



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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VIA ELECTRONIC MAIL

May 20, 2024

TO: Service List, dated January 23, 2024

FROM: Melanie Bachman, Executive Director *MAB*

RE: **PETITION NO. 1589** – USS Somers Solar, LLC petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road, Ellington, Connecticut, and associated electrical interconnection. **Court-granted Voluntary Remand Regarding Connecticut Siting Council Vote on Final Decision.**

On May 20, 2024, the Connecticut Superior Court (Court) issued an order granting the Connecticut Siting Council (Council) and USS Somers Solar, LLC's May 16, 2024 Joint Motion for Voluntary Remand regarding the Council's February 1, 2024 vote on the above-referenced petition for a declaratory ruling.

The Council will place this matter on a future regular meeting agenda for a new vote consistent with the Court-granted joint voluntary remand.

Thank you.

MAB/IN/laf

c: Council Members

DOCKET NO. HHB CV-CV24-6085674-S	:	SUPERIOR COURT
	:	
USS SOMERS SOLAR, LLC	:	
<i>Plaintiff</i>	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
v.	:	
	:	
CONNECTICUT SITING COUNCIL	:	
<i>Defendant</i>	:	MAY 16, 2024

JOINT MOTION FOR VOLUNTARY REMAND

Plaintiff USS Somers Solar LLC (“USS Somers Solar”) and Defendant State of Connecticut Siting Council (“CSC” or “Council”), hereby respectfully move that the Court remand CSC Petition No. 1589¹ to the CSC for clarification and/or reconsideration due to changed conditions. *See Commission on Human Rights & Opportunities v. City of Hartford*, 138 Conn. App. 141, 152-154, 50 A.3d 917 (2012), *cert. den.*, 307 Conn. 929, 55 A.3d 570 (2012); *Conn. Light & Power Co. v. Public Utilities Regulatory Authority*, 223 Conn. App. 136, 148, n. 9, 307 A.3d 967 (2023); Conn. Gen. Stat. § 4-181a(b) (reopening of final decision due to changed conditions). In support of this motion, both USS Somers Solar and the CSC advise the Court of the following:

- On August 23, 2023, USS Somers Solar filed a petition for a declaratory ruling with the Council that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction, Operation and Maintenance of a

¹ Petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction, Operation and Maintenance of a 3.0 +/- MW AC Solar Photovoltaic Electric Generating Facility Located at 360 Somers Road, Ellington, CT.

3.0 +/- MW AC Solar Photovoltaic Electric Generating Facility Located at 360 Somers Road, Ellington, CT. *See Complaint*, ¶ 4.

- After a hearing and the taking of evidence (in which there were no additional parties or intervenors), the CSC took a preliminary poll of CSC members resulting in three members voting in the affirmative (to approve the facility) and two members voting in the negative (to oppose the facility), with the presiding officer directing CSC staff to draft a favorable Opinion and Decision and Order to be reviewed at the next CSC meeting. *See CSC Minutes of January 18, 2024, Item No. 2, Exhibit A to this Motion.*²
- At the CSC meeting of February 1, 2024, the CSC “After reviewing the Draft Findings of Fact, Opinion, and Decision and Order, Presiding Officer Morissette took a final vote of each Council member with Mr. Silvestri, Mr. Golembiewski, and Dr. Near in favor of the proposed facility; Mr. Nguyen and Presiding Officer Morissette voting no; Mr. Lynch voting no with prejudice; and Mr. Carter abstaining. The final vote was tied. Therefore, it failed.” *See CSC Minutes of February 1, 2024, Item No. 3, Exhibit B to this Motion.*
- On February 5, 2024, the CSC issued a letter to counsel for USS Somers Solar stating, “At the energy/telecommunications meeting held on February 1, 2024, the Connecticut Siting Council (Council) did not issue a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed

² The minutes of the Connecticut Siting Council “are public” and “the court can take judicial notice as the public minutes of a state agency”. *Town of Groton v. Connecticut Siting Council*, 2020 Conn. Super. LEXIS 1041 at *5 (Conn. Super. August 11, 2020).

solar photovoltaic electric generating facility in Ellington, Connecticut. Due to a tie, the final vote failed; therefore, a declaratory ruling was not issued.” The CSC letter further stated, “Enclosed are the Council’s Findings of Fact, Opinion, and Decision and Order that were considered during the February 1, 2024 meeting.” *See CSC Letter of February 5, 2024 (with attachments), Exhibit C to this Motion.*

- At the CSC meeting of February 29, 2024, the CSC considered a motion for reconsideration filed by USS Somers Solar, but “Mr. Lynch moved to deny the Petition for Reconsideration; seconded by Mr. Golembiewski. The motion passed with Mr. Nguyen voting no.” *See CSC Minutes of February 29, 2024, Item No. 3, Exhibit D to this Motion.*
- On March 1, 2024, the CSC issued a letter to counsel for USS Somers Solar stating, “During a public meeting of the Connecticut Siting Council (Council) held on February 29, 2024, the Council considered and denied, by a vote of five to one, USS Somers Solar, LLC’s February 16, 2024 Petition for Reconsideration, pursuant to the provisions of Connecticut General Statutes §4-181a(a), of the Council's February 5, 2024 final decision not to issue a declaratory ruling for the above-referenced solar photovoltaic electric generating facility due to a tie vote.” *See CSC Letter of March 1, 2024, Exhibit E to this Motion.*

Subsequently, USS Somers Solar filed the pending administrative appeal. There is a lack of clarity in the administrative record as to whether the CSC’s action (or inaction) should be considered a denial of the approval sought by USS Somers Solar, in which case, the Court should

search the record to see if there is substantial evidence to support a denial. *D'Amato-Canterbury v. Town of Canterbury Planning and Zoning Commission*, 2009 Conn. Super. LEXIS 2074, at *9-10, 2009 WL 2781527 (Conn. Super. July 23, 2009). If the CSC is considered to have failed to issue a declaratory ruling within 180 days of the filing of the petition, then, pursuant to Conn. Gen. Stat. § 4-176(i), the appropriate relief would be a declaratory judgment action pursuant to Conn. Gen. Stat. § 4-175, which would require this Court to hold a *de novo* proceeding.

Since the previous votes cited in this motion, additional Council members have joined the CSC. A remand would give additional members an opportunity to read the record and vote and avoid another tie. Given that there were no additional parties and intervenors, there is a reasonable opportunity that an agency action may be reached that will not require judicial review. Therefore, both Plaintiff and Defendant request that this motion for remand be granted.

Respectfully submitted,

DEFENDANT

STATE OF CONNECTICUT
SITING COUNCIL

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CERTIFICATE OF SERVICE

Pursuant to Practice Book § 10-14, I hereby certify that a copy of the above was sent by email this 16th day of May 2024, to all counsel of record and pro se parties, who have consented to receive pleadings by email, at the following:

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