

Lee D. Hoffman
90 State House Square
Hartford, CT 06103-3702
p 860 424 4315
f 860 424 4370
lhoffman@pullcom.com
www.pullcom.com

October 4, 2017

VIA U.S. MAIL AND ELECTRONIC MAIL


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

Re: Petition of DWW Solar II, LLC for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for a 26.4 Megawatt AC Solar Photovoltaic Electric Generating Facility In Simsbury, Connecticut

Dear Ms. Bachman:

I am writing on behalf of my client, DWW Solar II, LLC, ("DWW") in connection with the above-referenced Petition. With this letter, I am enclosing an original and 16 copies of DWW's Motion to Compel Responses to Interrogatories. Please date stamp one of the copies provided and return it to me in the enclosed envelope. Should you have any questions concerning this submittal, please contact me at your convenience. I certify that copies of this submittal have been made to all parties on the Petition's service list.

Sincerely,



Lee D. Hoffman

Enclosures

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petition of DWW Solar II, LLC for a
Declaratory Ruling that no Certificate of
Environmental Compatibility and Public
Need is Required for a 26.4 Megawatt AC
Solar Photovoltaic Electric Generating Facility
In Simsbury, Connecticut**

Petition No. 1313

October 4, 2017

**DWW SOLAR II, LLC'S MOTION TO COMPEL RESPONSES TO
INTERROGATORIES**

The petitioner, DWW Solar II, LLC (“DWW”) respectfully moves that the Siting Council compel Michael Flammini, Laura Nigro, Linda Lough, Lisabeth Shlansky, Zhenkui Zhang, John Marktell, Rob Perissi and Ed Wrobel (“the Abutters” or “Flammini et al.”)¹ to respond to the Interrogatories that were served upon them on September 26, 2017. In the alternative, DWW would move that the testimony of Flammini et al. be removed from the record in this Petition and not be considered by the Siting Council as it renders its decision in this matter.

On August 28, 2017, Flammini et al. requested permission from the Siting Council to become parties in this Petition. The Siting Council granted this request on September 6, 2017, and these individuals were made full parties in the Petition. Making full use of their rights as parties, Flammini et al. voluntarily proffered pre-filed testimony from the majority of the individuals who sought party status as well as from George Logan, who is serving as a retained expert on Flammini et al.’s behalf. This testimony was filed on September 8 and 11, 2017.

¹ DWW notes that Christine Kilbourn-Jones has subsequently filed a request to become a party in this Petition, and to be represented by the same counsel as Flammini et al. To the extent that Ms. Kilbourn-Jones adopts the testimony and information provided by Flammini et al., it is DWW’s hope that the Council would apply its ruling to Ms. Kilbourn-Jones’s involvement in this proceeding as well. In the alternative, DWW can, should the Siting Council so desire, submit interrogatories from Ms. Kilbourn-Jones to respond to separately.

DWW had several questions regarding this testimony, particularly the testimony proffered by Mr. Logan, therefore, DWW propounded Interrogatories to Flammini et al. on September 26, 2017, a copy of which is attached hereto as Exhibit A. On September 27, 2017, counsel for Flammini et al. filed a response, which flatly refused to answer any of the proffered Interrogatories. A copy of that filing is attached hereto as Exhibit B. In the refusal, counsel for Flammini et al. did not object to any of the Interrogatories as improper. Rather, the filing states that the parties themselves do not have the knowledge necessary to answer the questions. The response goes on to state that Mr. Logan, who presumably possesses such knowledge, would be available for cross examination, but would not answer the properly propounded Interrogatories served upon Flammini et al.

The fact that Mr. Logan is available for cross examination misses the point of serving interrogatories and other discovery requests. If it was simply a matter of witness availability, there would be no need for interrogatories and similar devices, everything could be handled during public hearings. However, that is not the law in Connecticut, nor is it the practice of the Siting Council to be so inefficient as to leave all discovery to the public hearing portion of a proceeding. Rather, discovery devices such as interrogatories and document requests are used to dispose of certain questions that are more easily resolved in writing and leave thornier issues for the hearing room.

This practice enjoys long-standing support in Connecticut. As the Connecticut Supreme Court has noted, “our rules of practice provide guidelines to facilitate the discovery of information relevant to a pending suit.” *Sanderson v. Steve Snyder Enterprises, Inc.*, 196 Conn. 134, 139 (1985). “The discovery rules are designed to facilitate trial proceedings and to make a trial less a game of blindman's [buff] and more a fair contest with the basic issues and facts

disclosed to the fullest [practicable] extent.” *Vitone v. Waterbury Hospital*, 88 Conn.App. 347, 357 (2005). Counsel for Flammini et al. would take these precepts and stand them on their ear. Rather than allow the basic issues to be disclosed, DWW will be left blindly guessing as to what is meant by certain elements of Mr. Logan’s testimony. This will not only unduly prejudice DWW as it tries to formulate meaningful cross examination, it will also force DWW to waste precious time in the hearing room asking questions to which it should have already received an answer.

While not necessarily binding, the Connecticut Practice Book is instructive in this regard. Practice Book § 13-14(a) provides in relevant part that a tribunal may, in response to a motion to compel production, make such orders as the ends of justice require. *See Cavolick v. DeSimone*, 88 Conn. App. 638, 653 (Conn. App. 2005). As the Supreme Court noted, “the granting or denial of a discovery request rests in the sound discretion of the court.” *Metropolitan Life Ins. Co. v. Aetna Cas. & Sur.*, 249 Conn. 36, 51 (1999). In this matter, however, such sound discretion would be exercised by the Siting Council, not a court.

Fortunately, the Siting Council has already used its discretion and has issued guidelines as to how such an issue should be addressed. When the Siting Council issued its order granting party status to Flammini et al. on September 6, 2017, it included the *Connecticut Siting Council Information Guide to Party and Intervenor Status* (“Guide”) as part of that order. The September 6, 2017 order and the Guide are attached hereto as Exhibit C.

Section C of the Guide provides instructions as to how discovery is to be conducted: “The Council encourages parties and intervenors to file pre-hearing questions to the applicant *and other parties and intervenors* in the proceeding on any information in the record, including, but not limited to . . . pre-filed testimony of other parties and intervenors in the proceeding.”

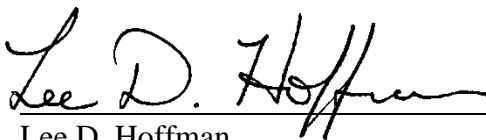
Emphasis added. Given this encouragement by the Siting Council, DWW followed the Guide and filed its September 26, 2017 Interrogatories. In filing their September 27, 2017 response, however, Flammini et al. did not follow the relevant requirements of Section C: “The applicant, *parties and intervenors* are *obligated* to respond to pre-hearing questions directed to them that are filed by the Council, *the applicant*, and any party in the proceeding in accordance with the schedule announced by the Council.” Emphasis added.

The language of Section C establishes a clear mandate for a response to the Interrogatories propounded by DWW, and that those responses be filed in a timely fashion. The response is not optional, and there are no permitted excuses in Section C for failure to comply with these requirements. DWW filed responses to Flammini et al.’s Interrogatories in a timely fashion; reciprocation by Flammini et al. is only fair. By intervening in this Petition, these individuals sought to make themselves part of the process, as is their right. Having availed themselves of this right, however, they now have the responsibility to live up to their obligations as parties. Flammini et al. should follow the process articulated in the Guide, just as all the other participants in this proceeding are required to do.

Accordingly, DWW requests that it be provided with full responses to all of its Interrogatories no later than 5:00 pm on October 6, 2017, if any witnesses testifying on behalf of Flammini et al. intend to testify at the October 10, 2017 public hearing. If such witnesses do not intend to testify until a later public hearing, DWW requests that it be provided with full responses to all of its Interrogatories by 5:00 pm on October 12, 2017. The timing of these responses is critical to provide DWW (and potentially others) with adequate time to prepare its cross-examination. Given the timing of the hearings, it would be unduly prejudicial for DWW to receive answers to its Interrogatories any later than these time frames.

WHEREFORE, DWW respectfully requests that the Siting Council grant DWW's Motion to Compel and require that Flammini et al. provide responses to its Interrogatories in the time frames provided for above. In the alternative, DWW requests that the Siting Council strike the testimony of Flammini et al. from the record in this Petition.

Respectfully Submitted,
DWW Solar II, LLC

By: 
Lee D. Hoffman
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Juris No. 409177
860-424-4300 (p)
860-424-4370 (f)
lhoffman@pullcom.com
Its Attorneys

Certification

This is to certify that a copy of the foregoing has been mailed via U.S. Mail, first class postage prepaid, and/or electronically mailed on October 4, 2017 to all parties and intervenors of record, as well as all pending parties and intervenors as follows:

Jesse A. Langer
Robert M. DeCrescenzo
Updike, Kelly & Spellacy, P.C.
One Century Tower
265 Church Street
New Haven, CT 06510
Counsel for the Town of Simsbury

Kirsten S.P. Rigney
CT Dept. of Energy and Environmental
Protection
Bureau of Energy and Technology Policy
10 Franklin Square
New Britain, CT 06051
Counsel for the CT DEEP

Krista Trousdale
Connecticut Office of the Attorney General
PO Box 120
Hartford, CT 06141-0120
Counsel for the CT Dept. of Agriculture

Jason Bowsza
Connecticut Department of Agriculture
450 Columbus Blvd.
Hartford, CT 06103

Alan M. Kosloff
Alter & Pearson, LLC
701 Hebron Avenue
P.O. Box 1530
Glastonbury, CT 06033



Lee D. Hoffman



Lee D. Hoffman
90 State House Square
Hartford, CT 06103-3702
p 860 424 4315
f 860 424 4370
lhoffman@pullcom.com
www.pullcom.com

September 26, 2017

VIA E-MAIL AND U.S. MAIL

Alan M. Kosloff
Alter & Pearson, LLC
701 Hebron Avenue
P.O. Box 1530
Glastonbury, CT 06033

Re: Petition No. 1313 - Petition of DWW Solar II, LLC for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for a 26.4 Megawatt AC Solar Photovoltaic Electric Generating Facility in Simsbury, Connecticut

Dear Mr. Kosloff:

In connection with the above-referenced Petition, I am enclosing a copy of DWW Solar II, LLC's first set of Interrogatories to your clients.

Should you have any questions, please feel free to contact me at your convenience.

Sincerely,


Lee D. Hoffman

Enclosure

cc: Service List, Petition 1313 (by e-mail)

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

DWW SOLAR, II, LLC PETITION)	PETITION NO. 1313
FOR DECLARATORY RULING)	
THAT NO CERTIFICATE OF)	
ENVIRONMENTAL)	
COMPATIBILITY AND PUBLIC)	
NEED IS REQUIRED FOR A 26.4)	
MEGAWATT AC SOLAR)	
PHOTOVOLTAIC ELECTRIC)	
GENERATING FACILITY IN)	SEPTEMBER 26, 2017
SIMSBURY CONNECTICUT)	

DWW SOLAR II, LLC'S FIRST SET OF INTERROGATORIES
TO FLAMMINI ET AL.

The petitioner, DWW Solar II, LLC (“DWW”) respectfully submits this First Set of Interrogatories to Michael Flammini, Laura Nigro, Linda Lough, Lisabeth Shlansky, Zhenkui Zhang, John Marktell, Rob Perissi and Ed Wrobel (“the Abutters” or “Flammini et al.”), parties in the above-referenced Petition. Please respond to these interrogatories by October 3, 2017.

- Q1: Please refer to page 5 of the REMA Report. Given that there are continuous agricultural activities going on at the site, why would it be assumed that avians can be observed or heard regardless of when the avians are surveyed?**
- Q2: Please refer to footnote 7 of the REMA Report. Provide a list of references that support the contention that “the widely accepted breeding avian survey protocol for woodlands and scrub shrub areas is twice in June, separated by at least 7 days.”**
- Q3: Please refer to page 5 of the REMA Report, which states that “the presence or absence of the larval host plant for the two moths is one of the techniques that can be used” to determine the presence of these two species. Please provide supporting documentation for the statement in the REMA Report that such determination, as has been made by the Petitioner, “should not replace specific field surveys during the flight times of these species.”**
- Q4: Please provide the dates, times and a detailed description of the activities undertaken by Mr. Logan at the property that is the subject of this Petition.**
- Q5: Please refer to page 7 of the REMA Report, which discusses the concept of a 400 foot undisturbed buffer. Please provide an example of where such a buffer has been**

required for any development in Connecticut and the circumstances for such requirement.

- Q6:** Please refer to page 7 of the REMA Report, which discusses the concept of a 400 foot undisturbed buffer. Please provide any basis for which the barred owl, the broad-winged hawk, the mink and/or the Louisiana waterthrush would be anticipated to be present at the Project site.
- Q7:** Please refer to page 7 of the REMA Report. Provide all literature reviewed which supports the statement that the solar panels that are proposed for the Project will be mistaken by wetland-dependent avians and by aquatic invertebrates and will lower prey numbers and wildlife support functions.
- Q8:** Please refer to page 7 of the REMA Report. Please provide all examples of the recreation and scientific enjoyment of the fauna that is currently being undertaken by individuals at the Project site.
- Q9:** Please refer to page 7 of the REMA Report. Identify all “traprock ridge systems” that will be present at the Project site.
- Q10:** Please refer to page 9 of the REMA Report. Please provide all scientific literature that was reviewed that supports the proposition that the “grassland fields shown on the proposed plans are not of sufficient size, configuration, or location to accommodate the habitat requirements of these ‘listed’ avians, based on the scientific literature.”
- Q11:** Please refer to page 9 of the REMA Report. Please provide the anticipated increase in mortality amounts as a result of the fencing being proposed for the Project.
- Q12:** Please refer to pp. 9 and 10 of the REMA Report. Are any of the soils at the Project site classified as Potentially Highly Erodible Lands (PHEL)? What are the anticipated increases in soil erosion for the totality of the Project as compared with the current agricultural activities taking place at the site?
- Q13:** Has Mr. Logan or any of the Abutters observed any areas on the property that is the subject of this Petition where accelerated soil erosion may have occurred? If so, please describe.
- Q14:** Please refer to page 10 of the REMA Report, which discusses the potential for pesticide mobilization. Please describe how the mobilization of pesticides for the Project would differ from the current risk of pesticide mobilization given the agricultural activities at the Project site. Please include in your analysis calculations of pesticide mobilization assuming that no pesticides are used if the Project is constructed, but that pesticides will continue to be used at their current levels if the Project is not constructed.

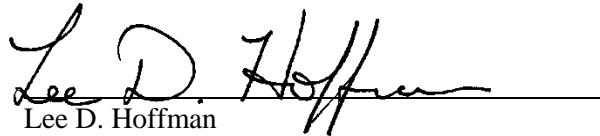
- Q15:** What is the current impact of pesticide and fertilizer residue on waterways near the Project site, including, but not limited to the Munnisunk and Saxton Brooks, as a result of the current agricultural operations at the Project site?
- Q16:** Please refer to page 10 of the REMA Report relating to open space considerations. Please provide all materials/references that support the assertion that the “ecological integrity and wildlife utilization of these parcels would be substantially diminished by the proposal,” including an analysis of the distance between the Project site and the parcels referenced on page 10 of the REMA Report, which wildlife species would be adversely impacted, and a detailed description of such impacts.
- Q17:** If the current landowner of the property that is subject to the Petition sells that property to a third party, and the third party no longer wishes to lease the property for agricultural production, how would such a situation impact the various natural resources discussed in the REMA Report?
- Q18:** Please describe all measures that the current owner and/or operator of the Project site are required to take to reduce impacts to the various natural resources that are discussed in the REMA Report. For example, what steps must the current owner of the Project site undertake to protect herpetological or entomological resources, etc.?
- Q19:** Please refer to the “Northern Gateway” section of the Simsbury 2007 Plan of Conservation and Development (POCD), which can be found at: https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/adopted_pocd.pdf. The Northern Gateway section begins on p. 85 of the POCD. Please also refer to the map entitled “Special Areas Reference Map” which can be found at: https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/special_areas_ref.pdf, and is attached as Exhibit A hereto. Assuming that the Town of Simsbury is successful in developing the Northern Gateway as articulated in the POCD, please articulate the impacts associated with such development and how those impacts would affect the Project site in terms of the areas of study addressed in the REMA Report (e.g., endangered/threatened species, habitat, pesticide infiltration, etc.)
- Q20:** Please refer to the Economic Development section of the POCD (starting on p. 105) and the map entitled “Economic Development Plan,” which can be found at: https://www.simsbury-ct.gov/sites/simsburyct/files/file/file/economic_development.pdf, which is attached as Exhibit B hereto. Assuming that the industrially-zoned area of the map labeled “North End” is developed for an industrial/commercial purpose, please articulate the impacts associated with such development and how those impacts would affect the Project site in terms of the areas of study addressed in the REMA Report (e.g., endangered/threatened species, habitat, pesticide infiltration, etc.)
- Q21:** Please refer to Exhibit B of the Petition, and to the figure labeled “As-of-Right Concept Plan” contained in Exhibit B. Assuming that the area is developed as provided for in that drawing, please articulate the impacts associated with such

development and how those impacts would affect the Project site in terms of the areas of study addressed in the REMA Report (e.g., endangered/threatened species, habitat, pesticide infiltration, etc.)

- Q22:** Please estimate the quantities of water (in gallons per day) that would be need to be skimmed from cold water tributaries to the Farmington River (including the Munnisunk and Saxton Brooks) to support crop production during typical summer months? How might these withdrawals impact in-stream habitats?
- Q23:** Please describe all anticipated impacts to the flora and fauna that may be present at the Project site due to the current agricultural uses of the site, including the application of pesticides and fertilizers, storage of chemicals, use of tractors, etc.
- Q24:** What is the current impact on nearby waterways, including, but not limited to the Munnisunk and Saxton Brooks, as a result of the use of pesticides and fertilizers at the Project site?
- Q25:** Please provide the name and employer of every individual who prepared or assisted in the preparation of the REMA Report.
- Q26:** Please provide the name and employer of every individual who prepared or assisted in the preparation of the responses to these interrogatories.

Respectfully Submitted,
DWW Solar II, LLC

By:



Lee D. Hoffman
Pullman & Comley, LLC
90 State House Square
Hartford, CT 06103-3702
Juris No. 409177
860-424-4300 (p)
860-424-4370 (f)
lhoffman@pullcom.com
Its Attorney

CERTIFICATION

I hereby certify that on September 26, 2017, the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, to all parties and intervenors of record, as follows:

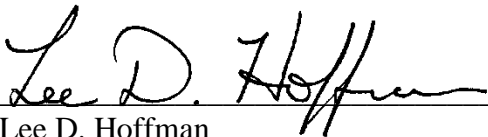
Jesse A. Langer
Robert M. DeCrescenzo
Updike, Kelly & Spellacy, P.C.
One Century Tower
265 Church Street
New Haven, CT 06510
Counsel for the Town of Simsbury

Kirsten S.P. Rigney
CT Dept. of Energy and Environmental Protection
Bureau of Energy and Technology Policy
10 Franklin Square
New Britain, CT 06051
Counsel for the CT DEEP

Krista Trousdale
Connecticut Office of the Attorney General
PO Box 120
Hartford, CT 06141-0120
Counsel for the CT Dept. of Agriculture

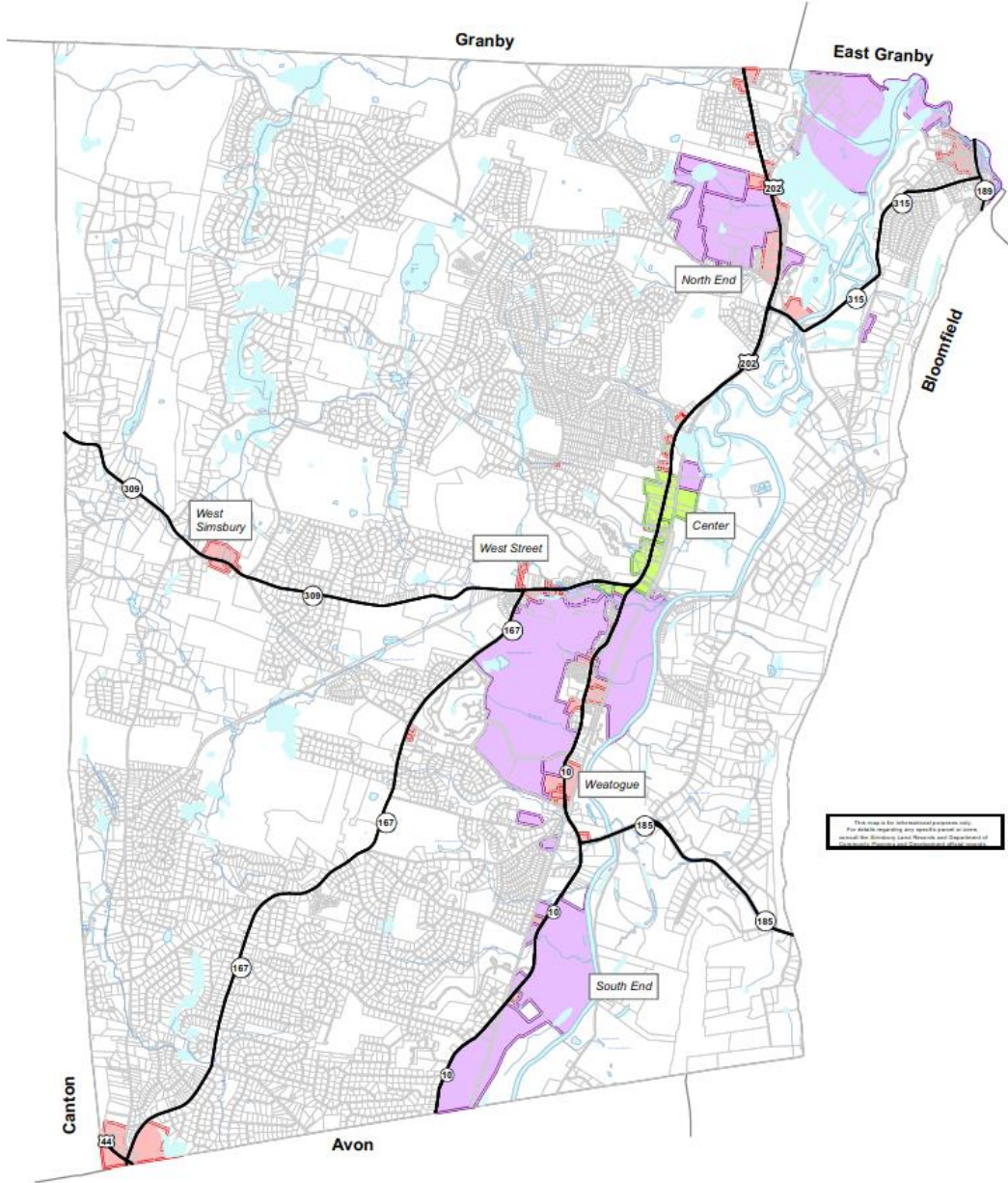
Jason Bowsza
Connecticut Department of Agriculture
450 Columbus Blvd.
Hartford, CT 06103

Alan M. Kosloff
Alter & Pearson, LLC
701 Hebron Avenue
P.O. Box 1530
Glastonbury, CT 06033



Lee D. Hoffman
Commissioner of the Superior Court

Exhibit B



Legend

Zoning Class at Present Time

- Commercial
- Industrial
- SCZ

0 3,250 Feet
1 inch equals 3,250 feet
MAP EFFECTIVE 11/3/21

DESIGNED BY THE
TOWN OF SIMSBURY
ENGINEERING DEPARTMENT
AVON/LANGLDON NH

NEW ENGLAND
GEOSYSTEMS
Provisional Member Survey Contractors
2021/07/26/2021

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

DWW SOLAR, II, LLC PETITION)
FOR DECLARATORY RULING)
THAT NO CERTIFICATE OF)
ENVIRONMENTAL)
COMPATIBILITY AND PUBLIC)
NEED IS REQUIRED FOR A 26.4)
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SIMSBURY CONNECTICUT)

PETITION NO. 1313

September 27, 2017

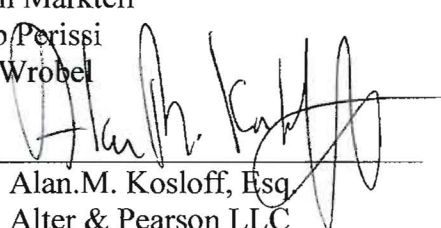
RESPONSES TO DWW SOLAR II, LLC'S FIRST SET OF INTERROGATORIES TO
FLAMMINI ET AL.

Michael Flammini, Laura Nigro, Linda Lough, Lisabeth Shlansky, Zhenkui Zhang, John Marktell, Rob Perissi and Ed Wrobel ("the Abutters" or "Flammini et al."), parties in the above-referenced Petition hereby respond to Petitioner's September 26, 2017 First Set of Interrogatories addressed to them as follows:

As to questions 1 through 26, the Abutters have insufficient knowledge and expertise to respond. Mr. George Logan, our expert and author of the REMA Report will be made available at the appropriate time in accordance with the Council's schedule, as it may be revised from time to time, to be cross-examined as to his prepared testimony and report as on file with the Council.

Respectfully Submitted,

Michael Flammini
Laura Nigro
Linda Lough
Lisabeth Shlansky
Zhenkui Zhang
John Marktell
Rob Perissi
Ed Wrobel

By: 
Alan.M. Kosloff, Esq
Alter & Pearson LLC
Their Attorney

CERTIFICATION

I hereby certify that on this day that the foregoing was delivered by electronic mail in accordance with RCSA §16-50j-12, to all parties and intervenors of record, as follows:

Counsel for DWW Solar II, LLC

Lee D. Hoffman, Esq.

Pullman & Comley, LLC

90 State House Square Hartford, CT 06103-3702

Counsel for Town of Simsbury

Jesse A. Langer, Esq.

Robert M. DeCrescenzo, Esq.

Updike, Kelly & Spellacy, P.C.

One Century Tower

265 Church Street New Haven, CT 06510

Counsel for the Department of Energy and Environmental Protection

Kirsten S. P. Rigney

Bureau of Energy Technology Policy

Department of Energy and Environmental Protection

10 Franklin Square

New Britain, CT 06051

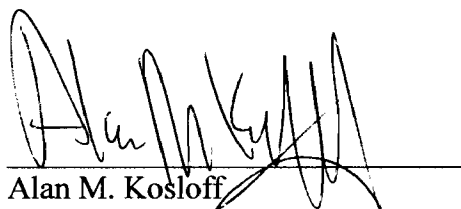
Counsel for the Connecticut Department of Agriculture

Jason Bowsza

Connecticut Department of Agriculture

450 Columbus Blvd

Hartford, CT 06103



Alan M. Kosloff

Commissioner of the Superior Court

September 27, 2017



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

www.ct.gov/csc

September 6, 2017

Alan M. Kosloff, Esq.
Alter & Pearson, LLC
701 Hebron Avenue
P.O. Box 1530
Glastonbury, CT 06033

RE: **PETITION NO. 1313** - DWW Solar II, 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 26.4 megawatt AC solar photovoltaic electric generating facility on approximately 289 acres comprised of 5 separate and abutting privately-owned parcels located generally west of Hopmeadow Street (US 202/CT 10), north and south of Hoskins Road, and north and east of County Road and associated electrical interconnection to Eversource Energy's North Simsbury Substation west of Hopmeadow Street in Simsbury, Connecticut.

Dear Attorney Kosloff:

In response to your request of August 28, 2017, during a regular meeting held on August 31, 2017, the Connecticut Siting Council (Council) granted party status in Petition No. 1313 to the abutting property owners, Flammini et al.

All filings submitted to the Council must consist of an original and 15 copies with the petition number, properly collated and paginated, and bound. In accordance with the State Solid Waste Management Plan, the Council is requesting that all filings be submitted on recyclable paper, primarily regular weight white office paper. Please avoid using heavy stock paper, colored paper, and metal or plastic binders and separators. It is also requested that an electronic version of all filings be sent to siting.council@ct.gov.

The Council's preferred service to parties and intervenors is electronic mail. If you wish to receive hard copies of documents via regular mail, please notify the Council in writing. Parties and intervenors are required to serve all other parties and intervenors a copy of any material submitted in this petition, unless service is waived. A copy of the current service list can be found on the Council's website for this proceeding.

Copies of all documents filed to date in this proceeding are available for your review at the Council's office and on the Council's website under pending proceedings. On the Council website you may sign up for our e-alerts. Pursuant to Section 16-50j-16 of the Regulations Connecticut State Agencies, you or your representative are responsible for obtaining and reviewing all of the materials for the proceeding. Enclosed for your convenience is the Council's Guide to Party and Intervenor Status. Please contact me if you require any further information regarding the Council's procedure.

Very truly yours,



Melanie Bachman
Executive Director

MAB/RDM/bm

Enclosure: Council's Guide to Party and Intervenor Status

c: Parties and Intervenors



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

Web Site: www.ct.gov/csc

CONNECTICUT SITING COUNCIL INFORMATION GUIDE TO PARTY AND INTERVENOR STATUS

The Connecticut Siting Council (Council) will name or admit as a **party** any person whose legal rights, duties or privileges will be specifically affected by the Council's decision in a docket.

The Council will name or admit as an **intervenor** any person whose participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

Service List and Service Requirements

Once a person is named or admitted as a party or intervenor, they will be added to the "Service List," which lists all of the participants in a docket that is prepared and made available to the public under the link for a specific docket on the "Pending Proceedings" page on the Council website. Parties and intervenors will receive documents via e-mail. If a party or intervenor prefer to have hard copies of documents via regular mail, they must notify the Council in writing. Also, documents filed with the Council must contain one original, 15 copies and an electronic version for scanning to the website via e-mail or disk. The Council, parties and intervenors must send a copy of any document filed in a docket to every person on the service list and include a certification as follows:

"I hereby certify that a copy of the foregoing document was electronically mailed to the following service list on (date)." Signature and printed name of the sender.

Conduct of the Proceedings

- A. Pre-hearing Conference:** The Council will schedule a pre-hearing conference on procedural matters in the Council's office or by telephone. All parties and intervenors are requested to attend or participate. This is the proper venue to informally discuss the Council's procedure and ask any questions related to procedure. Failure to attend results in a lost opportunity to discuss process matters. The Council will also announce a schedule for the submission of pre-filed testimony and pre-hearing interrogatories.
- B. Pre-Filed Testimony:** The Council requires that testimony be pre-filed with the service list before the hearing to avoid direct testimony and to save the time and expense of the public at the hearing. Pre-filed testimony is the only chance for parties and intervenors to make a statement of position. Pre-filed testimony is posted on the docket webpage and is part of the record in a proceeding. Pre-filed testimony consists of allegations of fact and statements of position with exhibits attached in support of the allegations of fact and stated position. Parties and intervenors are not permitted to make statements (ex. directly testify) during the hearing.
- C. Pre-hearing Interrogatories:** The Council encourages parties and intervenors to file pre-hearing questions to the applicant and other parties and intervenors in the proceeding on any information in the record, including, but not limited to, the application, other pre-hearing questions, pre-filed testimony of the applicant or pre-filed testimony of other parties and intervenors in the proceeding. Pre-hearing questions are an opportunity for parties and intervenors to request more information. The applicant, parties and intervenors are obligated to respond to pre-hearing questions directed to

them that are filed by the Council, the applicant and any party or intervenor in the proceeding in accordance with the schedule announced by the Council.

- D. Administrative Notice:** The Council routinely develops a list of exhibits known as “Administrative Notice Items” in every docket. Administrative Notice items are generally recognized technical or scientific facts within the Council’s specialized knowledge, including, but not limited to, prior decisions of the Council, publications of federal state agencies such as the Federal Communications Commission and publications of other state agencies such as the Department of Transportation. Scientific studies or publications for which the author is not available for questioning by participants in the proceeding should be submitted as administrative notice items rather than exhibits attached to pre-filed testimony.
- E. Experts and/or Witnesses:** Experts and/or witnesses are the authors of pre-filed testimony and attached exhibits. They are the sponsors of the information contained in pre-filed testimony and are sworn in during the hearing. After the experts and/or witnesses are sworn in, they are made available for questioning by the Council and other participants in the proceeding. Experts and/or witnesses may not present new evidence or provide direct testimony. For example, if a party or intervenor presents a land survey in their pre-filed testimony, the author or engineer that prepared the land survey must be present at the hearing, sworn in and available to answer questions pertaining to the land survey that are asked by the Council and the other participants in the proceeding.
- F. Cross examination at the hearing:** The Council, applicant, parties and intervenors have an opportunity to cross-examine the witnesses appearing on behalf of the applicant or other parties and intervenors during the hearing. This means that the person conducting the cross-examination asks questions of the witnesses. The applicant and parties and intervenors submit to cross-examination from the Council, the applicant and other parties and intervenors. The order of appearances and cross examination will be governed by a hearing program developed by the Council for the proceeding. Order of appearance is determined by the order in which parties and intervenors were named or admitted by the Council. Typically, the hearing proceeds as follows:
1. Opening Statement from the Council Chairman
 2. Administrative Notice Items of the Council
 3. **Applicant’s Appearance**
 - a. Identification of Exhibits (pre-filed testimony, responses to pre-hearing interrogatories)
 - b. Swear Witnesses
 - c. Cross Examination of the Applicant by:
 - i. Council
 - ii. Party
 - iii. Intervenor
 4. **Appearance by Party**
 - a. Identification of Exhibits (pre-filed testimony, responses to pre-hearing interrogatories)
 - b. Swear Witnesses
 - c. Cross Examination of Party by:
 - i. Council
 - ii. Applicant
 - iii. Intervenor

5. **Appearance by Intervenor**

- a. Identification of Exhibits (pre-filed testimony, responses to pre-hearing interrogatories)
- b. Swear Witnesses
- c. Cross Examination of Intervenor by:
 - i. Council
 - ii. Applicant
 - iii. Party

6. **Oral Limited Appearance Statements/Public Comment Session**

- this portion of the hearing is reserved for members of the public who are not parties and intervenors in the proceeding to express concerns
- members of citizens' groups or associations that have attained party or intervenor status are represented by the group or association and may not also provide oral limited appearance statements

7. **Rebuttal by Applicant:** Limited to facts and evidence addressed during the hearing. No argument or closing statements/remarks will be allowed.

G. Post-Hearing Procedure: At the conclusion of the hearing, when the evidentiary record is officially closed, the Council announces a post-hearing schedule for written limited appearance statements, briefs and proposed findings of fact. No new information, no new evidence and no arguments will be considered by the Council.

1. 30 Day Written Limited Appearance/Public Comment Period: Written limited appearance statements from the public are accepted within 30 days after the close of the hearing. Parties and intervenors may not submit additional written statements after the close of the evidentiary record.

2. Post Hearing Brief and Proposed Findings of Fact Schedule: Parties and intervenors may file a brief with the Council summarizing allegations of fact and statements of position presented during the evidentiary hearing. Parties and intervenors may also submit suggestions of facts in the record for inclusion in the Council's final decision.

3. Draft Findings of Fact Issued by Council: The Council will issue draft findings of fact from the record to be issued as part of the final decision. Parties and intervenors will be given an opportunity to identify errors or inconsistencies between the Council's draft findings of fact and the record.

4. Final Decision: The Council will make a final decision at a regular Council meeting. The agenda for all Council meetings is published on the Council website. All parties and intervenors to a docket that is on an agenda will receive a copy of the agenda. Although regular Council meetings are open to the public, there is no opportunity for public participation during the meeting. All parties and intervenors will receive a copy of the final decision in the mail.