

MOTION TO REOPEN PETITION NO. 1310

PETITION NO. 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

*Connecticut
Siting
Council*

November 12, 2019

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I. Introduction

Pursuant to Connecticut General Statutes (“Conn. Gen. Stat.”) § 4-181a(b), Quinebaug Solar, LLC (“Quinebaug Solar” or “Petitioner”), respectfully moves the Connecticut Siting Council (the “Council”) to reopen and modify, its Findings of Fact, Opinion, Decision and Order (collectively the “Decision”) in Petition No. 1310, based on changed conditions described herein. The Decision denied, without prejudice, Quinebaug Solar’s request to construct, operate and maintain a ground-mounted solar photovoltaic facility of up to 50 megawatts alternating current and associated equipment to be constructed in the towns of Brooklyn and Canterbury, Connecticut (the “Project”).

Support for the Council’s reopening on the basis of changed conditions is discussed in this motion and are further described in the attached Testimony of Hagen Lee; the Joint Testimony of Katelin Nickerson and Dr. Kevin Ryan; and the revised Petition (“Petition”) submitted concurrently with this Motion. The Petitioner respectfully requests that the Council reopen the Petition No. 1310 evidentiary proceeding, modify the Decision and issue a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, operation and maintenance of the Project.

II. Procedural History

On June 15, 2017, Quinebaug Solar filed a Petition (“Initial Petition”) with the Council for a declaratory ruling that a Certificate of Environmental Compatibility and Public Need (“Certificate”) was not required for the construction, operation and maintenance of a ground mounted solar photovoltaic facility of up to 50 megawatts alternating current and associated equipment to be constructed in Brooklyn and Canterbury. The Project was selected by the Department of Energy and Environmental Protection in response to the “New England Clean Energy Request for Proposals” conducted pursuant to Connecticut law. The relevant power purchase agreements with The Connecticut Light and Power Company d/b/a Eversource Energy and The United Illuminating Company were subsequently approved by the Public Utilities Regulatory Authority on September 13, 2017.

The Council held two public hearings on the Initial Petition, on September 19, 2017 and October 17, 2017. By Decision dated December 7, 2017, the Council declined to issue a declaratory ruling and denied the Initial Petition without prejudice. The Proposed Modified Quinebaug Solar Project (the “Project”) fully responds to the Council’s findings and concerns in the Decision.

The Council expressed concern that the Initial Project would have an adverse effect on stormwater management, including sedimentation impacts to wetlands and watercourses that are in close proximity to the limits of disturbance and result in a negative effect on water quality. *See* Opinion, pp. 6-7. The Council also expressed concern that the Project as proposed in the Initial Petition did not identify sufficient grading, erosion and stormwater controls. *Id.* Pursuant to current Connecticut best practices, the Petitioner has prepared a detailed outline of construction-phasing and construction-period stormwater controls, as well as a discussion of post-construction stormwater management for DEEP’s review. The Petitioner has worked with DEEP to address its

concerns and will submit an application for a General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities as soon as possible.

The Council also expressed concern that the Project proposed inadequate buffer areas around wetlands and vernal pools. *See* Opinion, pp. 5-6. To address the concern, the Project increases wetland and watercourse buffers by 300%, or an increase of 132 acres. The Project proposes no direct wetland impacts and will apply a standard 100-foot no-disturbance upland buffer around the majority of wetlands and watercourses, with minor deviations proposed for previously impacted resource areas. Additional protections are included for vernal pools and herpetofauna habitat.

The Council also expressed concern regarding the lack of site-specific surveys conducted. *See* Opinion, p. 5-6. Additional protections are included for vernal pools and herpetofauna habitat, including exclusion a large area from development. Finally, the Council expressed concern with a lack of protection measures for species on site. *See* Opinion, p. 5. The Project avoids impacts to vernal pool critical terrestrial habitat through reduced Project footprint, including directional corridors and buffers.

In light of the foregoing changes, the Petitioner moves that the Council reopen Petition No. 1310 due to changed conditions and consider additional evidence that the construction, maintenance and operation of the Project will not create a substantial adverse environmental effect.

III. Council Precedent and Legal Authority for Reconsideration

In relatively rare instances, the Council may determine that a petition or application has not demonstrated that it meets certain criteria, or that the time requirements of the proceeding will not allow sufficient time for such a solution to be fully developed and considered by the Council. In such a case, the Council may deny it “without prejudice” – that is, without prejudice to the Council’s later consideration of a modification of the project that provides additional information sought by the Council or cures deficiencies identified by the Council in the initial proceeding. For example, the Council initially denied without prejudice an application for a Certificate for an undersea HVDC cable connecting Connecticut and Long Island, principally because of the anticipated impacts of crossing shellfish beds. In Docket No. 208, the Council thereafter approved a modified project that located the cable in and beneath the federal navigation channel, where shellfish cultivation was not allowed. In Docket No. 217, the Council initially declined to approve a transmission line because it did not have sufficient information before it. On reconsideration, after additional information was presented, the Council approved the line, conditioned on an additional modification. Most recently, in Docket No. 461, the Council considered a substation and transmission line project and issued an order denying the application without prejudice because it found the record insufficient. The Council later voted to grant the Motion to Reopen the denial without prejudice based on changed conditions, and subsequently issued a Certificate for the project.¹

The Council may grant a motion to reopen pursuant to Conn. Gen. Stat. § 4-181a(b):

On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency’s own motion...

¹ See, Final Decision and Order, Docket No. 461A (November 14, 2017).

As set forth in the preceding paragraphs, numerous conditions have changed since the Council's denial without prejudice, including the layout, design, and analysis that informs a complete redesign of the Project. Significantly, all of these changes are designed to respond to the guidance in the Council's Decision on the Initial Petition.

Reopening the Docket to consider changed conditions and additional evidence is an efficient procedure that eliminates the duplication and delay that would be required for a new application. On reconsideration, the Council can "pick up where it left off" and use the Findings of Fact and conclusions embodied in its Opinion that do not require updating in response to the new information.

IV. Changed Conditions and New Facts

The Petitioner has significantly modified the Project layout based on the results of the environmental surveys, current best development practices, and the guidance in the Council's Decision. For example, the Development Area of the Initial project was 270 acres and has been reduced to cover 227 acres. *See* Petition, **Section 3.1**. These modifications include expanded wetland and watercourse buffers and setbacks, a herpetofauna protection area, and vernal pool directional buffers. *See* Petition, **Sections 6.11, 6.12, 6.14 and Exhibit D**. The Project also utilizes an existing network of roads on lands already impacted from human activities, and avoids tree clearing in areas that were previously proposed to be cleared. *See* Petition, **Section 3.3**. Quinebaug Solar generally proposes to maintain buffers around all wetlands at a minimum of 100 feet, except in limited circumstances in the vicinity of existing gravel roads, or in areas that have been heavily impacted by agricultural activities. *See* Petition, **Section 6.16**.

A herpetofauna protection area has been established on the western portion of the Study Area. *See* Petition, **Exhibit A, Figure 6**. This protection area leaves the forested area around

vernal pools intact and maintains habitat connectivity between certain pools, associated wetlands and watercourses, and the Cold Spring Brook and Blackwell Brook floodplain systems. The herpetofauna protection area encompasses approximately 38 acres, including numerous wetlands and watercourses, and a swath of forested area that extends to the west and eventually connects to the floodplain wetlands associated with Cold Spring Brook and Blackwell Brook. Avoiding development within this area will protect the principal function of these wetlands as wildlife habitat as well as maintain habitat connectivity between these wetlands and vernal pools and the resources that border the western Project boundary. *See Pre-Filed Testimony of Katelin Nickerson and Dr. Kevin Ryan, Functions and Values Assessment.*

The implementation of a robust sediment and erosion control plan, along with careful design, avoids direct impacts to natural resources. A carefully designed Development Area, along with construction and operational best management practices, including post-construction restoration of disturbed soils, will minimize potential impacts due to erosion or sedimentation. Short-term, temporary impacts to soils during construction will be managed with sedimentation and erosion controls designed, installed, and maintained in accordance with the *2002 Connecticut Guidelines for Soil Erosion and Sediment Control*. Disturbed soils will be revegetated to ensure potential soil erosion is minimized. The Project's stormwater management plan details construction sequencing that will be synchronized with stormwater control phasing, to minimize movement of soil to avoid impacts to water quality. A full and complete summary of the avoidance, minimization, and mitigation measures is presented in Section **6.16** of the Petition.

V. Conclusion

Quinebaug Solar respectfully requests that the Council reopen Petition No. 1310 for the limited purpose of reconsidering the new information provided herein and any other information

the Council may deem relevant or appropriate and issue a declaratory ruling that no Certificate is needed pursuant to Conn. Gen. Stat. §16-50k.

Respectfully submitted,

QUINEBAUG SOLAR, LLC



By _____

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CERTIFICATION

This is to certify that on this 12th day of November, 2019, an original and fifteen (15) copies of the foregoing were sent by express mail to The Connecticut Siting Council, 10 Franklin Square, New Britain, Connecticut 06051, one copy was served on all other known parties and intervenors electronically and by depositing the same in the United States mail, first class postage prepaid on this 12th day of November, 2019 and an electronic copy was provided to the Connecticut Siting Council.

A handwritten signature in black ink, appearing to read "David W. Bogan", written over a horizontal line.

David W. Bogan, Esq.