

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) OCTOBER 26, 2017
SIMSBURY CONNECTICUT)

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

1. Reference to the Council's Interrogatory #5 to you: you responded that, "DWW can find no evidence that any portion of the site is enrolled in the Department of Agriculture's Public Act 490 Program. No portions of the parcels being acquired for the project are outside the Project limits." Are you aware that Simsbury's Tax Assessor, David Gardner, reports that approximately 249 acres of the land are subject to Public Act 490 and that the current owner benefits from a lower tax rate for agricultural land as a result of the application of P.A. 490 to the property?

RESPONSE: Objection. The Interrogatory calls for a legal conclusion for which no response is required. In addition, the Interrogatory calls for information that is beyond the scope of this Petition and is not reasonably calculated to lead to evidence that will be admissible in this proceeding. Subject to the foregoing objection, to the extent a response is required, the Petitioner states that it was generally aware that the property paid less in taxes than fair market value due to its use as a farm. As a result of submittals received by the Petitioner from the Town of Simsbury, Petitioner is now aware that the property has taken advantage of tax protections afforded to the property as a result of Public Act 490. Petitioner further notes that Petitioner will not be able to take advantage of these same protections if Petitioner converts the property to a solar generation facility.

2. Reference to the Council's Interrogatory #9 to you concerning proximity of the nearest off-site residence to the construction access points and the solar field area: you responded that, "the nearest off-site residence to the northwestern solar array is located at 13 Knollwood Circle, which is 275 feet to the east. The nearest off-site residence to northeastern solar array is located at 1 Centerwood Road, which is 247 feet to the north. The nearest off-site residence to central solar array is located at 14 County Road, which is 142 feet to the west. The nearest off-site residence to southern solar array is located at 85 Hoskins Road, which is 197 feet to the north. The nearest off-site residence to County

Road construction access is located at 81 County Road, which is 122 feet to the south. 81 County Rd is across the street from the construction access road on County Rd. The nearest off-site residence to County/Hoskins Road construction access is located at 10 County Road, which is 562 feet to the northwest."

- (a) Why did you not include #2, 4, 6, 8, 10, 12, 14, 16, & 18 Litchfield Dr. which are all within 100' from the access road, which runs behind Litchfield Dr.;
- (b) Why did you not include #24, 43, 44, & 45 Berkshire Way, which are all within 400' of the access road and the solar field;
- (c) Why did you not include #20 & 21 Saxton Brook which are 550' from the access road and the solar panels?

RESPONSE: As was requested by the Siting Council's Interrogatory #9, the dimensions provided were between the construction access points at the public right-of-way at County Road and Hoskins Road and the solar array fields, and the nearest residences.

3. Reference to the Council's Interrogatory # 21 to you regarding the length and depth of the solar racking support posts: you responded that, "the solar racking support posts will be embedded 12 to 14 feet into the ground, however, the final design will be based on the results of geotechnical analysis. The posts will be 8-10 feet above ground." As indicated previously by you, there will be approximately 110,000 solar panels that will require 4-6 racking support posts. What will DWW do to reduce the noise from such significant pile driving or auguring operations and what hours of operation will you be following with so many residences in close proximity?

RESPONSE: This Interrogatory significantly overstates the number of posts required to support the racking. Roughly 10,000 posts will be required to support the racking. Petitioner's activities are anticipated to be in full compliance with applicable regulations, including the regulations found at RCSA § 22a-69-1 *et seq.* It is also anticipated that the Petitioner will limit the hours of construction as part of its D&M Plan. Even if no limits on construction hours are placed on the construction a part of the D&M Plan, Petitioner will limit the hours of construction so as to ensure compliance with the requirements of applicable regulations, including, but not limited to, RCSA § 22a-69-1 *et seq.*

4. In your answer to the Council's Interrogatory #49 you state that no assessment of pesticide residues has been performed, yet in your answer to the Council's Interrogatory #35 you state that the racking posts for over 109,000 solar panels will be embedded 12 - 14 ft in the ground.

- (a) What is DWWs plan for dust control and air monitoring of potentially contaminated dust released into the atmosphere during construction?

(b) What are DWW's plans for preventing the release of contaminants (including dissolved contaminants) into groundwater and surface water during construction?

RESPONSE:

(a) The Petitioner would note that it is not aware of any dust protection measures currently being used at the Site as it is utilized for agricultural operations. As the Petitioner has indicated in previous hearings, the Petitioner intends to use water for dust suppression during construction activities. See Transcript, pp. 192-93 and Response 23 to the Interrogatories propounded on the Petitioner by the Town of Simsbury. In addition, as the Petitioner also indicated during previous hearings, once the Petitioner assumes control of the Site, the Petitioner intends to seed the Site so that exposed dirt will be eliminated to the extent possible, thus limiting the amount of dust that will emanate from the Site. See Transcript, pp. 48-51.

(b) As was articulated by Mr. Henry during the October 10, 2017 public hearing and in Petitioner's response to Interrogatory 84 served upon it by the Siting Council, the Petitioner does not anticipate that contaminants will be released during the course of construction of the Project.

5. In your answer to the Council's Interrogatory #57, DWW stated that arrival times for peak construction activity will be early in the morning and early in the evening thus avoiding peak commuting times. School buses pick up and drop off our children during these early morning (6:30-7:15 am) and afternoon (2:30-4:00pm) times. The children are waiting at the side of the road, often in dim light in the morning and dropped off in the afternoon, often crossing the roads in these construction access areas. There are no traffic controls on that roadway and at least one of the entrances is a blind driveway at a three way intersection. How will DWW ensure a safe environment for our children with the increased construction traffic?

RESPONSE: Objection. This Interrogatory assumes facts not properly in the record of this Petition. Subject to the foregoing objection, Petitioner states that Petitioner expects that the construction traffic for the Project will obey all traffic laws and posted signs. Construction traffic will also be alerted to the presence of the school near the Project Site, and Petitioner does not anticipate any increased danger for the children in the area.

6. In response to Simsbury's Interrogatory #72, you state that that 'vegetative maintenance (weed and grass mowing) will be performed once per year as is the industry standard or "more frequent if deemed necessary based on site conditions". What is your definition of "necessary based on site conditions?"

RESPONSE: Petitioner has stated repeatedly that it would mow the Project Site *at least* once per year based on the conditions of the Site. The primary purpose of mowing at least once per year is to limit the growth of woody vegetation. See Transcript, pp. 16, 47-48 and 218.

7. Will "danger high voltage" signs be posted on the fences along Hoskins and County Roads, clearly visible to those passing by?

RESPONSE: Appropriate warning signage will be placed on the chain link fence around the project, as is required by the National Electric Safety Code. It is anticipated that such signage would be hidden from view as a result of the decorative fencing that has been suggested to be put in place by the Petitioner.

8. Regarding yours answers to the Council's Interrogatories ##10 and 14, wherein you state the anticipated facility is a 26.4 MW-AC/37.4 MW-DC solar power generating facility, but the DC figure is subject to change based on final site specific engineering: Does that mean the project may exceed the current estimate?

RESPONSE: The DC to AC conversion is dependent on the make and model of the inverters that will be used for the Project. Although some minor adjustments to the DC capacity of the Project may occur as a result of which inverters are used, the Project is currently designed to have a nameplate capacity of 26.4 MW-AC, and that figure is not anticipated to change.

9. Regarding your response to Simsbury's Interrogatory #15, you responded in part you objected to the question because "it presumes, without evidence, that the Project is located over an Aquifer Protection Zone. . ."

(a) Reference your Exhibit B, and in particular, the 7th figure therein, isn't that evidence that the Project is located over an Aquifer Protection Zone?

(b) Also, do you believe that you would be entitled to construct this project if Simsbury's Aquifer Protection Regulations were applied to it by the Council. If so, why?

RESPONSE:

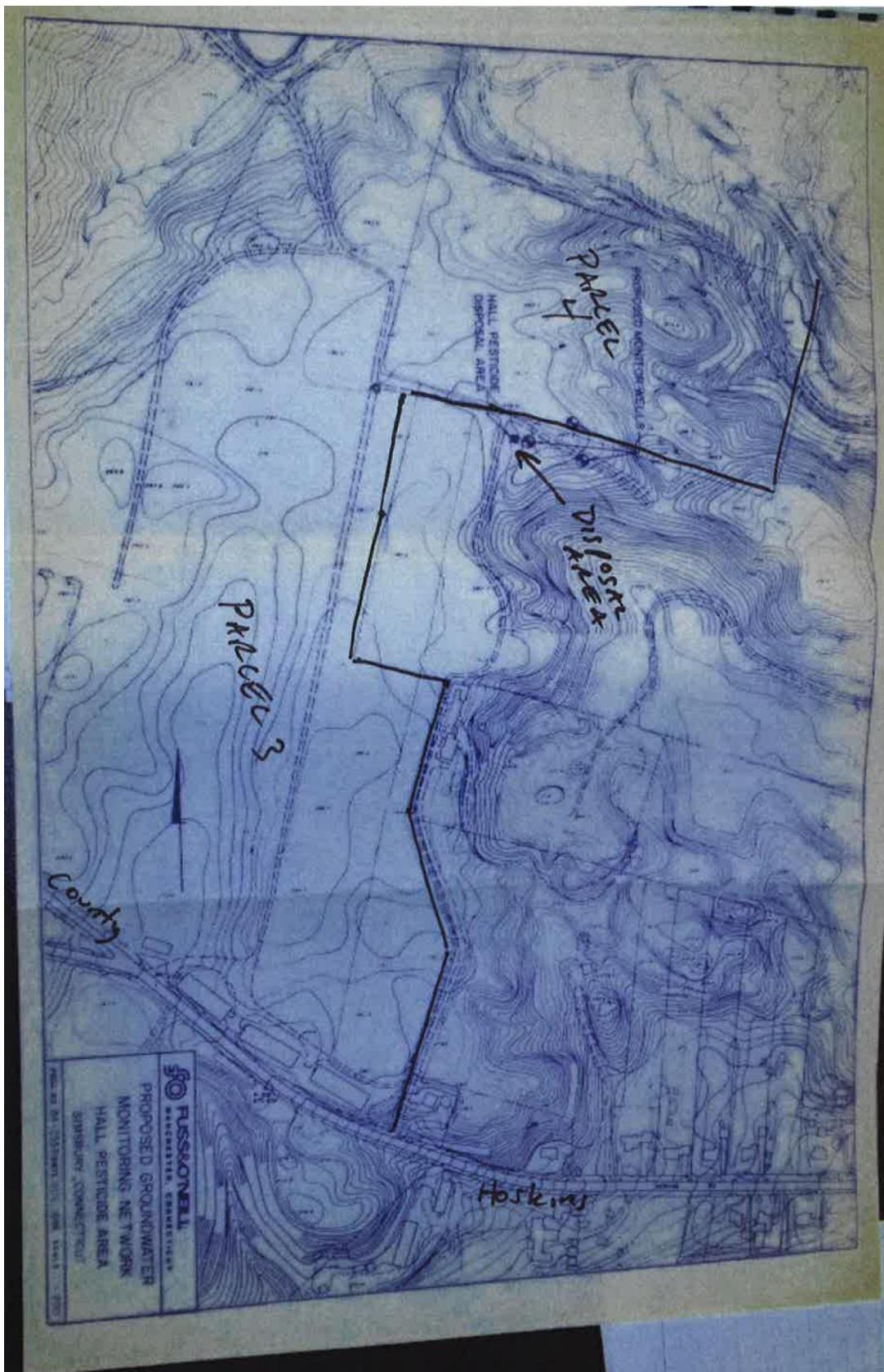
(a) Page 35 of the Petition states that "In general, eastern portions of the Project Site are included in the Town's Aquifer Protection Area." Exhibit B "Floodplain, Surface & Groundwater Resources Map" also identifies that portions of the Site are in an Aquifer Protection Area. The Petitioner agreed to comply with any applicable laws and regulations of the Connecticut Department of Public Health should it be determined that DWW must submit an Aquifer Protection Plan to the Department of Public Health.

(b) Objection. The Interrogatory calls for a legal conclusion for which no response is required.

10. Also, reference is made to Conn. Gen. Stat. §22a-354p(g) which in relevant part reads, "(g) (1) Notwithstanding any other provision of the general statutes, the commissioner [of Energy and Environmental Protection] shall have sole authority to grant, deny, limit or

modify, in accordance with regulations adopted by him, a permit for any regulated activity in an aquifer protection area proposed by (A) ...any person to whom the commissioner has issued a permit for the subject site under the provisions of the federal Resource Conservation and Recovery Act (42 USC 6901 et seq.) for a treatment, storage or disposal facility, (B) any public service company, as defined in section 16-1, providing gas, electric, pipeline, water or telephone service, (C) any large quantity generator, as defined in regulations adopted by the commissioner under section 22a-449. ..." If Mr Carr's findings are correct [see his letter dated October 5, 2017 included with Simsbury's supplemental disclosure dated October 5, 2017], that a RCRA disposal facility was operated within the Hall Farm and that more than 1,000 kgs per month of hazardous waste were generated at the Hall Farm, would not your project be required to (i) undergo generator closure, (ii) obtain a RCRA permit for the closure of a TSD facility, and (iii) obtain an aquifer protection permit from DEEP notwithstanding the Council's possible favorable action on your petition?

RESPONSE: Objection. This Interrogatory calls for a legal conclusion for which no response is required. To the extent a response is required, Petitioner states that the provisions of section 22a-354p(g) do not apply as cited since the Project will not have received a TSDF permit, is not a public service company and is not a large quantity generator of hazardous waste. Moreover, as depicted in the figure on the next page, the alleged historical pesticide disposal site referenced in Zuvic Carr's letter of October 5, 2017, is not part of the Project Site. Indeed, the parcel containing the former disposal site is a separate parcel that, to the best of Petitioner's knowledge, is currently owned by River Bend Development, LLC, has a street address of 1503 Hopmeadow, and will not be purchased by Petitioner as part of the Project. For reference, the areas identified as Parcel 3 and Parcel 4 on the figure on the next page will be part of the Project, the remaining areas north of Hoskins Road depicted on that figure will not.



11. Also, reference is again made to Mr. Carr's letter: If Mr. Carr is correct, that the origin of the hazardous wastes referenced in the RCRA manifests noted by Mr. Carr was the Hall Farm, would not the Hall Farm parcels be considered an "establishment" under the Connecticut Transfer Act? If so, would you accept a condition requiring you to comply with the Connecticut Transfer Act upon transfer of the property to you?

RESPONSE: Objection. This Interrogatory calls for a legal conclusion for which no response is required. To the extent a response is required, Petitioner states that it does not believe the Project Site is an "establishment" as that term is defined under the Connecticut Transfer Act, and that such a determination is more appropriately made by the transferor of an establishment, pursuant to Conn. Gen. Stat. § 22a-134a(c). Moreover, failure of a transferor of an establishment to properly follow the Transfer Act entitles the transferee (in this case the Petitioner) to recover damages from the transferor pursuant to Conn. Gen. Stat. §22a-134b.

Thus, any failure to properly comply with the requirements of the Transfer Act are legally to be borne by the seller of the property, not the Petitioner. If it is determined that the Project Site does, indeed, constitute an establishment as defined by the Transfer Act, the Petitioner and the seller of the property will comply with the legal requirements mandated by the Transfer Act.

12. Given Mr. Carr's findings concerning the presence of hazardous wastes at the Hall Farm,

- have you conducted or are you planning to conduct any soils testing to either confirm or refute his findings?
- Have you conducted or are you planning to conduct any soils testing in the vadose zone at the Hall Farm to determine whether there are any exceedances of DEEP's Pollutant Mobility Criteria?
- If not, what evidence in the record do you point to that establishes that your construction/operation activities will not have the effect of mobilizing hazardous wastes in the form of dissolved solids so as to result in violation of DEEP's Water Quality Standards or otherwise cause "pollution of the waters of the State" (as that term is defined in Title 22a of the Connecticut General Statutes)?

RESPONSE:

- & (b) Petitioner disputes the implication that Mr. Carr has made definitive findings that implicate the Project Site. Moreover, Petitioner notes that the historical pesticide disposal site discussed by Mr. Carr is outside the boundaries of the Project Site, therefore,

Mr. Carr's findings are speculative. Petitioner has not tested the soils at the Project Site and does not have any current plans to do so.

(c) Objection. This Interrogatory calls for a legal conclusion for which no response is required. To the extent a response is required, Petitioner states that as a matter of federal law, pesticides that have been applied in accordance with labeling instructions are not considered hazardous wastes. Moreover, as was articulated by Mr. Henry during the October 10, 2017 public hearing and in Petitioner's response to Interrogatory 84 served upon it by the Siting Council, the Petitioner does not anticipate that contaminants will be released during the course of construction of the Project.

13. Petitioner states in its answer to the Council's interrogatory #39 that the power generated by this project "will be sold in accordance with the terms of the project's PPAs."

(a) Will any of the power purchasers be Connecticut customers?

(b) If so, who are they?

(c) How much power will they be purchasing?

RESPONSE: (a) No. (b) Not applicable. (c) Not applicable.

14. According to the Public Utility Environmental Standards Act, (§16-50p) "a public benefit exists when a facility is necessary for the reliability of the electric power supply of the state [of Connecticut] or for the development of a competitive market for electricity, and a public need exists when a facility is necessary for the reliability of the electric power supply of the state [of Connecticut]." (emphasis added)

(a) In what way does your project constitute a "public benefit";

(b) In what way does your project fulfill a "public need"?

(c) What evidence is there in the record to support your contentions?

RESPONSE: Objection. This Interrogatory calls for a legal conclusion for which no response is required. To the extent a response is required, Petitioner states that section 16-50p applies to applications for a certificate. As the Siting Council has previously ruled, this matter is a petition for declaratory ruling. Therefore, the provisions of 16-50p do not apply. Nonetheless, the benefits of the Project are described in Section 4.0 of the Petition, entitled, "Project Benefits."

15. Why is your facility necessary for the reliability of the electric power supply of the State of Connecticut in view of DEEP's determination that, "Resources within Connecticut are expected to be sufficient to meet Connecticut's Local Sourcing Requirement as defined by the Transmission Security Analysis criteria through 2024. Within the Connecticut sub-area specifically, no new capacity will be needed because existing resources, planned transmission, and energy efficiency will exceed the local requirement beyond the ten-year IRP horizon." (See DEEP 2014 Integrated Resource Plan, at p.13 as restated in the Council's Docket No. F-2014/2015 10-year Load Forcast, at p. 48)

RESPONSE: Objection. This Interrogatory calls for a legal conclusion for which no response is required. To the extent a response is required, Petitioner states that as the Siting Council has previously ruled, this matter is a petition for declaratory ruling. Therefore, the provisions relating to applications for certificates do not apply. Moreover, although this Project is not necessary for the reliability of the electric power supply of the State of Connecticut, it confers other benefits to the State and the region as articulated in Section 4.0 of the Petition.

16. According to your Petition (p. 7), you were selected to supply power "to Massachusetts electric distribution companies"; were you also selected to supply power to Connecticut electric distribution companies?

RESPONSE: No.

17.

(a) **Are you aware that the U.S. Commerce Department recently approved a collection of steep tariffs on imports of most solar panels made in China?**

(b) **Will the Petitioner switch to the purchase of American-made panels as a result of the Commerce Department's action?**

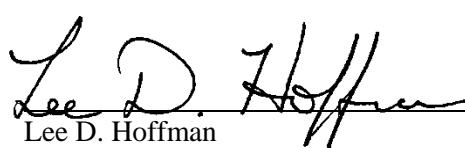
(c) **If not, will Petitioner seek to pass the added expense of the tariffs on to the consumer?**

RESPONSE: Objection. This Interrogatory calls for a legal conclusion for which no response is required, calls for speculation, exceeds the scope of this Petition and assumes facts that have not been properly placed into the record of this Petition. Subject to the foregoing objection, Petitioner responds as follows: (a) It is Petitioner's understanding that tariffs on solar panels manufactured in China are being considered by the International Trade Commission ("ITC"). It is also Petitioner's understanding that on November 13, 2017, the ITC will present its suggested remedies and findings to President Trump. President Trump will then have until January 12 to

provide his decision with respect to such tariffs. (b) No determination of the country of origin for panels has been made at this time. (c) No.

Respectfully Submitted,
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CERTIFICATION

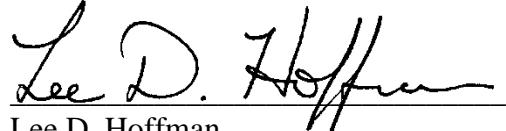
I hereby certify that on October 26, 2017, the foregoing was delivered by electronic mail and regular mail, postage prepaid, in accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies, to all parties and intervenors of record, as follows:

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