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PETITION FOR A DECLARATORY RULING FOR A RENEWABLE ENERGY FACILITY

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A “renewable energy facility” is any electric generating or storage facility using renewable energy sources, including, but not limited to, solar photovoltaic, solar thermal, wind, fuel cells, ocean thermal, wave or tidal, geothermal, landfill gas, hydropower, or biomass. (Conn. Gen. Stat. §16-50i(a)(3); Conn. Gen. Stat. §16-1)

Potential petitioners are urged to carefully review Connecticut General Statutes §16-50k(a) to determine whether the proposed project falls within the petition for a declaratory ruling process that applies to fuel cells (unless the Council finds a substantial adverse environmental effect), customer-side distributed resource projects or grid-side distributed resource projects or facilities with a capacity of 65 megawatts or less (as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection).

Petitioners should also consult Connecticut General Statutes Sections 16-50g, *et seq.* and Sections 16-50j-1, *et seq.* of the Regulations of Connecticut State Agencies (RCSA) to assure complete compliance with the requirements of those sections. Where appropriate, statutory and regulatory references are noted below.

I. PETITION FOR A DECLARATORY RULING PROCESS

A. Request for Petition (RCSA §16-50j-39)

Any interested person may at any time request a declaratory ruling of the Council with respect to the applicability to such person of any statute, or the validity or applicability of any regulation, final decision, or order enforced, administered, or promulgated by the Council. Such request shall be addressed to the Council and sent to the principal office of the Council by mail or delivered in person during normal business hours. The request shall be signed by the person on whose behalf the inquiry is made. It shall give the address of the person inquiring and the name and address of such person’s attorney, if applicable. The request shall:

1. state clearly and concisely the substance and nature of the request;
2. identify the statute, regulation, final decision, or order concerning which the inquiry is made and shall identify the particular aspect to which the inquiry is directed;
3. be accompanied by a statement of any supporting data, facts and arguments that support the position of the person making the inquiry; and
4. be accompanied by exhibits detailing any supporting data including, but not limited to, where applicable, maps, drawings, diagrams and technical specifications.

B. Requests for Participation

Where applicable, Sections 16-50j-13 through 16-50j-17 of the Regulations of Connecticut State Agencies govern requests for participation in a proceeding.

C. Notice (RCSA §16-50j-40)

Prior to submitting a petition for a declaratory ruling to the Council, the petitioner shall, where applicable, provide notice to each person other than the petitioner appearing of record as an owner of property which abuts the proposed primary or alternative sites of the proposed facility, each person appearing of record as an owner of the property or properties on which the primary or alternative proposed facility is to be located, and the appropriate municipal officials and government agencies. Proof of such notice shall be submitted with the petition for a declaratory ruling. These notice requirements are applicable to proposed facilities that, by statute, are required to be approved by a declaratory ruling in lieu of a certificate under Section

16-50k of the Connecticut General Statutes, and to petitions for a declaratory ruling that the subject of the petition does not constitute a facility. The term “appropriate municipal officials and government agencies” means, in the case of a facility required to be approved by declaratory ruling, the same officials and agencies to be noticed in the application for a certificate under Section 16-50l of the Connecticut General Statutes. Petitioners seeking a declaratory ruling where the subject of the petition is not a facility, shall serve notice to the chief elected official of the municipality where the proposed project is located in whole or in part. Within thirty (30) days after receipt of a petition for a declaratory ruling, the Council shall give notice of the petition to all persons to whom notice is required by any provision of law and to all other persons who have requested notice of declaratory ruling petitions on the subject matter of the petition. The notice provided by the Council shall provide contact information for the Council, a timeline for public involvement and the date, place and time for any scheduled field review of the proposed project. The Council may receive and consider data, facts, arguments, and opinions from persons other than the persons requesting the ruling.

D. Hearing (RCSA §16-50j-40)

If the Council deems a public hearing necessary or helpful in determining any issues concerning the request for a declaratory ruling, the Council shall schedule such hearing and give notice thereof as shall be appropriate.

E. Decision (RCSA §16-50j-40)

Within sixty (60) days after receipt of a petition for a declaratory ruling, the Council, in writing, shall:

1. Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified proceedings;
2. Order the matter set for a specified proceeding;
3. Agree to issue a declaratory ruling by a specified date;
4. Decide not to issue a declaratory ruling and initiate regulation-making proceedings under Connecticut General Statutes § 4-168 on the subject; or
5. Decide not to issue a declaratory ruling, stating the reasons for its action.

F. Notice of Decision (RCSA §16-50j-40)

A copy of all rulings issued and any actions taken shall be promptly delivered to the petitioner and other parties personally or by United States mail, certified or registered, postage pre-paid, return receipt requested. A declaratory ruling shall contain the names of all parties to the petition, the particular facts on which it is based, and the reasons for its conclusion.

G. Filing Fee (RCSA §16-50v-1a)

The petitioner must submit an original and 15 copies of its petition for a declaratory ruling with a \$625 filing fee. The expenses incurred for a field inspection shall not exceed \$500 per review. Assessments shall be made to cover all other expenses incurred by the Council. Any fees which are in excess of the actual expenses of the Council will be refunded to the petitioner.

II. FORM AND CONTENT OF A PETITION FOR A DECLARATORY RULING

A. Form of Petition for a Declaratory Ruling (RCSA §16-50j-39)

All petitions for declaratory rulings shall include the following components:

1. The purpose for which the petition is being made;
2. The statutory authority for such petition;

3. The exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person. If any petitioner is a corporation, trust association, or other organized group, it shall also give the state under the laws of which it was created or organized;
4. The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the petition for a declaratory ruling are to be addressed. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the petitioner;
5. Such information as may be required under Uniform Administrative Procedure Act and Public Utility Environmental Standards Act;
6. Such information as any department or agency of the state exercising environmental controls may, by regulation, require;
7. Such information as the petitioner may consider relevant; and
8. Such additional information as the Council may request.

B. Contents of Petition for a Declaratory Ruling

Pursuant to Public Act 17-218, a petition for a declaratory ruling requires "...for a **solar photovoltaic facility with a capacity of 2 or more megawatts**, to be located on prime farmland or forestland... the Department of Agriculture represents in writing to the Council that the facility will not materially affect the status of prime farmland or the Department of Energy and Environmental Protection represents in writing to the Council that such project will not materially affect the status of such land as core forest..."

A petition for a declaratory ruling for construction of a renewable energy facility shall include the following, **as applicable**:

1. Project and Property Description
 - a. A map and description of the location of the proposed facility, including, but not limited to, depiction of site boundaries, identification of towns within 2500 feet, zoning designation, abutters' map;
 - b. A description of how the project is consistent with the state's energy policy, including, but not limited to, whether the project was selected through a Department of Energy and Environmental Protection (DEEP) or utility request for proposal process, how the project will comply with air and water quality standards of the DEEP and how the project will not have a substantial adverse environmental effect; and
 - c. A site plan with the proposed facility location, access roads and other associated equipment, including, but not limited to, as applicable, inverters and transformers, cooling modules, water tanks, concrete pads and utility connections (overhead or underground).
2. Equipment and Energy Production
 - a. Facility design with detailed description of facility components and maximum facility component heights;
 - b. Maximum power output of facility in kilowatts or megawatts (AC);
 - c. Use of power generated (ex. on-site consumption and surplus sold to grid or all power sold to grid)
 - d. Use of Virtual Net Metering, Agricultural Virtual Net Metering or Shared Clean Energy Facility;
 - e. Utilization of uninterruptible power module or waste heat recovery;
 - f. Interconnection Agreement and results of System Impact Study for interconnection;
 - g. Operational life of the facility;
 - h. Compliance with applicable National Fire Protection Association and other safety standards;
 - i. Description of protection system to shut down the facility in the event of a fault or other power outage events; and
 - j. Decommissioning Plan.
3. Environmental Considerations
 - a. Compliance with air emissions rates, including carbon dioxide and any other greenhouse gasses, and compliance with applicable DEEP regulations;
 - b. Water consumption and discharge rates;
 - c. FEMA Flood Zone information and associated flood mitigation plans;
 - d. Proximity to DEEP Aquifer Protection Areas; **Why not all drinking water supply watersheds**
 - e. **DEEP groundwater classification underlying the site property; Why only groundwater classifications**
 - f. FAA determination regarding air navigation hazard and plume analysis;

- g. Number of trees six inches in diameter or greater that will be cleared or the total acreage of tree clearing, including a breakdown of tree clearing by upland versus wetland areas;
 - h. DEEP Natural Diversity Database (NDDDB) consultation correspondence and analysis of federally-listed species (ex. Northern Long-Eared Bat);
 - i. Wetland and Watercourse Analysis Report and map, and associated Wetland and Watercourse Impact Mitigation Plan;
 - j. Vernal Pool Analysis Report and map, and associated Vernal Pool Impact Mitigation Plan; and
 - k. Analysis of any visual impacts including, but not limited to, nearest residence, and any proposed mitigation plans, such as vegetative screening.
4. Project Construction and Maintenance
- a. Stages of construction;
 - b. Plans for erosion and sedimentation control consistent with the 2002 Connecticut Guidelines for Erosion and Sedimentation Control;
 - c. Construction schedule, including days of the week and hours; and
 - d. Maintenance plans that include, but are not limited to, as applicable, routine general maintenance, mowing, snow clearing, and estimated frequency of site visits by technicians.

This overview is designed to answer general questions and provide basic information. Reference should be made to the appropriate statutes and regulations for specific regulatory language. Asserting a person's rights and privileges is his or her responsibility. A person has the prerogative, though not the obligation, to obtain legal counsel.