

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 MEGAWATT  
AC SOLAR PHOTOVOLTAIC ELECTRIC  
GENERATING FACILITY IN SIMSBURY  
CONNECTICUT

PETITION NO. 1313

September 6, 2017

**MEMORANDUM IN SUPPORT OF MOTION TO DENY DECLARATORY RULING**

Michael Flammini, Laura Nigro, Linda Lough, Lisabeth Shlansky, Zhenkui Zhang, John Marktell, Rob Perissi and Ed Wrobel (hereinafter the “Homeowner Parties”) hereby join in the Connecticut Department of Agriculture’s (“DOA”) Motion to deny Declaratory Ruling dated August 23, 2017 for the reasons set forth in DOA’s August 23, 2017 memorandum in support thereof.

Of particular importance is DOA’s legal reasoning (see DOA memorandum, p. 4):

“The conclusion that the law that applies to this project is the law in effect at the time of the decision - rather than the law in effect at the time of the filing of the petition - is consistent with the case law and statutes that govern what law applies to municipal zoning and wetlands applications. The current rule is that a zoning application or a wetlands application is governed by the zoning or wetlands regulations in effect on the date of the application. But this is so only because statutes had to be enacted to change the common law rule that these applications are governed by the law in effect at the time of the local agency's decision. *See* Conn. Gen. Stat. §8-2h (zoning applications); *McNally v. Zoning Comm'n*, 225 Conn. 1,9 (1993) (zoning applications); Conn. Gen. Stat. § 22a-42e (wetlands applications); *Paupack Dev. Corp. v. Conservation Comm'n*, 229 Conn. 247, 249 n.2 (1994) (wetlands applications). There is no statute for Siting Council decisions that changes the common law rule. Accordingly, the law that applies to this project is the law in effect at the time the Siting Council makes its decision, which will be after July 1, 2017.”

Moreover, as DOA correctly points out (see DOA memorandum, p. 3):

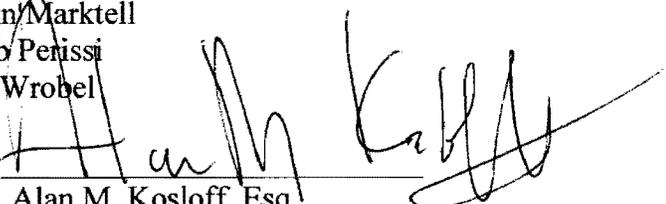
“The declaratory ruling portion of § 16-50k(a) provides an alternative, shortened procedure the Siting Council uses to approve certain projects that the Siting Council would otherwise have to approve by issuing a certificate.”

Thus, the declaratory ruling process set forth in §16-50k(a) is a **procedure in avoidance of a certificate proceeding**. Since the process is procedural in nature, as DOA correctly asserts, the amendment applies retroactively, particularly in light of the absence of any savings clause extant in the Public Utility Environmental Standards Act.

Finally, as DOA correctly asserts, the plain language of the Public Utility Environmental Standards Act evinces a legislative intent that the statutory amendment apply to matters as of the date the Council makes its decision (which in this case will be after July 1, 2017).<sup>1</sup> The mere filing of a petition for declaratory ruling does not create a vested right to avoid a certificate proceeding.<sup>2</sup>

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

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<sup>1</sup> See DOA memorandum, pp. 3 - 4

<sup>2</sup> See RCSA §16-50j-40(c)(2) which entitles the CSC to order that the declaratory ruling petition be “set for specified proceedings”; this language on its face would seem to include certificate proceedings.

CERTIFICATION

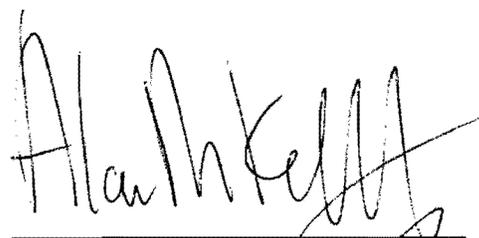
I hereby certify that on this day that the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with RCSA §16-50j-12, to all parties and intervenors of record, as follows:

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Alan M. Kosloff  
Commissioner of the Superior Court  
September 6, 2017