STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

SR LITCHFIELD, LLC PETITION FOR DECLARATORY RULING, PURSUANT TO CONNECTICUT GENERAL STATUTES §4-176 AND §16-50k, FOR THE PROPOSED CONSTRUCTION, MAINTENANCE AND OPERATION OF A 19.8-MEGAWATT AC SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITY ON 6 CONTIGUOUS PARCELS LOCATED BOTH EAST AND WEST OF WILSON ROAD SOUTH OF THE INTERSECTION WITH LITCHFIELD TOWN FARM ROAD IN LITCHFIELD, CONNECTICUT, AND BOTH EAST AND WEST OF ROSSI ROAD, SOUTH OF THE INTERSECTION WITH HIGHLAND AVENUE IN TORRINGTON, CONNECTICUT, AND ASSOCIATED ELECTRICAL INTERCONNECTION	:	PETITION NO. 1442
	:	SEPTEMBER 24, 2021

OBJECTION TO REQUEST FOR PARTY STATUS AND
NOTICE OF CEPA INTERVENTION AND REQUEST FOR PUBLIC HEARING

SR Litchfield, LLC ("Petitioner") hereby objects to the Request for Party Status and Notice of CEPA Intervention and Request for Public Hearing ("Request") filed by Erin McKenna ("McKenna") on September 19, 2021. As discussed in more detail below, the Request is untimely, McKenna fails to meet the statutory criteria for party status, and the Request fails to meet the statutory requirements for intervention under the Connecticut Environmental Protection Act, Conn. Gen. Stat. § 22a-14 to 22a-20 ("CEPA"). For all of these reasons, McKenna's request should be denied.

BACKGROUND

Petitioner filed Petition No. 1442 with the Council on February 5, 2021. At its regular business meeting of June 17, 2021, the Council voted to set the date by which it would render a

decision on Petition No. 1442 as no later than November 2, 2021. On September 16, 2021, the Council published its regular business meeting agenda announcing that it would render a "decision" on Petition No. 1442 on September 23, 2021. At its September 23, 2021 meeting Petition No. 1442 was approved.

On August 3, 2021, nearly six months after Petition No. 1442 was filed, McKenna submitted public comments to the Council on the matter. For weeks thereafter, nothing further was heard from McKenna. Now, nearly eight months after Petition No. 1442 was filed, and on the eve of the Council's decision, McKenna asks the Council to be admitted as a party in this proceeding, seeks to intervene under the CEPA, and requests that the Council hold a public hearing on the Petition.

ARGUMENT

A. The Request is Untimely and Moot

McKenna's Request should be denied because it is untimely and has been rendered moot by the Council's decision approving Petition No. 1442 on September 23, 2021. Section 4-176(d) of the Connecticut General Statutes gives the Council discretion, in a proceeding on a petition for declaratory ruling, to grant party status upon the filing of a "***timely*** petition . . . demonstrating that the petitioner's legal rights, duties or privileges shall be specifically affected by the agency proceeding[.]" Petition No. 1442 was filed nearly eight months ago. As mentioned above, McKenna filed comments on the Petition on August 3, 2021. If McKenna wanted to further participate in this matter, she should have intervened long ago, and not waited until the eve of the Council's decision to seek status. McKenna has had ample time and opportunity to seek party status in this proceeding but chose not to do so. Further, as the Council is familiar with the issues raised in the Request and clearly capable of rendering a decision in McKenna's absence,

allowing intervention at this late juncture would result in unreasonable delay and prejudice to the Petitioner for no practical purpose. The Request is untimely and should be denied.

B. McKenna Fails to Meet the Council's Statutory and Regulatory Requirements for Party Status

The Request does not satisfy the requirements of Sections 16-50n(b), 4-176 and 4-177a(a) of the Connecticut General Statutes and Section 16-50j-14(b) of the Regulations of Connecticut State Agencies. These provisions require that petitions for designation as a party state fact that demonstrate that "the petitioner's legal rights, duties or privileges shall be specifically affected" by the Council's decision in the proceeding.

The Request alleges that McKenna should be made a party because she resides "approximately half a mile walking distance" from the project site, and Petitioner's proposed facility will result in "significant change" to the "nature and character of the surrounding area." (Request, at 2). The remaining allegations in the Request regard alleged general environmental impacts of Petition No. 1442. While the Council's decision in this matter may have some attenuated effect on McKenna, just as it could any number of other properties in the Towns of Litchfield and Torrington, McKenna has not demonstrated any "legal right, duty or privilege" that will be specifically affected by the Council's decision. *See* Conn. Gen. Stat. §§ 4-176(d), 4-177a(a); R.C.S.A. § 16-50j-14(b). In other words, McKenna has not articulated how the Council's decision will affect her differently than any other member of the general public. Therefore, the Request does not satisfy the statutory and regulatory requirements for party status and should be denied.

C. The Request Fails to Meet the Statutory Requirements for CEPA Intervention

Connecticut General Statutes Section 22a-19 allows a person to intervene in an administrative proceeding on the filing of a verified petition that "contain[s] specific factual allegations setting forth the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources of the state and should be sufficient to allow the reviewing authority to determine from the verified pleading whether the intervention implicates an issue within the reviewing authority's jurisdiction." Although an individual need not prove his case to intervene pursuant to Section 22a-19, "he must articulate a colorable claim of unreasonable pollution, impairment or destruction of the environment" to be granted intervenor status under CEPA. *Windels v. Envtl. Prot. Comm'n*, 284 Conn. 268, 289-90 (2007). Merely citing provisions of the statute is not sufficient. *See Finley v. Inland Wetlands Comm'n*, 289 Conn. 12, 36 (2008); *see also Fairwindct, Inc. v. Conn. Siting Council*, 313 Conn. 669, 712 (2014) ("[T]he mere allegation that [a Petitioner] has failed to comply with certain technical or procedural requirements of a statute imposing environmental standards does not, in and of itself, give rise to a colorable claim of unreasonable pollution under the [CEPA]...."). Moreover, policy and legislative concerns do not fall within Section 22a-19 because they do not involve *conduct* which is reasonably likely to unreasonably pollute, impair or destroy the natural resources of the State. *Pond View, LLC v. Planning & Zoning Comm'n*, 288 Conn. 143, 160-61 (2008).

The Request raises several issues and concerns related to stormwater runoff and clearing trees, such as the loss of wildlife habitat and potential erosion and sedimentation of nearby watercourses. However, the project will need to comply with Connecticut Department of Energy and Environmental Protection ("DEEP") requirements with regard to stormwater discharges, and

these issues are simply not within the Council's jurisdiction here. *See Connecticut Fund for Environment Inc. v. City of Stamford*, 192 Conn. 247 (1984). Further, nothing in the Request demonstrates that approving Petition No. 1442 will result in ***unreasonable*** impacts to natural resources of the state. In short, the Request for CEPA intervention does not "give rise to a colorable claim of unreasonable pollution" and should be denied.

D. The Request for a Hearing is Moot and Should be Denied

The decision to hold a hearing on Petition No. 1442 is discretionary under the Uniform Administrative Procedures Act and the Council's own regulations. *See* Conn. Gen. Stat. § 4-176(g); R.C.S.A. § 16-50j-40(b). *See also Cadlerock Props. J.V., L.P. v. Commissioner of Envtl. Protection*, 253 Conn. 661 (2000) ("Agencies . . . are given broad discretion to exercise their regulatory authority."). As discussed above, the Council is familiar with the issues raised in the Request and can take this information into consideration without a hearing. Moreover, given that the Council approved Petition No. 1442 at its meeting on September 23, 2021, the request for a hearing is now moot. *See, e.g., Berlin Batting Cages, Inc. v. Planning & Zoning Commission*, 76 Conn. App. 199, 204 (2003) ("A case becomes moot when due to intervening circumstances a controversy between the parties no longer exists.").

CONCLUSION

For all of these reasons, Petitioner respectfully requests that the Council deny McKenna's request for party status, request to intervene, and request for public hearing.

Respectfully submitted,

SR LITCHFIELD, LLC

By 

Kenneth C. Baldwin
Jonathan H. Schaefer
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-03597
(860) 275-8200
kbaldwin@rc.com
jschaefer@rc.com
Attorneys for the Applicant

CERTIFICATION

This is to certify that on the 24th day of September, 2021, a copy of the foregoing was sent, via electronic mail, to the following:

Dominick J. Thomas, Esq.
Cohen and Thomas
315 Main Street
Derby, CT 06418
(203) 735-9521
djt@cohen-thomas.com

Emily A. Gianquinto
EAG Law LLC
363 Main Street, Third Floor
Hartford, CT 06106
(860) 785-0545
emily@eaglawllc.com

Kenneth C. Baldwin