

One State Street
Hartford, CT 06103
Main (860) 275-8200
Fax (860) 275-8299
jschaefer@rc.com
Direct (860) 275-8349

Also admitted in Massachusetts
and Vermont

Via Hand Delivery and Electronic Mail (siting.council@ct.gov)

October 29, 2025

Melanie Bachman,
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: **Petition No. 1595 - HyAxiom, Inc. petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a grid-side 4.14-megawatt fuel cell facility and associated equipment to be located at 35 North Main Street, Ansonia, Connecticut, and associated electrical interconnection.**

Response to Response of HyAxiom, Inc. to the Motion of the City of Ansonia to Reopen and Reverse Declaratory Ruling

Dear Attorney Bachman:

On behalf of the City of Ansonia ("City"), enclosed please find the original and fifteen (15) copies of the City's response to the response of HyAxiom, Inc. to the motion of the City to reopen and reverse declaratory ruling in the above-referenced petition.

If you have any questions concerning this submittal, please contact me at your convenience.

Sincerely,



Jonathan H. Schaefer

Enclosed (15 copies)

Copy to (via email): Service List 07/16/25; Bruce McDermott, Esq.

33239482-v1

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:	:	
	:	
HYAXIOM, INC. PETITION FOR A	:	PETITION NO. 1595
DECLARATORY RULING, PURSUANT TO	:	
CONNECTICUT GENERAL STATUTES §4-176	:	
AND §16-50K, FOR THE PROPOSED	:	
CONSTRUCTION, MAINTENANCE AND	:	
OPERATION OF A GRID-SIDE 4.14-	:	
MEGAWATT FUEL CELL FACILITY AND	:	
ASSOCIATED EQUIPMENT TO BE LOCATED	:	
AT 35 NORTH MAIN STREET, ANSONIA,	:	
CONNECTICUT, AND ASSOCIATED	:	
ELECTRICAL INTERCONNECTION	:	OCTOBER 29, 2025

**THE CITY OF ANSONIA’S RESPONSE TO
RESPONSE OF HYAXIOM, INC. TO THE
MOTION OF THE CITY OF ANSONIA TO
REOPEN AND REVERSE DECLARATORY RULING**

On October 23, 2025, HyAxiom, Inc. (“HyAxiom”) submitted its comments/statement of position opposing the City of Ansonia’s (the “City”) Motion to Reopen and Reverse Declaratory Ruling (“City’s Motion”) in the above-referenced petition. HyAxiom’s opposition appears to be two-fold: (i) the City failed to state a valid legal reason to reopen the proceeding; and (ii) the City cannot reference any legal precedent to support its assertion that lack of site control is a sufficient reason to reverse the Declaratory Ruling. *See* HyAxiom’s Response at 1-2.

Contrary to HyAxiom’s cursory statements, the City’s Motion provided specific legal justification for reopening the proceeding and sufficient legal precedent to support its requests.¹

¹ *See* City’s Motion at p. 2-3 (“Conn. Gen. Stat. § 4-181a(b) states, in pertinent part, that “[o]n a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency’s own motion.” Therefore, the Council has broad authority to reopen this petition and reverse its Declaratory Ruling upon the showing of changed conditions. According to well-established Council precedent, a changed condition “requires new information or facts, identification of any unknown or unforeseen events or any relevant circumstances, or evidence of scientific or technological breakthroughs that were not available at the time of the final decision.” *See, e.g.*, Docket No. 190B, Conclusions of Law (September 19, 2013), at p. 4.)

Notably, HyAxiom did not directly address the City’s legal justification for reopening the proceeding or the legal precedent provided in the City’s Motion.

In its comments, HyAxiom also referred to the passage of time since the Declaratory Ruling. *See* HyAxiom’s Response at 1. However, Connecticut General Statute § 4-181a(b) contains no temporal restrictions on the Connecticut Siting Council’s (the “Council”) authority to reverse or modify a final decision – in fact, it states that the Council may do so “at any time.”

HyAxiom also asserted that only upon the expiration of the three-year construction deadline and any extension of that deadline does HyAxiom’s right to develop a fuel cell project at the Property cease to exist. *See* HyAxiom’s Response at 2. HyAxiom failed to state any legal support or precedent that the construction deadline set forth as a condition in the Declaratory Ruling is somehow immune from authority provided to the Council under Conn. Gen. Stat. § 4-181a(b). The Council has the authority to revisit its decisions and the Council has exercised that authority on numerous occasions.² The Council’s authority to revisit a prior decision only requires changed conditions, which exist when a party can no longer construct the approved project, let alone meet the conditions set forth in the decision, and thus that decision is impeding the development of projects in furtherance of the public need.

As HyAxiom alludes to, there are several conditions precedent that must be satisfied before construction of its project may even commence. *See* HyAxiom’s Response at 2. For instance, Condition No. 7 of the Declaratory Ruling requires HyAxiom to “Submit the results of the soil tests, including any required revisions to the proposed facility site and remediation measures, if necessary, prior to the commencement of construction.” Without access to the site, HyAxiom has

² *See Town of Fairfield v. Connecticut Siting Council*, 37 Conn. App. 653, 664 (1995) (Conn. Gen. Stat. §4-181a(b) "gives an agency broad discretion to reverse or modify a final decision, at any time, on a showing of changed conditions."), *reversed on other grounds*, 238 Conn. 361 (1996). *See also, e.g.*, Petition No. 1350A, Petition EIP Investment LLC, Motion to Reopen and Modify Petition 1350, August 20, 2021, Sec. III.

no ability to conduct soil tests; thus, HyAxiom cannot satisfy Condition No. 7. HyAxiom's refusal to voluntarily withdraw the Declaratory Ruling is actively inhibiting the ability of the City to progress with the development of a viable fuel cell project and is inhibiting the various public benefits that will flow from that project.

For the reasons set forth in the City's Motion and above, the City respectfully requests that the Council reopen Petition No. 1595 for the purpose of considering the changed conditions discussed in the City's Motion and herein, and reverse the Declaratory Ruling pursuant to Conn. Gen. Stat. § 4-181a(b).

Respectfully submitted,
THE CITY OF ANSONIA

By: 

Jonathan H. Schaefer, Esq.
One State Street
Hartford, CT 06103
Tel: (860)-275-8200
E-mail: jschaefer@rc.com
Its Attorneys


CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing was sent electronically to the following:

John Prinssen
Installation Project Manager
Doosan Fuel Cell America, Inc.
101 Riverside Drive
East Hartford, CT 06108
John.prinssen@doosan.com

Bruce McDermott, Esq.
Harris Beach Murtha Cullina PLLC
One Century Tower
265 Church Street, 9th floor
New Haven, CT 06510-1220
bmcdermott@murthalaw.com

October 29, 2025



Jonathan H. Schaefer, Esq.
Robinson & Cole LLP
One State Street
Hartford, CT 06103
Telephone: (860)-275-8349
Attorneys for The City of Ansonia