



# STATE OF CONNECTICUT

## CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

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December 8, 2017

Steve Broyer  
Windham Solar LLC  
c/o Ecos Energy LLC  
222 South 9<sup>th</sup> Street, Suite 1600  
Minneapolis, MN 55402

RE: **PETITION NO. 1221** - Windham Solar LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of two 1.0 Megawatt and one 1.5 Megawatt Solar Photovoltaic Electric Generating facilities located at 91 Plainfield Pike Road, Plainfield, Connecticut. **Motion to Reopen Declaratory Ruling based on changed conditions pursuant to Connecticut General Statutes §4-181a(b).**

Dear Mr. Broyer:

At a public meeting held on December 7, 2017, the Connecticut Siting Council (Council) considered and denied Windham Solar LLC's (WS) November 2, 2017 Motion to Reopen the Connecticut Siting Council's (Council) July 21, 2016 final decision not to issue a declaratory ruling to WS for the above-referenced proposed solar photovoltaic electric generating facilities in the Town of Plainfield based on changed conditions pursuant to Connecticut General Statutes §4-181a(b).

Enclosed for your information is a copy of the staff report on this Motion to Reopen.

Please do not hesitate to contact our office if you should have any questions.

Very truly yours,

Robert Stein  
Chairman

RS/MP/lm

Enclosure: Staff Report, dated December 7, 2017

- c: Honorable Cathy Tendrich, First Selectman, Town of Plainfield
- Ryan Brais, Zoning Officer, Town of Plainfield
- Lou Soja, Planning and Engineering, Town of Plainfield
- Michael Melone, Windham Solar LLC, c/o Allico Renewable Energy Limited



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### **Petition No. 1221**

### **Windham Solar, LLC**

### **91 Plainfield Pike Road, Plainfield**

### **Motion to Reopen**

### **Staff Report**

**December 7, 2017**

On March 21, 2016, Windham Solar LLC (WS or Petitioner) submitted a petition (Petition) to the Connecticut Siting Council (Council) for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need (Certificate) is required for the construction, operation and maintenance of a 3.5 megawatt (MW) alternating current (AC) solar photovoltaic generating facility located on 91 Plainfield Pike Road (Route 14A) in Plainfield, Connecticut. Council member James J. Murphy, Jr. and Michael Perrone of the Council staff visited the site on April 20, 2016 to review this proposal with Steve Broyer from WS; Michael Melone, Vice President and General Counsel, Allco Renewable Energy Limited; and Louis J. Soja, Jr., L.S., Town Planner, Town of Plainfield.

The site is a 67.2-acre parcel located on Plainfield Pike Road owned by PLH, LLC. The eastern portion of the site is zoned industrial, and the western portion of the site is zoned residential. Adjacent land uses to the north include a church and residences. To the northeast is a commercial auto body business and an apartment building. To the west is I-395. To the east and immediate south there is vacant land, and farther to the south is a residential development.

During a public meeting of the Connecticut Siting Council (Council) held on July 21, 2016, the Council voted to deny the petition on the basis that the petition was incomplete and appeared to have a substantial adverse effect on water quality. In support of the denial, the Council identified the following deficiencies and adverse effects on water quality:

1. Wetlands comprise approximately 25% of the subject site and there would be 4,660 square feet of direct wetland impacts that would require a Category 1 or Category 2 permit from the U.S. Army Corps of Engineers;
2. No access to the "Future Project" has been determined or developed and may require a brook crossing and associated impacts;
3. No detailed Vernal Pool Analysis nor Vernal Pool Habitat Mitigation Plan was submitted. In response to Council Interrogatory No. 43 submitted June 27, 2016, a Vernal Pool Analysis was deemed "not applicable at this time;" however, during the March 30, 2016 and April 13, 2016 surveys for breeding amphibians conducted at the site, spotted salamander and wood frog egg masses were found in all three identified vernal pools;
4. No response from the Department of Energy and Environmental Protection (DEEP) Natural Diversity Database has been submitted; and
5. Eversource confirmed that only 2 MW of interconnection capacity is available whereas the petition requests approval for 3.5 MW of interconnection capacity.

On August 30, 2017, WS submitted a new petition for a declaratory ruling for the project. On September 6, 2017, the Council sent correspondence to WS that the new petition for a declaratory ruling was improperly filed and that if WS sought to reopen the Council's July 25, 2016 final decision on Petition No. 1221, a motion to reopen should be submitted under the provisions of Connecticut



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General Statutes (CGS) §4-181a(b) clearly describing the changed conditions that the Petitioner alleges warrant a reopening of the Council's July 25, 2016 final decision not to issue a declaratory ruling for the project.

On November 2, 2017, WS submitted a Motion to Reopen pursuant to CGS §4-181a(b). Pursuant to Regulations of Connecticut State Agencies §16-50j-40, WS provided notice of the Motion to Reopen to abutters, the Town of Plainfield officials, state agencies and state officials. On November 6, 2017, the Council issued a memorandum of notice of the filing of the Motion to Reopen describing the changed conditions presented by the petitioner. No comments have been received to date.

In its Motion to Reopen, WS included information that it believes constitutes changed conditions that would address the five deficiencies identified by the Council in its July 25, 2016 final decision not to issue a declaratory ruling for the project. Such information is discussed below.

### **1. Wetland Impacts**

Approximately 18.5 acres of the 67.2-acre proposed site have been delineated wetlands. In the July 25, 2016 final decision, the Council noted that wetlands comprise 25% of the subject site and project construction would have 4,660 square feet of direct wetland impacts that would require a Category 1 or 2 permit from the U.S. Army Corps of Engineers (ACOE). As described in the Motion to Reopen, while the solar arrays and associated equipment would not have direct wetland impacts, a proposed 14-foot wide on-site gravel access driveway would connect the South Project to the East Project and result in permanent direct wetland impacts of approximately 4,670 square feet (approximately 0.10 acres) of palustrine forested wetlands. On August 18, 2016, the Petitioner applied for an ACOE general permit for such permanent wetland impacts. Since the permit application submission, a site visit was conducted on October 3, 2017 with a representative from ACOE, to verify the impact locations and construction methods. Additional correspondence from ACOE dated November 2, 2017 authorizes the performance of the proposed activities under an ACOE general permit. The revised project would entail clearing within 0.10 acres of wetlands and clearing within 1.6 acres of wetland buffers.

### **2. Access to Future Project**

In the original petition filing, the 1.5 MW North Project, or Future Project as it was described in the Council's final decision, was left isolated and difficult to access due to the discovery of a brook after the petition was filed just east of the proposed Future Project that would require a crossing and result in wetland impacts. In the Motion to Reopen, the North Project would be accessed from the Lighthouse Church of God (LCG) parking lot to the north. WS executed an easement agreement with LCG on July 14, 2017. While this access route would impact 0.19-acre of wetland buffer on LCG property, it was selected to avoid the brook crossing. Furthermore, the interconnection for the North Project is proposed to be directionally bored to the east underneath the existing brook and associated wetlands. The bore will be approximately 420 feet in length and 6 feet below the bottom of the brook.

The East and South Projects would be accessed from the existing driveway in the Northeast corner of the property that provides access to the rear of the industrial building to the east of the project parcel on property owned by Leo Properties, LLC (Leo). This access route was selected to minimize additional grading and driveway construction that would have resulted in additional wetland and wetland buffer impacts. WS executed an easement agreement with Leo on May 25, 2017. This easement allows for utility interconnection infrastructure to be installed outside of wetlands and allows for the interconnection of all three projects in the Northeast corner of the parcel at the existing driveway and Plainfield Pike Road.

### **3. Vernal Pool Analysis**

In response to Interrogatory No. 43 in the original petition record, a Vernal Pool Analysis was deemed “not applicable at this time,” but during the March 30, 2016 and April 13, 2016 surveys for breeding amphibians conducted at the site, spotted salamander and wood frog eggs were found in all three identified Tier I vernal pools. As a result, the proposed site plan was revised to avoid development within the 100-foot vernal pool envelope and reduce impacts to 17.2% development in the 100-foot to 750-foot critical terrestrial habitat area. In the Motion to Reopen, WS submitted an updated Wetland Report revised on August 17, 2017. The updated Wetland Report indicates that solar panels are not proposed to be installed within 100 feet of any vernal pools and recommends seasonal construction restrictions to protect migrating amphibians and employment of an Environmental Monitor to implement a management plan for the protection of amphibian populations. WS indicates that a more detailed vernal pool assessment, as well as an Amphibian and Reptile Inventory, would occur in early spring 2018 at the three vernal pool locations to document the presence of state-listed species. If species are found, WS would prepare and implement a mitigation and conservation plan.

### **4. Response from DEEP regarding the Natural Diversity Database**

By letter dated August 21, 2017, DEEP issued a preliminary Natural Diversity Database (NDDB) assessment for the proposed project site. According to NDDB records, the following State-listed Endangered Species may occur at the site: the pure diploid blue-spotted salamander and the eastern spadefoot toad. Also, the following State-listed Special Concern Species may occur at the site: the eastern box turtle, wood turtle, spotted turtle, and eastern hognose snake. In its August 21, 2017 letter, DEEP emphatically notes that, “[T]his project may have a direct negative impact on the populations of the endangered pure diploid blue-spotted salamander and the eastern spadefoot.” Notwithstanding, DEEP requests field surveys for all five State-listed species by a consulting biologist that has the appropriate state collectors permit to work with state-listed species at this project site. DEEP also included recommended protection strategies for the State-listed turtle species and the eastern hognose snake, but also emphatically notes that, “This letter is a preliminary assessment and not a final determination.”

WS plans to perform and submit a habitat assessment and field survey report to DEEP for the blue-spotted salamander and the eastern spadefoot toad. WS also plans to comply with the DEEP-recommended protection strategies for Turtle Protection Plan and Eastern Hognose Snake Protection Plan.

### **5. Interconnection Capacity Constraints**

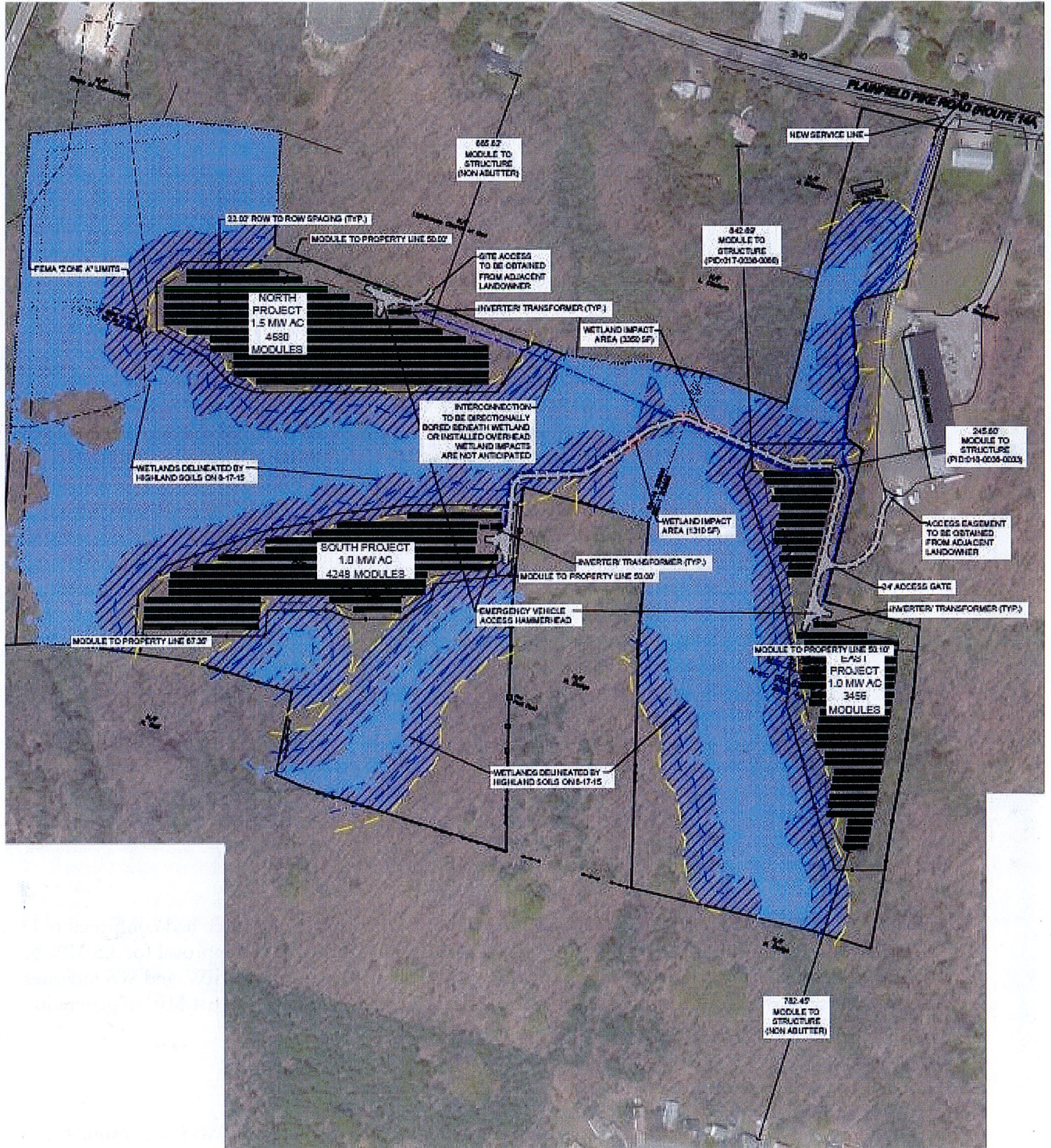
In the Council’s July 25, 2016 final decision, the Council found that Eversource had confirmed only 2 MW of interconnection capacity is available whereas the petition requested approval for 3.5 MW of interconnection capacity. In the Motion to Reopen, WS proposes a total of 3 MW, and WS indicates that Eversource has confirmed in a more recent System Impact Study that up to 4 MW of generation capacity may be exported fully to the grid.

### **Conclusion**

Therefore, based on the foregoing information relative to changed conditions, WS is requesting the Council issue a declaratory ruling for the project.



**Site Plan for Petition No. 1221**





**Revised Site Plan in Motion to Reopen**

