

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

GRE GACRUX LLC petition for a declaratory ruling for the proposed construction, maintenance and operation of a 16.78-megawatt AC solar photovoltaic electric generating facility in Waterford, Connecticut. Reopening of this petition based on changed conditions.

Petition No. 1347A

August 3, 2020

SAVE THE RIVER-SAVE THE HILLS, INC.'S OBJECTION TO AND MOTION TO STRIKE FROM THE RECORD PETITIONER'S RESPONSE TO LATE-FILED EXHIBIT REQUESTS

Save the River-Save the Hills, Inc. ("STR-STH") hereby objects to and moves to strike two portions of GRE GACRUX LLC's ("GRE") Responses to the Siting Council's Late-Filed Exhibit Requests. Both portions of GRE's submission constitute hearsay, and GRE's failure to file the actual documents it purports to be summarizing or copying from will prevent STR-STH, as well as the Council and the Town, from being able to effectively cross examine GRE's witnesses with respect to those documents.

In response to item "i," a request from the Council as to whether the solar panels contain selenium, GRE references and relies on a confidential report provided to it by an unknown manufacturer that purportedly states that selenium is not a "major material" used in unidentified panels that GRE may or may not use in the project and "does not leach from the module." GRE claims that because the report is confidential, "it cannot be provided at this time." (GRE Responses at 3.) That is of course not true; the Council has a procedure for filing such information under seal pursuant to protective order when necessary, and regularly uses that procedure. (*See* CSC Procedures for Filing a Protective Order, dated Nov. 2014, available at <https://portal.ct.gov/-/media/CSC/Guides/ProtectiveOrderpdf.pdf>.) It is impossible for any party to cross examine witnesses on a report that that party has not been able to review, and it would be improper for the Council to rely upon such unsupported, vague and untested assertions

in analyzing whether this project presents risks related to release of selenium in the environment, which poses not only a risk to human health, but a significant risk to aquatic species.

GRE also included a page and a half of what it titles "CTDEEP Comments" in its Responses. (See GRE Responses at 4-5.) This section appears to be a cut-and-paste of correspondence between GRE and unidentified individuals at DEEP, purporting to include comments from DEEP and responses by GRE that as of the date of its submission to the Council, it had not even provided to DEEP. The Council should strike this bizarre submission from the record, as there is no reason GRE could not have simply appended the actual comments received from DEEP to its submission and supplemented its filing with its actual responses to DEEP when they were submitted to that agency. Instead, GRE expects the Council and the parties to review and to rely upon this recreation of correspondence that may not even be what was finally submitted to DEEP. The responses should also be stricken because they reference documents that are not in the record before the Council, including an apparent new Stormwater Report and a letter of credit. Again, there is no way for any party to effectively cross examine GRE's witnesses on documents they have not seen.

The right of cross examination is one of the most basic, "fundamental rules of natural justice." See *Giaimo v. New Haven*, 257 Conn. 481, 512-13 (2001). "Cross-examination is the greatest aid to the ascertainment of the truth which the advocate possesses. . . . The power of cross-examination has been justly said to be one of the principal, as it certainly is one of the most efficacious, tests, which the law has devised for the discovery of truth." *Wadell v. Bd. of Zoning Appeals of New Haven*, 136 Conn. 1, 8 (1949). The right to cross examine is not diminished in administrative hearings; in fact, our Supreme Court has noted that in those situations, cross examination has an elevated importance: "[An administrative body] is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. But the

more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended." *Id.* at 9; *see also* *Mattabassett Group, Inc. v. Inland Wetlands & Watercourses Agency of Middletown*, Superior Court, judicial district of Middlesex, No. 60372, 1992 WL 83535, at *2 (Apr. 21, 1992, O'Connell, J.) ("Although hearings before administrative agencies are not governed by the strict rules of evidence, they must be conducted so as not to violate the fundamental rules of natural justice. This means a fair opportunity to cross-examine witnesses.").

Given the schedule in this matter, including the likely conclusion of the public hearing on August 4, 2020, STR-STH will not have the opportunity to cross examine GRE's witnesses with respect to the DEEP comments or GRE's responses to the same, which are clearly highly relevant to the question of GRE's compliance with water quality standard, or with respect to the "confidential report" regarding selenium that was generated by some unidentified manufacturer with respect to some unidentified model of solar panel. The only way to remedy that situation is to strike these two portions of GRE's submission.

For all of the foregoing reasons, STR-STH asks the Council to sustain its objection to these two portions of GRE's responses to the Council's request for late-filed exhibits and to grant its motion to strike the same.

SAVE THE RIVER-SAVE THE HILLS, INC.

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CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by first-class mail and e-mail to the following service list:

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