

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

Petition of The United Illuminating Company for a ) Petition 1104  
Declaratory Ruling that No Certificate of Environmental )  
Compatibility and Public Need is Required for the Proposed )  
Construction, Maintenance and Operation of a 2.2 MW AC )  
Solar Photovoltaic Facility and a 2.8 MW AC Fuel Cell )  
Facility on Approximately 22 Acres of the former Seaside )  
Landfill Located at 350 Waldemere Avenue, Bridgeport, ) October 24, 2014  
Connecticut

**BRIEF OF THE UNITED ILLUMINATING COMPANY**

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Avenue, Bridgeport, Connecticut	)	October 24, 2014

**BRIEF OF THE UNITED ILLUMINATING COMPANY**

The United Illuminating Company (“UI” or “Company”) submits this Brief to the Connecticut Siting Council (“Council”) in support of the Council’s issuance of a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 2.2 MW AC solar photovoltaic facility on Seaside Landfill and a 2.8 MW AC fuel cell facility (the “Project”) located at 350 Waldemere Avenue, in Bridgeport, Connecticut (the “Site”), because the Project will not have an adverse environmental impact.

**I. PROJECT BACKGROUND**

Section 127 of Public Act 11-80, *An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut’s Energy Future* (the “Act”)<sup>1</sup>, permits electric distribution companies (“EDC”) to build, own or operate generation facilities using Class I renewable energy sources. The Act permits an EDC to manage a portfolio of up to 10 megawatts (“MW”). The capacity at each site must be greater than 1 MW and may not exceed 5MW.

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<sup>1</sup> Section 127 of the Act was subsequently codified as Conn. Gen. Stat. Section 16-244v.

Prior to submitting the Petition, the Company worked closely with local authorities to ensure that the proposed Project would not have an adverse environmental effect. UI worked directly with the City of Bridgeport (the “City”) in its selection of the proposed Site. In the early stages of the Project, Mayor Bill Finch remarked, in his testimony before the Public Utilities Regulatory Authority, that the Project was going to bring a “change in [Bridgeport’s] image from a declining industrial city to a smart, green community with vision and innovation.” Petition at 5. Mayor Finch’s support for the Project has not waivered and as he stated in his comments to the Siting Council on September 11, 2014, the Project has “generated overwhelming support at the local level” as it will convert an “old, polluted and dormant piece of property” into a “green jobs creator that will bring in tax revenue to the City and power thousands of homes with clean energy.” Tr. at 7-11.

## **II. PROJECT DESCRIPTION**

The Project consists of photovoltaic and fuel cell technologies, both of which have been extensively tested and utilized throughout the world. The solar and fuel cell facilities will produce approximately 5 MW of renewable energy (2.2 and 2.8 MW respectively). The Company will design and construct the Project in accordance with all relevant local, state, and federal building and electrical codes.

### **A. Solar Facilities**

Due to the Project’s location, the Company plans to construct the solar facilities using a fixed tilt design with a series of approximately 8,500 multicrystalline silicon modules. Tr. at 286. The anti-reflective panels are aluminum edged and affixed to a metal frame system. The frame connects to concrete ballasts, which rest atop a gravel bed placed on geotextile fabric. Tr.

at 295. The use of gravel beneath the ballasts allows the Company to efficiently erect the system on the varied-slope landscape of the landfill. *See* tr. at 293-95. The facilities are designed to withstand winds of up to 110 miles per hour. Tr. at 89.

The Company plans to cut the existing vegetation down to a height that will allow the placement of the gravel beds and ballasts. UI will not penetrate the landfill cap. Any soils or vegetation displaced by mowing or construction-related activities will be replaced and seeded. Tr. at 290. UI will perform all required regularly scheduled maintenance on the Site while the Project is operational, as well as any additional maintenance as it becomes necessary. *See* tr. at 284-285.

#### **B. Fuel Cell Facilities**

The construction, operation, and maintenance of the fuel cell includes raising the elevation of the proposed Site, installing a concrete pad for task lighting, and constructing a chain-link fence topped with barbed-wire. Petition at 10. The Company will install electrical switchgear and other necessary equipment adjacent to the fuel cell enabling Project interconnection to the local distribution system. Due to the industrialized and naturally concealed nature of the fuel cell's proposed location, there is no plan to install additional landscaping outside of the fence perimeter.

#### **C. Project Features**

The efficiency of the proposed photovoltaic modules is approximately 16%. While the efficiency does not decrease overtime, factors such as age and weather do cause a degradation of power output. Response to Interrogatory CSC-12. However, the degradation is minimal – roughly half a percent per year. Tr. at 77. The panels have a service life of 25 years. The electric equipment, transformers, and inverters have a 15-20 year expectancy depending on the

equipment, but that would be replaced as O&M. The solar and fuel cell facilities each carry warranties that eclipse the initial lease term – 20 and 25 years respectively – but can be upgraded if necessary. Tr. at 49-50, 284-85. UI will monitor the performance of both the solar and fuel cell facilities in determining whether to exercise the lease extensions. Tr. at 285, 308-09.

#### **D. Safety**

The Project will meet or exceed all health and safety requirements applicable to electric power generation. Petition at 17. In order to prevent individuals from gaining access to either of the projects, the Company will install a chain-link fence around the solar and fuel cell facilities. While both fences will be eight feet in height, the top of the fence surrounding the fuel cell facility will include barbed-wire. Petition at 9-10; tr. at 24, 36, 371. As the safety and security risks associated with the fuel cell facility are greater than those of the solar facility, the Company will surround the fuel cell with one-inch mesh fencing (to make climbing more difficult) while installing two-inch mesh around the solar facilities. Tr. at 67. Installation of one-inch mesh fencing around the solar facility is not necessary given the risks posed to individuals that improperly gain access to the solar facilities. See tr. at 373. The fuel cell facility will have spotlighting in the working area but there will be no general lighting. Tr. at 28. There will be no lighting on the solar project so the nighttime visibility of the project will be minimal. Tr. at 84.

While no specialized procedures are required to respond to a fire at either the fuel cell or solar field (Response to Interrogatory CSC-29), the Company has met on site with the City of Bridgeport Fire and Rescue Officials to discuss the Project. Petition at 17; tr. at 53. In addition, City officials already have some familiarity with the operations of fuel cells because of the currently operating fuel cell in the City. Tr. at 10. The Company will meet again with these city officials prior to commencement of operation. Petition at 17-18; tr. at 53.

### **III. PROPERTY DESCRIPTION**

#### **A. Site Selection**

The Company worked diligently to identify and review suitable project locations. During the site selection process, the Company identified several potential locations and used the following criteria to select the site most conducive to the proposed Project:

- Site suitability (area of land available to produce required solar output, grade of land, and surrounding topography);
- Site availability and mutual benefits (ability to purchase or lease land, utilize otherwise uninhabitable land); and
- Proximity to critical infrastructure (ease of connecting to existing distribution system).

The Company conducted the site selection process in coordination with the City. Petition at 5. Upon locating the land most suitable to the Project, the Company entered into a 20-year lease with the City. The lease terms include a Company option to extend the initial term for two additional five-year periods. *See* Tr. at 49.

#### **B. Site Description**

The leased parcel is located at 350 Waldemere Avenue in Bridgeport, on a peninsula adjacent to Barnum Boulevard. Bounded to the north by Cedar Creek, to the west by Black Rock Harbor, and to south by the Long Island Sound, the Site is accessible from the north via Cedar Creek Drive. From there, an access road extends up the northwest side of the property, permitting travel between the proposed solar project at the top of the landfill and the proposed fuel cell location.

Sikorsky Aircraft Corporation and scattered Bridgeport Parks Department facilities occupy the land immediately surrounding the Site. Additionally, the City owns several parcels in the vicinity of the Project. Petition at 6-7.

### **C. Solar Area**

The Company proposes the construction of the solar facilities on approximately 11 acres of land atop the former landfill. The City operated Seaside Landfill from 1938 to 1991 for the disposal of municipal solid wastes (“MSW”). Petition at 7. From 1974-1987, an area to the northwest of the landfill handled metal hydroxide sludge, a Resources Conservation and Recovery Act Classified Hazardous Waste Material. *Id.* The City is in the process of closing this hazardous waste area, and it is separate and apart from the 22 acres of land that the Company plans to use for the proposed Project.

From 1996 until October 2000, the Connecticut Department of Energy and Environmental Protection (“DEEP”) permitted the City to dispose of mechanically processed demolition debris (“MPDD”). The previously submitted Closure Document (attached as Exhibit III to the Petition) indicates that there is 24 inches of cover material, along with a vegetative layer, on top of the waste materials. DEEP’s Division of Solid Waste Management confirmed that the City closed the main portion of the landfill in 2000. *Id.*

### **D. Fuel Cell Area**

The Company will house the fuel cell facilities and related interconnection equipment on a plot of land approximately 290 feet by 80 feet. This area is adjacent to land owned and operated by the City for Parks and Recreation Department equipment.

## **IV. THE PROJECT SATISFIES THE CRITERIA FOR APPROVAL BY PETITION FOR DECLARATORY RULING**

The Project will have no adverse environmental impact, advances state policies concerning renewable energy, and is consistent with state policies concerning the natural environment, ecological balance, public health and safety, and scenic, historic, and recreational

values. As clearly demonstrated by the record, the Project satisfies the requirements of Conn. Gen. Stat. § 16-50k(a) because it complies with DEEP air and water quality standards, and is a grid-side distributed resources facility under 65 MW that will not have an adverse environmental effect.

Conn. Gen. Stat. § 16-50k(a) provides:

[T]he council shall, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling... the construction or location of any fuel cell, unless the council finds a substantial adverse environmental effect, or of any customer-side distributed resources project or facility or grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection.

The legislature has defined “grid-side distributed resources” as “the generation of electricity from a unit with a rating of not more than sixty-five megawatts that is connected to the transmission or distribution system, which units may include, but are not limited to, units used primarily to generate electricity to meet peak demand.” Conn. Gen. Stat. § 16-1(a)(37).

The Project is a grid-side distributed resources facility, less than 65 MW, and connected to the transmission system, meeting the criteria set forth in Conn. Gen. Stat. § 16-50k. Further, as demonstrated below, the Project will not have an adverse environmental effect and will meet the DEEP's air quality standards. Accordingly, the Project meets the criteria for issuance of a declaratory ruling.

## **V. THE PROJECT COMPLIES WITH DEEP AIR AND WATER QUALITY STANDARDS**

The record is clear that the Project complies with all applicable air quality standards. The solar portion of the Project will not produce any emissions during operation. Although the fuel cell will produce some emissions, the levels of any such emissions produced will amount to less

than that of traditional fossil fuel based electric generation, and fuel cells are classified as a Class I renewable resource in Connecticut under Conn. Gen. Stat. § 16-1(a)(26). Petition at 18. In fact, over the life of the Project, both facilities will contribute to a significant reduction in various regulated pollutants as compared to combustion-based generation. *Id.* This was unrefuted during the proceeding. The extremely low levels of regulated air pollutants or greenhouse gasses produced by the construction or operation of the facility do not necessitate an air permit. *Id.*

The record is also clear that the Project will comply with DEEP water quality standards. During construction, UI will use only minor quantities of water for dust suppression. During operation, the solar facilities will consume no water. The fuel cell facilities will consume approximately 26,000 gallons per day of water sourced from Bridgeport's city water system. Much of the water will release from the system as steam, while UI will send approximately 13,000 gallons per day from the facilities directly to the City via a nearby wastewater line. Petition at 16.

## **VI. THE PROJECT WILL NOT HAVE A SUBSTANTIAL ADVERSE ENVIRONMENTAL EFFECT**

The record is additionally clear that the Project will have no adverse environmental impact. The Project will have no environmental impact with respect to the natural environment and ecological balance, in large part due to the Site's historic heavy disturbance as a long-standing (albeit now closed) depository for refuse, including mechanically processed, municipal solid, and other toxic wastes.

Upon decommissioning, UI will completely remove all Project elements and facilities, and return the landscape of the property to its previous state, to the greatest extent possible.

### **A. Status as Former Landfill**

A fatal flaw analysis commissioned by UI concluded the Site is suitable for fuel cell and solar development. UI Exhibit II (Fatal Flaw Analysis) at 13. As the Site is already heavily disturbed, the Project will present no adverse environmental impact to the natural environment and ecological balance. Additionally, UI designed the systems in such a manner so as to ensure the integrity of the landfill cap, will similarly maintain the facilities, and will undertake any necessary actions to mitigate potential unforeseen disturbances to the landfill. Response to Interrogatory CSC-18; tr. at 294-95, 334.

Although various individuals throughout the proceeding raised the issue of landfill settlement, UI conducted an analysis of past and potential future settlement and is confident no disruptive settlement will occur. UI's experts testified that the landfill's total expected uniform settlement had largely occurred and that the installation of solar facilities on the landfill would result in *de minimis* additional settlement. Tr. at 48-49.

Further, although differential settlement is possible, through regular maintenance and mitigation, it can be readily addressed and controlled. Tr. at 75. UI's construction of both the fuel cell and solar facilities will require minimal grading, avoiding any disturbance of the landfill cap. Response to Interrogatory CSC-10; tr. at 333.

### **B. Ecological Conditions**

UI coordinated with DEEP's Wildlife Division staff to identify any potential state endangered and threatened species in the vicinity of the Site. Response to Interrogatory CSC-19 (Habitat Assessment) at 2. In doing so, four species or their preferred habitats were identified as being potentially impacted by the Project. *Id.* Those species include the horned lark, sickle-leaved golden aster, beach needlegrass, and sand dropseed. *Id.* at 3-4. After qualified botanists

and avian specialists performed several field habitat assessments, “none of the target species, nor any suitable habitat for these species, were observed” during these assessments within the Project area. *Id.* at 6. An American Kestrel was observed at the Site during a field visit, but it was located outside of the Project area. *Id.* at 8. The American Kestrel is a state threatened species. Although there is no evidence of any nesting activity, UI will remain vigilant in its monitoring of the Site for potential changes in ecological conditions and will take any mitigation measures necessary for the preservation of threatened and endangered species and their habitats.

DEEP concurred with UI’s findings with regard to the Project’s lack of ecological impact, and remarked that “DEEP supports the addition of the five megawatts of renewable power proposed by this project as well as the beneficial reuse of a closed landfill... [and that] [t]he applicant has submitted documentation that no suitable habitat for any of [the identified species] occurs at the landfill. DEEP concurs with these assessments.” DEEP Comments, dated September 4, 2014 at 2. Additionally, DEEP concurs with the monitoring and mitigation measure proposed with regard to the American Kestrel. *Id.*

### **C. Wetlands**

The Project’s impact on wetlands will be minimal, particularly since the only wetland in the Project area is of low quality and man-made. UI identified three wetlands in the leased area, but only one will be affected by the Project (“Wetland B”). Response to Interrogatory CSC-19 (Wetland Delineation Report) at 10. Wetland B is the inadvertent result of a depression that formed over time on the landfill cap. It occupies a small area on the top of the landfill, is manmade, not part of a larger wetland system, and low functioning. *Id.*; tr. at 37. UI plans to fill in the area and take other mitigation measures as necessary to prevent the reforming of this wetland. Tr. at 37.

Of the other two wetlands, only one (“Wetland Z”) exists in close enough proximity to the planned construction operations to warrant protection measures. Response to Interrogatory CSC-19 (Wetland Delineation Report) at 11. To ensure the protection and integrity of Wetland Z, UI will monitor its condition throughout the construction of the Project and deploy silt fencing along with any additional mitigation measures deemed necessary. *Id.*

#### **D. Stormwater Management**

The Project will not alter the characteristics of the ground under the landfill cap and therefore will not disrupt drainage from the Site. Although the panels themselves are impervious, they are elevated off of the ground surface and UI will maintain the vegetation currently in place throughout more than 96% of the landfill.<sup>2</sup> This will allow the rainwater to fall off the panels, onto the vegetative cover, and drain in nearly the same fashion as it would without the solar system in place, as the water is able to travel freely beneath each successive line of panels until it leaves the area. Interrogatories CSC-22-23; tr. at 295-97, 303-09. As UI expert Joe Perugini stated during the hearing, “[the impervious areas are] separate individual areas, so when... calculated, it’s not changing the pathway of the runoff, the ability of that runoff to infiltrate into the ground, we’re not changing the ground cover, and so the increase, the slight increase that we see we consider negligible over the entire site.” Tr. at 305. The record demonstrates that the Project will not have an adverse impact on stormwater management at the Site.

#### **E. Flooding**

The proceedings raised some confusion as to the potential floodplains located within the vicinity of the Site. The Federal Emergency Management Agency (“FEMA”) lists only a 100-

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<sup>2</sup> The only land mass that is being directly altered is the area underneath the “ballast blocks themselves...” and “from the storm water calculations that were put together and submitted as an exhibit, [the introduction of ballast blocks] changed the characteristics [of the landfill area] by about 3.44 percent.” Tr. at 296.

year floodplain within the Site boundaries (specifically the fuel cell area), and UI plans to build the fuel cell facilities to the FEMA required height plus an additional foot. Response to Interrogatory CSC-7; tr. at 86-87.

**F. Noise**

The Project will produce very little noise during operation. The solar facilities will produce no sound, while the fuel cell facility will produce 72 decibels at a distance of ten feet – this is approximately equivalent to the noise generated by a vacuum. Tr. at 28-29. The fuel cell will not be audible from the nearest recreational center, Seaside Park. *Id.*

**G. Scenic, Historic, and Recreational Values**

The Project will result in no adverse impact relating to historic, scenic, and recreational values.

*1. Scenic Values*

Although visible from the Black Rock neighborhood of Bridgeport, given the height of the panels and the distance from the visual receptors, UI is confident there will be no adverse visual effect. In addition, UI’s visual simulations submitted with the Visibility Analysis (“Report”) show that the impact is minimal. *See* Response to Interrogatory CSC-26 (Visibility Analysis) at Simulation 5-9. It is also clear that “there’s very little visibility of the facility installation from [the beach and park areas].” Tr. at 315. But as referenced below, UI is committed to screening the solar facilities from these vantage points where necessary. Tr. at 50, 374.

*2. Historic and Recreational Values*

Much of Intervenor Torres’ (“Torres”) pre-filed submissions concerned the Site’s supposed prior inclusion in Bridgeport’s Seaside Park. Whether or not the site was formerly part

of a larger public park is irrelevant to the Council's decision. The fact remains that an abundance of evidence offered throughout the proceeding shows that the proposed Site operated for nearly 60 years as a landfill – not as a recreational center. Any vestige of parkland or open space that it once possessed was lost long ago. Today, the site has little potential for meaningful use. Tr. at 11; *see also* tr. at 274.

In 1982, the State Historic Preservation Officer (“SHPO”) decided the landfill area should not be included on a nomination application for Seaside Park’s inclusion on the National Register of Historic Places (“Register”) and the Council should give no weight to suggestions that the Petition should be denied because of a supposed historic use. Tr. at 240. Although assertions have been made that the boundaries of the landfill with respect to the Register are in question (*see* Torres Exhibit II at 2), the former Bridgeport Historian admitted that [the Site] “would no longer qualify [for inclusion on the register]...” and that “the entire raised landfill would probably be omitted.” Tr. at 255-56. Because the Site’s historical use has been so thoroughly obliterated, there remains no historic value to preserve, and thus the Project cannot adversely affect the Site’s historic value.

In a review of the Project, the SHPO concluded that “the proposed project will have no adverse effect” so long as the “solar field is adequately screened with plants consistent with Olmsted’s original design for the park.” SHPO Letter, dated 8/07/14. UI is committed to working with Bridgeport to develop appropriate screening so as to ensure the Project has no adverse historical effect as advised by the SHPO. Tr. at 50, 374.

### 3. *Connecticut General Statutes § 7-131n Does Not Apply to the Proposed Site*

Torres insinuates that the City failed to comply with the requirements of Conn. Gen. State § 7-131n. *See* Torres Letter to Melanie Bachman dated August 21, 2014. Torres' argument is based on a flawed reading of that statute.

Conn. Gen. Stat. § 7-131n states that “if any municipality takes any land, for highway or other purposes, or which had been dedicated for such purposes, such municipality shall provide comparable replacement land.” § 7-131n. The statute continues to provide for certain notice and administrative directives associated with such a taking.

Torres posits that because the landfill area at one time had been dedicated for recreational or open space purposes, it falls under the protection of § 7-131n. This reasoning incorrectly assumes that the phrase “had been dedicated” applies to any dedication throughout history and completely ignores the land's current state as a former landfill.

Although the examination of this statute by Connecticut's judiciary is limited, in *Polotaye v. Zoning Bd. of City of Stamford*, FSTCV084015041S, 2011 WL 4509248 (Conn. Super. Ct. Sept. 6, 2011), the court held that when determining the applicability of § 7-131n to a certain piece of land, the current use or status of that land is a necessary threshold question. *Id.* at 28. As the landfill is not currently reserved for recreational or open space – but rather inaccessible to the public as a closed landfill adjacent to a toxic waste area – Bridgeport's grant of a leasehold to the Company for the purpose of installing electric facilities does not implicate § 7-131n.

Certainly, this is a reasonable interpretation of § 7-131n, as the statute concerns the replacement of recreation land if its classification and/or intended use changes. In the present case, the landfill's classification and use as open or recreational space has long since passed.

UI's understanding that the landfill area is neither designed nor designated for public use, was unrefuted in the proceeding. *See* Response to Interrogatory CSC-5.

In addition, it should be noted that the City's Department of Parks and Recreation unanimously approved the use of the site for the Project. The City Council of Bridgeport subsequently approved the lease of this site to UI for the Project by a vote of fifteen to five, with Torres having voted in the minority.

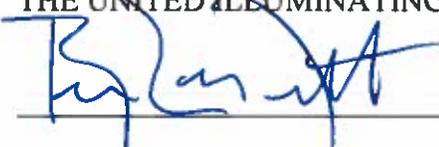
## VII. CONCLUSION

The record before the Council amply supports the grant of a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of a 2.2 MW AC solar photovoltaic facility on Seaside Landfill and a 2.8 MW AC fuel cell facility located at 350 Waldemere Avenue, in Bridgeport, Connecticut. As the record demonstrates, the construction, maintenance and operation of the Project will not have any significant adverse environmental effects on the surrounding area. Accordingly, UI respectfully request that the Council determine that the Project meets the criteria for approval by petition for declaratory ruling.

Respectfully submitted,

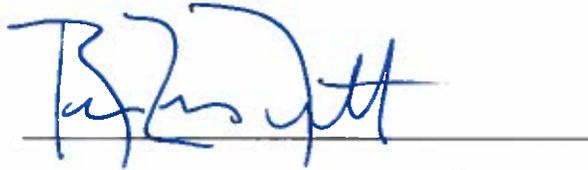
THE UNITED ILLUMINATING COMPANY

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## CERTIFICATION

This is to certify that on this 24th day of October, 2014, an original and fifteen (15) copies of the foregoing were delivered by hand to The Connecticut Siting Council, 10 Franklin Square, New Britain, Connecticut 06051, one copy was served on all other known parties and intervenors electronically and by depositing the same in the United States mail, first class postage prepaid on this 24th day of October, 2014 and an electronic copy was provided to the Connecticut Siting Council.



Bruce L. McDermott