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March 9, 2020

VIA ELECTRONIC MAIL AND FEDEX

Melanie A. Bachman
Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Petition 1347 - GRE GACRUX LLC Petition for a Declaratory Ruling, Pursuant to Connecticut General Statutes §4-176 and §16-50k, for the Proposed Construction, Maintenance and Operation of a 16.78 MW AC Ground-mounted Solar Photovoltaic Electric Generating Facility Located on Oil Mill Road in Waterford, Connecticut

Dear Ms. Bachman:

My client, GRE GACRUX LLC, hereby respectfully submits one (1) original and fifteen (15) copies of GRE's Brief regarding the representation by counsel of additional parties and/or intervenors in the above-captioned Petition.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Lee D. Hoffman

Encs.

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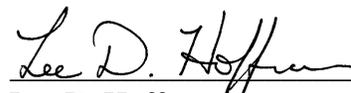
**Petition 1347 – GRE
Certification**

A copy of the foregoing has been mailed this date to all parties and intervenors of record.

The Honorable Robert J. Brule
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Lee D. Hoffman

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

PETITION NO. 1347 — GRE GACRUX LLC petition	:	Petition No. 1347
for a declaratory ruling, pursuant to Connecticut General	:	
Statutes §4-176 and §16-50k, for the proposed construction,	:	
maintenance and operation of a 16.78-megawatt AC solar	:	
photovoltaic electric generating facility located at 117 Oil	:	
Mill Road and associated electrical interconnection to	:	
Eversource Energy's existing substation at 325 Waterford	:	March 9, 2020
Parkway North in Waterford, Connecticut.	:	

BRIEF OF PETITIONER GRE GACRUX LLC

I. Introduction

Petitioner GRE GACRUX LLC (“GRE” or the “Petitioner”) respectfully submits this Brief to the Connecticut Siting Council (the “Council”) in connection with the above-referenced Petition. Specifically, this Brief addresses whether Save the River-Save the Hills, Inc.’s (“STR-STH” or the “Intervenor”) may continue its involvement in the instant proceeding without being represented by counsel. To be certain, STR-STH is permitted to remain an intervenor in this Petition, however, this administrative proceeding constitutes the “practice of law” as that term defined under Connecticut law, and STR-STH is a Connecticut not-for-profit corporation. As such, STR-STH may not continue as a *pro se* litigant, but rather must secure counsel to represent it in this administrative proceeding.

II. Analysis

A. As a corporation, Save the River-Save the Hills, Inc. may not represent itself in this Proceeding, nor can one of its non-attorney members act on its behalf.

In Connecticut, it is well settled that any person who is not an attorney is prohibited from practicing law. *Lowe v. City of Shelton*, 83 Conn. App. 750, 756, 851 A.2d 1183, 1190 (2004); Conn. Gen. Stat. § 51–88. Indeed, the practice of law is “open only to individuals proved to the satisfaction of the court to possess sufficient general knowledge and adequate special

qualifications as to learning in the law and to be of good moral character.” *State Bar Ass'n of Conn. v. Connecticut Bank & Tr. Co.*, 145 Conn. 222, 234, 140 A.2d 863, 870 (Conn. 1958).

There are a few exceptions to this general prohibition, as codified in Conn. Gen. Stat. § 51-88. Only one of those exceptions, however, might be argued to be applied in the instant matter. That exception, found at Conn. Gen. Stat. 51-88(d)(2), allows for parties to plead their own cause, commonly referred to as proceeding as a *pro se* litigant. However, STR-STH proceeding as a *pro se* litigant is neither relevant nor applicable for the instant proceeding. Recognizing that only a natural person can conform to these “exacting requirements,” our courts have consistently held that the practice of law is not a business in which a corporation may lawfully engage. *See State Bar Ass'n of Conn.*, 145 Conn. at 234 (holding that “[a]rtificial creations such as corporations or associations cannot meet these prerequisites and therefore cannot engage in the practice of law”).

As a corporation cannot practice law directly, it cannot do so indirectly through its officers or employees who are not licensed as attorneys, since “that would be an evasion which the law will not tolerate.” *Id.* at 234-35; *Triton Associates v. Six New Corporations*, 14 Conn. App. 172, cert denied, 208 Conn. 806 (1988) (ruling that a non-attorney may not represent a corporation in Superior Court, even if he is a principal shareholder); *see also Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202, 113 S. Ct. 716, 721, 121 L. Ed. 2d 656 (1993) (holding corporations, partnerships, and unincorporated associations may not appear through an officer or other non-lawyer representative), cited with approval in *Expressway Assocs. II v. Friendly Ice Cream Corp. of Connecticut*, 34 Conn. App. 543, 548, 642 A. 2d 62 (1994) (holding that a general partner, who is a non-attorney, may not appear on behalf of a partnership in Superior Court).

Indeed, the qualifications of the individual representing a corporation is one of vital judicial concern, as such person is clearly engaged in the practice of law in a representative capacity. The Connecticut Practice Book has defined the practice of law to specifically include representation in administrative proceedings, such as this Petition, for which lawyers are required to be retained. *See Connecticut Practice Book* § 2-44A(a)(4) (defining practice of law to include “[r]epresenting

any person¹ in a court, or in *a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.*”) Emphasis added.

As the Council is well aware, this Petition is a contested case within the meaning of section 4-177 of the Uniform Administrative Procedures Act (“UAPA”). As section 4-177(d) notes, “the record in a contested case shall include: (1) Written notices related to the case; (2) all petitions, pleadings, motions and intermediate rulings; (3) evidence received or considered; (4) questions and offers of proof, objections and rulings thereon; (5) the official transcript, if any, of proceedings relating to the case, or, if not transcribed, any recording or stenographic record of the proceedings; (6) proposed final decisions and exceptions thereto; and (7) the final decision.”

The dictates of the UAPA clearly show that this Petition is a formal administrative adjudicative proceeding, complete with pleadings, evidence, offers of proof, a transcript, and a final decision. As such, participation in this proceeding constitutes the practice of law. In light of Connecticut’s longstanding rule that corporations, such as STR-STH, cannot lawfully engage in the practice of law on their own behalf, nor are they permitted do so “indirectly through its officers or employees who are not licensed as attorneys,” GRE submits that STR-STH should engage counsel for this matter, exactly as it did in Petition 1347.

Indeed, the prior history of Petition 1347 shows how STR-STH participated appropriately in the prior petition. STR-STH is a domestic nonprofit corporation with approximately 350 members.² As the Council is well aware, when GRE had submitted its petition 1347, STR-STH was heavily involved with the 2018 proceedings associated therewith.³ Notably, during this involvement, STR-STH was represented by counsel, Bruce McDermott of Murtha Cullina.

¹ Practice Book § 2-44A: The term “person” includes a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates.

² See Save the River-Save the Hills, Inc. Response to GRE GACRUX LLC’s First Set of Interrogatories, Petition No. 1347, dated October 12, 2018.

³ See Save the River-Save the Hills, Inc. Request for Intervenor Status with Council Acknowledgement, 8/20/18; Save the River-Save the Hills Appearance and Request for Extension, 9/11/18; Save the River-Save the Hills, Inc. Interrogatories to Petitioner, 9/21/18; Save the River-Save the Hills, Inc. Interrogatory Responses to Petitioner, 10/12/18. See <https://www.ct.gov/csc/cwp/view.asp?a=2397&Q=603418&PM=1>.

By correspondence dated February 4, 2020, however, Ms. Deborah Moshier-Dunn, the Vice President of STR-STH, alerted the parties of record that STR-STH would no longer be utilizing the services of Attorney McDermott for this re-opened Petition:

Hi all – please remove Attorney Bruce McDermott from the list. He has not been our attorney since October 2018. Please direct all Save the River-Save the Hills correspondence to me. Thank you.

This wording suggests that Ms. Moshier-Dunn will be effectively assuming the role, and corresponding responsibilities, that Attorney McDermott had in connection with the Original Petition. However, unlike Attorney McDermott, who is licensed and therefore authorized to practice law in this State, Ms. Moshier-Dunn is not. And while Ms. Moshier-Dunn is free to practice law for herself *pro se*, the authorization to appear *pro se* is limited to representing one's own cause, and does not permit individuals to appear *pro se* in a representative capacity for a corporation such as STR-STH. *See* Conn. Gen. Stat. § 51–88; *Expressway Assocs. II v. Friendly Ice Cream Corp. of Connecticut, supra*, 34 Conn. App. at 546; *Certo v. Fink*, 140 Conn. App. 740, 747, 60 A.3d 372, 376 (2013).

Because STR-STH, as a corporation, cannot represent itself, nor can Ms. Moshier-Dunn, as a non-attorney, act on its behalf, GRE believes that it would be improper for STR-STH to proceed in this matter without counsel. This is not to imply that STR-STH should not be allowed to intervene or participate, rather it should do so as it did before, with counsel present.

B. Save the River-Save the Hills, Inc.’s involvement in this Proceeding before the Siting Council, without formal representation, likely constitutes the unauthorized practice of law.

GRE suspects that the level of STR-STH’s involvement in the re-opened Petition, including the proceedings associated therewith, will be substantially similar to its level of involvement in the Original Petition. If that is the case, such involvement, without formal representation, constitutes the unauthorized practice of law.

As indicated above, but which bears repeating here, STR-STH’s involvement in the original petition included, *inter alia*, the filing of appearances, the issuance(s) of interrogatories,

and the preparation of other like documents. Needless to say, all of these documents are traditionally regarded as legal in nature. *See* Connecticut Practice Book § 2-44A (defining the practice of law to include, *inter alia*, the “drafting of any legal document,” including “...pleadings and any other papers incident to legal actions and special proceedings”). In addition to all of that which took place before, STR-STH has, along with the Town of Waterford, requested a public hearing for this Petition, to which GRE has no objection. Such a hearing, however, will involve the process of proffering evidence, the swearing in of witnesses and cross examination of such witnesses. As such, the proceedings in this Petition will be even more formal than the prior petition for which STR-STH had counsel.

While, at first blush, the prohibition against the unauthorized practice of law may appear as applying only to formal court proceedings, our Supreme Court has explicitly rejected such a narrow construction:

The practice of law consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces the giving of legal advice on a large variety of subjects and the preparation of legal instruments covering an extensive field. Although such transactions may have no direct connection with court proceedings, they are always subject to subsequent involvement in litigation. They require in many aspects a high degree of legal skill and great capacity for adaptation to difficult and complex situations. No valid distinction can be drawn between the part of the work of the lawyer which involves appearance in court and the part which involves advice and the drafting of instruments. The work of the office lawyer has profound effect on the whole scheme of the administration of justice. It is performed with the possibility of litigation in mind, and otherwise would hardly be needed. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill and of sound moral character, acting at all times under the heavy trust obligation to clients which rests upon all attorneys. The underlying reasons which prevent corporations and associations, as well as individuals other than members of the bar, from appearing before the courts apply with equal force to the performance of these customary functions of attorneys and counselors at law outside of courts.

State Bar Ass'n of Conn. v. Connecticut Bank & Tr. Co., 145 Conn. 222, 234–35, 140 A.2d 863, 870 (Conn. 1958); *See also* *Statewide Grievance Comm. v. Patton*, 239 Conn. 251, 254–55, 683 A.2d 1359, 1361 (1996).

As has our Legislature, Connecticut Practice Book section 2-44A(a)(4) defines the “practice of law” a number of ways, including but not limited to, “[r]epresenting any person in a

court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.” (Emphasis added). This Siting Council proceeding, as is the case with most Siting Council proceedings, is a “formal administrative adjudicative proceeding” under the terms of the Connecticut Practice Book.

Moreover, recent revisions to the Rules of Superior Court—specifically, Rule 2-16—lend further support to this idea. Under the revised rule (effective January 1, 2017), all out-of-state attorneys must follow pro hac vice procedures in order to participate in any proceeding before a municipal or state agency, commission, board or tribunal—in the same manner as if those attorneys were going to appear pro hac in a court proceeding.⁴ The revised rule can be found on the following page in its entirety, and the commentary to the revised rule is also enlightening.⁵

⁴ The rule was deemed necessary in light of the Connecticut Supreme Court’s decision in *Persels & Associates, LLC v. Banking Commissioner*, 318 Conn. 652 (2015); therein, the Court concluded that the sole authority to license and regulate the practice of law rests with the Connecticut Judicial Branch.

⁵ The commentary accompanying Section 2-16 may be instructive to the Council:

COMMENTARY: The changes to this section establish a requirement that an out-of-state attorney request permission to appear pro hac vice in any cause, appeal or proceeding before any Connecticut state court or any state or municipal agency, commission, board or tribunal by filing a written application, on a form prescribed by the chief court administrator, to the administrative judge of the court in the judicial district where the case is likely to be tried or proceeding is to be conducted. This amendment is necessary in light of the Connecticut Supreme Court opinion in Persels & Associates, LLC v. Banking Commissioner, 318 Conn. 652, 122 A.3d 592 (2015), in which the Court concluded that the sole authority to license and regulate the general practice of law rests in the Judicial Branch. The rule also establishes additional information that must be included in an affidavit submitted with an application for permission to appear pro hac vice.

(2) **Notification to Other States.** The statewide bar counsel shall be authorized to notify each entity governing the practice of law in the state or territory of the United States, or the District of Columbia, in which the authorized house counsel is licensed to practice law, of any disciplinary action against the authorized house counsel.

(g) **Transition**

(1) **Preapplication Employment in Connecticut.** The performance of an applicant's duties as an employee of an organization in Connecticut prior to the effective date of this rule shall not be grounds for the denial of registration of such applicant if application for registration is made within six months of the effective date of this rule.

(2) **Immunity from Enforcement Action.** An authorized house counsel who has been duly registered under this rule shall not be subject to enforcement action for the unlicensed practice of law for acting as counsel to an organization prior to the effective date of this rule.

(Adopted June 29, 2007, to take effect Jan. 1, 2008; amended June 30, 2008, to take effect Jan. 1, 2009; amended June 22, 2009, to take effect Jan. 1, 2010; amended June 15, 2012, to take effect Jan. 1, 2013.)

Sec. 2-16. —Attorney Appearing Pro Hac Vice

An attorney who is in good standing at the bar of another state, the District of Columbia, or the Commonwealth of Puerto Rico, may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any state court or a proceeding before any municipal or state agency, commission, board or tribunal (hereinafter referred to as "proceeding") in this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (A) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning such action, (B) certifying that the applicant has paid the client security fund fee due for the calendar year in which the application has been made, (C) designating the chief clerk of the Superior Court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, (D) agreeing to register with the Statewide Grievance Committee in accordance with the provisions of this chapter while appearing in

the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the Statewide Grievance Committee of the expiration of the two year period, (E) identifying the number of times the attorney has appeared pro hac vice in the Superior Court or in any other proceedings of this state since the attorney first appeared pro hac vice in this state, listing each such case or proceeding by name and docket number, as applicable, and (F) providing any previously assigned juris number, and (2) unless excused by the judicial authority, a member of the bar of this state must be present at all proceedings, including depositions in a proceeding, and must sign all pleadings, briefs and other papers filed with the court, local or state administrative agency, commission, board or tribunal, and assume full responsibility for them and for the conduct of the cause or proceeding and of the attorney to whom such privilege is accorded. Any such application shall be made on a form prescribed by the chief court administrator. Where feasible, the application shall be made to the judge before whom such case is likely to be tried. If not feasible, or if no case is pending before the Superior Court, the application shall be made to the administrative judge in the judicial district where the matter is to be tried or the proceeding is to be conducted. Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, or proceeding, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause or presentation of the proceeding, or that the litigant is unable to secure the services of Connecticut counsel. Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the Statewide Grievance Committee of such action. Any person granted permission to appear in a cause, appeal or proceeding pursuant to this section shall comply with the requirements of Sections 2-68 and 2-70 and shall pay such fee when due as prescribed by those sections for each year such person appears in the matter. If the clerk for the judicial district or appellate court in which the matter is pending is notified that such person has failed to pay the fee as required by this section, the court shall determine after a hearing the appropriate sanction, which may include termination of the privilege of appearing in the cause, appeal or proceeding.

(P.B. 1978-1997, Sec. 24.) (Amended June 24, 2002, to take effect July 1, 2003; May 14, 2003, effective date changed to Oct. 1, 2003; Sept. 30, 2003, effective date changed to Jan.

Thus, if section 2-16 was designed to prohibit the unlawful practice of law from attorneys that were properly licensed outside of Connecticut's jurisdiction, that must mean that appearance before "any state or municipal agency, commission, board or tribunal" constitutes the practice of law in Connecticut. If that is the case, then this proceeding is a practice of law in Connecticut, and STR-STH cannot proceed as a *pro se* litigant, rather it must retain counsel.

While Rule 2-16 and its commentary are not dispositive on this issue, the two documents, taken together, are instructive on the issue presently before this Council; it is irreconcilable to posit, on the one hand, that an out-of-state attorney (though an attorney, nonetheless) could not represent STR-STH in the instant proceeding before this Council, but that an individual, with no law license and no formal legal training or expertise, could. Such a result not only defies logic and common sense, but is antithesis to this State's long-established strictures against the unauthorized practice of law.

III. Conclusion

To conclude, because STR-STH cannot represent itself in this Proceeding, nor can one of its non-attorney members act on its behalf, GRE believes that STR-STH should retain counsel to represent it in this matter.

Respectfully Submitted,

GRE GACRUX LLC

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