

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

**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:

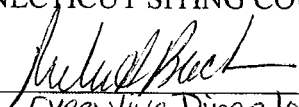
“CONFIDENTIAL-PROPRIETARY”

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: Executive Director
Dated: 7/18/2019