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October 5, 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 Reply related to its 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 5, 2017

**REPLY OF DWW SOLAR II, LLC RELATED TO ITS MOTION TO COMPEL
RESPONSES TO INTERROGATORIES**

The Petitioner, DWW Solar II, LLC (“DWW”) hereby replies to the October 4, 2017 Response to DWW’s Motion to Compel (“Response”) filed by: Michael Flammini, Laura Nigro, Linda Lough, Lisabeth Shlansky, Zhenkui Zhang, John Marktell, Rob Perissi and Ed Wrobel (“the Abutters” or “Flammini et al.”).¹ DWW will not reiterate the original arguments in its Motion to Compel, however, based on the Abutters’ Response, and for the reasons set forth in greater detail below, DWW reiterates its request that DWW be provided full responses to its Interrogatories or that the testimony of Flammini et al. be removed from the record in this Petition.

The Abutters are attempting to have it both ways. They are seeking to participate in this Petition as parties, however, when the obligations of party status become too onerous, they unilaterally decide to ignore those obligations. Moreover, the mischaracterization of the discovery requests by counsel for Flammini et al. only serves to muddy a fairly straightforward

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.

issue – parties to proceedings must file complete and timely responses to proper discovery requests.

Contrary to the Abutters' assertion in their Response, DWW never served Interrogatories upon Mr. Logan. The Interrogatories were specifically served upon Michael Flammini, Laura Nigro, Linda Lough, Lisabeth Shlansky, Zhenkui Zhang, John Marktell, Rob Perissi and Ed Wrobel and the Motion to Compel sought compliance from those same individuals. The reason for seeking such compliance is simple – the Abutters are the party that will be relying upon Mr. Logan's testimony. They can either provide the answers to the Interrogatories and continue to rely on that testimony, or they can fail to provide such answers and lose the right to rely upon such testimony. What they cannot do is ignore the Interrogatories and still bring forward this particular piece of evidence.

The Abutters' Response wrongly characterizes DWW's Interrogatories as discovery requests upon non-parties, and uses this red herring to bootstrap an argument that DWW's Interrogatories are inappropriate. The Response closes by stating that the Abutters have no knowledge or basis for which to form a response to DWW's Interrogatories. The Response also mentions the Abutters' lack of funds. What the Response fails to consider, however, is that Mr. Logan is a witness that was hired by the Abutters to prepare and proffer his testimony. Presumably, the Abutters paid Mr. Logan to prepare this testimony, and page 3 of the Abutters' Response appears to imply that if the Abutters paid Mr. Logan to answer the Interrogatories, he could do so. That is all DWW is asking for. A party to the Petition, in this case the Abutters, has the means to answer the Interrogatories in question; they are simply unwilling to expend the funds to do so.

DWW can find nothing in the Siting Council's regulations or other guidance that states that the desire to save money is a permissible reason to fail to file interrogatory responses. Indeed, many of the witnesses in this proceeding are consultants who are employees of the party for whom they are testifying. Taking the Abutters' argument to its logical extreme, the Town would be permitted to not answer questions about Mr. Frost's testimony, the Department of Agriculture could ignore interrogatories related to Mr. Kolesinskas's opinions, and DWW would not have to draft responses related to Ms. Moberg's work. Such a result is ludicrous on its face and perverts the notion of due process.

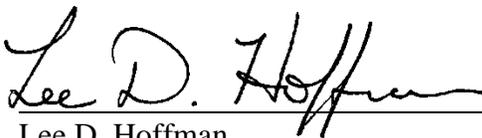
Moreover, the Abutters' arguments concerning the Siting Council's lack of an ability to compel production of evidence from non-parties is unavailing. RCSA § 16-50j-22a(c) provides this authority:

(c) Discovery. The purpose of discovery is to provide the Council, parties and intervenors access to *all relevant information* in an efficient and timely manner to ensure that a complete and accurate record is compiled. Parties and intervenors may serve written information requests only during the time specified by the Council. The Council may serve written information requests on any party or intervenor to the proceeding at any time. *The presiding officer may subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in a contested case pursuant to Section 4-177b of the Connecticut General Statutes.* Responses to information requests shall be separately and fully answered under the penalties of perjury by the witness who shall testify during the hearing as to the content of the response. Objections to information requests may be submitted in lieu of a response.

(Emphasis added). Thus, if the Siting Council so chooses, it can enforce DWW's rights to this information and mandate that the Abutters provide a response to DWW's Interrogatories. DWW once again reiterates its request that the Siting Council do just that.

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

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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 5, 2017 to all parties and intervenors of record, as well as all pending parties and intervenors as follows:

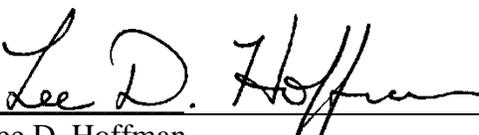
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