

STATE OF CONNECTICUT
BEFORE THE
CONNECTICUT SITING COUNCIL

Windham Solar LLC amended petition for)	Docket No. 1395A
a declaratory ruling, pursuant to)	
Connecticut General Statutes §4-176 and)	
§16-50k, for the proposed construction,)	
maintenance and operation of one 1.0-)	
megawatt (MW) and one 0.99 MW solar)	
photovoltaic electric generating facilities)	
located at 31 Benz Street, Ansonia, Connecticut)	April 9, 2021

INTERVENING PARTY, CITY OF ANSONIA’S, OBJECTION TO WINDHAM SOLAR, LLC’S MOTION TO VACATE OR OTHERWISE RECONSIDER THE SITING COUNCIL’S FINAL DECISION OF MARCH 12, 2021

The City of Ansonia, an Intervening Party in this matter, hereby objects to Windham Solar, LLC’s “Motion to Reconsider, and in the Alternative, to Reconsider the Decision of March 12, 2021.” This objection is based on the grounds that the Siting Council’s denial *with prejudice* of a declaratory ruling to Windham Solar, LLC constitutes a final ruling that may not be properly reconsidered or revisited by the Siting Council pursuant to the basic principle of res judicata.

Windham Solar, LLC has conceded that the Siting Council has the statutory authority to render a final decision relative to its submitted petition. Specifically, Windham’s Motion to Vacate, page 5, cites CGS §4-176(a), which states: “Any person may petition an agency ... for a declaratory ruling as to ... the applicability to specified circumstances of a provision of the general statutes, a regulation, or a *final decision* on a matter within the jurisdiction of the agency.” (Emphasis Added).

It is well settled law that final decisions are subject to the principle res judicata. “The doctrine of res judicata holds that an existing final judgment rendered upon the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction ... ***If the same cause of action is again sued on, the judgment is a bar with respect to any claims relating to the cause of action which were actually made or which might have been made*** ... Res judicata, as a judicial doctrine ... should be applied as necessary to promote its underlying purposes. These purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose ...” (Emphasis Added). (Citations omitted; emphasis in original; internal quotation marks omitted.) *Efthimiou v. Smith*, 268 Conn. 499, 506, 846 A.2d 222 (2004).

Moreover, there can be no question that the Siting Council’s decision to deny Windham’s petition ***with prejudice*** was a final decision for the purposes of CGS §4-176(a). Both federal and Connecticut case law clearly define dismissal with prejudice as “having the effect of a final adjudication on the merits favorable to defendant and bars future suits brought by plaintiff upon the same cause of action.” *Nemaizer v. Baker*, 793 F.2d 58, 60 (2d Cir.1986); *See also: Heyde v. Watkins*, No. CV-03-082093S, 2003 WL 22293775, at *2-3 (Conn. Super. Ct. Sept. 29, 2003); Black's Law Dictionary (7th Ed.1999).

Windham Solar’s efforts to vacate or otherwise overturn the Siting Council’s final decision are therefore misdirected. The principle of res judicata bars the Siting Council from re-

litigating or reconsidering its final decision. If Windham Solar desires to appeal the Siting Council's final decision, then it should properly seek an appeal to a higher legal authority.

WHEREFORE, for the reasons above, the Intervening Party, City of Ansonia, respectfully requests that the Siting Council properly deny Windham Solar, LLC's Motion to Vacate and/or Reconsider the Siting Council's final decision of March 12, 2021.

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Certificate of Service

I certify the attached petition has been served this day, April 9, 2021, via e-mail on the following with one paper copy via U.S. mail.

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/s/John Marini