

<p><b>PETITION NO. 1589R</b> – 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. <b>Court-granted Joint Motion for Voluntary Remand.</b></p>	<p>} Connecticut</p> <p>} Siting</p> <p>} Council</p>
	<p><b>July 26, 2024</b></p>

**DRAFT Remand Opinion**

**Introduction**

On August 23, 2023, USS Somers Solar, LLC (USS) submitted a petition to the Connecticut Siting Council (Council), pursuant to Connecticut General Statutes (CGS) §16-50k and §4-176, for a declaratory ruling for the construction, maintenance, and operation of a 3.0-megawatt AC solar photovoltaic electric generating facility located at 360 Somers Road in Ellington, Connecticut, and associated electrical interconnection (Petition or Project).

After the filing of the Petition, the Council received requests for a Public Hearing from the Town of Ellington (Town) and 14 members of the public. On October 12, 2023, the Council granted the requests for a public hearing which was held on December 5, 2023.

On November 9, 2023, USS filed a motion for protective order under CGS §1-210(b) related to the estimated construction cost of the Project. During the public hearing held on December 5, 2023, the Council issued a Protective Order related to the disclosure of the estimated construction cost of the Project pursuant to CGS §1-210(b).

During a regular meeting held on February 1, 2024, the Council did not issue a declaratory ruling for this Petition due to a tie vote. On February 16, 2024, pursuant to CGS §4-181a(a), USS submitted a Motion for Reconsideration to the Council requesting a new vote be taken on the Petition. The Council denied the Motion for Reconsideration during a regular meeting held on February 29, 2024.

USS filed an appeal of the Council’s February 5, 2024 final decision on the Petition in the New Britain Superior Court (Court) on April 15, 2024. On May 16, 2024, USS and the Council filed a Joint Motion for Voluntary Remand with the Court requesting an opportunity for the Council to reconsider its February 5, 2024 final decision. The Court granted the Joint Motion for Voluntary Remand on May 20, 2024.

Also on May 20, 2024, the Council issued a memorandum to the service list related to the Court-ordered Joint Voluntary Remand and the placement of the Petition on a future regular meeting agenda for a new vote.

During a regular meeting held on July 18, 2024, the Council conducted a non-binding straw poll vote on the proposed remand decision that resulted in 2 votes in favor of the Project, 2 votes in opposition to the Project, and 1 abstention.

On July 18, 2024, the Council issued a memorandum to the service list requesting written comments on the proposed remand decision by July 25, 2024. No comments were received.

### Jurisdiction

As it applies to the Petition, CGS §16-50k states in relevant part, "...the Council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling...(B) the construction or location... of any grid-side distributed resources project... with a capacity of not more than sixty-five megawatts, as long as such project meets the air and water quality standards of the Department of Energy and Environmental Protection and the Council does not find a substantial adverse environmental effect..." The Project is a "grid-side distributed resources" facility, as defined in CGS §16-1(a)(37) and has a capacity of approximately 3.0 MW.

Public Act 17-218 requires, for a solar photovoltaic facility with a capacity of two or more megawatts, to be located on prime farmland or forestland, excluding any such facility that was selected by the Department of Energy and Environmental Protection (DEEP) in any solicitation issued prior to July 1, 2017, pursuant to section 16a-3f, 16a-3g or 16a-3j, the Department of Agriculture (DOAg) represents, in writing, to the Council that such project will not materially affect the status of such land as prime farmland or DEEP represents, in writing, to the Council that such project will not materially affect the status of such land as core forest. PA 17-218 also requires that the Council not find a substantial adverse environmental effect in its exercise of jurisdiction over the facilities eligible to be approved by declaratory ruling under CGS §16-50k. There are no exemptions from this provision of PA 17-218.

By letter dated March 6, 2023, DOAg determined that the proposed solar facility would not have a material impact on the status of prime farmland with the condition that the proposed on-site agricultural co-uses are implemented. By letter dated May 5, 2023, DEEP's Bureau of Natural Resources determined the proposed solar facility would not have a material impact on the status of core forest. By letter dated August 2, 2023, DOAg determined that the downsized facility site would not have a material impact on the status of prime farmland with the condition that the Petitioner would implement a livestock grazing program within the fenced boundaries of the revised project area.

Pursuant to CGS §16-50x, **the Council has exclusive jurisdiction over the construction, maintenance and operation** of the proposed solar photovoltaic electric generating facility.

PA 17-218 does not confer the Council's exclusive jurisdiction upon DOAg or DEEP nor does it permit DOAg or DEEP to impose any enforceable conditions on the construction, maintenance and operation of solar photovoltaic electric generating facilities under the exclusive jurisdiction of the Council. The proposed site is to be used principally for an electric generating facility as defined by CGS §16-50i(a)(3).

Furthermore, the Council does not have jurisdiction or authority over any portion of the host parcel beyond the boundaries of the facility "site." This includes portions of the host parcel retained by the property owner and portions of the host parcel the property owner may lease to third parties. Once a facility is decommissioned, the Council no longer has jurisdiction or authority over the facility "site."

### Public Benefit

Pursuant to CGS §16-50p, a public benefit exists when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity. PA 05-1, An Act Concerning Energy Independence, portions of which were codified in CGS §16-50k, established a rebuttable presumption that there is a public benefit for electric generating facilities selected by the Public Utilities Regulatory Authority in Requests for Proposal.

The Project was selected in Year 1 of the Shared Clean Energy Facility (SCEF) program. The electricity, capacity and renewable energy credits (RECs) produced by the facility would be sold to Eversource in accordance with a 20-year Tariff Terms Agreement (TTA). A REC certifies that one megawatt-hour of renewable electrical energy has been generated.

USS would not participate in an ISO-New England, Inc. (ISO-NE) Forward Capacity Auction during the term of the TTA.

### **Proposed Site**

Pursuant to a lease agreement with the property owner, USS proposes to construct the solar facility on an approximate 19.2-acre site on an approximate 127-acre parcel, at 360 Somers Road in Ellington. The host parcel is owned by the Ellington Airport and zoned Industrial (I). The host parcel is subject to a third-party lease with Connecticut Parachutists Inc. (CPI) that has 14.5 years remaining in the term.

The host parcel is currently used for mixed purposes including an airport, agriculture and pasture. Ellington Airport supports light general aviation traffic and includes a helicopter flight school and a parachuting school. The surrounding land uses include State Route 83 (Somers Road) to the east, and rural, agricultural and residential parcels to the north, east, west and south.

### **Proposed Facility**

The Project consists of 7,074 non-reflective photovoltaic panels rated at approximately 570 Watts. The panels would be installed on a single-axis tracker system that would move in a north-south axis to a maximum angle of approximately 62 degrees. The tracker system would be powered by electricity produced from the solar panels via the transformer. At maximum tilt, the panels would be approximately 12 feet 10 inches above grade at the highest point and 3 feet at the lowest point. The panels would be arranged in linear rows facing east at sunrise and west at sunset, separated by 11.2-foot wide vegetated aisles.

One 10-foot by 30-foot concrete pad would be installed on the south side of the site, centrally located between two arrays and within the fenced array area. The pad would support one switchgear, one transformer and one small auxiliary rack. The Project would use a total of 18 string inverters (35-inch wide by 26-inch high by 14-inch long), mounted on drive pile foundations at the end of select panel rows. Wiring would extend underground in conduits from the inverters to the switchgear/transformer pad.

The Project would be enclosed by a seven-foot tall agricultural-style security fence. The fence initially featured a 4-inch gap on the bottom for small wildlife movement; however, due to the planned implementation of grazing activities within the fenced array, the fence could be lowered to ground level to prevent predatory animals from entering.

Access to the facility would be from a new 16-foot wide, 1,300-foot long gravel access drive extending west from an existing access drive from Somers Road. It would extend to the western portion of the facility to a turnaround area between the northern and southern arrays. Minor improvements would be made to the existing portion of the access driveway.

The nearest property line and the nearest off-site residence to the solar facility perimeter fence would be 20 feet to the west and 128 feet to the south, respectively.

### *Electrical Interconnection*

The electrical interconnection includes the installation of three new utility poles along the access road to support an overhead line that connects to a 13.8-kV Eversource distribution line on Somers Road. The new poles would be approximately 45 feet above ground level. From there, Eversource's distribution line connects to Eversource's Rockville Substation.

The interconnection application for a connection to the existing Eversource pole is currently in review. The facility interconnection would require ISO-NE review and approval. The Council will require notification of the dates on which Eversource and ISO-NE approve the interconnection application and design in the Development and Management (D&M) Plan.

### *Project Alternatives*

Given the selection of the Project in the DEEP SCEF program, and a 20-year TTA contract with Eversource, CPG did not consider alternative locations.

USS selected the proposed site due to the presence of open fields, limited ground disturbance and tree clearing, the presence of forested buffers along the property lines, and close proximity to an existing three phase electrical distribution line.

Pursuant to CGS §16-50p(g), the Council has no authority to compel a parcel owner to sell or lease property, or portions thereof, for the purpose of siting a facility<sup>1</sup>.

### **Neighborhood Concerns**

The Council held a publicly noticed public comment session via Zoom conferencing on December 5, 2023, commencing at 6:30 p.m. 6 members of the public made oral limited appearance statements at the public comment session. While the Council public comment record was open, 13 interested persons provided written limited appearance statements expressing concerns that included, but were not limited to, safety of planes, skydivers and parachutists, traffic disruption during construction of the facility, property devaluation and the size of the site. Prior to submission of the Petition to the Council, based on municipal and neighborhood concerns, USS modified the proposed facility by removing the southern portion of the originally proposed array thereby decreasing the site footprint by 13 acres and reducing the proposed electrical power generation from 4.0 MW AC to 3.0 MW AC. This would preserve more land for industrial use and the activities of the parachute school. USS also filed a revised site plan to the Federal Aviation Administration (FAA). The FAA determined that the revised facility would not pose a hazard to air navigation.

### **Public Safety**

The Project would comply with the current National Electrical Code (NEC), the National Electrical Safety Code and the National Fire Protection Association code.

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<sup>1</sup> Corcoran v. Connecticut Siting Council, 284 Conn. 455 (2007); CGS §16-50p(g) (2019)

The facility would be remotely monitored on a 24/7 basis by USS personnel. Monitoring includes real time performance that can detect production abnormalities. The facility can be remotely shut down in its entirety or partially at the level of the string inverters.

Prior to commencement of operation USS would conduct outreach/training to local emergency responders. Emergency responders would be able to shut down the facility via a disconnect switch. Site access for emergency responders would be provided via a “knox box” (or equivalent) on the access gate. The Council will require USS to provide operations and emergency response training to local emergency responders.

Specialized equipment would not be required to extinguish a solar panel/electrical component fire. Pesticides and herbicides would be used only if necessary and would follow Integrated Pest Management principles with an emphasis on restricting use within 100 feet of wetlands and watercourses.

The Project is not located within a Federal Emergency Management Agency designated 100-year or 500-year flood zone.

#### *Noise*

An independent noise analysis dated November 2, 2023, was performed for the Project. Noise generated during facility operations would comply with the DEEP Noise Control Standards. Noise resulting from construction is exempt from DEEP Noise Control Standards.

#### *Aviation Safety*

Ellington Airport’s runway is located south of the proposed facility, running in a north-south direction. There are no immediate plans for an extension of the runway; however, any future extensions of the runway would be located to the north. Construction, operation and maintenance of the proposed facility would not interfere with any airport operations. USS would extend the existing access drive to the north, away from the runway.

For safety purposes, the FAA requires nothing greater than three feet in height within 125 feet of the centerline of the runway. The nearest portion of the proposed facility is 1,000 feet from the centerline of the runway.

Parachutists and skydivers have used fields around the airport and private properties for an alternate landing area. A grounding study of the solar array would be performed to reduce the potential of anyone within the solar array area being electrocuted from touching an electrical component of the facility. Due to the potential of unauthorized persons landing within the solar array area, the Council will require a grounding study be performed and submitted to the Council prior to the commencement of construction.

The FAA requires a glare analysis for on-airport solar development at federally-obligated airports. Ellington Airport is not a federally-obligated airport. The nearest federally-obligated airport to the facility is Hartford-Brainard Airport in Hartford, located approximately 21 miles southwest of the site. The solar panels would have a non-reflective, glare-resistant coating that improves the overall efficiency of the panels. A glare analysis was performed (but not provided as part of the record) for the proposed solar facility and the results were favorable, indicating no glare would occur. The Council will require USS to provide the glare analysis prior to the commencement of construction.

The FAA issued Determinations of No Hazard to Air Navigation (No Hazard Determinations) for the proposed Project. On February 11, 2022, the FAA issued a Determination of No Hazard to Air Navigation

for three utility poles with the condition that each utility pole would be marked/lighted in accordance with the FAA Advisory Circular 70/7460-1M, Obstruction Marking and Lighting. However, USS interprets this requirement to apply only to structures within 125 feet of the runway; therefore, USS does not propose to light the utility poles. The Council will require USS to provide written confirmation of the applicability or inapplicability of the FAA structure marking/lighting scheme prior to commencement of construction.

### *Decommissioning*

The Project has an anticipated design life of approximately 35 years. At the end of the Project's lifespan, it will be fully decommissioned and removed from the property in accordance with provisions of the site lease. The site would be restored to its original condition, including the removal of access roads, fencing and the stormwater management system.

The lease is a private agreement between USS and the property owner. At the end of the lease term, control of the solar facility site reverts back to the property owner. The Council does not have the authority to supersede restoration provisions of the site lease or require additional site restoration conditions beyond those established by the site lease. The property owner would determine site restoration conditions at the time of Project decommissioning, including, but not limited to, access road, fencing, and the stormwater management system.

Project components that cannot be recycled will be removed and disposed of in accordance with regulatory criteria. USS provided Toxicity Characteristic Leaching Procedure (TCLP) results from the solar panel manufacturer for selected panels that indicate the panels would not be characterized as hazardous waste in the event the solar panels cannot be recycled at the end of the Project's life.

Construction hours would be Monday through Friday from 7:00 AM to 6:00 PM and Saturday from 8:00 AM to 5:00 PM.

## **Environmental Effects and Mitigation Measures**

### *Air and Water Quality*

The project would meet DEEP air quality standards. There would be no air emissions of regulated pollutants or greenhouse gases associated with site operation.

Operation of the facility would not require water use.

Groundwater is classified as "GA" which indicates it is presumed suitable for human consumption without treatment. The host parcel and adjacent parcels are served by private wells. Vibrations from the installation of the racking system are not expected to cause sediment releases, and thus, no disruption to well water flow or quality is expected.

Sheep grazing at the site is not expected to impact nearby wells. The amount of manure would be less than that typically applied to the existing farm field to grow crops thus there would be no degradation of water quality from stormwater runoff.

No on-site fuel storage is proposed during construction. In order to ensure subsurface water quality is maintained, the Council will order USS to submit a Spill Prevention, Control and Countermeasures Plan that includes spill response procedures, contact information for regulatory agencies, spill cleanup contractors and local responders.

The site is located outside of a DEEP-designated Aquifer Protection Area.

#### Stormwater

Pursuant to CGS §22a-430b, DEEP retains final jurisdiction over stormwater management and administers permit programs to regulate stormwater pollution. DEEP regulations and guidelines set forth standards for erosion and sedimentation control, stormwater pollution control and best engineering practices. The DEEP Individual and General Permits for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities (Stormwater Permit) require implementation of a Stormwater Pollution Control Plan (SWPCP) to prevent the movement of sediments off construction sites into nearby water bodies and to address the impacts of stormwater discharges from a Project after construction is complete. A DEEP-issued Stormwater Permit is required prior to commencement of construction.

DEEP has the authority to enforce Project compliance with its Stormwater Permit and the SWPCP, including, but not limited to, the installation of site-specific water quality protection measures in accordance with the *2002 Connecticut Guidelines for Soil Erosion and Sediment Control* (2002 E&S Guidelines).

The Project has been designed to comply with DEEP Stormwater Permit Appendix I and the 2002 E&S Guidelines. Post-construction stormwater would be controlled by perimeter swales and two stormwater management basins; one located in the southwest portion of the site, and one located in the northwestern portion of the site.

The stormwater management system is designed to maintain and/or reduce existing drainage patterns during 2, 10, 25, and 100-year storm events. Once the site is stabilized, USS would conduct annual inspections of the stormwater control features. The Council will order USS to submit a copy of its DEEP-issued Stormwater Permit prior to commencement of construction.

#### Wetlands and Watercourses

The Inland Wetland and Watercourses Act (IWWA) strikes a balance between economic activities and wetlands preservation. The impact of a proposed activity on the wetlands and watercourses that may come from outside the physical boundaries of the wetlands or watercourses is a major consideration. Defined upland review areas, such as 100 feet, provide a trigger for reviewing whether a regulated activity is likely to affect wetlands and watercourses. Under CGS §22a-41(d), regulatory agencies shall not deny or condition an application for a regulated activity in an area outside wetlands or watercourses on the basis of an impact or effect on aquatic, plant, or animal life *unless such activity will likely impact or affect the physical characteristics of such wetlands or watercourses*.

One wetland and three watercourses were identified on the host parcel. One watercourse (Broad Brook) and an unnamed tributary, and associated forest wetlands are located in the northwest portion of the host parcel, while Hydes Brook is located in the southern portion of the parcel, south and southwest of the runway.

The Project would comply with 2002 E&S Guidelines.

The Project would include a wetland buffer of 50 feet to stormwater control features and 100 feet to solar panels in accordance with the criteria established in DEEP Stormwater Permit Appendix I. The Council finds the proposed 71-foot buffer between the wetland associated with Broad Brook and the facility limit of disturbance (LOD) sufficient to protect the wetland.

### *Scenic, Historic and Recreational Values*

There are no properties listed on the State or National Register of Historic Places located within or proximate to the Project site. A Phase 1B Survey determined that no significant impacts to cultural resources are anticipated to result from the Project construction, and no additional archaeological investigation is warranted.

The nearest open space is Meadow Brook Estates Open Space, located approximately 735 feet southwest of the facility. The nearest publicly accessible recreational resource is Shenipsit State Forest located approximately 0.75 miles northeast of the proposed site. The facility would not be visible from Shenipsit State Forest.

Sport parachuting, as occurs on the host parcel, is defined by statute as a “recreational purpose.” In Connecticut, the person in control of the property, including an owner, tenant, lessee or occupant, is liable for permitting entry thereon for any recreational purpose.

There are no Town or state designated scenic roads within one mile of the site.

No comments were received from the Office of Policy and Management or DEEP regarding impacts to scenic quality or resources.

Existing vegetation and its location set back from Somers Road would shield the majority of the facility from view. Seasonal views of the facility may be possible from abutting residential properties to the east and west and from areas within a 0.25 mile radius. Year round views of the facility would be from the immediate vicinity southeast of the site from the airport and the industrial properties along Somers Road.

There are no “blue-blazed” hiking trails maintained by the Connecticut Forest and Park Association within one mile of the site.

### *Fish, Aquaculture and Wildlife*

A portion of the proposed site is within a DEEP Natural Diversity Database (NDDDB) buffered area. DEEP issued correspondence to USS indicating the site is within range of the eastern box turtle, a state-species of special concern, and recommended turtle protection measures, including but not limited to contractor education, site inspections, and isolation barriers. USS incorporated these measures into the Project site plans.

A subsequent review by DEEP identified the site as a potential habitat for the Savannah sparrow, a state-listed species of special concern. The Council will order USS to implement DEEP recommended protective measures for the Savannah sparrow.

USS obtained correspondence from the U.S. Fish & Wildlife Service’s (USFWS) Information, Planning and Consultation (IPaC) service indicating that the northern long-eared bat (NLEB), a federally-listed and state-listed Endangered Species, would not be adversely affected by the Project. No additional action would be required.

### *Agriculture*



Approximately 90 acres of the host parcel is enrolled in the PA 490 Program. The portion of the parcel occupied by the site would not affect its use classification.

Approximately 33.52 acres of the host parcel are classified as prime farmland soils of which 0.09 acres are within the site but are already disturbed by an existing gravel road used for the airport and that would also be used for the Project.

In accordance with DOAg's No Material Impact to Prime Farmland letter dated August 2, 2023, USS would implement a sheep grazing program within the fenced solar array area of the site. The Council does not have jurisdiction or authority over any portion of the host parcel beyond the boundaries of the Project "site." This includes portions of the host parcel retained by Ellington Airport and portions of the parcel Ellington Airport may lease to third parties.

Sheep grazing would be conducted by establishing five temporary paddocks within the solar array, isolated by temporary, non-electrified fencing. It is anticipated approximately 9 sheep would be on-site and rotated among five temporary paddocks (one paddock at a time) for about 3 days per paddock, depending on forage conditions. Grazing would not be permitted in areas outside of the solar array perimeter fence.

The solar array would be seeded with a seed mix that provides sufficient forage for livestock and promotes pollinator species. The Council will require that the final seed mix be included in the Development and Management (D&M) Plan.

#### *Forest and Parks*

No state forests or state parks are located in the vicinity of the site. The Shenipsit State Forest is approximately 0.75 mile northeast of the Site. The nearest mapped core forest is about 2,800 feet from the site.

Construction of the facility would require approximately 1 acre of tree clearing.

#### **Conclusion**

Based on the record of this proceeding, the Council finds that there would be an adverse effect on air navigation and aviation safety associated with the construction, maintenance and operation of an approximate 3.0 MW solar photovoltaic electric generating facility and an associated electrical interconnection located at 360 Somers Road in Ellington, Connecticut.

The proposed Project is a grid-side distributed resources facility with a capacity of less than 65 MW under CGS §16-50k, it was selected under the state's SCEF Program, it is consistent with the state's energy policy under CGS §16a-35k, and the proposed Project would meet all applicable U.S. Environmental Protection Agency and DEEP Air and Water Quality Standards. Therefore, the Council will not issue a declaratory ruling for the proposed Project.