



COUNCIL ON ENVIRONMENTAL QUALITY

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Executive Director

July 8, 2008

S. Derek Phelps
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

ORIGINAL

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CONNECTICUT
SITING COUNCIL

RE: Petition No. 784 – Plainfield Renewable Energy, LLC

Dear Mr. Phelps:

I am writing on behalf of the Council on Environmental Quality for three reasons related to the Plainfield Renewable Energy petition (Docket Number 784). The first is to communicate this Council's response to a citizen complaint regarding recent correspondence between the citizen and the petitioner. Second, the CEQ requests clarification of Siting Council policy regarding municipal consultation and public input on petitions such as this one. Third, the CEQ asks that, in light of the answers to the above questions, the Siting Council determine whether the residents and officials of Canterbury had adequate notice of the pumping / intake facility and whether all relevant information was considered. These are explained below.

1. As you know, Mr. Robert Noiseux of Canterbury asked the Siting Council several questions about the adequacy of the public notice for the proposed intake / pumping facility associated with the Plainfield Renewable Energy project. It is our understanding that you asked the petitioner to respond, and Mr. Bruce McDermott provided responses in letters dated March 25, 2008 and April 24, 2008. As part of a citizen complaint, Mr. Noiseux forwarded those letters to our Council.

We reviewed the letters from Mr. McDermott and were dismayed by their inaccurate content and condescending tone. Because the request came from you on behalf of the decision-making agency, the reply should have been serious, respectful and helpful to the citizen's understanding of the proceeding. Instead, the responses, especially the one of March 25, consist mainly of legal argument and show a lack of respect for the concerns of an interested citizen and for the importance of the Siting Council's efforts to encourage public participation.

I am enclosing a copy of the March 25 letter with notes in the margin (A,B,C,D) that correspond to the enclosed CEQ staff memo dated May 16, 2008. We would be interested to know if your analysis differs from our staff's. Unless you disagree substantially with this analysis, we would recommend that your Council discard the March 25, 2008 and April 24, 2008 letters in their entirety, and that the Siting Council reply directly to the citizen's questions. We do not believe his questions have been answered to date.

This is an unusual recommendation, especially as the CEQ tries never to involve itself in the administration of your Council or any other agency. However, I know that the Siting Council shares our Council's strong interest in seeing that all activities are conducted in an open and transparent manner and that citizens' concerns are taken seriously. In view of the fact that the aforementioned letters are now part of the public record, our Council makes this recommendation in order to not leave standing the incomplete and erroneous responses of the petitioner.

2) The CEQ will be interested in the answers to Mr. Noiseux's questions about notice, and asks to be sent copies of any such answers. In addition to those answers, the Council requests clarification on two policy points:

A. When a power plant or other facility has secondary facilities associated with it, such as a sizable intake / pumping facility, is it generally Siting Council policy to treat those secondary facilities differently with regard to notice? Should there be mention of those secondary facilities in the public hearing notice if those facilities are in a different town?

B. If Docket #784 had been an application rather than a petition, would the notice issues have been handled differently?

We recall from your presentation to our Council in April that the Siting Council takes pride, and justifiably so, in seeing that municipalities and citizens have ample opportunity to raise concerns and contribute relevant information. Unfortunately, in the case of the intake / pumping facility, some residents of the community, including members of the Canterbury Inland Wetlands and Watercourses Commission, reportedly were not aware of the change in proposed location.

Some of our Council members also expressed concern that the experiences of Canterbury residents will not lead to positive reactions among municipalities and citizens for future renewable-energy projects that might qualify for declaratory rulings.



3) The CEQ asks that the Siting Council review the Canterbury situation in light of the answers to the above questions, and determine if the citizens received adequate notice about the location of the intake / pumping facility and if the Siting Council in turn received complete and adequate information about the newer proposed intake / pumping site.

If you have any questions about this letter and its requests and recommendation, please do not hesitate to contact Karl Wagener. We will be very happy to discuss this matter at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Thomas F. Harrison".

Thomas F. Harrison
Chairman





STATE OF CONNECTICUT

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Karl J. Wagener
Executive Director

DATE: May 16, 2008

TO: Council Members

FROM: Karl J. Wagener
Executive Director

RE: Notes on the March 25, 2008 Letter From the Petitioner's Attorney

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The March 25, 2008 from Mr. Bruce McDermott letter is attached. I have marked four sections of the letter (A,B,C,D) to highlight deficiencies in the letter.

Explanations of these deficiencies follow:

- A. Mr. McDermott (the petitioner's attorney) explains why the statutory provisions regarding public notice of applications do not apply to a petition. However, Mr. Noiseux never made reference to the statutes. He was referring to a November 1, 2006 memo from the Siting Council that spells out notification requirements for this petition.
- B. Here Mr. McDermott assumes wrongly that Mr. Noiseux is referring to a guidance document, whereas he is again referring to the November 1 memo.
- C. I have underlined a phrase that appears in quotes. To me, the only reasonable inference – the one that the writer surely intends for the reader to make – is that this phrase is a direct quote from the referenced statute (CGS Section 16-50I(b)). However, it is NOT a direct quote. In fact, the actual language of the statute would lead the reader to the opposite conclusion that Mr. McDermott asserts.

Mr. McDermott's "quote" is: "primary site on which the facility would be located." Mr. McDermott then goes on to say that the primary site is the location of the proposed generating facility, implying strongly that the meaning of "primary site" is "main site," and that such things as pumping facilities would be "secondary sites."

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Here is the actual statutory language: “primary or alternative sites on which the facility would be located.” The meaning of “primary,” in this line and in the context of the whole statute, clearly is “preferred” or “first priority” as distinct from alternative sites. It does not mean “main” at all. (The statute makes this very clear, at the beginning of the section “quoted” by Mr. McDermott, where it refers to “any portion of such facility..., both as primarily proposed and in the alternative locations listed,...”)

The importance of this statute is that it requires notice to be sent to adjoining landowners of the primary and alternative sites. It says nothing about related or secondary sites.

The misleading and disrespectful content of Mr. McDermott’s letter is, ironically, beside the point. Mr. Noiseux did not mention the statute in his question. Again, he was referring to the November 1 memo, which states:

“3. At least ten business days prior to the public hearing, the applicant shall provide notice of the application and scheduled hearing by certified mail to all abutting landowners of the proposed facility.”

A review of the record shows that the petitioner asserted that all adjoining landowners had been given notice, and the CSC in its Finding of Fact makes the same assertion. Evidently, the CSC did not find it necessary for the petitioner to give notice to neighbors of the pumping facility, but I do not know if that was a case-specific decision, an oversight, or Council policy. If it is indeed policy, I do not know if it applies to applications or just petitions, which might have different statutory requirements. I intend to learn the answer to these questions, but for the present I conclude that the citizen could have been given this information and evidently was not, certainly not from the petitioner.

- D. “For the reasons set forth above, there was no requirement for the water intake / outfall structure to be described in the public hearing notice.” If the reasons “set forth above” are meant to include the conclusions discussed in note C above, then this only shows more disrespect for the reader.



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WIGGIN AND DANA

VIA FEDERAL EXPRESS

Counsellors at Law

March 25, 2008

Robert J Noiseux
47 S. Canterbury Road
Canterbury, CT 06331-1520

Re: Plainfield Renewable Energy LLC

Dear Mr. Noiseux:

In a letter dated March 19, 2008, Derek Phelps, Executive Director of the Connecticut Siting Council, provided Plainfield Renewable Energy ("PRE") with a copy of your March 6, 2008 electronic mail in which you raise various procedural issues concerning the PRE project. Mr. Phelps has asked PRE to respond to your concerns.

At the outset, it is important to note that many of the procedural requirements to which you cite apply when a company files an application seeking a certificate of environmental compatibility and public need ("certificate") from the Council. PRE did not file such an application. Rather, PRE filed a petition for a ruling from the Council that no certificate was needed. Legislation in 2005 (Public Act 05-01 (June Special Session), *An Act Concerning Energy Independence*) amended the Council statutes to provide explicitly for the siting consideration of small generators such as Plainfield through a petition process rather than a certificate application proceeding.

The notice requirements set forth in the Council's statutes for certificate proceedings do not apply to petition proceedings. However, in order to assure that the Council's consideration of a petition is made known to as many interested persons as possible, the Council often requires the same steps be taken to make government officials and members of the public aware of the Council's consideration of a petition and of their right to participate in the proceeding. The difference is that there is no *statutory requirement* to do so.

The following information is provided in response to the issues identified in your electronic mail:

Robert J Noiseux
March 25, 2008
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WIGGIN & DANA
Counsellors at Law

1. *As per article 1 of the CSC noticing requirements: Should PRE have erected signage near the proposed pump house? If so, they did not.*

PRE assumes that the reference to "article 1 of the CSC noticing requirements" is to the Siting Council's "Application Guide for an Electric Generating Facility." As discussed above, this document applies only to situations where a company is seeking a certificate from the Council. For example, in PRE's August 2006 letter to the Council which accompanied the petition, PRE specifically states that "even though this is a Petition, PRE has provided to the Council generally the information required by [the Council's statutes and the Application Guide]."] B.

Even if the Application Guide were to apply to petitions, the requirement you reference did not exist at the time PRE filed its Petition. PRE filed its petition in August 2006. The version of the guide that contains the signage provision was finalized in June 2007. No similar provision was in the prior version of the guide. Finally, even if the guide in place in August 2006 had included a provision regarding signage, any failure to post a sign would not have been a prejudicial error since the guide is only advisory and does not have the same effect as a statute or regulation. As the June 2007 Guide states, in the event of inconsistencies between the guide and the statutes and regulations the later shall govern.

2. *As per article 3 of the CSC noticing requirements: Should PRE have sent notice to owners of property abutting the pump house property and pipeline? If so, they did not (see attached noticing package).*

Connecticut General Statute Section 16-50(b) requires that notice of an *application* for a certificate be sent to each owner of property abutting the proposed primary site on which the facility would be located. Since PRE filed a *petition*, there was no statutory requirement to provide notice to abutting property owners. C.

Assuming for the sake of argument that such a requirement exists for petitions, the statute does not require that property owners abutting the intake / outfall structure be notified. Rather, the statute only requires that property owners abutting the "primary site on which the facility would be located" be provided notice. The primary site for the facility in this instance is the property where the generating facility will be located. There is no similar requirement for property owners abutting the intake / outfall structure or other property that is not the primary site.

3. *In accordance with article 7 of the CSC noticing requirements (see attached document), should PRE have scheduled a tour of the proposed pump house site? If so, they did not (see attached field review schedule).*

Robert J Noiseux
March 25, 2008
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WIGGIN AND DANA
Counsellors at Law

Following the Council's December 16, 2006 visit to the generating facility site, the Council members were driven to the location of the proposed intake / outfall structure. Council Member Bell references the field visit on page 107 of the transcript.

4. *Should PRE have included the Canterbury facility site as part of the public hearing notice? If so, they did not (see attached noticing package).*

Also, when PRE applied to the CSC, they delivered copies of their application to the Town of Canterbury. Canterbury then had the right to review this documentation for up to 65 days and request the right for local review. We all know that this request never happened. However, the proposal for erecting a pump house and pipeline changed at some point after this period. Canterbury has only this week learned that the location shifted. It moved from land with established industrial uses to a parcel almost half a mile away which does not currently have industrial zoning associated with it (the new parcel actually falls under PA 490, as open space). With the changes, Canterbury was denied its right to comment and possibly intervene on the re-zoning of this piece of property. Would the Siting Council consider rectifying the situation? That would be the fair thing to do.

For the reasons set forth above, there was no requirement for the water intake / outfall structure to be specifically described in the public hearing notice. D. Additionally, the 65 day comment period you reference (Connecticut General Statute Section 16-50x(d)) applies to applications and is not part of the Council's procedures when considering a petition. However, PRE did provide copies of the petition to the Canterbury First Selectman, the Town Planner/Zoning Enforcement Officer/Inland Wetlands, the Chair of the Planning and Zoning Commission, the Chair of the Inland Wetlands & Watercourses Commission and the Canterbury Public Library, among others.

In addition, representatives of the Town of Canterbury were provided with notice of the Council's hearing in Plainfield. No town official decided to participate in the hearing. A copy of the Council's final decision documents were provided to the First Selectman. These documents clearly identified the location of the intake / outfall structure. Moreover, on numerous occasions PRE has discussed the location of the structure with the First Selectman. Finally, the Town and PRE entered into a construction contract concerning the installation of the water pipe on Packer Road in June 2007 and the location of the structure was discussed with the Town at that point in time.

Robert J Noiseux
March 25, 2008
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WIGGIN AND DANA
Counsellors at Law

Very truly yours,

B. L. McDermott

Bruce L. McDermott

cc: S. Derek Phelps, Connecticut Siting Council
Dan Donovan, PRÉ

Enclosures

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