vs City of Groton/ Groton Utilities

Good afternoon.

The petition was not removed from the website. The Siting Council rendered a decision on Petition No. 1214 on March 3, 2016. Because of this, the petition was moved from the Pending Proceedings Page to the Decision/Petitions Page on our website. The link to new location on our website is <http://www.ct.gov/csc/cwp/view.asp?a=958&Q=247756#PE1214> (The path from our home page is Decisions/Petitions/Petition No. 1214).

I have attached the decision on this petition for your convenience.

Should you have any further questions, please feel free to contact me.

Thanks. Have a nice afternoon.

Melanie

Melanie A. Bachman  
Acting Executive Director/Staff Attorney  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051  
860-827-2951



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**From:** zRepresentative Aundre Bumgardner [mailto:Aundre.Bumgardner@housegop.ct.gov]  
**Sent:** Monday, March 07, 2016 2:23 PM  
**To:** Bachman, Melanie <Melanie.Bachman@ct.gov>  
**Subject:** FW: Pfizer/Groton Fuel Cell vs City of Groton/ Groton Utilities

Can you please let me know why they removed the petition no. 1214 for Groton from the Siting Councils website? I was hoping to be able to let my constituent know by the end of the day.

Thanks,

Audre Bumgardner  
State Representative 41<sup>st</sup> District

Here is the link from the Day Paper on the original story when in Public the Mayor is all happy about the fuel cell that Pfizer wants to build on site. <http://www.theday.com/business/20160105/pfizers-alternative-energy-plants-seen-as-positive-sign>. I started asking questions about two weeks ago. This is petition no. 1214 with the Connecticut Siting Council. That petition has now been removed from the State web page (CSI) and is no longer open to the public. Can anyone help me find out what is going on?  
Thanks Mike Boucher



## Bachman, Melanie

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**From:** Lindsay Leveen <lleveen@gmail.com>  
**Sent:** Wednesday, November 16, 2016 10:03 AM  
**To:** Bachman, Melanie  
**Cc:** Stein, Robert; John Nichols; Goddard, Kurt; Attorney General; Matt Vespa; Peavler, David L.; evanstim@sec.gov  
**Subject:** Re: Fuel Cell at Pfizer

Ms Bachman

Thanks for your response. It is apparent that there is more hazardous Waste than was disclosed. We're the disclosures made under penalty of perjury?

Thanks

Lindsay Leveen

Sent from my iPhone

On Nov 16, 2016, at 5:44 AM, Bachman, Melanie <[Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)> wrote:

Good morning, Mr. Leveen.

The Connecticut Siting Council rendered a final decision on the petition for a declaratory ruling filed by Fuel Cell Energy, Inc. for a fuel cell installation at the Pfizer Groton campus on March 4, 2016.

Here is the link to the record of this petition: <http://www.ct.gov/csc/cwp/view.asp?a=2397&q=578152>

According to the record, the fuel cell complies with all applicable CT Department of Energy and Environmental Protection regulations, including the Small Quantity Generator rules for treatment, storage and disposal of hazardous waste.

Thanks. Have a nice day.

Melanie

Melanie A. Bachman  
Acting Executive Director/Staff Attorney  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051  
860-827-2951  
<image001.jpg>

**From:** Lindsay Leveen [<mailto:lleveen@gmail.com>]  
**Sent:** Tuesday, November 15, 2016 4:46 PM  
**To:** Bachman, Melanie <[Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)>  
**Cc:** Stein, Robert <[Robert.Stein@ct.gov](mailto:Robert.Stein@ct.gov)>; John Nichols <[j.nichols87@yahoo.com](mailto:j.nichols87@yahoo.com)>; Goddard, Kurt <[kgoddard@fce.com](mailto:kgoddard@fce.com)>; Attorney General <[Attorney.General@ct.gov](mailto:Attorney.General@ct.gov)>; Matt Vespa

<[matt.vespa@sierraclub.org](mailto:matt.vespa@sierraclub.org)>; Peavler, David L. <[peavlerd@sec.gov](mailto:peavlerd@sec.gov)>; [evanstim@sec.gov](mailto:evanstim@sec.gov)

**Subject:** Re: Fuel Cell at Pfizer

Ms. Bachman

Any news on the quantity of hazmat FuelCell Energy generates at Pfizer. If they lied to your Council what recourse do you have? President Trump's DOJ will be asked to investigate the entire fuel cell industry particularly those that use natural gas as a feedstock and why so much taxpayer money was given to this dirty technology. There were a bunch of politicians who attended the grand opening of the fuel cell project in CT. You have to remember that Senator Dianne Feinstein helped launch the Bloom Bloomdogle in Feb 2010 but later helped me get the US FTC to investigate Bloom for Greenwashing.

I am going to ask the US SEC to investigate all the fuel cell companies as shareholders have lost lots on money based on false claims of clean energy.

Lindsay

On Sun, Nov 13, 2016 at 8:33 AM, Lindsay Leveen <[lleven@gmail.com](mailto:lleven@gmail.com)> wrote:

I did the math on parts per million by mass and it comes to nearly 1,000 ppm of these horrible hazardous chemicals in pipeline gas in Delaware. Ms. Bachman if the siting council was fed false information what legal redress is possible?

Please tell me what are the next steps to end greenwashing.

Lindsay Leveen

On Nov 8, 2016 11:25 AM, "Lindsay Leveen" <[lleven@gmail.com](mailto:lleven@gmail.com)> wrote:

Folks I have data for the horrible chemicals in pipeline natural gas in Delaware

Table 4.3 in this pdf

<http://biocng.us/wp-content/uploads/2013/03/biocng-fuel-quality-technical-paper-nov-2012s.pdf>

almost 200,000 parts per billion by volume if you add them all up.

All these chemicals have a higher molecular weight than Methane. There could be 800,000 parts per billion by weight. This is 800 ppm by weight. My math in the previous email only used 15 ppm by weight. There could be 50 times as much other chemicals than I first estimated. This is 10,000 pounds per year of just these chemicals without the filter material and the sulfur.

Ms. Bachman we need real data from FuelCell and Pfizer to see if they were bluffing about the quantity and frequency of removal of the hazardous waste.

Thanks

Lindsay Leveen

On Tue, Nov 8, 2016 at 11:10 AM, Lindsay Leveen <[lleveen@gmail.com](mailto:lleveen@gmail.com)> wrote:

Ms. Bachman

Thanks for your reply.

I did some quick math that is shown below. With a sulfur loading of 3% on the filtering material and pipeline gas having 0.5 grains Sulfur per 100 scf, I estimate 8,432 pounds per year of hazardous solid waste will hauled away from the Pfizer site.

This equals approximately 4 events per year if 2,000 pounds are hauled in each event. This would be more frequent than once every year or every two years. Of course FuelCell could be loading the waste with more than 3% sulfur but this would imply the waste is also heavily laden with Benzene and other toxic chemicals such as toluene, xylene, chloromethane, etc.

Please help me in getting the actual quantities of waste and the actual concentration of sulfur and the myriad other poisons in the waste. FuelCell Energy should be able to provide these details.

Thanks again for being a wonderful and honest public servant. Our country needs more people like you.

Lindsay Leveen

mw	5.6
hours per year	8760
capacity factor estimated	0.88
mwh per year	43169.28
mmbtu per mwh	8
btu/100 standard cubic feet	103000
100 scf per mwh	77.66990291
100 scf per year	3,352,954
grains Sulfur per 100 scf	0.5
grains sulfur per year	1,676,476.89
grains per pound	7000
pounds sulfur per year	239.50
typical sulfur loading on filter	3.0%
filter mass per year pounds	7,983.22
filter plus sulfur pounds per year	8,222.72
other chemicals Benzene etc ppmw in nat gas	15
other chemicals Benzene etc lbs per year	209.56
filter plus sulfur plus other chems (benzene etc) lbs per year	8,432.28

On Tue, Nov 8, 2016 at 10:22 AM, Bachman, Melanie <[Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)> wrote:

[http://www.ct.gov/csc/lib/csc/pending\\_petitions/2\\_petitions\\_1201through1300/pe1214-responsetointerrogatories-groton.pdf](http://www.ct.gov/csc/lib/csc/pending_petitions/2_petitions_1201through1300/pe1214-responsetointerrogatories-groton.pdf)

Melanie A. Bachman

Acting Executive Director/Staff Attorney

Connecticut Siting Council

10 Franklin Square

New Britain, CT 06051

[860-827-2951](tel:860-827-2951)

<image002.jpg>

**From:** Lindsay Leveen [mailto:[lleveen@gmail.com](mailto:lleveen@gmail.com)]

**Sent:** Tuesday, November 08, 2016 12:58 PM

**To:** Bachman, Melanie <[Melanie.Bachman@ct.gov](mailto:Melanie.Bachman@ct.gov)>; Stein, Robert <[Robert.Stein@ct.gov](mailto:Robert.Stein@ct.gov)>; John Nichols <[j.nichols87@yahoo.com](mailto:j.nichols87@yahoo.com)>; Goddard, Kurt <[kgoddard@fce.com](mailto:kgoddard@fce.com)>

**Subject:** Fuel Cell at Pfizer

Ms. Bachman

Did Pfizer know they would become a generator of hazardous solid waste?

<https://finance.yahoo.com/news/fuelcell-energy-announces-completion-5-123000906.html>

Bloomdoggie Bloom Energy said FuelCell has an open system to suck out the desulfurization material laden with benzene and other poisons.

Lindsay Leveen

## Bachman, Melanie

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**From:** Arasimowicz, Jennifer <jarasimowicz@fce.com>  
**Sent:** Thursday, January 25, 2018 11:26 AM  
**To:** Bachman, Melanie  
**Subject:** RE: Groton Fuel Cell - Petition 1214

We are in a tax appeal with them. If you want to call me I can fill you in on what she wants. In a nutshell, she will not accept that the statute exempts behind the meter fuel cells from property taxation. She is now trying to piece apart the fuel cell system into components and tax everything except the box. She probably wants you to say that the heat exchangers and other components other than the fuel cell are not in your jurisdiction as they are not part of the fuel cell.

**Jennifer D. Arasimowicz, Esq.** | Senior Vice President, General Counsel and Corporate Secretary  
Direct: 203.825.6070 | Cell: 860.213.0592 | Fax: 203.825.6069 | [jarasimowicz@fce.com](mailto:jarasimowicz@fce.com)

**FuelCell Energy** | 3 Great Pasture Rd | Danbury, CT 06810

[www.fuelcellenergy.com](http://www.fuelcellenergy.com) |   



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**From:** Bachman, Melanie [<mailto:Melanie.Bachman@ct.gov>]  
**Sent:** Thursday, January 25, 2018 11:24 AM  
**To:** Arasimowicz, Jennifer <jarasimowicz@fce.com>  
**Subject:** Groton Fuel Cell - Petition 1214

Good morning.

I hope all is well.

FYI – the Groton Assessor has called here 3X today, but left me one message referencing the fuel cell. No details. I'll call her back this afternoon and follow up with you thereafter. I don't respond well to persistent callers. Each time I get a repeat call, I place them at the end of the call back list.

Thanks.

Melanie A. Bachman, Esq.  
Executive Director/Staff Attorney  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051  
860-827-2951



**CONFIDENTIAL INFORMATION:**

**LIST OF PARTIES AND INTERVENORS**  
**SERVICE LIST**

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Petitioner</b>	<input checked="" type="checkbox"/> E-mail	Groton Fuel Cell 1, LLC	<p>Jennifer D. Arasimowicz, Esq. Vice President, Managing Counsel FuelCell Energy, Inc. 3 Great Pasture Road Danbury, CT 06810 (203) 825-6070 (203) 825-6069 - fax Email:<a href="mailto:jarasimowicz@fce.com">jarasimowicz@fce.com</a></p> <p>Dmitriy Kamenetskiy Project Manager FuelCell Energy, Inc. 3 Great Pasture Road Danbury, CT 06810 (203) 825-6142 (203) 825-6100 - fax Email:<a href="mailto:dkamenetskiy@fce.com">dkamenetskiy@fce.com</a></p> <p>Bruce L. McDermott, Esq. Samuel R. Volet, Esq. Murtha Cullina LLP 265 Church Street New Haven, CT 06510 (203) 772-7787 Email:<a href="mailto:bmcdermott@murthalaw.com">bmcdermott@murthalaw.com</a> <a href="mailto:evolet@murthalaw.com">evolet@murthalaw.com</a></p>
<b>Party (Approved on 2/18/16)</b>	<input checked="" type="checkbox"/> E-mail	The City of Groton	<p>Stephen W. Studer, Esq. Berchem, Moses &amp; Devlin, P.C. 75 Broad Street Milford, CT 06460 (203) 783-1200 (203) 878-2235 - fax Email: <a href="mailto:ssuder@bmdlaw.com">ssuder@bmdlaw.com</a></p> <p>Robert L. Berchem, Esq. Berchem, Moses &amp; Devlin, P.C. 75 Broad Street Milford, CT 06460 (203) 783-1200 (203) 878-2235 - fax Email: <a href="mailto:rberchem@bmdlaw.com">rberchem@bmdlaw.com</a></p>