

June 28, 2019

VIA EMAIL AND OVERNIGHT MAIL

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

RE: **Petition No. 1372** – Derby Fuel Cell, LLC petition for declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 14.0-megawatt fuel cell facility and associated equipment to be located at 200 Roosevelt Drive, Derby, Connecticut.

Dear Ms. Bachman:

On behalf of the Petitioner, Derby Fuel Cell, LLC, enclosed please find an original and 15 copies of the Petitioner's Motion for Protective Order, Affidavit of Frank Wolak, proposed Protective Order, proposed Non-Disclosure Agreement and proposed Request for Information in connection with the Petitioner's Confidential response to the Council's Interrogatory CSC-36 filed in the above-referenced proceeding.

Please feel free to contact me if you have any questions or require additional information.

Respectfully submitted,

Jennifer D. Arasimowicz

Jennifer D. Arasimowicz
Interim President, General Counsel, Chief
Commercial Officer and Corporate Secretary

Encls.

c: Service List

PETITION NO. 1372 – *Petition No. 1372* – Derby Fuel Cell, LLC petition for declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 14.0-megawatt fuel cell facility and associated equipment to be located at 200 Roosevelt Drive, Derby, Connecticut

*Connecticut
Siting
Council*

June 28, 2019

MOTION FOR PROTECTIVE ORDER

1. Derby Fuel Cell, LLC (“Derby” or the “Petitioner”) respectfully moves the Connecticut Siting Council (the “Council”) for a protective order to ensure that confidential information provided by Derby in connection with its petition for a declaratory ruling in the above-referenced proceeding is not subject to public disclosure, in accordance with Conn. Gen. Stat. § 1-210(b) and Regulations of Connecticut State Agencies § 16-50j-22a(d)(1).

2. The confidential information addressed in this motion includes the following information requested by the Council in interrogatory CSC-36. Specifically, this information includes Derby’s estimated project costs (the “Confidential Information”).

3. Pursuant to Conn. Gen. Stat. § 1-210(b), the Council is authorized to protect from public disclosure “trade secrets,” which for purposes of the Freedom of Information Act are defined as information, including compilations and cost data “that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Conn. Gen. Stat. § 1-210(b)(5)(A); Conn. Gen. Stat. § 35-51(d). The Council is also authorized to protect from public disclosure “[c]ommercial and financial information given in confidence, not required by statute.” Conn. Gen. Stat. § 1-210(b)(5)(B); *See*,

Department of Public Utilities v. Freedom of Information Comm’n, 29 Conn. L. Rptr. 215, 2001 WL 79833, at *3 (Conn. Super. Ct. January 12, 2001); *see also Chief of Staff v. Freedom of Information Comm’n*, 25 Conn. L. Rptr. 270, 1999 WL 643373, at *2-3 (Conn. Super. Ct. August 12, 1999).

4. In accordance with the above, the Confidential Information qualifies as both a trade secret and as commercial financial information given in confidence, not required by statute, and therefore should be exempt from disclosure. Moreover, the Confidential Information is considered commercially and competitively sensitive and highly proprietary. Attached to this Motion is the Affidavit of Frank Wolak, Senior Vice President, Sales, attesting to the fact that Derby and its corporate parent have historically, vigorously protected this type of information because of the irreparable harm that disclosure would cause to the their competitive market interests.

5. Neither federal law nor Connecticut statutes require that the Petitioner submit the Confidential Information. In this case, the necessity of withholding public disclosure of the data outweighs the public interest in such disclosure.

6. In prior proceedings, the Council has protected proprietary cost information from public disclosure. *See Petitions 1150, 1181, 1192, Tesla Energy Operations, Inc., Council Decisions on Motion for Protective Order (July 19, 2018).*

WHEREFORE, for all of the foregoing reasons, Derby requests that the Council grant its Motion for Protective Order.

Respectfully Submitted,

DERBY FUEL CELL, LLC

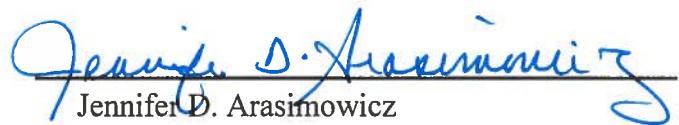
By 

Jennifer D. Arasimowicz
3 Great Pasture Road,
Danbury, CT 06810
jarasimowicz@fce.com
General Counsel
Tel. (203) 825-6070

CERTIFICATION

I hereby certify that on June 28, 2019, 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:

Dmitriy Kamenetskiy
Project Manager
FuelCell Energy, Inc.
3 Great Pasture Road,
Danbury, CT 06810
DKamenetskiy@fce.com


Jennifer D. Arasimowicz

PETITION NO. 1372 – Petition No. 1372 – Derby Fuel Cell, LLC petition for declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 14.0-megawatt fuel cell facility and associated equipment to be located at 200 Roosevelt Drive, Derby, Connecticut

*Connecticut
Siting
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June 28, 2019

AFFIDAVIT OF FRANK WOLAK

I am over the age of eighteen and understand the obligations of making statements under oath. The following statements are true to the best of my knowledge and belief.

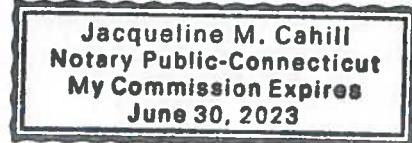
1. I am Frank Wolak, Senior Vice President, Sales for FuelCell Energy, Inc. (“FCE”). The Petitioner, Derby Fuel Cell, LLC (“Derby”), is an indirect wholly-owned subsidiary of FCE.
2. I submit this affidavit in support of the Petitioner’s Motion for Protective Order as it relates to certain information requested by the Connecticut Siting Counsel (the “Council”) in connection with Petition No. 1372 (the “Petition”). Specifically, Derby has been asked to provide the Council with information related to “estimated project costs” (the “Confidential Information”).
3. The Confidential Information is commercial financial information that Derby considers highly confidential and commercially sensitive.
4. To the best of my knowledge, Derby and its corporate parent, FuelCell Energy, Inc. have heretofore used best efforts to maintain the Confidential Information as secret in order to avoid the economic harm to each that would result if the information were to become publicly available. To the best of my knowledge this information has not previously been disclosed or released to the public.
5. I have been advised by Derby’s legal counsel that neither federal nor Connecticut statutes require the confidential portion of this information to be filed in the public record.

Frank Wolak

Frank Wolak
Senior Vice President, Sales
FuelCell Energy, Inc.

Subscribed and sworn to before me this 28th
day of June, 2019.

Jacqueline M. Cahill
Notary Public
My Commission Expires: June 30, 2023



PETITION NO. 1372 – *Petition No. 1372* – Derby Fuel Cell, LLC petition for declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 14.0-megawatt fuel cell facility and associated equipment to be located at 200 Roosevelt Drive, Derby, Connecticut

*Connecticut
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June 28, 2019

PROTECTIVE ORDER CONCERNING DERBY FUEL CELL, LLC'S PROVISION OF CONFIDENTIAL COMMERCIAL AND FINANCIAL INFORMATION

WHEREAS, Derby Fuel Cell, LLC (the “Company”) has been requested to provide the Connecticut Siting Council (the “Council”) with certain information related to “estimated project costs” (the “Confidential Information”) that would, in the opinion of the Company, result in the disclosure of commercially valuable or financial information that is given in confidence and not required by statute, and/or which information the Company contends constitutes a trade secret within the meaning of Connecticut General Statutes § 1-210(b)(5) (collectively, the “Confidential Information”); and

WHEREAS the Company has expressed a willingness to provide the Confidential Information subject to a protective order (the “Order”);

NOW, THEREFORE, it is hereby ordered, that the following procedures are adopted for the protection of the Confidential Information provided by the Company:

1. All Confidential Information provided by the Company, whether in documentary form or otherwise, shall be identified as follows: “[identifying title] [Confidential Information]”, and will be governed by the terms of this Order. This Order is applicable to all such Confidential Information, whether in the form of documents, data, testimony, studies, or otherwise.
2. All Confidential Information made available pursuant to this Order shall be given to Members and staff of the Council, upon execution of the Acknowledgment referenced below

(each a “Signatory” and collectively, the “Signatories”). Any parties to Petition 1372 will separately be provided the Confidential Information upon 1) consent of the Company and 2) execution of the Nondisclosure Agreement in the form attached hereto as Exhibit 1 (each also a “Signatory” and collectively, the “Signatories”).

3. Upon execution of the Nondisclosure Agreement, Confidential Information will be marked as such and delivered in sealed envelopes to the Council. A statement in the following form shall be placed prominently on each envelope:

CONFIDENTIAL-PROPRIETARY – PETITION 1372

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the pertinent Protective Order issued in Petition 1372.

4. Any Confidential Information made available pursuant to this Order shall be part of the record in the docket cited above, subject to the same relevancy and other evidentiary considerations as non-confidential information and subject to the conditions stated in Paragraphs Five and Six of this Order.

5. If the Confidential Information is used in any manner in any interrogatory, letter, petition, brief or other writing (each a “Document”), all reference to the Confidential Information in the Document shall be either:

- a) in a separate document, prominently labeled “Proprietary Information”, which document shall be safeguarded in accordance with the Order and distributed only to Members and staff of the Council, and to Signatories; or
- b) solely by title or exhibit reference in a manner reasonably calculated not to disclose the Confidential Information.

6. If the Confidential Information is used in any manner in any Council proceeding or during the course of a public hearing before the Council (a “Hearing”), the Hearing shall not be held before, nor any record of it made available to, any party or other person or entity not a

Signatory, other than the appropriate representatives of the Council. No record shall be disclosed, nor any communication made, of use of the Confidential Information in the Hearing to any person or entity not a Signatory, Member of the Council or Council staff. Any transcript or other recording of the Hearing that relates to the Confidential Information shall be placed in sealed envelopes or containers and a statement in the following form shall be placed prominently on such envelope or container:

“CONFIDENTIAL-PROPRIETARY”

This envelope is not to be opened nor the contents to be displayed or revealed except pursuant to the pertinent Protective Order issued in Petition 1372.

7. Nothing herein shall be construed as a final determination that any of the Confidential Information will be admissible as substantive evidence in this Council proceeding or at any hearing or trial. Further, nothing herein shall be considered a waiver of any party's right to assert at a later date that the Confidential Information is or is not proprietary or privileged. A party seeking to change the terms of this Order shall by motion give every other party five (5) business days' prior written notice. No information protected by this Order shall be made public until the Council rules on any such motion to change the terms of this Order. Confidential Information otherwise properly discovered, even though also subject to the terms of this Order, shall not be considered protected by this Order.

8. All copies of such Confidential Information shall be returned to the Company no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding.

CONNECTICUT SITING COUNCIL

By: _____
Title: _____
Dated: _____

REVIEWED AND ACKNOWLEDGED:

The undersigned hereby acknowledges that he or she has reviewed this Protective Order, and hereby agrees to abide by the terms thereof in exchange for receipt of the Confidential Information from Derby Fuel Cell, LLC.

RECIPIENT: _____ REPRESENTING: _____

DATE: _____

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

EXHIBIT 1

**PETITION 1372
DERBY FUEL CELL, LLC**

NONDISCLOSURE AGREEMENT

Derby Fuel Cell, LLC (the “Company”) agrees to make available to _____ (“Recipient”) confidential and proprietary information filed in Connecticut Siting Council Petition 1372 (“Confidential Information”) subject to restrictions stated herein.

1. Any information provided to Recipient and labeled “Confidential Information” by the Company shall be Confidential Information subject to this Nondisclosure Agreement.
2. The Confidential Information is received by Recipient in confidence.
3. The Confidential Information shall not be used or disclosed by the Recipient except in accordance with the terms contained herein and in the Company’s Motion for Protective Order in Petition 1372.
4. Only individuals, and not entities, may be Recipients of Confidential Information under this paragraph. The Recipient must be an attorney or independent expert witness for a party in this Council proceeding. The Recipient acknowledges that he/she now represents or in the future may represent competitors or potential competitors of the Company and that disclosure of confidential and proprietary information of the Company to competitors or use of such information for the benefit of competitors of the Company could adversely affect the Company and its customers. By executing this Nondisclosure Agreement, each Recipient certifies that he/she meets the requirements of this paragraph.
5. The following conditions shall apply to each Recipient:
 - a) Each Recipient shall receive one (1) numbered, controlled copy of the Confidential Information. The Recipient shall not make any copies thereof or provide the Confidential Information to any individual or entity.
 - b) The Recipient shall maintain a log of all persons granted access to the Confidential Information.
 - c) The Recipient, by signing this Nondisclosure Agreement acknowledges that he/she may not in any manner disclose the Confidential Information to any person, and that he/she may not use the Confidential Information for the benefit of any person except in this Council proceeding and in accordance with the terms of the Protective Order.

- d) The Recipient acknowledges that any violation of this Nondisclosure Agreement may subject the Recipient to civil actions for violation hereof. Additionally, any Recipient who is an attorney acknowledges his/her ethical obligations under the Rules of Professional Conduct to abide by this Nondisclosure Agreement and to handle properly confidential information that is subject to a protective order.
- e) Within thirty (30) days of the final decision in this Proceeding, Recipient shall return the Confidential Information to the Company.

RECIPIENT:

By: _____

Dated: _____

**REQUEST FOR PROPRIETARY INFORMATION
PURSUANT TO PROTECTIVE ORDER**

1. This form must be accompanied by an original signed Non-Disclosure Agreement or a Subscription to a Protective Order entered in an administrative proceeding, if you are a party or intervenor in an administrative proceeding and are not employed by the Independent System Operator, New England (ISO-NE) or a federal or state agency. If you have already signed a Proprietary Information Non-Disclosure Agreement, please provide the date: _____

2. The undersigned requests the following information:

Connecticut Siting Council Petition No. 1372, Derby Fuel Cell, LLC petition for a declaratory ruling, pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance and operation of a 14.0-megawatt fuel cell facility and associated equipment to be located at 200 Roosevelt Drive, Derby, Connecticut, Unredacted Response to Interrogatory CSC-36

Any additional material to be filed in this Docket for which confidential proprietary information status is claimed by Derby Fuel Cell, LLC.

3. The undersigned is:

a party or intervenor in the proceeding identified in paragraph 3, having been admitted as such on _____.
an employee of ISO-NE or another independent system operator or regional transmission organization in North America
a state agency employee
a federal agency employee
an employee of the electricity reliability organization or regional entity
an employee of a transmission owner in another control area
a consultant of one of the entities listed above who has been retained to provide advice regarding the matter described in no. 5 below

4. Give the name of your employer and your title: _____

5. The undersigned represents, warrants and agrees that the information is to be used solely for the following purpose [describe in detail]:

6. If you are a consultant, provide the name and contact information of an individual at the organization that has retained you so that we may verify your role:

I acknowledge that the foregoing is true and accurate, and agree to give Derby Fuel Cell, LLC immediate notice if any of the foregoing is no longer true. I also consent to Derby Fuel Cell, LLC and its affiliated companies sharing the fact that this request has been made and/or granted, and agree that Derby Fuel Cell, LLC and its parent and affiliated companies shall have no liability to me in connection with this request.

Signature: _____
Organization: _____
Email: _____
Fax: _____

Name (please print): _____
Business Address: _____
Phone: _____
Date: _____