

**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

December 1, 2017

POST-HEARING BRIEF OF PETITIONER DWW SOLAR II, LLC

I. INTRODUCTION

The petitioner, DWW Solar II, LLC (“DWW”), submits this post-hearing brief in support of its June 29, 2017 Petition 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”).

Through the course of the thousands of pages of information that has been exchanged during the course of this Petition, and the hours of hearing time that has been expended, DWW hopes that it has demonstrated that it designed its Project to meet the exacting standards set forth by the Siting Council as it considers such projects. DWW worked not only with the Council, but also with the other parties in this matter, to improve its Project, limit the Project’s impacts where possible, and develop a Project that is capable of generating clean energy to help Connecticut meet its renewable energy and carbon reduction goals. DWW believes that the Project, as designed, represents efficient use and preservation of the land on which the Project will sit and will provide environmental benefits to the region.

II. BACKGROUND

A. Background of the Project

This Petition was filed on June 29, 2017. The Council conducted a field review of the proposed project site on September 12, 2017 and conducted a public hearing in Simsbury on September 12, 2017. Evidentiary hearings were conducted on September 12, October 10 and November 2, 2017. DWW received and responded to hundreds of interrogatories during the proceeding. According to the Revised Schedule published by the Council for this Petition, the deadline for a final decision in this matter is December 26, 2017.

The Project itself is located on five parcels which comprise a 289 acre tract in Simsbury, Connecticut, which is zoned as both residential and industrial land. *See*, September 11, 2017 Comments of the Connecticut Department of Energy and Environmental Protection (“DEEP Comments”) p. 1. As the DEEP noted in its comments, based on the design of the Project, “133 acres of forest, wetlands and open space will be preserved” as a result of the completion of the Project. *Id.*

B. DWW Has Amended its Project Design in Response to Stakeholder Input

Throughout these proceedings, DWW has demonstrated its willingness to respond to stakeholder input by amending its project design or agreeing to carry on additional activities in connection with its development of the Project. As DWW has repeatedly indicated during its testimony, it is always willing to work with neighbors, stakeholders, and municipalities to improve the Project and minimize impacts. Tr, pp 709, 756.

DWW made substantial efforts to reach out to the abutters to the Project, the broader community, stakeholders and municipal officials long before it filed the Petition. As is articulated in greater detail on pp. 15-17 of the Petition as well as in Exhibit D of the Petition, DWW met with individual public officials and/or municipal boards nine times prior to the filing of its Petition. In addition to those nine meetings, DWW hosted two public meeting sessions and participated in a third public meeting. Prior to each meeting that it hosted, DWW reached out directly to all abutters and made sure that each meeting was well advertised. The meetings were well-attended and stakeholders provided DWW with meaningful feedback.

DWW listened to that feedback and made significant changes to its Project as a result. The Project design that DWW showed to residents at its May 11, 2017 was over ten percent larger than the Project design that was submitted for this Petition. After hearing from residents at the May 11, 2017 public meeting, DWW removed over 18 acres of proposed solar panels from the design of the Project. The locations from which DWW removed these panels was in direct response to the public's expressed concerns. Petition, pp. 19-20.

DWW unveiled its proposed changes to the Project at a subsequent public meeting held on June 22, 2017 in the Town of Simsbury. At that meeting, DWW explained that it had made six reductions in the scope of its Project, each designed to alleviate residents' concerns about the Project. A detailed explanation of these changes was provided to the residents (*see* pp. 24-43 of Exhibit D of the Petition), and a summary of these changes was provided to the Council on pp. 19-20 of the Petition itself. The changes were also delineated in the following figure that was included as part of Exhibit B of the Petition:

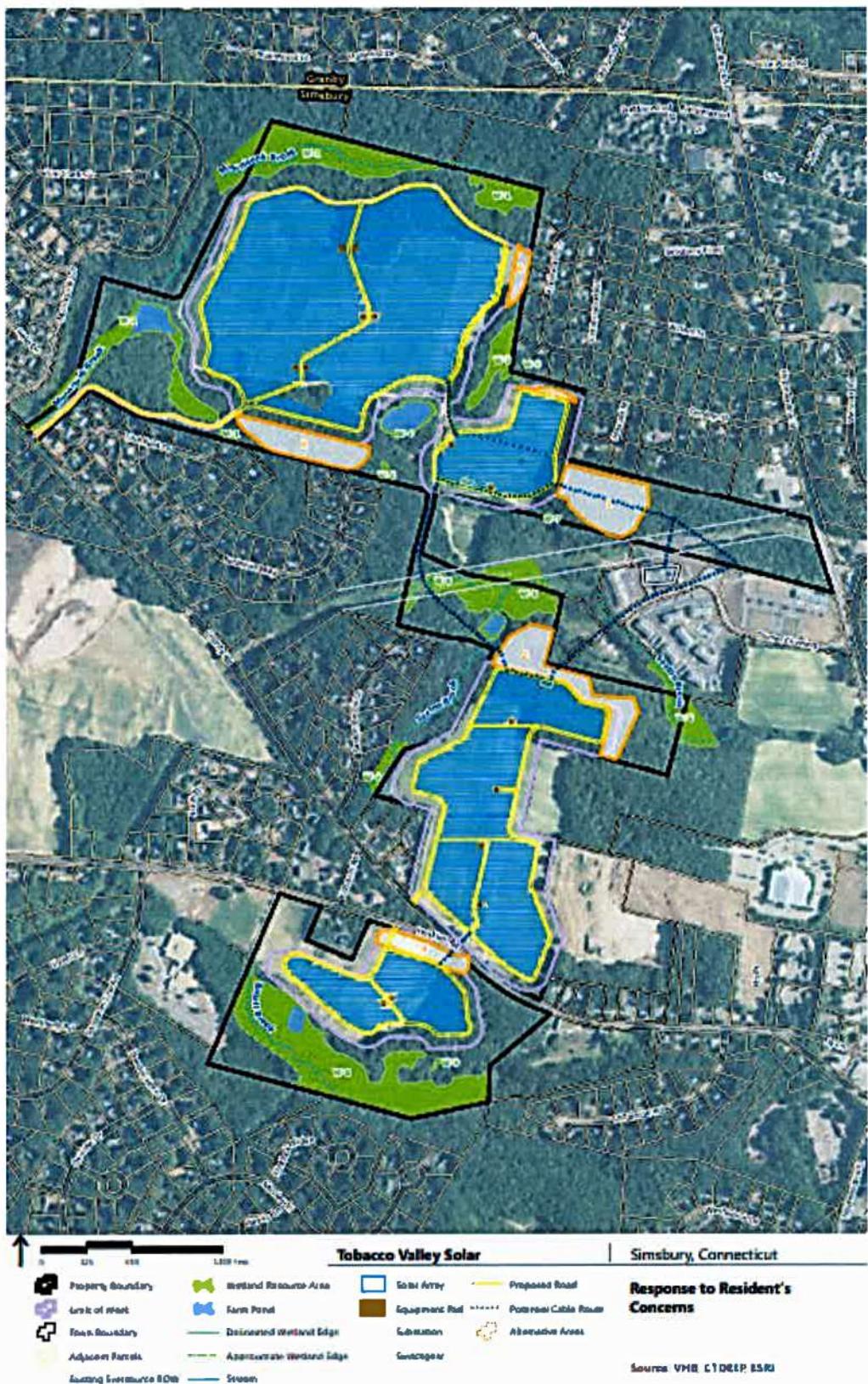


Exhibit B, page 7

DWW's willingness to amend its Project design did not end with the filing of the Petition. Throughout the Petition process, DWW has shown its willingness to think creatively and come up with solutions to potential issues when called upon. Whether the proposed change involved something minor, such as raising the chain link fence six inches to accommodate the travels of smaller fauna (Tr., pp. 193-94) or something more significant, such as elimination of panels south of Hoskins Road to further shrink the footprint of the Project (as delineated in the Project's Response to Interrogatory 67), DWW has worked with the Council and stakeholders to minimize impacts.

DWW's willingness to compromise and work with stakeholders stands in stark contrast to positions taken by others in this matter. As is set forth in greater detail below, neither the Town of Simsbury nor the Department of Agriculture have shown a similar willingness to accommodate other participants' positions. In the case of the Town for example, the Town's suggestion for visual screening is a 12 foot high berm that would be 100 feet in width. That solution is unworkable, and the Town has not offered any other options as an alternative for visual screening. The Department of Agriculture has been similarly recalcitrant and unwilling to work with DWW. DWW has asked the Department to provide DWW with best practices for utility excavation that takes place in farmlands, but the Department has not done so. DWW is willing to consider such best practices, but it is difficult to consider such standards when no such materials are provided.

In short, DWW has shown its willingness to adjust its Project design to accommodate reasonable concerns throughout this process. If its Petition is approved, DWW anticipates that such accommodation will continue through the D&M Plan process. Should that happen, it is DWW's hope that other parties to this matter will also foster a similar spirit of cooperation.

III. LEGAL STANDARD

Pursuant to Conn. Gen. Stat. § 16-50k(a) and Section 4-176(a) and 16-50j-38 *et seq.* of the Regulations of Connecticut State Agencies, DWW requested that the Council issue a declaratory ruling for DWW's proposed development, on property located in Simsbury Connecticut, of a 26.4 megawatt AC ground-mounted solar photovoltaic system, associated ground equipment, an access road, and electrical interconnection into the Eversource North Simsbury Substation which abuts the property (the "Project").

CGS § 16-50k(a) provides:

Notwithstanding the provisions of this chapter or title 16a, the council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling . . . (B) the construction or location of any . . . grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the Department of Environmental Protection

The Project is a "grid-side distributed resources" facility, as defined in CGS § 16-1(a)(43), because the Project involves "the generation of electricity from a unit with a rating of not more than sixty-five megawatts that is connected to the transmission or distribution system . . ." The record is clear that the Project complies with the air and water quality standards of the Connecticut Department of Energy and Environmental Protection ("DEEP"). The language of section 16-50k is equally clear and unambiguous: so long as a grid-side distributed generation project of less than 65 megawatts meets the air and water quality standards of the DEEP, the Council shall grant approval of that project by declaratory ruling. Thus, approval of the Project is required under CGS § 16-50k(a).

Compliance with DEEP air and water quality standards is the appropriate and only standard of review for this Petition. However, DWW recognizes that the Council has indicated

that, pursuant to Conn. Gen. Stat. §§ 16-50k and 4-176 and RCSA § 16-50j-38, the Council has jurisdiction to approve a petition for declaratory ruling so long as the facility will not have a substantial environmental impact and therefore would not require a certificate of environmental compatibility and public need. The Connecticut Supreme Court recognized and affirmed the Council's view of its jurisdiction under CGS § 16-50k and CGS § 4-176(a) and its authority pursuant thereto in *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn 669, 677-685, 99 A.3d 1038 (2014).

Further, the Council has indicated that, in determining whether a facility has a substantial environmental impact, the Council must consider the criteria laid out in CGS § 16-50p, which includes the consideration of:

[t]he nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether along or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife.

See CGS § 16-50p (3)(B). Such heightened review is specifically limited by the language of section 16-50k, which states that approval shall be granted “[n]otwithstanding the provisions of this chapter or title 16a,” so long as the air and water quality standards of the DEEP are met. Nonetheless, even if a heightened standard of review is applied to this Petition, which DWW argues is not the standard of review provided for by the General Assembly for approval of petitions through the declaratory ruling process, the record is clear that the Project, as designed and subsequently modified, will not have a substantial environmental impact. Therefore, the Petition must be granted.

IV. ARGUMENT

A. The Project Meets Applicable Air Quality Standards

At no time has it been disputed that the Project will meet applicable air quality standards. The Project will generate no air emissions when operational and therefore requires no air permit from the DEEP. Petition, p. 53. Unlike most electric generation projects, the DWW Project will actually *improve* air quality. By displacing fossil-fueled resources, the Project will assist Connecticut in meeting its goal of reducing greenhouse gas emissions by eighty percent by the year 2050. Petition, p. 7. Moreover, the Project is anticipated to offset over 12,500 metric tons of carbon dioxide emissions every year the Project is operational. Petition, p. 46. A more detailed analysis of this carbon offset of 12,523 metric tons was provided to the Council as Exhibit D to DWW's Response to Interrogatory 106.

There was brief discussion about the air emission impacts associated with the construction of the Project, but as was discussed in both Responses to Interrogatories and during the public hearings, such air emission impacts are expected to be minuscule, particularly when compared with the current use of the property as an agricultural facility. DWW Response to Town of Simsbury Interrogatory 23. Currently, the Project site is used as an agricultural operation, and there is no known dust control system in place at the site. Tr, p. 587. The Project site consists of exposed soils, which when worked by agricultural equipment can generate fugitive dust. As DWW has indicated, one of its first steps after taking control of the property will be to establish a cover crop. Tr, p. 16. The establishment of this cover crop will minimize exposed soils, which will have the benefit of limiting dust emissions, as well as helping to control soil erosion.

While there may be temporary dust emissions associated with the construction activities, such emissions are expected to be minimal and will not require DWW to obtain an air emissions

permit. Petition, p. 53. To the extent that dust is generated as a result of construction activities, DWW will take measures to properly control such emissions. DWW Response to Town of Simsbury Interrogatory 23. As such, the Project will clearly meet the applicable air emission standards of the State of Connecticut.

B. The Project Meets Applicable Water Quality Standards

The Project will also meet applicable water quality standards. The Project, because it will have no on-site staff after construction, will not require potable water nor will it result in any sanitary discharges. Petition, p. 50. As for any remaining issues related to water quality standards, DEEP's comments regarding the measures being taken by the Project to address stormwater runoff are a good place to begin the water discharge analysis. As the DEEP noted on page two of its September 11, 2017 comments, the Project will prevent soil erosion during construction by "utilizing erosion control blankets, silt fence, straw wattles, sediment traps and hydraulic mulching to hold back sediment." DEEP is prepared to analyze these techniques as part of its stormwater permitting review. *Id.* DWW believes that the measures articulated in its Stormwater Management Report (Exhibit L of the Petition), coupled with DEEP's stormwater analysis (including DEEP's recently-issued "Stormwater Management at Solar Farm Construction Projects") will be more than sufficient to address any stormwater issues that may result from the Project's construction.

DEEP also noted on page three of its September 11, 2017 comments that the Project will be "partially located on the Aquarion Water Company's Hoskins Well Field Aquifer Protection Area." While the Town of Simsbury attempted to claim that the Project's location on the aquifer protection area meant that the Project should not be constructed, the DEEP correctly noted that the Project "is not a regulated activity under the Aquifer Protection Area Regulations" as found

in Conn. Gen Stat. § 22a-354bb. *Id.* Nonetheless, in its comments, DEEP recommended that the Siting Council require the Project to adopt best management practices for its construction, including:

- A stormwater management plan should be developed that considers both the quality and quantity of stormwater runoff;
- Stormwater should be managed to ensure minimization of groundwater contamination; and
- Sheet flow should be shunted to above-ground treatment structures.

DWW has no objections to any of these conditions being placed on the approval of this Project. Indeed, DWW anticipates that the Siting Council would require such stormwater protections to be in place as part of the Project's Development and Management (D&M) Plan, even if the DEEP had not suggested such conditions for approval.

Thus, DEEP itself has identified these potential aquifer issues and has posited a proposed solution that addresses these, and the other potential water quality standard issues that may be faced by the Project. Ordinarily, this would be sufficient to end the analysis; however, several parties to this matter appeared to focus on other potential issues associated with possible groundwater contamination associated with the Project. As set forth in greater detail below, these purported “issues” are a combination of historical matters that have been addressed by regulatory agencies and/or speculation regarding possible, but unproven, avenues for groundwater contamination. Given the length of time spent on these issues in the hearings, however, a closer examination is warranted.

The crux of the issue, as DWW understands it, is that the Town of Simsbury and the Abutters who have intervened in this Petition believe that the Project may have an adverse

impact to the groundwater owing to the historical use of pesticides at the Project site and surrounding areas. However, after extensive back-and-forth on this issue, it is clear that the Project will not cause any harm to groundwater.

As an initial matter, it should be noted that the Town of Simsbury has alleged, through the testimony of Robert Carr, that there has been pesticide disposal at the Project site. *See* October 5, 2017 Letter of Zuvic Carr. However, as demonstrated by DWW in its response to the Abutters' Interrogatory 10, this former disposal site is located "on a separate parcel" that "will not be purchased by Petitioner as part of the Project." As such, the concerns surrounding that former disposal site are unwarranted as the Project will not impact that former disposal site. According to Mr. Henry, this disposal area is outside the Project area and therefore has no bearing on the Project site. Tr, p. 660.

Despite the fact that the former disposal site is located on a parcel that will not be part of the Project, Mr. Carr maintained in his October 5, 2017 letter that the Transfer Act may apply to DWW's purchase of the site. *See also*, Tr. 600-01. Even if one were to assume that the Transfer Act would hypothetically apply to the proposed transaction (which DWW expressly denies based on the findings contained in Exhibit O), as Mr. Carr admitted in the public hearing, all of the requirements of the Transfer Act would be satisfied *after* DWW purchased the Project site. As Mr. Carr admitted:

- A Form III can be filed under the Transfer Act without the collection of any data on a particular site (Tr, p. 602);
- After a Form III is filed, the filer has up to two years to complete environmental testing at a site (*Id.*);
- The filer has three years to begin remediation of a site under the Transfer Act (Tr, p. 603); and
- The filer has up to eight years to complete remedial activities at a particular site under the Transfer Act. (*Id.*)

Thus, by the Town's own admission, even if the Transfer Act were to apply to this situation (which it does not), no testing would need to be completed by this stage of the development of the Project. Even though no testing is required at this stage of the proceeding, DWW nonetheless contracted to have a Phase I Environmental Site Assessment (ESA) performed and included that ESA as Exhibit O to the Petition. The ESA was completed in "accordance with the ASTM Standard Practice for Phase I Environmental Site Assessments, E 1527-13 (ASTM 1527-13)." Exhibit O, p. 1. As DWW indicated in the public hearing, the ESA is a "screening tool" to determine if more testing is needed. Tr, pp. 722-24. Based on the findings in the ESA, and in accordance with applicable ASTM standards, no subsequent environmental testing was deemed to be needed. Tr, p. 724.

The ESA concluded that the Project site did not appear to be an "establishment" as that term was defined in the Connecticut Transfer Act. Exhibit O, p. 24. As such, the Transfer Act would not apply to any transaction involving the Project site. *See Conn. Gen. Stat. §§ 22a-134 and 134a.* Moreover, the ESA only listed three recognized environmental conditions associated with the site: the presence of discarded building debris such as roofing materials and empty drums, the presence of an unlabeled 55 gallon metal drum, and the historic use of the parcel for agricultural operations, which could lead to pesticide residue being present in the soil and groundwater. Exhibit O, p. 23.

The first two issues are easily addressed as none of those materials evidence a release on the site and therefore did not require additional investigation. Tr, pp. 632-33. The last remaining issue, that of pesticide residue, took up a great deal of hearing time during the Petition proceedings. DWW was grateful for this full examination of this issue, since it demonstrated

that the Project will not have an adverse impact on groundwater as a result of historic pesticide contamination.

The biggest concern associated with this issue is the idea that the drilling or driving of piles could somehow form a pathway whereby pesticides would come into contact with the groundwater. As DWW testified, water-soluble pesticides would not be expected to remain at the site and infiltrate ground water. Those pesticides are “very soluble” and travel widely. Tr, p. 728. Those pesticides would have already traveled to the groundwater and therefore water-soluble pesticides are not expected to be a problem associated with Project construction.

The remaining pesticide residue is not particularly soluble, and binds to the soil. Tr, p. 716. Thus, any pesticide residue left behind from agricultural operations would be in the top few inches of soil and, the only exposure pathway would be for the pesticide residue to be carried down the post hole as the post is driven or screwed into the ground. As DWW indicated, however, this exposure pathway will not exist at the Project site. Pesticide-contaminated soil, if it exists on site, will not travel downwards when posts are driven or screwed into the ground. Rather, such soils will move laterally along the surface of the ground where the posts are located. Tr, p. 661. Thus, even if pesticide contamination existed at the Project site, such contamination would not be anticipated to travel off site. Moreover, because the site will be stabilized with cover crops once DWW takes control of the Project site, (Tr, p. 16) transport of any soils are even less likely to occur offsite.

Nonetheless, the Town of Simsbury, through the October 5, 2017 Zuvic Carr letter, attempts to raise the specter of groundwater contamination in the area based on groundwater testing that was conducted primarily in the 1980s and 1990s on private water wells. DWW was surprised by Zuvic Carr’s contention that there were seven homes in the area that were known to

be contaminated by pesticides and that there were other unnamed “wells located on County Road and Gordon Street, which are outside of the 500 ft. buffer” but were nonetheless “contaminated with Vorlex and/or EDB.” *Id.* At 2. Zuvic Carr’s letter goes on to discuss various other searches on the issue, however, Zuvic Carr’s report concludes without an indication that the DEEP ever followed up on these troubling findings. DWW found this lack of a follow up surprising.

The reader of the Zuvic Carr report is left with only one of two conclusions: either the DEEP knew of such contamination in the 1980s and 1990s and allowed individuals to drink contaminated water (which is certainly what was implied by the Zuvic Carr report), or there was more recent information that was available that would demonstrate that the DEEP did its usual thorough job of protecting human health and the environment and remedied this issue. DWW refused to believe the implication that DEEP would uncover potential sources of well water contamination and then do nothing about such contamination.

Thus, DWW went back to the DEEP File Room, fully examined the remediation file and also found addition files that showed more recent testing data for the private wells in the area. Copies of this data, along with other relevant reports and information, were provided to the Council as a revision to DWW’s Response to Interrogatory 84. A review of that information shows that the Zuvic Carr report missed the fact that the DEEP fully investigated and resolved the situation that was the subject of the Zuvic Carr October 5, 2017 report in the late 1980s and early 90s.

The most useful articulation of this investigation can be found in the DEEP’s Chronology of Events, dated January of 1994. See Exhibit 1 to DWW’s Revised Response to Interrogatory 84, pp. 20-23. As the chronology indicates, DEEP became aware of this issue in 1986, had testing conducted and eventually issued an order to Culbro Corporation on February 14, 1989

(Order No. WC 4772). *Id.* This order required excavation and remediation of the pesticide issue. This remediation was done to the DEEP's apparent satisfaction since DEEP rescinded Order No. WC 4772 on July 6, 1994. *Id.* at p. 16.

It would therefore appear that pesticides were an issue in Simsbury during the 1980s and 90s as Zuvic Carr reported, but what Zuvic Carr failed to report was that DEEP considered the matter addressed (if not closed) as early as 1994. The reason why it can be inferred that DEEP didn't fully close out the matter is that DEEP conducted series of well tests on area drinking water wells through 2013. Copies of the most recent results of these well tests were provided to the Council as Exhibit 2 to DWW's Revised Response to Interrogatory 84.

Mr. Henry reviewed these test results and found them to be in stark contrast to the suppositions made in the Zuvic Carr report. While the Zuvic Carr report suggested an indeterminate number of wells in the area may have suffered from pesticide contamination in excess of standards, Mr. Henry testified that this was not the case. As Mr. Henry stated during his testimony, the relevant data showed that five area wells had measurable levels of contaminants. Tr, p. 728. Although concentrations of pesticides were detected, the levels of these pesticides were below applicable drinking water action levels. *Id.* Even though drinking water action levels were not triggered, these wells were nonetheless placed on water filters, in an abundance of caution. *Id.*

This information is sufficient to end the inquiry into this issue. Neither the Town of Simsbury nor the Abutters have developed any evidence of potential harm to the groundwater in the area. The best these entities have done is come up with conjecture as to what might be possible, even though the testing data that is available shows no potential for harm to the area's groundwater. Nonetheless, DWW indicated that it was willing to take the additional step of

conducting additional testing of area wells both prior to construction of the Project as well as after the completion of Project construction. Tr, p. 730. Such supplemental testing does not appear to be necessary under the facts presented or pursuant to applicable law, however, DWW is willing to conduct such testing for those property owners that are willing to have such testing conducted on their properties.

The Project has fully demonstrated that it will meet applicable air and water quality standards of the state of Connecticut. As such, there is no further analysis that is required to approve the Petition in accordance with Conn. Gen. Stat. § 16-50k(a). Although the law is quite clear that analysis beyond impacts to air and water quality standards is not required, the Council looked beyond these standards, perhaps in response to the Town of Simsbury's exhortation to the Council that it "at the very least engage in a comprehensive review through the petition process." Pre-Filed Testimony of Lisa L. Heavner, p. 3. However, as is the case with compliance with air and water quality standards, DWW demonstrated that the Project will not have an adverse effect on other elements, including agriculture, visibility, historic resources, and/or species of concern. Other potential issues, such as noise or waste generation, were not discussed during the hearings, so DWW is presuming that there are no issues associated with such matters. The remaining discussion will therefore focus on the four areas of discussion referenced above.

C. The Project Will Not Have an Adverse Impact on Agricultural Resources

The Department of Agriculture's (DOA's) participation in this Petition is somewhat perplexing. It appears to be based, at least in part, on the DOA's erroneous assumption that Connecticut is continuing to lose agricultural land. DOA's witnesses testified that "from 1982 to 1997 Connecticut lost a vast amount of agricultural land." Tr, p. 485. However, when asked to provide more recent figures for agricultural land in Connecticut, the DOA was unable to provide

information as to what has been taking place with agricultural land in Connecticut more recently. Tr, pp. 487-488.

Fortunately, the U.S. Department of Agriculture (USDA) provides such data, and the DOA requested that the Siting Council take administrative notice of such data when it incorporated the USDA's NASS, *2012 Census of Agriculture, 2014, available at <https://www.nass.usda.gov/>* into the administrative record pursuant to section III.A.10. of the Hearing Program.

The Census of Agriculture breaks down agricultural data by state, and the data for the state of Connecticut, found on p. 7 of the Census, is illuminating as can be seen on the following page:

2012 CENSUS OF AGRICULTURE

Connecticut State and County Data

Volume 1 • Geographic Area Series • Part 7

AC-12-A-7

Table 1. Historical Highlights: 2012 and Earlier Census Years

[For meaning of abbreviations and symbols, see introductory text.]

All farms	2012	2007	2002	1997
Farms number	5,977	4,916	4,191	4,905
Land in farms acres	436,539	405,616	357,154	406,222
Average size of farm acres	73	83	85	63
Estimated market value of land and buildings ¹ :				
Average per farm dollars	809,375	1,045,133	840,302	516,347
Average per acre dollars	11,082	12,667	9,491	6,270
Estimated market value of all machinery and equipment ¹ :				
\$1,000	352,391	315,000	214,739	132,266
Average per farm dollars	58,958	64,090	51,214	37,167
Farms by size:				
1 to 9 acres	1,768	1,232	984	1,065
10 to 49 acres	2,403	1,894	1,625	1,835
50 to 179 acres	1,317	1,287	1,077	1,447
180 to 499 acres	379	400	387	453
500 to 999 acres	67	63	91	75
1,000 to 1,999 acres	29	30	23	26
2,000 acres or more	14	10	4	4
Total cropland farms	4,011	3,884	3,395	4,242
	acres	151,144	163,666	170,673
Harvested cropland farms	3,781	3,517	3,000	3,848
	acres	126,835	136,833	131,248
Irrigated and farms	1,011	789	801	809
	acres	9,272	9,901	10,139
				7,689

As can be seen from the chart on the previous page, the amount of agricultural land in Connecticut has actually *increased* by nearly 80,000 acres since 2002 – from 357,154 acres in 2002 to 436,539 acres ten years later. Data for 2017 is not yet available. Tr, p. 485. While the Project is mindful of the need to preserve agricultural land, the Project will impact no more than 126 acres of farm land. DWW Response to Interrogatory 72. This means that the Project comprises only 0.16% on the net increase in agricultural lands in Connecticut, or 0.03% of the total agricultural lands in Connecticut.

Despite this *de minimis* amount of agricultural land the Project represents, the DOA is nonetheless arguing that the development of the Project may present a “food security” issue. Tr, p. 456; *See also* DOA Response to Interrogatory Number 2. DWW is dismayed by this argument, particularly since the DOA witnesses do not have a clear idea as to what is meant by food security, although they do acknowledge that the tobacco that has recently been grown on the Project site has no relation to food security in Connecticut. Tr, pp. 497-98. Even if food crops were being grown on the Project site, DWW is hard-pressed to believe that Connecticut’s food security hangs on the use of three hundredths of a percent of its available agricultural land.

The Council appeared to hone in on this issue during the public hearings as well. The Council specifically inquired of the DOA as to whether it inserts itself into local zoning or land use hearings when proposed projects may have an impact on agricultural lands. Tr, p. 460. Although the DOA stated that it tries to work with private landowners and communities when such instances arise, the DOA could not list one time that it intervened in a land use board proceeding where agricultural lands are involved. Tr, pp. 461-62.

As has been indicated throughout these proceedings, the Project, as proposed, will be of temporary duration and will be removed at the end of its useful life in accordance with the

Decommissioning Plan found at Exhibit S of the Petition. The DOA acknowledges, however, that permanent structures, such as residential development, would render land no longer available for agriculture and such land “would no longer be considered prime farmland” or farmland of statewide importance. Tr, pp. 493-94. Thus, for the DOA’s position to be remotely logical, one must presume that this tract of land in Simsbury will remain undeveloped for the next 25-35 years. Otherwise, the Project’s temporary impacts on the agricultural land, if any, would pale in comparison to the residential and industrial development, for which the land is currently zoned.

Even though DWW believes that the Project’s impacts to the agricultural nature of the Project site will be minimal at most, DWW has expressed a willingness to work with the DOA and the Council to develop procedures to minimize what little impacts the Project may have the agricultural lands on which it sits. As an initial measure, DWW has agreed to take the steps outlined in its Decommissioning Plan to address potential agricultural impacts, including removing the Project’s infrastructure and conducting a deep till of the soil to minimize compaction. *See Exhibit S of the Petition.* In addition, DWW agreed to segregate and preserve soils during construction so as not to unduly commingle prime agricultural soil with lesser soils. Finally, DWW agreed to include soil-enhancing plants as its cover crop, which would allow the soil to recover nutrients during the life of the Project. Tr, pp. 55-57.

The DOA has indicated that these measures, while helpful, are not enough. Short of demanding that the Project not be constructed, however, the DOA has not been forthcoming with other suggested methods of reducing impacts to the agricultural conditions at the Project. This is particularly troubling since the DOA has indicated that it has worked with the state’s utilities in the past to minimize agricultural impacts resulting from the utilities’ various construction

projects. Tr, p. 491. While DWW is willing to work with the DOA to minimize agricultural impacts, the DOA has not proffered any meaningful guidance as to what such minimization might entail, nor has the DOA met any burden showing how the Project will irreparably harm agricultural activities at the Project site. There is therefore no reason to deny this Petition based on agricultural grounds.

The DOA should be commended for the success it has had in preserving and increasing the amount of agricultural land in Connecticut. This Project, however, when viewed in the totality of all of Connecticut's agricultural land, will not be large enough to have a significant impact on Connecticut's agriculture. Moreover, the DOA's position ignores the fact that a permanent, land-intensive project (such as an industrial facility or residential development) may be put on the Project site by a different land developer. Finally, with the safeguards that the Project has offered to put in place, should the land be sold to a farmer after the useful life of the Project, the Project site will be ready to support agricultural operations.

D. The Project Will Not Have an Adverse Impact on Visibility

Much like the DOA has provided DWW with very little assistance on minimizing agricultural impacts associated with the Project, the Town of Simsbury has been similarly less than forthcoming with assistance to DWW as to how it can minimize the visibility of the Project. In response to resident concerns regarding the visibility of the Project, DWW proposed to construct a privacy fence at a cost of nearly \$700,000 to shield the Project from the residents' view. Renderings of the fence can be seen in the Visibility Assessment provided as Exhibit G to the Petition.

After reviewing the original Project plan and accompanying impacts on visibility, the Council requested that the Project be re-configured so that the Project had less of an impact on

the viewshed south of Hoskins Road. The Project complied and submitted a revised Project plan on October 3, 2017. One of the benefits of this revised plan was the elimination of several acres' worth of panels on the south side of Hoskins Road. Thus, the June 29, 2017 rendering of Viewpoint 44 of Exhibit G went from looking like this:



June 29, 2017 Exhibit G – Viewpoint 44 – Figure 6, Sheet 12 of 14

to looking as it does on the next page.



October 2017 Exhibit G – Viewpoint 44 – Figure 6, Sheet 12 of 14

DWW's revision makes the area almost indistinguishable from the current view:



June 29, 2017 Exhibit G – Viewpoint 44 – Figure 6, Sheet 11 of 14

These improvements were not sufficient for the Town of Simsbury, however, as the Town claimed that it needed to protect the “vernacular” of the Town and that “the vernacular of a 10-foot pole vinyl fence does not exist in the Town of Simsbury.” Tr, pp. 553-54. According to the Town’s landscape architect Mr. Frost, eight to twelve foot high berms “are part of the vernacular of Simsbury.” Tr, p. 396. The problem with constructing such a berm, however, is that such a berm would be 78 feet wide assuming a 3 to 1 slope, (Tr, p. 398) and up to 102 feet wide assuming a 4 to 1 slope (Tr, p. 404).¹ Even if it were advisable to construct such a berm at the Project site, Mr. Frost did not know what the potential impacts to stormwater runoff would be as a result of such construction. (Tr, p. 401), although Mr. Frost later acknowledged that stormwater would run off a berm more quickly than flatter ground (Tr, p. 404).

Moreover, Mr. Frost’s proposed plans call for the planting of large trees along the perimeter of the site, even though there are power lines nearby. Mr. Frost’s plans do not take into account Eversource’s requirements for the planting of trees near those lines. Tr, pp. 403-04. In short, the Town of Simsbury has not provided meaningful assistance as to how it would like visual mitigation to be addressed. Rather, it chooses to simply oppose the Project outright, or place onerous requirements on the Project such as the construction of a berm that will be 100 feet wide and 12 feet high.

When one considers the potential impacts to visibility from this Project, one must also consider what the impacts would be if the Project site were utilized in other ways. For example, the 70 acres immediately to the north of Hoskins Road are zoned as industrial property. Tr, p.

¹ Mr. Rabbitt attempted to repair Mr. Frost’s testimony on behalf of the Town of Simsbury by claiming that he had photos of other options showing a “meandering berm” that varies from four to eight feet. Tr, p. 554. Unfortunately, those photos were never submitted as evidence in this Petition, nor did Mr. Rabbitt discuss any of the potential stormwater or wildlife impacts that the construction of such berms may create.

551. As the Council astutely noted, the zoning regulations for such land in the Town of Simsbury come with their own potential impacts to visibility, including: fifty foot front yard setbacks (Tr, p. 552); forty foot building height limits (Tr, p. 552); and plantings for screening of “35 feet in width or 7 feet high or both” (Tr, p. 559). Such measures are in stark contrast to the construction of a berm that, as the Council correctly notes, will be 96 feet wide at the minimum. Tr, p. 556.

DWW contemplates that it will need to provide for plantings as part of its visual mitigation efforts as articulated on p. 15 of Exhibit G of the Petition. Indeed, DWW also committed to providing additional plantings as visual “spot mitigation” after the Project is constructed based upon actual impacts to the various viewsheds. Tr, pp. 674-76. DWW would have no objection to meeting the planting requirements laid out in Simsbury’s zoning regulations for an industrial project, however, the proposals set forth by the Town of Simsbury take it a step too far. DWW does not believe that such plantings should interfere with existing power lines, and the scope of such plantings will be more appropriately addressed during the development of a D&M Plan, should the Petition be approved by the Council.

E. The Project Will Not Adversely Impact Historic Resources

The Town of Simsbury has also attempted to make much of the fact that there are five old tobacco barns on the site, which may or may not have played a role in Dr. Martin Luther King Jr.’s decision to answer the call to ministry and engage in the civil rights movement in the United States. As the Council correctly deduced, however, this would appear to be a recent interest of the Town of Simsbury and the Council properly inquired of the Town “Why haven’t you done more to secure this incredible legacy that you’re giving to us here in your letters and testimony?” Tr, p. 577. Indeed the Town has not applied for any grants to preserve this legacy (Tr, p. 576),

nor has the Town sought any designations for the National Register of Historic Properties in connection with Dr. King's activities in Simsbury. Tr, p. 569; Town of Simsbury's Response to Interrogatory Number 13, issued by DWW.

The recent historical fervor on the part of the Town for Dr. King's historical legacy is belied by several facts that came out during the last public hearing on this Petition. Under cross examination, the Town admitted that "we do not have information that links Dr. Martin Luther King to these particular barns on this particular property." Tr, p. 588. Although the Town has no evidence that Dr. King ever used the barns in question, the Town concurs that Dr. King most likely slept in the Morehouse dormitory when he worked in Simsbury. *Id.* When asked if the Simsbury Fire Department burned down this dormitory, Ms. Carnell on behalf of the Town replied, "Indeed they did." Tr, pp. 588-89. The Town did not think to preserve such a structure, because the building was less than 50 years old, even though the Town had every reason to believe that Dr. King utilized the building. Tr, p. 589.

In the face of its lack of diligence to preserve Dr. King's known historic legacy in Simsbury, the Town now seeks to put the onus and expense of preserving all five of the barns on the Project site on DWW as a condition of the Petition's approval. Tr, p. 581. By the Town's own admission, however, three of the barns in question are not visible to the public. Tr, p. 587. Moreover, as the Town has also admitted, DWW has committed to saving three barns in total: the southern two barns, which are visible to the public (Tr, p. 580) as well as one barn, located on the eastern portion of Drawing C-3.3, based on conversations DWW has had with the State Historic Preservation Office (SHPO). Tr, p. 761. Subsequent to that portion of testimony, DWW indicated that it might be willing to leave a fourth barn at the Project Site as well, if that was deemed to be necessary. Tr. 761-62. Given DWW's commitment to saving these barns, and

DWW's ongoing consultations with SHPO, DWW believes that its consideration of historic resources is more than adequate.

DWW's consideration of historic resources goes beyond the barns on the Project site. As discussed on pages 612-14 of the Transcript, DWW must consider potential impacts to nearby properties that may be eligible for inclusion on the National Register of Historic Places. While they may be eligible for inclusion in the National Register of Historic Place, the record shows that neither of the homes is currently listed on the Register. Ms. Kilbourn-Jones, one of the Abutters that intervened in this matter, lives at 85 Hoskins Road. She testified that her home is not listed on the National Register of Historic Places. Tr, p. 332. Another Abutter, Mr. Wrobel, who lives at 100 Hoskins Road, testified that his property similarly was not listed on the National Register of Historic Places. Tr, p. 329. Neither individual offered any testimony that their properties would even be eligible for such a listing.

Even if these properties *were* to be placed on the National Register of Historic Places, such placement would not be an impediment to the siting of a solar project nearby. The Council will recall that it approved the solar and fuel cell facilities in Petition 1104 – *United Illuminating declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 2.2 MW AC solar photovoltaic facility and a 2.8 MW AC Fuel Cell facility on approximately 22 acres of the former Seaside Landfill located at 350 Waldemere Avenue, Bridgeport, Connecticut.* When it did so, the Council approved a project that was located adjacent to the Seaside Park Historic District. The District was listed in the National Register of Historic Places, owing, in part, to its design by Frederick Law Olmsted. Petition 1104, Findings of Fact 79 and 80. Screening of the solar

facility, through the use of plantings, was determined to be sufficient to allow the siting of the facility adjacent to the Historic District. Petition 1104, Opinion, p. 2.

Since DWW is offering to provide screening and plantings as part of its D&M Plan, it would seem that there is no difficulty in the Council providing approval for the Project. Unlike in Petition 1104, the two properties in question are not listed on the National Register, nor do they comprise a historic district. Nonetheless, the screening mechanisms will be similar and will be made part of the Project's D&M Plan. Accordingly, the Project's Petition should not be denied on historical resource grounds.

F. The Project Will Provide Environmental Benefits to the State and the Area

Both the Town and the Abutters attempt to argue that in addition to potential impacts to the groundwater (discussed in Section IV.B. above), the Project will have other adverse impacts to the environment, such as adverse impacts to species of concern and loss of habitat. Contrary to such assertions, as articulated in Section 4 of the Petition, the Project will provide a significant number of environmental benefits, including:

- Generation of 100 percent renewable energy without any air emissions, including greenhouse gas emissions;
- Reducing carbon dioxide emissions by more than 12,000 metric tons per year;
- Energy generation without any water consumption or pollution;
- Enhancing existing farmland soils by use of long-term cover crops such as cool season grasses that sequester atmospheric carbon in the soil and improve soil health;
- Maintaining soil fertility by including species such as alfalfa and white clover that fix atmospheric nitrogen into forms available to grasses in the seed mix; and
- Enhancement of pollinator habitat by including flowering species such as white clover and alfalfa that attract pollinators in grass seed mixes, using pilot wildflower plantings along certain perimeter fences to attract pollinators.

Perhaps most importantly, the Project, as designed, will preserve 133 acres of forest, wetlands and open space out of a total land mass of 289 acres. During its testimony, the Town touted the fact that it could require a proposed project on this property to dedicate up to 58.7 acres of the proposed project as open space. Tr, p. 542. While this is certainly true, it is equally true that for the life of the Project as proposed, the preservation of 133 acres will be twice that number. If, at the end of the useful life of the Project, the Project site is sold and developed, Simsbury will still be able to preserve its 58.7 acres. For the time being, Simsbury is reaping the benefits of DWW's preservation of far more land than Simsbury would be entitled to preserve under its own regulations.

The September 11, 2017 comments filed by the DEEP indicate that there are no significant environmental/habitat concerns associated with the Project. The Project will not have an impact on wetlands or vernal pools (page 4), nor will the Project cause habitat loss that cannot be mitigated through the use of methods already suggested by DWW (pages 3-4). Indeed, because much of the Project site is currently being utilized for commercial agriculture, much of the area is previously disturbed. Nonetheless, DWW is mindful of the need to set up protections for smaller species of animals and will therefore make sure that fencing is raised six inches off the ground to allow smaller species to travel across the Project site. Tr, pp. 193-94.

The Siting Council subjected both DWW's and the Abutters' witnesses to rigorous cross examination concerning these issues. For DWW, this meant, as noted by Dr. Klemens, developing alternatives to allow passage of smaller animals through the field by raising the fencing (Tr, pp. 295-96), and having DWW's witnesses give "field-by-field descriptions of the conditions now that render these fields less than optimal" for certain species of birds. Tr, p. 303. This also resulted in DWW's submission of responses to Interrogatories 97, 98 and 99 which

provided the Council with more detailed habitat characterizations, mapping of open spaces in the vicinity of the Project site and a detailed memorandum of 38 pages assessing the area habitat and forest. These responses appeared to satisfy any lingering concerns on the part of the Council since these submissions were not subject to further cross examination by the Council.

The Abutter's witness in this area, Mr. Logan, was also subject to rigorous cross on his allegations that the Project would not sufficiently protect the area's natural resources. He made these allegations despite spending "zero" time visiting the Project site, and without spending any time reviewing the drone flights over the Project site that were posted on the Council's website. Tr, p. 334. Mr. Logan's proffered testimony therefore had gaps in it which needed to be supplemented with additional information. When called upon to provide such additional information, including recalculating the site with a 400 foot buffer that Mr. Logan recommended in his pre-filed testimony (Tr, p. 291), providing peer reviewed documentation regarding the "lake effect" of solar panels (Tr, p. 286), or providing documentation of how to conduct field surveys for birds (Tr, p. 339), Mr. Logan failed to provide any supplemental material.

Mr. Logan's failure to provide supplementary material was particularly troubling given that his testimony was filled with bald assertions that failed to be supported under cross examination. For example, Mr. Logan contended on page 2 of his pre-filed testimony that the Project site contained a "hot bed of listed species" (Tr, p. 276). During cross examination, the Council correctly noted that the area contains "a relative absence of species of conservation concern," and Mr. Logan agreed with this assertion. Tr, p. 279. DEEP also concurred with this assertion, as was indicated in VHB's October 26, 2017 Habitat Assessment and Forest Characterization, which was included as Exhibit C to DWW's Response to Interrogatory 99. According to p. 1 of that Assessment, "as reported during the October 10, 2017 hearing, NDDB

staff reported that they do not have records for any state or federal listed plant or animal species occurring on the property.” Thus, although Mr. Logan and the DEEP did not always agree with respect to the Project, the agency and the Abutters’ witness agreed that the site was not a “hot bed” of listed species as Mr. Logan had previously contended.

Moreover, there were problems with Mr. Logan’s pre-filed testimony as noted by the Council. As an initial matter, in order to come to the conclusions he reached, Mr. Logan had to change the methodology he used in prior proceedings before the Council, including in Petitions 1294 and 2195. Tr, pp. 281-284. Furthermore, Mr. Logan listed species in his report which are not NDDB species. Tr, pp. 285-86. Mr. Logan also failed to review the September 11, 2017 comments of the DEEP which contradicted his testimony prior to the day of the hearing. Tr, p.335. When confronted with the fact that his conclusions contradicted the state agency placed in charge of protection of human health and the environment, Mr. Logan stated that DEEP’s comments had no impact on his findings since it was “their opinion versus mine.” Tr, p. 336.

Given the incompleteness of both Mr. Logan’s testimony and his failure to answer any interrogatories, Mr. Logan was given the opportunity to supplement his findings by filing answers to a more limited set of interrogatories to be propounded by DWW. The Abutters’ counsel appreciated that gesture stating that “we would definitely accept that so as to kind of hone in on what it is that Mr. Hoffman feels was not answered.” Tr, p. 360. The Abutters’ counsel went on to say that the abutters would make Mr. Logan available for further cross examination on the limited set of interrogatories. Tr, p. 361. Sadly, Mr. Logan neither responded to any additional interrogatories (which were timely filed on October 19, 2017), nor did Mr. Logan make himself available for further cross examination in these proceedings. As

such, his testimony is suspect at best and should not be used for any purpose as the Council deliberates on this Petition.

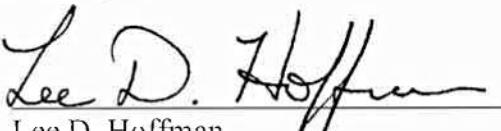
V. CONCLUSION

For the reasons set forth above, DWW Solar II, LLC respectfully requests that the Siting Council approve the location, construction and operation of the Project by declaratory ruling.

Respectfully Submitted,

DWW Solar II, LLC

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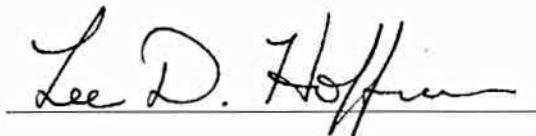
This is to certify that a copy of the foregoing has been mailed via U.S. Mail, first class postage prepaid, and/or electronically mailed on December 1, 2017 to all parties and intervenors of record, as well as all pending parties and intervenors as follows:

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