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in Memoriam
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February 28, 2020

Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Corrected Petition for Reconsideration by Town of Groton

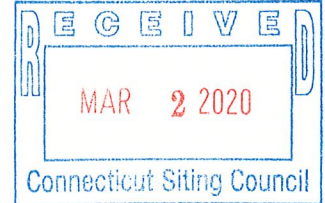
To Whom it May Concern:

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



ORIGINAL

A Tradition of Innovative Solutions

**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

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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:

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Richard S. Cody



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 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.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,

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

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..."