

DRAFT

DATE: September 26, 2025

TO: Council Members

FROM: Melanie A. Bachman, Esq.
Executive Director/Staff Attorney

RE: **DOCKET NO. 538** - The Towers, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility and associated equipment located at 1022 Trumbull Highway, Lebanon, Connecticut. **Roy Motion to Dismiss/Motion for Stay of Proceeding –Staff Report.**

On May 2, 2025, pursuant to Connecticut General Statutes (CGS) §16-50k, The Towers, LLC (Applicant), submitted an application to the Connecticut Siting Council (Council), for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a telecommunications facility located at 1022 Trumbull Highway, Lebanon, Connecticut.

On May 2, 2025, pursuant to CGS §16-50gg, the Council sent correspondence to the Town of Lebanon requesting comments and inviting the municipality to participate in the Council's public hearing process.

During a meeting held on May 29, 2025, the Council deemed the application complete and approved the schedule for the proceeding, including a public hearing on September 11, 2025.¹

Approximately two weeks before the scheduled public hearing and 118 days after the application was submitted to the Council, on August 28, 2025, Gregory and Natalie Roy (Roy) submitted correspondence requesting the Council to delay the public hearing for three months and to send a list of all other Lebanon residents who were sent a certified letter from the Applicant on April 30, 2025.²

On August 29, 2025, the Council responded to Roy that a public hearing is required by statute to be held not less than 30 days nor more than 150 days of receipt of an application, provided links to the record documents referenced in Roy's correspondence and invited Roy to participate in the public hearing as a party or intervenor.

On September 4, 2025, Roy requested Intervenor status and postponement of the public hearing for at least 90 days. During the evidentiary session of the Council's public hearing held on September 11, 2025, the Council granted Roy intervenor status and denied Roy's request to postpone the September 11, 2025 public hearing on the basis that a continued evidentiary hearing session for the matter was scheduled for December 16, 2025, which is 96 days from September 11, 2025.³

¹ Notice of the Council's public hearing was published in the *Norwich Bulletin* on June 4, 2025.

² Council Docket No. 538, August 29, 2025 correspondence to Roy, available at https://portal.ct.gov/-/media/csc/1_dockets-medialibrary/1_media_do500_600/do538/proceduralcorrespondence/do538-royltr-08292025_a.pdf?rev=3e40623f86534d1188a38a59c8cf6b51&hash=5BD00E2BF66222D4098BEDBE3FD818DE

³ Council Docket No. 538, September 12, 2025 Continued Evidentiary Hearing Session Memo, available at https://portal.ct.gov/-/media/csc/1_dockets-medialibrary/1_media_do500_600/do538/proceduralcorrespondence/do538-continuationofevidentiarymemo_a.pdf?rev=76ea5a39ac5f4dd8af3ab0b7b9d04c4a&hash=FB4AD5AE499C39A3CA630E7FD2122C40

On September 11, 2025, approximately one and a half hours before the scheduled public hearing, via email, Roy submitted a Motion to Dismiss/Motion for Stay of Proceeding (Motion) alleging that there exists a conflict of interest that requires the recusal of Council Member Dr. Scott Williams (Dr. Williams) and this recusal would leave the Council improperly constituted without the required number of public members experienced in the field of ecology under its enabling statute.⁴ In the alternative to dismissal, Roy requests postponement of the application until the Council is properly constituted with the required number of public members experienced in the field of ecology.⁵

Also on September 11, 2025, shortly after receipt of the Motion, the Council informed the service list for Docket No. 538 and Roy, via email, that the Motion would be taken up during its regular meeting scheduled for October 2, 2025.⁶ Under Regulations of Connecticut State Agencies §16-50j-22a(b), any motions concerning jurisdictional matters shall be made in writing and shall be considered during a regular Council meeting either prior to or after a hearing, if a hearing is held, for the convenience of the public.

On September 26, 2025, the Applicant objected to the Motion on the basis that a conflict of interest does not exist and the Council is properly constituted.

Under the Council's enabling statute, the Public Utility Environmental Standards Act (PUESA), the Council shall consist of:

- (1) The Commissioner of Energy and Environmental Protection, or the commissioner's designee;
- (2) the chairperson of the Public Utilities Regulatory Authority, or the chairperson's designee;
- (3) one designee of the speaker of the House;
- (4) one designee of the president pro tempore of the Senate; and
- (5) **five public members**, to be appointed by the Governor, **at least two of whom shall be experienced in the field of ecology**, and all five of whom shall, consistent with the provisions of section 4-9a, have no substantial financial interest in, not be employed in or by, and not be professionally affiliated with any (A) utility, (B) facility, (C) hazardous waste facility, or (D) ash residue disposal area, and shall have had no professional affiliation with any such utility, facility, hazardous waste facility or ash residue disposal area for three years preceding such public member's appointment to the council. (Emphasis added).⁷

PUESA requires categories of Council members.⁸ For the public member category, the Governor **must** appoint at least two members experienced in the field of ecology. The appointment of **at least two** members experienced in the field of ecology is mandatory. Consistent with PUESA, the Council currently has two public members experienced in the field of ecology. Consistent with CGS §4-9a, the four public members currently appointed to

⁴ Council Docket No. 538, Roy September 11, 2025 Motion to Dismiss/Motion for Stay of Proceeding, *available at* https://portal.ct.gov/-/media/csc/1_dockets-medialibrary/1_media_do500_600/do538/roysubmissions/do538-motion-to-dismiss-and-motion-for-stay91125.pdf?rev=a70fa728aa704465b5fbcd003ac5172f&hash=EA938C69F0FE98F6600FF40283B3B4AE

⁵ *Id.*

⁶ Council Docket No. 538, Council September 11, 2025 Response to Roy September 11, 2025 Motion to Dismiss/Motion for Stay of Proceeding, *available at* https://portal.ct.gov/-/media/csc/1_dockets-medialibrary/1_media_do500_600/do538/proceduralcorrespondence/do538-emailcorrespondence091125_a.pdf?rev=522b3cbb95d44a51809fac6bb4defa17&hash=84770C13A8C8DA1365EEBF1333FAFE01

⁷ Conn. Gen. Stat. §16-50g, *et seq.* (2025).

⁸ *Block v. Statewide Grievance Comm.*, Conn. Supp. 5, 13 (Conn. Super. 2000) (Enabling statute determines composition).

the Council had no affiliation with any utility, facility, hazardous waste facility or ash residue disposal area for three years preceding their appointment to the Council.

In the Motion, Roy claims Dr. Williams is biased because he works for the same public entity as one of the proposed telecommunications facility site host parcel owners, Karen Buffkin (Buffkin). Attached to the Motion are the online “employment profiles” of Dr. Williams and Buffkin that are posted on the University of Connecticut (UCONN) website. Dr. Williams and Buffkin are both adjunct professors at UCONN. Dr. Williams works at the Connecticut Agricultural Experiment Station in New Haven. Buffkin works at the UCONN campus in Hartford. Buffkin also heads the UCONN Office of Faculty and Staff Labor Relations, which Roy claims is a relationship that creates the appearance of impropriety as Dr. Williams’ vote on the application could financially benefit Buffkin.

There is a presumption that administrative board members acting in an adjudicative capacity are not biased.⁹ To overcome the presumption, the person asserting bias must timely demonstrate “actual bias” rather than the mere appearance of bias of the adjudicator challenged and must produce evidence particular to the adjudicator and particular to the controversy.¹⁰ In support of the Motion, Roy cites *Clisham v. Board of Police Commissioners of Borough of Naugatuck*, a case involving hearings for removal of the police chief where board members openly and publicly made ex parte statements before and during the hearings that the police chief should be removed demonstrating the existence of “actual bias.”¹¹

The facts and circumstances in the *Clisham* case evidencing “actual bias” do not exist in this proceeding.¹² Actual bias cannot be simply inferred from the status of the adjudicator, particularly where the status is required by statute.¹³ Similar to the composition of the Council, in *Moraski v. Board of Examiners of Embalmers & Funeral Directors*, the Court noted that the legislature required the Board of Examiners of Embalmers and Funeral Directors to be comprised of five members: three licensed practicing embalmers and two members of the public.¹⁴ The Court held that the status of some of the board members as competitors who could reap the accused licensee’s share of business is not enough to establish “actual bias.”¹⁵ The “actual bias” Roy claims in the Motion cannot be simply inferred because Dr. Williams is a member of the Council with experience in the field of ecology and/or Dr. Williams works for the same public entity as one of the host parcel owners.

It is a general rule that “membership in or connection with the same profession or occupation as that of the accused licensee does not alone indicate a disqualifying bias or interest on the part of the questioned tribunal member sufficient to violate due process.”¹⁶ In this proceeding, Buffkin is not the accused licensee, the applicant, a witness for the applicant, or a party or intervenor. Buffkin, along with Theodore Carl Reichard, Jr. (Reichard), owns the proposed telecommunications facility site host parcel located at 1022 Trumbull Highway in Lebanon.¹⁷

⁹ *Moraski v. Board of Examiners of Embalmers & Funeral Directors*, 291 Conn. 242 (2009); *Clisham v. Board of Police Commissioners of Borough of Naugatuck*, 223 Conn. 354 (1992); *Petrowski v. Norwich Free Academy*, 199 Conn. 231 (1986).

¹⁰ *Moraski v. Board of Examiners of Embalmers & Funeral Directors*, 291 Conn. 242, 262-67 (2009).

¹¹ *Clisham v. Board of Police Commissioners of Borough of Naugatuck*, 223 Conn. 354 (1992).

¹² *Petrowski v. Norwich Free Academy*, 199 Conn. 231, 242 (1986); *Moraski v. Board of Examiners of Embalmers & Funeral Directors*, 291 Conn. 242, 263 (2009).

¹³ *Moraski v. Board of Examiners of Embalmers & Funeral Directors*, 291 Conn. 242 (2009).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Council Docket No. 538, Application Attachment 17 – Redacted Lease Agreement, available at https://portal.ct.gov/-/media/csc/1_dockets-medialibrary/1_media_do500_600/do538/applicantsubmissions/application/attachment-17.pdf?rev=d5a1abff599c4112a7c4b58e7964d7a0&hash=062FC0592C69CE47F90CCA56A077B76B

Therefore, the “actual bias” Roy claims in the Motion does not alone indicate a disqualifying interest or bias on the part of Dr. Williams sufficient to violate due process.

Pursuant to CGS §16-50p(g), when reviewing an application for a jurisdictional facility, the Council shall in no way be limited by an applicant already having acquired land or an interest therein for the purpose of constructing the proposed facility.¹⁸ It is clear that the Council is not bound by whether the Applicant has already acquired Buffkin and Reichard’s land or an interest therein for the purpose of constructing the facility. Furthermore, the Council has no authority to compel Buffkin and Reichard to lease any portion of their land for the purpose of constructing the facility.¹⁹

Contrary to the claims in the Motion, Dr. Williams is not required to recuse from participating in the application proceeding or from voting on the application, and if he did recuse, or if he were absent from the Council’s vote on the application, the Council would not be improperly constituted. Under PUESA, it is the Governor’s appointment of public members with experience in the field of ecology to the Council that determines proper constitution of the Council rather than if any public members with experience in the field of ecology are recused or absent from voting on any application.

Vacancies, absences and recusals associated with a multi-member board do not deprive the board of the power to act where a quorum equal to a majority of the members of the board exists during transaction of the business involved.²⁰ A quorum of the Council is five members. Currently, the Council consists of eight members. If one, two or three members were absent or recused from an action on a jurisdictional matter, including, but not limited to Docket No. 538, a quorum of Council members would exist during the transaction of the business involved.

Therefore, based on the absence of “actual bias,” consistency of current Council membership with the requirements of PUESA and CGS §4-9a, and the existence of a quorum of Council members to act on the subject application in accordance with PUESA, Council staff recommends the Motion to Dismiss/Motion for Stay of Proceeding be denied.

¹⁸ Conn. Gen. Stat. §16- 50p(g) (2025); *Corcoran v. Conn. Siting Council*, 284 Conn. 455 (2007).

¹⁹ *Corcoran v. Conn. Siting Council*, 284 Conn. 455 (2007).

²⁰ *Moraski v. Board of Examiners of Embalmers & Funeral Directors*, 291 Conn. 242, 266 (2009) (“... even if we were to assume that a minimum of three board members are required to preside over license suspension and revocation proceedings, the complaint against the plaintiffs could have proceeded even if two of the five board members had to be recused due to a conflict.”); *Levinson v. Conn. Board of Chiropractic Examiners*, 211 Conn. 508 (1989) (plaintiff in license suspension appeal claimed board was improperly constituted because the board did not consist of one-third public members, but the Court held that although the public membership was not filled, a quorum of a collective body is empowered to act for the body.)