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VIA ELECTRONIC MAIL (DEEP.OPPD@ct.gov)

Katie Scharf Dykes
Commissioner
Connecticut Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106

Re: STEPs for Solar Development – Notice of Proceeding, Scoping Meeting and Opportunity for Public Comment

Dear Commissioner Dykes:

Thank you for the opportunity to comment on the scoping of STEPs (Sustainable, Transparent and Efficient Practices) for Solar Development. These comments are solely my own as a concerned citizen and should not be attributed to any other entity.

“What is surprising and shocking and sobering, frankly, is how rapidly we are experiencing the effects and seeing the unfolding of climate change. Climate change clearly has to be at the top of our agenda.” Katie Dykes¹

In evaluating the complex issues that are before us, I agree with your quote above; climate change must be our top priority. I also agree with the analysis found in the Department’s Draft Integrated Resource Plan from December of 2020 which stated that between 2,200 and 3,500 MW of additional solar resources could be developed in New England to assist in combating climate change. You have characterized climate change as “alarming,” and noted that “we have very limited time in this decade to turn off the tap and really ramp down on emissions,” further stating that “it is critical” that we do so.² Any responsible steward of the environment would agree with these statements. I most certainly do.

I do not need to convey to you how important it is as state for Connecticut to take a leading role in fighting against climate change, as you have been a leader on this topic throughout your career

¹ “Katie Dykes Takes Helm at DEEP in Era of Escalating Climate Change,” *CT Mirror*, May 20, 2019.

² “Climate change and steep energy goals: CT's DEEP commissioner steps up to the challenge,” *Connecticut Magazine*, April 20, 2021.

here. We are now in a time where Connecticut's zero carbon goals are more closely aligned with our nation's goals than ever. As President Biden noted in his January 27, 2021 Executive Order on the subject of climate change, "The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents."

With this by way of background, I implore you, as you consider the scope of the STEPs process, to focus on the "E" of STEPs – Efficiency. As both you and President Biden agree, the time for action on climate change is now; this is too great a crisis to wait until later.

*"No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon."*³

How Connecticut focuses on this Efficiency brings me to my fundamental concern with the STEPs scoping document and process. Thus far in this nascent process, concerns over land use are trumping the development of solar, even though those same concerns do not trump the development of warehouses, commercial spaces or distribution centers. If we are serious about combatting climate change, we cannot let the perfect be the enemy of the good, particularly when no other class of development project is held to the same standard as solar development is.

Rather than focus on the dangers presented by climate change, it appears that the focus is turning to whether solar development needs to be more regulated, with greater restrictions put upon it. I would submit that the development of solar power is currently the third most heavily-regulated energy resource in the state, trailing only nuclear energy and on-shore wind turbines. As it currently stands, natural gas-fired combined cycle power plants have less regulatory scrutiny attached to them than solar projects do. As such, the state faces an inflection point. The state can place its priority on fighting climate change and ensuring that the permitting and development of solar projects is made more efficient, or the state can place further restrictions on an already burdened industry and watch that industry wither and die. Should it choose the latter, the state will make attaining its ambitious zero carbon goals all the more difficult.

I realize that on its face, claiming that fossil fuel fired generation is less regulated than solar development sounds preposterous. However, a comparison of the recent permitting of the NTE facility in Killingly bears this out. In receiving its approvals from the state, the NTE facility never had to consult with the Department of Agriculture as to whether it was using prime farmland, nor did it have to consult with DEEP's Forestry Division to ascertain whether its facility would adversely impact core forest. Yet every utility-scale solar project in the state now has to undertake these tasks.

³ Matthew 6:24, *The New King James Version Bible*.

Moreover, the NTE plant does not have to comply with the newly-enacted Appendix I of the Department's General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities ("Construction General Permit"). Only solar facilities are subject to the requirements of Appendix I. Solar facilities under Appendix I cannot have disturbances within ten feet of a wetlands. Indeed, many of the solar projects under Appendix I need to allow 100 feet between the area of disturbance and a wetlands boundary. NTE's facility, however, has no such concerns. As can be seen in the drawings below, NTE's project will have disturbances as close as ten feet from the wetlands in the area, with a thirty foot high fill slope.⁴ Put another way, fossil fueled generation can get ten times closer to wetlands than solar development can.



So as the Department evaluates what constitutes appropriate methodologies for the siting and development of solar projects, it should ask itself what is the Department's priority? It may not be possible to efficiently develop solar projects in Connecticut while simultaneously protecting every last acre of land. But the fact is that warehouses and distribution centers are being constructed on prime farmland in Connecticut right now with nary a regulatory hurdle. No other facility needs to be limited in its use of core forest for development. So how will further regulation of solar development assist the Department in attaining its laudable zero carbon goals? That is a fundamental question that thus far has not been addressed in the scoping discussions for STEPs.

⁴ These drawings are taken from the facility's Erosion and Sediment Control Plan, which can be found in the Development and Management Plan for the facility at: https://portal.ct.gov/CSC/1_Applications-and-Other-Pending-Matters/Applications/3_DocketNos400s/Docket-No-470B-NTEKillingly.

*"I suppose it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail."*⁵

While the Department will, correctly, point out that it has not yet determined that more regulation of solar development is necessary, the language of the "Tentative Objectives" section of the June 7, 2021 Scoping Document lead one to believe that the Department is considering additional regulations that would affect solar development. Indeed, in reading through the five objectives, one can only surmise that the Department is planning to foster a process in addition to that which is already undertaken by the Siting Council, since those five Tentative Objectives are fully addressed by the Siting Council process.

I recognize that both the Department and the Public Utilities Regulatory Authority have designees that are voting members of the Siting Council. However, when one reviews each of the "Tentative Objectives" of the STEPs program, one is left with the inescapable conclusion that the Department will be seeking additional regulation of solar facilities or wishes to put a duplicative approval process in place.

That can be the only conclusion, since the Tentative Objectives nearly parallel the "legislative finding and purpose" language of Conn. Gen. Stat. § 16-50g, otherwise known as the Public Utility Environmental Standards Act. In creating the Siting Council, the General Assembly noted in section 16-50g that the development of power plants, including utility scale solar plants, "if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state." Therefore, the General Assembly created the Siting Council with the following purposes in mind:

to provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values; to provide environmental quality standards and criteria for the location, design, construction and operation of facilities for the furnishing of public utility services at least as stringent as the federal environmental quality standards and criteria, and technically sufficient to assure the welfare and protection of the people of the state; to encourage research to develop new and improved methods of generating, storing and transmitting electricity and fuel and of transmitting and receiving television and telecommunications with minimal damage to the environment and other values described above; to promote energy security; to promote the sharing of towers for fair consideration wherever technically, legally, environmentally and economically feasible to avoid the unnecessary proliferation of towers in the state particularly where installation of such towers would adversely impact class I and II watershed lands, and aquifers; to require annual forecasts of the demand for electric power, together with identification and advance planning of the facilities needed to supply that demand

⁵ Abraham H. Maslow, *The Psychology of Science*, 1966.

and to facilitate local, regional, state-wide and interstate planning to implement the foregoing purposes.

A review of the remainder of the Public Utility Environmental Standards Act and its implementing regulations shows that the Siting Council is required to take local zoning into account when making its decisions, that developers of facilities must consult with affected municipalities, including the host municipality and any nearby communities, and that abutting property owners must also be notified of a pending project. Moreover, as I articulated in my oral comments on June 16, 2021, the Siting Council requires at least thirty pieces of information be submitted from each and every renewable energy project it reviews. The list is exhaustive and requires the previously-mentioned reviews from the Forestry Division of DEEP and the Connecticut Department of Agriculture, information regarding zoning and abutters, consistency with the state's energy policy, potential impact to air, water, ecological, and visual resources, as well as how the project will be constructed.

These requirements are clearly articulated in the Siting Council's August 2018 Guidelines for a Petition for a Declaratory Ruling for a Renewable Energy Facility. For ease of review, a copy of the Guidelines is enclosed with this letter. One should be aware, however, that these requirements are arguably the *least* stringent requirements that the Siting Council uses. The Petition for Declaratory Ruling process is only used for smaller projects under the Siting Council's purview. For larger projects, the Certificate process is used, which results in an even more stringent review. Since the majority of utility scale solar projects are completed through the Petition process, I have included those Guidelines only.

Regardless of the process utilized by the Siting Council for review of the projects before it, the Siting Council's processes fully address the Tentative Objectives listed in the Department's scoping document of June 7th. As such, I would once again implore the Department to take a long look at why solar projects are subject to greater regulation than other projects in the state, whether they be other energy generation projects or the construction of warehouses or commercial space. If the Department is serious about achieving its zero carbon goals, it must focus on making the approval process more efficient, not less so.

"When Paris sneezes, Europe catches a cold." Klemens von Metternich⁶

"It's all up in the air, unfortunately. We're just sitting here waiting." Albert Goodhall, Jr., First Selectman, Union, Connecticut.⁷

In closing, I would remind the Department that while it may believe that it is simply scoping and searching for a better answer for how to address a problem, doing so in such a public fashion

⁶ Klemens von Metternich (1773 – 1859) penned this phrase during the time of Napoleon's rule.

⁷ "Connecticut moratorium stalls wind power proposal," National Wind Watch, March 29, 2014. <https://www.wind-watch.org/news/2014/03/30/connecticut-moratorium-stalls-wind-power-proposal/>

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causes outsized ripples in the regulated community. Much as early 19th century Europe looked to what Napoleon was doing, many solar project developers may try to “read the tea leaves” as they see that the Department may be offering a prelude to further regulation of their industry. For some of the larger developers, they will turn their attention to developing projects in other jurisdictions that are more favorably inclined to solar development. Other developers may simply close up shop and turn to other endeavors altogether. Certainly, some solar developers will remain, but if new regulation causes increased costs, those developers that remain will likely pass those costs along, and most likely those costs will be borne by Connecticut’s ratepayers.

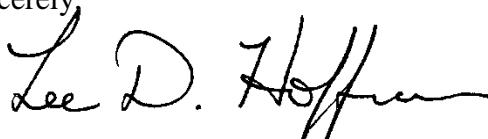
While this admittedly seems like a doomsday scenario, it has precedent. When the state began developing on-shore wind projects in 2010 and 2011, there were concerns about the potential visual and environmental impacts associated with such projects. In response, the General Assembly passed Public Act 11-245 in the spring of 2011, which placed a moratorium on any new on-shore wind projects until regulations regarding these projects could be developed. Three years later, on April 22, 2014, the regulations were adopted, and on-shore wind projects were allowed to be developed in Connecticut once again. To date, however, not a single new on-shore wind project has come before the Siting Council seeking approval. The only commercial turbines that have been built in Connecticut were those that were approved before the 2014 regulations were adopted.

That is why First Selectman Goodhall’s quote is so apt. Prior to the passage of PA 11-245 and its implementing regulations, the Town of Union had a viable site for wind development and a developer ready to build a project. In the seven years since those regulations have passed, no wind project has been forthcoming, and the Town of Union, like the rest of Connecticut, is still waiting for another on-shore wind project to be developed.

My concern with the STEPs program is that it has the potential to take solar from being the third most regulated form of energy development to the second most regulated. If anything, it should be placed back on a level playing field with other energy generation projects. It certainly does not warrant further regulation or obstacles. Failure to act now, or worse yet, act in such a way that curtails further development of solar projects, will only make it harder for Connecticut to retain its leading position in the development of zero carbon electricity.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink that reads "Lee D. Hoffman". The signature is written in a cursive, flowing style.

Lee D. Hoffman

Enclosure