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March 3, 2016

Ms. Melanie A. Bachman
Acting Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: **PETITION NO. 1214** – Groton Fuel Cell 1, LLC petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 5.6 megawatt fuel cell combined heat and power electric generating facility located at the Pfizer Groton campus, 445 Eastern Point Road, Groton, CT

Dear Ms. Bachman:

Groton Fuel Cell 1, LLC (“GFC”) submits this response to the Statement of Concerns and Request for Continuance (“Request”) filed in this proceeding on March 2, 2016 by the City of Groton (the “City”). The City seeks a postponement of the issuance of a decision in this matter, currently scheduled for March 3, 2016, “to afford the City an opportunity to discuss its concerns with GFC and Pfizer.” As explained in this response, the concerns expressed by the City relate to private business issues and contractual matters regarding the City’s power supply to the Pfizer Groton campus, and have no bearing on the Connecticut Siting Council’s (“Council”) determination on GFC’s petition. The City’s concerns do not warrant the relief the City is requesting, and they are clearly outside the scope of this proceeding. Although GFC is amenable to participating in future discussions with the City separate from this process, the City’s issues are not a basis for a postponement of the Council’s decision. GFC therefore objects to the Request and asks the Council to maintain its current procedural schedule in this matter.

The Council’s scope of review of the GFC petition is established by Conn. Gen. Stat. §16-50k(a), which provides in pertinent part that “the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling . . . the construction or location of any fuel cell, unless the council finds a substantial adverse environmental effect” Consistent with this standard, GFC demonstrated in its January 25, 2016 petition that the proposed fuel cell facility will not have a substantial adverse environmental effect, and addressed each of the factors relevant to the Council’s determination, including public benefits and impacts on the natural environment and ecological balance; public health and safety; scenic and historical values; air and water quality; and fish and wildlife.

The concerns raised by the City in its Request are wholly irrelevant to a determination of whether the proposed fuel cell will have a substantial adverse environmental effect pursuant to §16-50k(a). The City states two concerns, which are its belief that ownership of fuel cells and the sale of power within its service area would violate the City's franchise rights, and that the power purchase agreement between GFC and Pfizer is in violation of certain contractual provisions of other agreements between Pfizer and the City. Neither of these concerns is within the subject matter jurisdiction of the Council, nor are they valid. These issues are private business issues and contractual matters unrelated to the Council's evaluation of GFC's petition.

In addition, it would be improper for the Council to such issues outside of its statutory authority. As a governmental agency, the Council acts "as a tribunal of limited jurisdiction, [and] must act strictly within its statutory authority [A]n administrative agency which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation" Nizzardo v. State Traffic Comm'n, 259 Conn. 131, 156 (2002) (internal citations and quotation marks omitted); see also Kleen Energy Sys., LLC v. Comm'r of Energy & Env'tl. Prot., 319 Conn. 367 (2015) (affirming that the Public Utility Regulatory Authority's subject matter jurisdiction is strictly limited by the provisions in Titles 4 and 16 of the Connecticut General Statutes). "Action taken by an administrative agency in excess of its statutory authority is void and without legal effect." Moscowitz v. Planning & Zoning Comm'n, 16 Conn. App. 303, 313 (1988) (internal citations and quotation marks omitted). The Request raises issues outside the Council's statutory authority, and provides no basis for the City's requested postponement.

Lastly, the timing of the Request is prejudicial to GFC and inconsistent with efficient administrative process. The City received notice of the GFC petition at the time it was filed on January 25, 2016, and was granted party status on February 11, 2016. It received a copy of the Council's procedural guidelines in the Council's letter dated February 18, 2016 that confirmed the grant of party status, and had ample opportunity to participate in all phases of the proceeding. In fact, the City and its counsel participated in the Council's field review on February 22, 2016. It is unreasonable for the City to submit its Request at this time, on the eve of final action by the Council. The timing of the Request suggests a false urgency as to issues that have no bearing on GFC's petition. The City should not be permitted to disrupt the Council's process in this manner.

GFC respectfully requests that the Council deny the Request for postponement and issue a declaratory ruling in accordance with its current procedural schedule, holding that the proposed fuel cell installation will not have a substantial adverse environmental effect and therefore does not require a certificate of environmental compatibility and public need.

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Sincerely,

A handwritten signature in cursive script, reading "Daniel P. Venora", enclosed within a thin rectangular border.

Daniel P. Venora
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1 Liberty Square, Suite 208
New Britain, CT 06051

cc: Service List