

## **Connecticut Siting Council Responses to Questions for the Environment Committee's Informational Meeting – Connecticut Siting Council's Process for Solar Farm and Certificate of Environmental Compatibility and Public Need.**

1. When considering an application to construct a solar photovoltaic facility of more than 2 megawatts on prime farmland or core forest land, what is your agency's understanding of the role of DEEP and DoAG?

Depending on the generating capacity of a project, the solar project developer must submit to the CSC either an Application for a Certificate of Environmental Compatibility and Public Need (Application) for projects with a generating capacity of more than 65 megawatts or a Petition for a Declaratory Ruling (Petition) for projects with a generating capacity of more than 1 megawatt, but less than 65 megawatts. An Application requires a public hearing. For a Petition, it is within the CSC's discretion to hold a public hearing. Each process is governed by the provisions of the Uniform Administrative Procedure Act (UAPA) and the Public Utility Environmental Standards Act (PUESA). This process, particularly with regard to a Petition, includes very specific deadlines.

Prior to CSC receiving an Application or Petition, under Public Act 17-218, it is the CSC's understanding that DEEP and DOAg would be consulted by project developers with regard to impacts to agriculture, including, but not limited to, prime farmland and impacts to forests, including, but not limited to, core forest.

On November 1, 2017, in response to the submission of Petition 1323 by Windham Solar (WS) on August 30, 2017 and the lack of response from DOAg or DEEP relative to a protocol to be followed by project developers to comply with Public Act 17-218, CSC issued a Memo to Solar Industry representatives that instructs developers to engage in consultation with DOAg or DEEP before submitting a filing to the CSC because the agency consultation will determine what type of filing – Application or Petition.

A copy of the CSC November 1, 2017 memo is attached.

2. If DEEP or DoAG determine that an applicant's proposal will have a material affect on the status of the land as prime farmland or core forest land, how does this agency finding impact the Siting Council's analysis?

The statute as currently written requires a determination letter **ONLY IF** there is "no material affect." It does not require a determination letter if there is a "material impact." For purposes of a judicial appeal of CSC's final decision on any matter, there must be a record of substantial evidence. If the CSC were to deny a project on the basis of material affects to prime farmland and core forest, CSC would need the agency finding for the record of the matter.

If DEEP or DOAg determine there will be a material affect before a filing is submitted, the project developer should submit an Application rather than a Petition as described in the CSC November 1, 2017 memo.

The Application or Petition record needs to reflect this finding by letter submitted to CSC from DEEP or DOAg. Otherwise, there is no finding of material affect or information as to what the material affect may be in the record of the Application or Petition.

If DEEP or DOAg don't determine there will be a material affect before a Petition is submitted, the CSC has to render a decision on what was filed within 180 days per the UAPA. As more fully described above, if the CSC denies a project on the basis of material affect to prime farmland or core forest, the CSC needs a finding from DEEP or DOAg in the record.

3. The Environment Committee is considering a change in the definition of potential land use impacts, from the current "materially" affect to the proposed "permanently" affect, that the Siting Council should consider when evaluating and approving the installation of solar facilities on prime farmland or core forest. What change do you expect that this will have on the Application process? On the state's efforts to preserve and protect farms and forests?

There would be no change to either the Application or the Petition process, but what does "materially affect" or "permanently affect" mean? Defer to DEEP and DOAg on appropriate language to preserve and protect farms and forests.

4. The Environment Committee recently heard testimony regarding an Application by Windham Solar (Petition No. 1323, filed 8/31/2017) to construct three 2-megawatt and two one-megawatt facilities on a 43 acre parcel, currently a farm located at 134 Bilton Road, Somers, Connecticut. According to testimony, the Siting Council determined on 1/22/18 that no Certificate of Environmental Compatibility was needed, even though the Application was filed after the effective date of the new law that clearly requires the Council to seek the opinion of DoAG as to whether the proposed project would have a material affect on prime farmland. Please explain the process by which this determination was made.

The Petition was filed on August 30, 2017. The site consists of 8.5 acres of a former fruit farm and 24.8 acres of forest. The property is not "currently a farm." The Petition record reflects that the site hasn't been used as a farm since 2002. Public Act 17-218 relates to **productive** farm lands. A Phase I Environmental Site Assessment (Phase I) regarding historical property use is in the record and determined that former use of the site as a fruit farm is a recognized environmental condition. Per the American Society for Testing and Materials, a recognized environmental condition is defined as – the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: 1) due to any release to the environment; 2) under conditions indicative of a release to the environment; 3) under conditions that pose a material threat of a future release to the environment. The Phase I was conducted to qualify for Landowner Liability Protections under the Brownfields Amendments to the Comprehensive Environmental Response, Compensation and Liability Act.

CSC conducted an evaluation of the Petition using the decision criteria for an Application relative to substantial adverse environmental effect that include, but are not limited to, agriculture and forests.

Attached please find a timeline for the process by which Petition No. 1323 was approved.

5. How many Applications has the Siting Council received since July 1, 2017, that propose a solar voltaic installation of 2 megawatts or more? How many of these Applications have triggered a review of the new law because they would have a potential material impact on farmland or forest?

One. Petition No. 1323.

6. Does the Siting Council currently have the authority to require applicants to post a decommissioning bond to cover the expenses of removing the solar panel installation and restoring the affected property after the useful life of a solar farm? If so, what have been the circumstances that the Siting Council has considered in exercising this authority?

Yes. CSC requires the submission of a decommissioning plan for any Application or Petition that may include a bond. Typically, developers plan to restore the site to its original condition at the end of a project's useful life subject to any provisions of a lease executed with the property owner.

7. How do DEEP and DoAG receive timely notice of Applications to the Siting Council that propose a solar farm installation?

The Applicant or Petitioner is required to provide a copy of the Application or Petition via certified mail to the state agencies listed in CGS §16-50/ at the same time as filing the Application or Petition with CSC.

When an Application or Petition is received, CSC generates and distributes a state agency comment solicitation memo pursuant to CGS §16-50j(g) with a 30-day deadline to comment that may be extended upon request for a Petition and a deadline to comment that is coterminous with the evidentiary record for an Application. A copy of the October 30, 2017 state agency comment solicitation memo for Petition No. 1323 is attached.

For both Applications and Petitions, CSC develops a publicly noticed field review of the project site.

8. For the Siting Council, since the 2017 law went into affect, have there been solar farm Applications that have been filed where the Siting Council has determined that they would not have a "material affect" on prime farmland or core forest land? If so, how has the Siting Council made this determination? How many 2-megawatt or greater solar installations do you expect to be filed per year? How many of these are proposed for prime farmland or core forest?

Yes. Petition No. 1323. Pursuant to the provisions of the UAPA and PUESA, CSC evaluated the project according to the review criteria for an Application and developed a record of substantial evidence that demonstrated the project would not have a substantial adverse environmental effect through the on-site field review and two sets of interrogatories. The project developer engaged a professional soil scientist to evaluate prime farmland and the project developer revised the project to avoid clearing in core forest completely. It should be noted that the lack of any clearing in core forest actually triggers the requirement for a letter from DEEP as the law is currently written. No letter was received.

For further information on the record of this matter, here is a link to the project webpage:

<http://www.ct.gov/csc/cwp/view.asp?a=2397&Q=596070&PM=1>

CSC expects to receive approximately 13 solar installations in the next quarter that are exempt from Public Act 17-218. CSC does not know how many are expected to be filed per year or how many are proposed for prime farmland or core forest. The number of projects expected to be filed generally depends on DEEP procurements.



## STATE OF CONNECTICUT

### CONNECTICUT SITING COUNCIL

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November 1, 2017

To: Energy Industry Representatives

From: Melanie A. Bachman, Executive Director *MAB*

Re: Solar Electric Generating Facilities with a generating capacity of 2 or more megawatts

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Please be advised that effective July 1, 2017, pursuant to Public Act 17-218, Connecticut General Statutes §16-50k(a) requires:

**“...for a solar photovoltaic facility with a capacity of 2 or more megawatts,** to be located on prime farmland or forestland, excluding any such facility that was selected by the Department of Energy and Environmental Protection in any solicitation issued prior to July 1, 2017, pursuant to section 16a-3f, 16a-3g or 16a-3j, the Department of Agriculture represents, in writing, to the [Connecticut Siting Council] that such project will not materially affect the status of such land as prime farmland or the Department of Energy and Environmental Protection represents, in writing, to the Council that such project will not materially affect the status of such land as core forest...”

**Prior to the submission of any petition for a declaratory ruling** for a proposed solar project to the Connecticut Siting Council (Council) that is not exempt as described above, petitioners shall consult with the Department of Agriculture and the Department of Energy and Environmental Protection. Thereafter, the petitioner shall submit to the Council with the petition for a declaratory ruling written correspondence from the Department of Agriculture that such project will not materially affect the status of such land as prime farmland and written correspondence from the Department of Energy and Environmental Protection that such project will not materially affect the status of such land as core forest.

Any petition for a declaratory ruling for a solar facility with a capacity of 2 or more megawatts that is submitted to the Council without the above-referenced written correspondence will be rejected as incomplete. In lieu of submitting a petition for a declaratory ruling, project developers may opt to submit an Application for a Certificate of Environmental Compatibility and Public Need in accordance with the provisions of Connecticut General Statutes §§16-50k and 16-50l, which does not require the submission of written correspondence from the Department of Agriculture or the Department of Energy and Environmental Protection.

Thank you for your anticipated cooperation.

### **Petition 1323 Timeline**

<b>8/31/15</b>	WS executed 1 <sup>st</sup> contract for renewable energy credits under LREC/ZREC program Other contracts executed with Eversource on 10/23/15; 12/2/15; 7/28/16
<b>4/11/16</b>	WS' affiliate, PLH, LLC purchased property and WS commenced lease with PLH
<b>8/24/17</b>	WS certified mail to abutters, state agencies, legislators, Somers, Enfield (within 2500') WS published notice of intent to file Petition in Hartford Courant (not required by law)
<b>8/30/17</b>	CSC date stamped Petition received
<b>8/31/17</b>	e-mail sent to Klee and Reviczky notifying receipt of first solar Petition > 2MW after 7/1
<b>9/1/17</b>	DEEP response looking for guidance document as starting point CSC response with solar filing guide attachment DOAg AAG response not directly involved & no other response from DOAg provided
<b>9/6/17</b>	CSC issues incomplete Petition letter to WS on basis lack letters from DEEP or DOAg provided deadline to comply of 10/4/17
<b>9/8/17</b>	e-mail sent to Klee and Reviczky regarding incomplete Petition and deadline to comply
<b>9/29/17</b>	WS submits formal request to DEEP for a letter regarding core forest impacts
<b>10/3/17</b>	WS requests 30-day extension to comply with incomplete Petition letter
<b>10/4/17</b>	CSC grants 30-day extension to comply to 11/3/17
<b>10/24/17</b>	WS participates in conference call with DEEP
<b>10/19/17</b>	CSC provides notice of meeting agenda for 10/26/17 with Petition 1323 on agenda for "set date for decision" due to UAPA 60-day Petition action deadline (10/29/17)
<b>10/29/17</b>	60-day Petition action deadline, CSC sets date by which to decide as 180 <sup>th</sup> day (2/26/18)
<b>10/30/17</b>	CSC sends out state agency comment memo and town notification letters deadline to comment of 11/29/17 CSC provides notice of 11/7/17 field review
<b>11/1/17</b>	CSC issues memo regarding filings for solar projects with generating capacity > 2 MW
<b>11/7/17</b>	CSC holds public field/site review in Somers. Petitioner representatives and DEEP representative attended field review

<b>11/14/17</b>	CSC issues first set of interrogatories to WS regarding consultations with DEEP and DOAg
<b>11/22/17</b>	DEEP presented with revised project, but unable to provide response for at least 60 days 0 acres of core forest <b>requires</b> a letter from DEEP per Public Act 17-218 DEEP not likely consider development within small core forest a material impact
<b>11/27/17</b>	WS provides responses to CSC first set of interrogatories suggests filing (3) separate 1.99-MW projects (disaggregation argument) Dept. of Public Health submits comments project have no impact on drinking water
<b>11/30/17</b>	CSC issues second set of interrogatories to WS regarding the project and updates
<b>12/20/17</b>	WS provides responses to CSC second set of interrogatories <b>2 legal arguments</b> – status of prime farmland (hired soil scientist) and property not classified as forest land by certified forester (revised project to 0 core forest clearing)
<b>1/22/18</b>	CSC rendered decision to approve project with conditions (effective upon mailing) complies with air and water quality standards, state policies, selected in a utility procurement under LREC/ZREC in 2015, does not have significant adverse environmental effect and mitigation efforts with regard to farmland and forest land
<b>2/26/18</b>	180-day UAPA deadline for final decision on Petition
<b>3/8/18</b>	Deadline to file an appeal of CSC decision to Superior Court (only developer has standing) Neither DEEP nor DOAg could file an appeal as they did not request party status (not exhaust administrative remedies)





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October 30, 2017

TO: Commissioner Robert Klee  
Dept. of Energy & Environmental Protection

Commissioner Steven Reviczky  
Department of Agriculture

Commissioner Dr. Raul Pino  
Department of Public Health

Karl Wagener, Executive Director  
Council on Environmental Quality

Chairman Katie Dykes  
Public Utilities Regulatory Authority

Benjamin Barnes, Secretary  
Office of Policy and Management

Commissioner Catherine Smith  
Department of Economic and  
Community Development

Thomas A. Harley, P.E., Chief Engineer  
Bureau of Engineering and Construction  
Department of Transportation

Robert Bruno, Director of Planning,  
Engineering & Environmental  
Connecticut Airport Authority

Kevin Dillon, Executive Director  
Connecticut Airport Authority

Todd Levine  
Historian/Environmental Reviewer  
State Historic Preservation Office

Commissioner Dora B. Schiro  
Department of Emergency Services  
and Public Protection

Commissioner Michelle H. Seagull  
Department of Consumer Protection

Commissioner Scott Jackson  
Department of Labor

Commissioner Melody A. Currey  
Department of Construction Services

FROM: Melanie Bachman, Executive Director *MB*

RE: **PETITION NO. 1323** – Windham Solar LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of three 2.0 Megawatt AC and two 1.0 Megawatt AC solar photovoltaic electric generating facilities on an approximate 43 acre parcel located at 134 Bilton Road, Somers, Connecticut.

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Pursuant to Regulation of Connecticut State Agencies §16-50j-40, the Connecticut Siting Council hereby solicits your written comments on the above-referenced petition. Your response on or before November 29, 2017 would be appreciated.

You may access the petition and other documents for this proceeding on our website at [www.ct.gov/csc](http://www.ct.gov/csc) under the link "Pending Matters."

MB/CMW/bm

