

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petition of DWW Solar II, LLC for a
Declaratory Ruling that no Certificate of
Environmental Compatibility and Public
Need is Required for a 26.4 Megawatt AC
Solar Photovoltaic Electric Generating Facility
In Simsbury, Connecticut**

Petition No. 1313

November 2, 2017

**DWW SOLAR II, LLC'S MOTION TO COMPEL RESPONSES TO
INTERROGATORIES**

The petitioner, DWW Solar II, LLC (“DWW”) respectfully moves that the Siting Council compel the Department of Agriculture to make Steven K. Reviczky, Commissioner of the Department of Agriculture (“DOA”), available for testimony in this Petition. In the alternative, DWW requests that the Siting Council compel the DOA to answer the Interrogatories served upon DOA by DWW on October 19, 2017, and objected to by the DOA on October 26, 2017. For the reasons set forth below, the DOA’s actions unduly prejudice DWW’s ability to conduct effective cross examination of DOA’s witnesses.

Commissioner Reviczky was indicated as a witness in the Siting Council’s October 10, 2017 Hearing Program in this Petition. This may have been based, at least in part, on the DOA’s responses to DWW’s Interrogatories 1 and 36, which asked which DOA representatives were responsible for developing, assisting with the development or drafting of the DOA’s comments in this Petition (Interrogatory # 1) or the responses to the Interrogatories (Interrogatory #36). In both cases, Commissioner Reviczky was identified as one of the parties who played a role in the crafting of both the DOA’s comments in this Petition and its Interrogatory Responses.

However, on October 19, 2017, the DOA inexplicably revised its Responses to those two Interrogatories, eliminating Mr. Reviczky's name from both Responses. The DOA's comments did not change, nor did the remaining Interrogatory Responses, despite the fact that one of the collaborators involved in preparing those documents was now supposedly not involved in the preparation of the documents. DWW could only surmise that the reason for these changes was to avoid having Mr. Reviczky appear for cross examination.

In order to test that hypothesis, DWW proffered four additional Interrogatories to DOA on October 19, 2017. The Interrogatories were narrowly tailored to ascertain Mr. Reviczky's role in crafting the comments and Interrogatory Responses. Rather than reply to the Interrogatories, the DOA stonewalled and provided no meaningful answers. More importantly, for the two Interrogatories to which the DOA objected, the DOA's objections are without merit.

The DOA's primary objection to Interrogatories 37 and 38 are that the Interrogatories are beyond the scope of Connecticut's Freedom of Information Act (FOIA) and responses would be unduly burdensome. As an initial matter, the DOA's reliance on FOIA is misplaced. While FOIA requirements might ordinarily apply to document requests made of the DOA by a member of the general public, by voluntarily seeking to participate in this Petition as a party, the DOA subjected itself to a higher standard than FOIA, namely the rules and procedures under the Connecticut Uniform Administrative Procedures Act (UAPA) and the Rules of Practice of the Connecticut Siting Council. Moreover, the DOA opened itself up to this line of inquiry when it first claimed that Mr. Reviczky played a role in drafting these documents, then reversed itself and claimed that he played no role in the documents' creation.

As has been alluded to previously, the *Connecticut Siting Council Information Guide to Party and Intervenor Status* ("Guide") is particularly applicable. Section C of the Guide

provides instructions as to how discovery is to be conducted: “The Council encourages parties and intervenors to file pre-hearing questions to the applicant and other parties and intervenors in the proceeding on any information in the record, including, but not limited to . . .pre-filed testimony of other parties and intervenors in the proceeding.” “The applicant, *parties and intervenors* are *obligated* to respond to pre-hearing questions directed to them that are filed by the Council, *the applicant*, and any party in the proceeding in accordance with the schedule announced by the Council.” *Id.* Emphasis added.

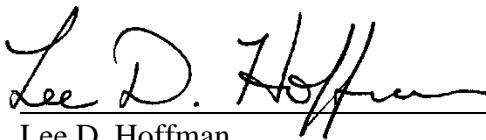
The language of Section C establishes a clear mandate for a response to the Interrogatories propounded by DWW, and that those responses be filed in a timely fashion. The response is not optional, and there are no permitted excuses in Section C for failure to comply with these requirements. The DOA placed the level of Mr. Reviczky’s participation in the drafting of comments and Interrogatory Responses into question when it modified Responses to Interrogatories 1 and 36. It cannot now deny DWW the right to ask questions about that level of participation.

This matter can be resolved simply if Mr. Reviczky is available for cross examination by DWW in a regularly-scheduled hearing. Mr. Reviczky is listed on the October 10, 2017 hearing program as a witness, and DWW has not been informed that Mr. Reviczky will not be participating as a witness in the hearings. Thus, if Mr. Reviczky participates in the hearing as scheduled, then DWW will withdraw this motion. If, however, Mr. Reviczky does not participate in the hearing for this Petition, DWW has a right to ascertain his level of involvement in the preparation of documents that are being proffered as evidence against DWW. If DOA will not properly respond to the Interrogatories, DWW will have no choice but to waste valuable hearing time getting to the truth related to Mr. Reviczky’s involvement in these proceedings.

Even that may not be sufficient to alleviate DWW's due process concerns, since DOA will not be able to provide the documentation to which DWW is entitled.

WHEREFORE, DWW respectfully requests that the Siting Council grant DWW's Motion to Compel and require that Mr. Reviczky make himself available as a witness in this matter. In the alternative, DWW requests that the Siting Council compel the DOA to fully respond to Interrogatories 37 and 38.

Respectfully Submitted,
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Certification

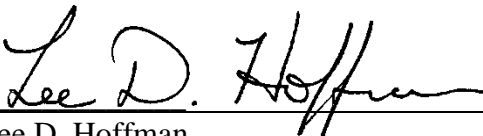
This is to certify that a copy of the foregoing has been mailed via U.S. Mail, first class postage prepaid, and/or electronically mailed on November 2, 2017 to all parties and intervenors of record, as well as all pending parties and intervenors as follows:

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