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February 19, 2020

VIA FACSIMILE: (860) 827-2950

Ms. Melanie A. Bachman
Executive Director
State of Connecticut
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

RE: Freedom of Information Request

Dear Ms. Bachman:

This letter is a formal request, pursuant to Connecticut General Statutes §§ 1-200, *et seq.*, the Connecticut Freedom of Information Act ("FOIA"), that you and the Connecticut Siting Council (the "Council") provide immediate access to, and a copy of, any and all of your and the Council's records, whether in electronic or hard copy format, dated on or after March 4, 2016, relating to the following:

- 1) Groton Fuel Cell Energy, Inc., which may also be known as Groton FuelCell Energy, Inc.
- 2) FuelCell Energy, Inc., or any variation or abbreviation thereof;
- 3) Petition No. 1214 – Groton Fuel Cell 1;
- 4) Groton Fuel Cell 1, LLC, or any variation or abbreviation thereof;
- 5) Groton Fuel Cell 1, or any variation or abbreviation thereof;
- 6) All communications between you or any member of the Council, directly or on your behalf, and: (a) Groton Fuel Cell Energy, Inc. (b) Jennifer Arasimowicz, (c) Dmitriy Kamenetskiy (d) Mary Gardner, or (e) any officer, employee, agent or representative of any of the foregoing person identified in this item 6 (a) through (c);
- 7) Any request for the "explanation" set out in a letter dated February 14, 2020, a copy of which is attached hereto;
- 8) The "fuel cell" property which is the subject matter of Petition No. 1214;
- 9) The real property situated at 445 Eastern Point Road, Groton, Connecticut.

By the term "records" in the first paragraph of this letter, we mean to include notes, phone-call records, memoranda, letters, email, text messages, electronic messages, (such as social media), audio recordings (such as voicemail and transcriptions thereof), statements, and all other documents prepared, owned, used, received or retained.

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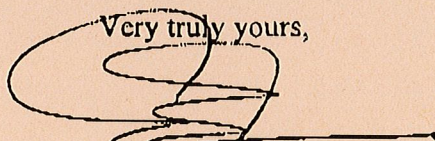
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Ms. Melanie A. Bachman
February 19, 2020
Page 2

Your cooperation and timely production of these records is greatly appreciated. We understand that there may be a charge for copies of these records. Please contact my office to inform me of the charges, if any, before making copies responsive to this request. We would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the Council's decisions and claims, including any continuing jurisdiction, in or with respect to Petition No. 1214.

The Act requires a response within four business days. If access to the records that we are requesting will take longer, please contact me with information about when we can expect copies of the requested records. My direct line is (860) 271-2213.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Eric W. Callahan', written over a horizontal line.

Eric W. Callahan

EWC/tbs



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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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 I, 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.¹ 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.

¹ 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.² 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.³

² 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.

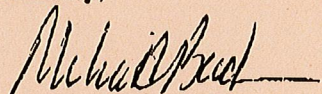
³ "The Council has considered numerous generating projects that consisted of combined heat and power generating units and the Council's jurisdiction over those projects has not been challenged. See (i) **Petition No. 805** - Ansonia Generation LLC petition for a declaratory ruling that no Certificate 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.⁴

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

Thank you.

Sincerely,



Melanie A. Bachman
Executive Director

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

⁴ 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..."