



20 Church Street
Hartford, CT 06103
Telephone: 860-525-5065
Fax: 860-527-4198
www.lockelord.com

David W. Bogan
Partner
Direct Telephone: 860-541-7711
Direct Fax: 866-877-2145
david.bogan@lockelord.com

August 1, 2017

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

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

Re: Petition 1310 – Quinebaug 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 a 50 megawatt AC solar photovoltaic electric generating facility on approximately 561 acres comprised of 29 separate and abutting privately-owned parcels located generally north of Wauregan Road in Canterbury and south of Rukstela Road and Allen Hill Road in Brooklyn, Connecticut.

Dear Ms. Bachman:

I am writing on behalf of Quinebaug Solar, LLC (“Quinebaug”) relative to the July 17, 2017 comments provided by the Connecticut Department of Agriculture (the “Department”) in response to Quinebaug’s petition for a declaratory ruling by the Connecticut Siting Council (the “Council”) that no certificate of environmental compatibility and public need is required for the above-referenced proposed solar project (the “Project”).

The Department states that it does not support the Project. However, in doing so, the Department makes reference to a host of issues that are beyond the Council’s jurisdiction, and therefore, irrelevant. Moreover, the Department’s assertions are speculative, at best, and not supported with any facts, data, or evidence.

Connecticut law provides that administrative agencies are tribunals of limited jurisdiction, and as such “their jurisdiction is dependent entirely [on] the validity of statutes vesting them with power and they cannot confer jurisdiction [on] themselves.”¹ The Council’s jurisdiction is set forth in Connecticut General Statutes (Conn. Gen. Stat.) § 16-50g et seq., and does not include consideration of the issues associated with agricultural lands sought to be injected by the Department. While the Connecticut legislature recently enacted Connecticut Public Act 17-218 (the “Act”), which does require that the Council consider the Department’s position on proposed projects, the provisions of the law only became effective on July 1, 2017 and do not apply retroactively.² As Quinebaug filed the petition for the Project

¹ *Kleen Energy Systems, LLC v. Commissioner of Energy and Environmental Protection*, SC 19362 (Conn. 2015), p. 8.

² The Act excludes from its provisions, any facility selected by the Department of Energy and Environmental Protection via any solicitation issued prior to July 1, 2017, pursuant to the provisions on Conn. Gen. Stat. §16a-3f, 16a-3g, or 16a-3j. *See*, Public At 17-218 at Sec. 3(a).

with the Council on June 15, 2017, the Project is not subject to the provisions of the Act. The law is clear that agencies may receive all evidence, but shall, as a matter of policy, “provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.”³ Accordingly, the Department’s assertions are not the proper subject of the Council’s consideration.

Even were its comments determined to be relevant, the Department offers no scientific support for its claims that the Soils Mitigation Plan is deficient as filed, or that the Project will “have long term impacts on the potential for future agricultural productivity.”⁴ Indeed, the Department offers no specific correlation of the claimed harm to the property at issue in this Petition. The Siting Council has found similarly unsupported Department comments unpersuasive in prior Petitions,⁵ and should do so once again in this instance.

The Department ignores the fact that farmland can be impacted or degraded by human activity in a number of ways. Several of the top factors include erosion, soil compaction, and nutrient depletion. Indeed, even retention of the property for farming operations can have detrimental effects. Farming processes involve physical soil disturbance, such as tillage, which results in bare compacted soil that is destructive and disruptive to soil microbes and creates a hostile environment for them to live. At the same time, misapplication of farm inputs, such as fertilizer or pesticides, can disrupt the symbiotic relationships between fungi, other microorganisms, and plant roots. Often the best solution to these impacts is to allow the soil to recover by taking it out of crop production.

Development of farmland soils for use in generating solar power is not expected to result in degradation of soil quality. After the viable life of the Project, the expectation would be that farmland identified on the site would be in the same, or an improved condition compared to today. Furthermore, the Project would be expected to arrest potential conversion of this farmland into another hardscape or residential/commercial development.

Finally, the Department devotes much of its comments to its preferable alternative uses for the site, even if it does not remain in agricultural use. The Department speculates that a clustered development (with roof top solar) on a portion of the property “might be a more preferable alternative.” While this certainly represents an alternative use of the property, it is not the one proposed by the property owner (or the developer) and appears to ignore the fact that the property could be developed for any permitted use or even allowed to lie fallow. While the Department may prefer a particular use for this property and that solar projects be sited on substantial highway right of ways, brownfield sites, and elsewhere, its mere desire is not sufficient to warrant the encumbrance of the owners’ private property rights.

³ Conn. Gen. Stat. § 4-178.

⁴ Department Letter at 2.

⁵ See, Petition 1224 – *RES Americas, Inc. Petition for Declaratory Ruling for Solar Energy Project Located on Woods Hill Road, Pomfret, Connecticut.*

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Thank you for your anticipated consideration. Please feel free to contact me if you have any questions regarding this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Bogan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David W. Bogan

DWB

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