



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

www.ct.gov/csc

VIA ELECTRONIC MAIL

March 4, 2020

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
rcody@sswbgg

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 Attorney Cody:

The Connecticut Siting Council (Council) is in receipt of your correspondence of March 4, 2020 acknowledging receipt of the Council's response to Attorney Callahan's FOIA request on behalf of the Town of Groton (Town) and requesting the Town's purported February 28, 2020 "Petition for Reconsideration" be "treated in the ordinary course."

As more fully and completely described in the Council's March 3, 2020 correspondence, the Town's purported "Petition for Reconsideration" 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.

The Council's March 3, 2020 correspondence does not invite the Town to withdraw its purported "Petition for Reconsideration." The Council's March 3, 2020 correspondence clearly indicates that the Town did not file a proper request for reconsideration for reasons including, but not limited to:

1. the February 14, 2020 jurisdictional opinion letter is not a "final decision" under the Uniform Administrative Procedure Act (UAPA);
2. the Town's February 28, 2020 purported "Petition for Reconsideration" was not submitted within 15 days after the mailing of the March 4, 2016 final decision on Petition 1214; and
3. the grounds for the Town's February 28, 2020 purported "Petition for Reconsideration" are for an appeal of an agency final decision to Superior Court rather than the grounds for a request for reconsideration.

The February 14, 2020 jurisdictional opinion letter is factually and legally correct. As it is not a final decision of the Council under the UAPA, none of the unidentified "applicable and ordinary requirements of process" you reference in your correspondence exist.

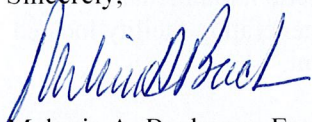
The claim that the Town has "no choice but to avail itself fully of its legal remedies in order to protect its financial, legal and governmental interests" is invalid. The Town could have submitted a properly filed request for reconsideration in 2016 when the Council issued a Declaratory Ruling to Fuel Cell Energy,



Inc. (FCE) for the construction, maintenance and operation of the fuel cell facility. It did not. The Town could have filed an appeal with the Superior Court in 2016 when the Council issued a Declaratory Ruling to FCE for the construction, maintenance and operation of the fuel cell facility. It did not. As referenced in the Town's February 28, 2020 purported "Petition for Reconsideration," the Town's pursuit of legal remedies in order to protect its financial, legal and governmental interests related to the fuel cell facility is properly pending before the Superior Court in the case of *Fuel Cell Energy, Inc. vs. Town of Groton*.

Finally, please be advised that pursuant to Connecticut General Statutes §16-50j, the Executive Director and Staff Attorney is not a voting member of the Council. Therefore, the Town's request for recusal from all consideration and participation in the "Petition's disposition" is misplaced. Furthermore, the "Petition's disposition" occurred four years ago to date. The Council issued a Declaratory Ruling to FCE for the construction, maintenance and operation of the fuel cell facility on March 4, 2016.

Sincerely,



Melanie A. Bachman, Esq.
Executive Director

MAB/laf

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