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LEED Green Associate

September 26, 2017

***VIA FEDERAL EXPRESS AND
ELECTRONIC MAIL***

Melanie.bachman@ct.gov
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Ms. Melanie A. Bachman, Esq., Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06501

Re: Petition 1313 – 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

Dear Attorney Bachman:

This office represents the Town of Simsbury (“Town”). On behalf of the Town, I have enclosed the Town’s Reply to Motion to Deny Declaratory Ruling in connection with the above-captioned matter. In accordance with § 16-50j-12 of the Regulations of Connecticut State Agencies and the Connecticut Siting Council’s July 21, 2017 correspondence, I have enclosed an original and fifteen (15) copies of each.

If you have any questions concerning the objection, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Jesse A. Langer', is written over a light blue horizontal line.

Jesse A. Langer

Enclosures

cc: *Service List (via regular mail and electronic mail)*

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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

.....)	
DWW SOLAR II, LLC PETITION FOR)	PETITION NO. 1313
DECLARATORY RULING THAT NO)	
CERTIFICATE OF ENVIRONMENTAL)	
COMPATIBILITY AND PUBLIC NEED)	
IS REQUIRED FOR A 26.4 MEGAWATT)	
AC SOLAR PHOTOVOLTAIC ELECTRIC)	September 26, 2017
GENERATING FACILITY IN SIMSBURY)	
CONNECTICUT)	
.....)	

REPLY TO MOTION TO DENY DECLARATORY RULING

Pursuant to § 16-50j-22a(b) of the Regulations of Connecticut State Agencies, the Town of Simsbury (“Town”), through counsel, respectfully submits this Reply to Motion to Deny Declaratory Ruling concerning Petition No. 1313 (“Petition”), initiated by DWW Solar II, LLC (“DWW”), pending before the Connecticut Siting Council (“Council”). The Town hereby agrees with and adopts the Reply to Motion to Deny Declaratory Ruling, submitted by the Connecticut Department of Agriculture (“DOA”), dated September 21, 2017. The Town supplements its adoption of DOA’s Reply with the following:

I. THE PUBLIC POLICY UNDERLYING PUBLIC ACT 17-218

It is important to emphasize the policy underlying Public Act 17-218 (“Act”). As stated in the Town’s Motion, supporting sustainable energy and preserving open space, forests and farms are worthy goals that can and should be pursued in a complimentary manner, but not at the expense of one policy over the other. Care must be taken that proceeding with a renewable future will not result in unintended and harmful impacts to our landscapes, habitats, wildlife and farmlands.

As stated by the Honorable John Hampton, State Representative for the 16th Assembly District, including the Town, the Act “represents a clearly stated public policy in favor of working towards sustainable solar energy while still being able to preserve open space and farmland.” (*Comments from Rep. Hampton, dated September 13, 2017, p. 2.*) This sentiment is echoed in the Act’s legislative history. The Honorable Ted Kennedy, Jr., State Senator for the 12th Assembly District, stated that the Act:

is aimed at stimulating the solar energy facilities in places other than our state’s prime farmland and forests, that is to say brownfields, landfills, state land, highway corridors, industrial locations, roof tops and disturbed lands. It doesn’t prohibit the installation of utility [scale] solar on prime farmland but it establishes a small but important administrative step to the [siting] of utility [scale] solar projects on prime farmland

CT S. Tran. June 6, 2017, at p. 20.

By requiring DWW to file an Application for a Certificate of Environmental Compatibility and Public Need (“Certificate”), the Council will have adhered to the important public policy underlying the Act while not depriving DWW of any substantive rights. The Council will not have rendered a decision that ultimately precludes DWW from obtaining approval to develop the proposed project. Rather, DWW would just have to follow the Certificate process, which would result in a more thorough review of the project consistent with the Act.

II. THE MORE THOROUGH REVIEW OF THE CERTIFICATE PROCESS IS WARRANTED IN THIS CASE

As a threshold matter, the DOA has not represented, in writing, to the Council that the proposed project “will not materially affect the status” of the prime farmland on which the project would be located. General Statutes § 16-50k(a)(B)(iii). Rather, the DOA has indicated that it has serious concerns about the adverse impact of the proposed project on that prime

farmland. (*Kolesinskas PFT, pp. 10-15.*) Additionally, the Town and its consultant have raised significant concerns with the proposed project as it relates to that prime farmland. (*Heavner PFT, Attach. A, pp. 3-4; Carr PFT, Attach. B and C.*)

It is also worthwhile to note that the proposed project would be subject to a thorough review similar to that of a Certificate under the Town's Zoning Regulations ("Regulations"). The proposed project would not be "as of right," and it would not be permitted by Special Exception as a general matter in either the I-1 or R-40 Zone – the Zones in which the Project would be located. Simsbury Zoning Regs., Art. 7 §§ B, C and I. Rather, DWW would have to (1) establish that the proposed project constitutes a "public utility" under the Regulations and seek approval as a Special Exception or (2) obtain approval from the Simsbury Zoning Commission ("Commission") to amend the Regulations to include solar electric generating facilities as a use permitted most likely by Special Exception in any zone and then seek approval as a Special Exception. Simsbury Zoning Regs., Art. 7 § A and Art. 13. Under either scenario, at the very least, DWW would have to demonstrate that the proposed project meets the requirements for a Special Exception.

The standards for a Special Exception which the Commission must consider include the following:

- a. The need for the proposed use in the proposed location.
- b. The existing and future character of the neighborhood in which the use is to be located.
- c. The location of main and accessory buildings in relation to one another.
- d. The height and bulk of buildings in relation to other structures in the vicinity.
- e. Traffic circulation within the site, amount, location, and access to parking, traffic load or possible circulation problems on existing streets.

- f. Availability of water to the site and adequate disposal of sewage and storm water.
- g. Location and type of display signs and lighting, loading toner and landscaping.
- h. Safeguards to protect adjacent property and the neighborhood its general from detriment.

Simsbury Zoning Regs., Art. 7, § C, ¶ 10.

Upon review of the Petition, the Commission stated that it could not determine, without a more thorough review, including additional information and public testimony, whether the proposed project would constitute a “public utility” or otherwise meet the Special Exception requirements.

(Heavner PPT; Attach. A, Appendix A.)

III. CONCLUSION

WHEREFORE, the Town respectfully moves the Council to deny the Petition.

Respectfully submitted by,

THE TOWN OF SIMSBURY

By: 

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CERTIFICATION

I hereby certify that on this day that 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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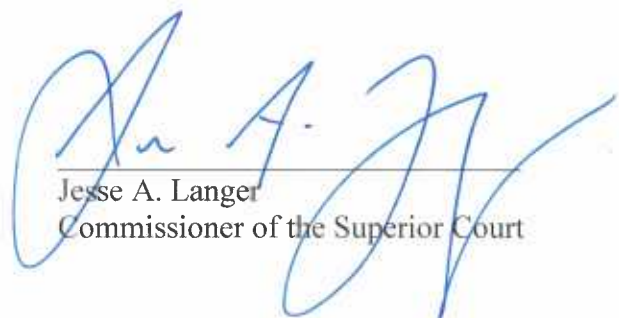
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Jesse A. Langer
Commissioner of the Superior Court