

NO. HHB CV15-6029869S : STATE OF CONNECTICUT
TOWN OF MIDDLEBURY, ET AL. : SUPERIOR COURT
v. : JUDICIAL DISTRICT OF NEW BRITAIN
CONNECTICUT SITING :
COUNCIL, ET AL. : JANUARY 12, 2016

OFFICE OF THE CLERK
SUPERIOR COURT
2016 JAN 12 PM 3:00
JUDICIAL DISTRICT OF
NEW BRITAIN

Memorandum of Decision

1/12/16
Marked to Atty's.
Savarese, Marconi and
Small & Reporter of
Judicial
Decisions
MM

The plaintiffs, the town of Middlebury (town) and sixteen other Middlebury residents and entities, appeal from the decision of defendant Connecticut siting council (council) granting the petition of defendant CPV Towantic, LLC (CPV) to reopen and modify a certificate of environmental compatibility and public need to allow for the construction, maintenance, and operation of a large electric generating facility in the neighboring town of Oxford. As detailed below, the court affirms the council's decision and dismisses the appeal.

I

This case began in 1999 and returns to the court for the fourth time. On June 23, 1999, the council, in Docket No. 192, granted the application of CPV's predecessor, Towantic Energy, LLC (Towantic), for a certificate for the construction and operation of an electric generating facility in Oxford. An Oxford citizens group appealed the granting of the certificate. The Superior Court dismissed the appeal in 2000. *Citizens for the Defense of Oxford v. Connecticut Siting Council*, Superior Court, judicial district of Hartford-New Britain at New Britain, Docket No. CV 99-0497075 (November 14, 2000, Satter, J.T.R.).

At about the same time, various citizens and citizen groups filed a petition for a

161.00
MM

declaratory ruling claiming that Towantic's then-recently filed development plan did not comport with the council's 1999 decision. From the council's adverse decision in this matter, these plaintiffs appealed to the Superior Court, which dismissed the appeal in February, 2002. *Town of Middlebury v. Connecticut Siting Council*, Superior Court, judicial district of New Britain, Docket No. CV 01-0508047 (February 27, 2002, Cohn, J.).

In December, 2006, some of the same plaintiffs filed a petition for a declaratory ruling claiming that the power plant had not yet been built and that the certificate had expired as a result of the passage of time. The council ruled against the plaintiffs. They appealed and the court rejected their appeal. *Town of Middlebury v. Connecticut Siting Council*, Superior Court, judicial district of New Britain, Docket No. CV 07-4013143 (November 1, 2007, Schuman, J.)

On November 3, 2014, CPV submitted a petition to reopen and modify the 1999 certificate. CPV sought permission to provide about 50% more electricity (from 512 megawatts to 785 megawatts), to expand its site in Oxford by six acres (from approximately twenty to twenty-six acres) in order to meet new environmental requirements, and to reconfigure its buildings and stacks to present a lower profile.

The council granted the petition to reopen but decided to reopen the original docket in its entirety and thus did not limit its proceedings to the changed conditions presented in the petition. From January through March, 2015, the council held seven evidentiary hearings and permitted all parties and intervenors to submit evidence and question witnesses.

On May 14, 2015, the council, by a 5-2 vote with the chairman in the minority, issued an 85 page decision approving CPV's proposed modifications to the original certificate. (Return of Record (ROR), Volume XII, pp. 20-103.) The council made 314 findings of fact. (ROR, Vol. XII,

pp. 20-82.) The council then observed that, over the fifteen years since it originally approved the Towantic plant, there had been an increase in population and demand for electricity, additional environmental challenges, the introduction of renewable resources into the electric grid, and other changes. The council found that, in view of this changed environment, the current proposal represented a significant improvement over the original project. (ROR, Vol. XII, p. 91.)

The council reached the following conclusion: "In the Council's view, the current CPV proposal significantly improves on [the] original project. CPV's project utilizes state-of-the art combustion technology to increase the reliability of the power supply. It is equally protective of natural resources as the approved project, and, in a few cases, more so, as the technical standards for measuring, monitoring and maintaining protection have risen. Notwithstanding continued public opposition, which the Council both acknowledges and has tried to use constructively in this decision, it is the Council's opinion that improvements offered by CPV's proposal do provide significant benefit to the public.

"Based on the record in this proceeding, we find that the conditions have changed since 1999. We further find that the effects associated with the construction, operation, and maintenance of the electric generating facility at the proposed site, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are not disproportionate either alone or cumulatively with other effects when compared to benefit, are not in conflict with the policies of the State concerning such effects, and are not sufficient reason to deny the proposed project. In addition, the Council grants CPV's request for an extension of time to complete construction of the facility no later than June 1, 2019." (ROR, Vol. XII, pp. 91-92.)

Accordingly, the council granted approval, subject to a variety of conditions, for a 785 megawatt generating facility. (ROR, Vol. X11, pp. 93-95.)

The plaintiffs appeal.¹

II

Pursuant to General Statutes § 16-50q, “[a]ny party may obtain judicial review of an order issued [by the council] on an application for a certificate or an amendment of a certificate in accordance with the provisions of section 4-183.” Section 4-183 is part of the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq. Under the UAPA, judicial review of an agency decision is “very restricted.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Dept. of Environmental Protection*, 257 Conn. 128, 136-37, 778 A.2d 7 (2001). Section 4-183 (j) of the General Statutes provides as follows: “The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or

¹There is no dispute by the defendants that the town is classically aggrieved by the council’s decision. Therefore, it is not necessary to decide, and the court does not decide, any of the other claims of aggrievement. See *Protect Hamden/North Haven from Excessive Traffic and Pollution, Inc. v. Planning and Zoning Commission*, 220 Conn. 527, 529 n.3, 600 A.2d 757 (1991).

clearly unwarranted exercise of discretion.” Stated differently, “[j]udicial review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s findings of basic fact and whether the conclusions drawn from those facts are reasonable.” (Internal quotation marks omitted.) *Schallenkamp v. DelPonte*, 229 Conn. 31, 40, 639 A.2d 1018 (1994). “It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion.” (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

Our Supreme Court has stated that “[a]n agency’s factual and discretionary determinations are to be accorded considerable weight by the courts. . . .” (Internal quotation marks omitted.) *Longley v. State Employees Retirement Commission*, 284 Conn. 149, 163, 938 A.2d 890 (2007). “Even for conclusions of law, [t]he court’s ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when a state agency’s determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . We have determined,

therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation. . . . [When the agency's] interpretation has not been subjected to judicial scrutiny or consistently applied by the agency over a long period of time, our review is de novo." (Citation omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, 310 Conn. 276, 281-83, 77 A.3d 121 (2013).

III

Chapter 277a of the General Statutes, which includes General Statutes §§ 16-50g to 16-50ee, contains the Public Utilities Environmental Standards Act (PUESA or the act). Among the purposes of PUESA is "[t]o 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" General Statutes § 16-50g. The act creates the council within the department of public utility control. General Statutes § 16-50j (a). It provides, with exceptions not pertinent here, that "[n]o person shall exercise the power of eminent domain in contemplation of, commence the preparation of the site for, or commence the construction or supplying of a facility, or commence any modification of a facility, that may, as determined by the council, have a substantial adverse environmental effect in the state without having first obtained a certificate of environmental compatibility and public need, hereinafter referred to as a 'certificate', issued with

respect to such facility or modification by the council” General Statutes § 16-50k (a).² In addition, General Statutes 16-50p (a) (1) provides: “In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.”

IV

The plaintiff first argues that the council did not follow its statutory directive to consider the concerns of the neighborhood. As a result of a 2012 Public Act, General Statutes § 16-50p (c) (1) provides as follows: “The council shall not grant a certificate for a facility described in subdivision (3) of subsection (a) of section 16-50i, either as proposed or as modified by the council, unless it finds and determines a public benefit for the facility and *considers neighborhood concerns* with respect to the factors set forth in subdivision (3) of subsection (a) of this section, including public safety.” (Emphasis added.) See Public Acts 2012, No. 12-165, § 1. Section 16-50p (c) (1) refers to the “factors set forth in” subsection (a) (3) of the same statute, which provides in relevant part that: “The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine . . . (B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every significant adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the

²A “facility” includes an electric transmission line, a fuel transmission facility, any electric generating or storage facility, any electric substation or switchyard, certain community antenna television towers, and certain telecommunication towers. See General Statutes § 16-50i (a).

policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife" General Statutes § 16-50p (a) (3) (B).

The plaintiffs focus on the phrase "considers neighborhood concerns" in § 16-50p (c) (1). Although the plaintiffs suggest to the contrary, there can be no genuine dispute that the council heard and admitted massive amounts of evidence about neighborhood concerns and made extensive findings on these matters in its decision. The plaintiffs initially admit in their brief that "the plaintiffs, along with the hundreds of other individuals who testified before and forwarded communications to the Council, participated in the process . . ." (Plaintiffs' Brief, p. 29.) The record also reveals the following. Twenty-three parties and intervenors, many of whom represented the neighborhood surrounding the project, participated in the proceedings. (ROR, Vol. XII, p. 84.) The council received several thousand pages of submissions from opponents of the project about neighborhood concerns such as water supply, air quality, public safety, and the other factors listed in § 16-50p (a) (3) (B).³ In some cases, the council affirmatively requested information about neighborhood concerns by interrogatories or requests for late-filed exhibits.⁴ The council conducted seven days of public hearings. (ROR, Vol. XII, p. 84.) Its decision

³ROR, Vol. VI, pp. 1-114 (parties' and intervenors' comments and requests); Vol. VII, pp. 1-2382 (public comments); Vol. VIII, pp. 1-1730 (questions and responses posed in interrogatory form to CPV and Oxford); Vol. IX, pp. 1209-1346 (prefiled testimony of plaintiff Raymond Pietrorazio); pp. 1366-1558 (prefiled testimony of other opponents of the project); Vol. X, pp. 1345-56 (administrative notice items filed by Pietrorazio); Vol. XI, pp. 206-29, 244-51, 266-307, 372-92 (posthearing briefs and additional comments on the council's findings of facts).

⁴ROR, Vol. II, p. 101 (council requests of plaintiff Pietrorazio for late-filed exhibits); Vol. VIII, pp. 16-17 (council's interrogatories); Vol. IX, pp. 270-71 (council's interrogatories); Vol. IX, pp. 1328-46 (late-filed exhibits of plaintiff Pietrorazio.)

contains thirty-five pages of factual findings on the statutory factors affecting the neighborhood. (ROR, Vol. XII, pp. 47-82.)⁵ The decision concludes by stating: "Notwithstanding continued public opposition, which the Council both acknowledges and has tried to use constructively in this decision, it is the Council's opinion that improvements offered by CPV's proposal do provide significant benefit to the public." (ROR, Vol. XII, p. 91.)

Beyond disputing the sheer volume of evidence before the council on neighborhood concerns and the council's extensive consideration of that evidence, the plaintiffs contend that court must construe the meaning of the phrase "[consider] neighborhood concerns" to require "greater scrutiny" of these factors. (Plaintiffs' brief, p. 24.) The plaintiffs do not identify the level of scrutiny that they have in mind, but they strongly suggest that, given the level of neighborhood opposition in this case, the council should have denied the petition to modify.

The plaintiffs' argument is essentially a plea for the court to either ignore the language of the statute or the standard of review. The court can do neither. The statute does not define the term "considers" or the phrase "considers neighborhood concerns." However, the subsection in question does provide that the council shall not grant a certificate unless it "finds and determines" a public benefit and "considers" neighborhood concerns. It thus strongly suggests that "considers" means something less than "find and determine." General Statutes § 16-50p (c) (1). Indeed, analogous authority confirms that the term "consider" is akin to "take into account." See *Westport v. Connecticut Siting Council*, 47 Conn. Supp. 382, 394, 797 A.2d 655 (2001), *aff'd*, 260

⁵ROR, Vol. XII, pp. 47-82 (addressing fire protection and safety, environmental effects, visibility, exhaust plumes, noise, traffic, historic and archaeological resources, geology and hydrology, wetlands, wildlife, air quality, water use, water discharge, solid and hazardous waste.)

Conn. 266, 796 A.2d 510 (2002) (Under General Statutes § 16-50x (a), providing in relevant part that the council “shall give such consideration to other state laws and municipal regulations as it shall deem appropriate . . . ,” the council “did consider the town zoning regulations because they were presented to the council as part of T-Mobile's application.”) Similarly, for the term “consider,” the common legal or dictionary meaning, which is ordinarily the guide to undefined statutory terms; see *Southington v. State Board of Labor Relations*, 210 Conn. 549, 561, 556 A.2d 166 (1989); is “to reflect on: think about with a degree of care or caution.” *T.S. v. Board of Education of the Town of Ridgefield*, 10 F.3d 87, 88 (2d Cir. 1993) (quoting Webster's Third International Dictionary 483 (1986)). Applying these standards, the proceedings before the council and its decision, as summarized above, reveal that the council extensively considered neighborhood concerns.⁶

Further, and notwithstanding the plaintiffs' contrary suggestion, the statute neither states nor implies that the council should give “greater scrutiny” to neighborhood concerns or deny applications merely because neighborhood concerns were numerous or varied. The court has no authority to change the balance achieved by the council on the ground that there were numerous neighborhood concerns. The court cannot retry the case or substitute its judgment for that of the agency. See *Domestic Violence Services of Greater New Haven v. FOIC*, 47 Conn. App. 466, 470, 704 A.2d 827 (1998); General Statutes § 4-183 (j). After considering neighborhood concerns, the council, not the court, has the task of determining whether these concerns outweigh the public benefit. To the extent the plaintiffs argue to the contrary, they misperceive the restricted

⁶ Contrary to the unsupported suggestion of the plaintiffs in their reply brief, the statute does not require that the council, in its decision, “address” each submission by an opponent.

role of judicial review of agency decisions.

V

The second issue raised by the plaintiffs is the claim that the CPV did not make proper service of its petition to modify the certificate. The plaintiffs rely on General Statutes § 16-50l (b), which provides that an applicant for an "amendment of a certificate" under § 16-50l (d) shall serve copies of its petition on certain officials and agencies of the "municipality in which any portion of such facility is to be located," which in this case is Oxford, as well as the attorney general, each member of the legislature in whose district the facility is to be located, any relevant state or federal agencies, and the general public. General Statutes § 16-50l (b).⁷

This claim is completely without merit. To begin with, the plaintiffs did not raise it before the agency. Therefore, they cannot raise it now. See *Pet v. Dept. of Health Services*, 228 Conn. 651, 674, 638 A.2d 6 (1994) (court "will not set aside an agency's determination upon a ground

⁷Section 16-50l (b) provides in pertinent part: "Each application shall be accompanied by proof of service of a copy of such application on: (1) Each municipality in which any portion of such facility is to be located, both as primarily proposed and in the alternative locations listed, and any adjoining municipality having a boundary not more than two thousand five hundred feet from such facility, which copy shall be served on the chief executive officer of each such municipality and shall include notice of the date on or about which the application is to be filed, and the zoning commissions, planning commissions, planning and zoning commissions, conservation commissions and inland wetlands agencies of each such municipality, and the regional councils of government which encompass each such municipality; (2) the Attorney General; (3) each member of the legislature in whose assembly or senate district the facility or any alternative location listed in the application is to be located; (4) any agency, department or instrumentality of the federal government that has jurisdiction, whether concurrent with the state or otherwise, over any matter that would be affected by such facility; (5) each state department, agency and commission named in subsection (h) of section 16-50j; and (6) such other state and municipal bodies as the council may by regulation designate. A notice of such application shall be given to the general public, in municipalities entitled to receive notice under subdivision (1) of this subsection, by the publication of a summary of such application and the date on or about which it will be filed."

not theretofore fairly presented for its consideration,” quoting *Finkenstein v. Administrator*, 192 Conn. 104, 114, 470 A.2d 1196 (1984)); *Dragan v. Connecticut Medical Examining Board*, 223 Conn. 618, 632, 613 A.2d 739 (1992) (“A party to an administrative proceeding cannot be allowed to participate fully at hearings and then, on appeal, raise claims that were not asserted before the board.”); *Solomon v. Connecticut Medical Examining Board*, 85 Conn. App. 854, 862, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005) (“If the plaintiff failed to raise issues before the panel or the defendant, he may not do so for the first time on appeal.”).

Second, CPV’s petition was not an “application for an amendment of a certificate” under § 16-507 (d).⁸ Rather, the petition specifically alleges that it arises under § 4-181a (b) and does not allege § 16-507 (d). (ROR, Vol. I, pp. 2, 8-9.) The plaintiffs cite no evidence to the contrary. General Statutes § 4-181a (b) provides that: “[o]n a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency’s own motion.”⁹ Under § 4-181a (b), the applicant must notify “[t]he party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the

⁸Section 16-507 (d) provides in pertinent part: “An amendment proceeding may be initiated by an application for amendment of a certificate filed with the council by the holder of the certificate or by a resolution of the council. . . . A copy and notice of each amendment application shall be given by the holder of the certificate in the manner set forth in subsection (b) of this section.”

⁹Section 4-181a (b) provides in full that: “On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency’s own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.”

original contested case” The plaintiffs do not and cannot dispute that CPV complied with this requirement. (ROR, Vol. I, pp. 24-27; Vol. II, pp. 7, 11-12.)

Finally, the plaintiffs cannot show that “substantial rights of the person appealing have been prejudiced” as a result of any alleged noncompliance with statutory notice requirements. General Statutes § 4-183 (j). First, even if § 16-50i (b) applied, it would not have required CPV to provide notice to any of the plaintiffs in this case other than possibly the town, which CPV in fact served with its petition. (ROR, Vol. I, p. 24; Vol II, p. 7.)¹⁰ Second, plaintiff does not and cannot establish that any interested or required person or entity did not receive notice of CPV’s petition. (ROR, Vol. I, pp. 24-27; Vol. XII, pp. 3-7.)¹¹ Accordingly, the plaintiffs cannot prevail on their claim of improper notice.

¹⁰Section 16-50i (d) provides that “[a] copy and notice of each amendment application shall be given by the holder of the certificate in the manner set forth in subsection (b) of this section.” Subsection (b) provides that a party applying for a certificate must notify both “[e]ach municipality in which any portion of such facility is to be located, both as primarily proposed and in the alternative locations listed, and any adjoining municipality having a boundary not more than two thousand five hundred feet from such facility” (Emphasis added.) There is no dispute that the town has a boundary within 2500 feet of the facility. On the other hand, subsection (d) also provides that “[t]he certificate holder and the council shall not be required to give such copy and notice to municipalities and the commissions and agencies of those municipalities other than those in which the modified portion of the facility would be located.” General Statutes § 16-50i (b)(1), (d). There is no need to reconcile this apparent conflict, as the statute does not apply and CPV, in any event, served the town.

¹¹The plaintiffs make a passing reference in their reply brief to the possibility that a nonparty abutter named Spectra Energy did not receive notice. (Reply brief, p. 10.) First, it is improper to raise new issues or present new evidence in a reply brief, because the opponent has no fair opportunity to respond. See *Collard & Roe, P.C. v. Klein*, 87 Conn.App. 337, 343-44 n. 3, 865 A.2d 500, cert. denied, 274 Conn. 904, 876 A.2d 13 (2005). In any event, the plaintiffs lack standing to assert that a nonparty did not receive notice. See *Lauer v. Zoning Commission*, 220 Conn. 455, 459, 465, 600 A.2d 310 (1991).

VI

The plaintiffs next claim that the record reflects bias and predetermination by the council. The standards governing such a claim in the administrative context are well known. "At the core of due process is the requirement for an impartial tribunal. . . . Due process demands . . . the existence of impartiality on the part of those who function in judicial or quasi-judicial capacities. . . . It has been generally recognized, however, that due process does not require that members of administrative agencies adhere in all respects to the exalted standards of impartiality applicable to the judiciary The mere appearance of bias that might disqualify a judge will not disqualify an arbitrator. . . . A presumption of impartiality attends administrative determinations, and the burden of establishing a disqualifying interest on the part of an adjudicator rests upon the one seeking disqualification. . . . To overcome the presumption, the plaintiff in this case must demonstrate actual bias, rather than mere potential bias, of the [panel] members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable." (Citations omitted; internal quotation marks omitted.) *Jones v. Connecticut Medical Examining Board*, 129 Conn. App. 575, 586-87, 19 A.3d 1264 (2011), *aff'd*, 309 Conn. 727, 72 A.3d 1034 (2013).

Under these standards, the plaintiffs' claim must fail. To begin with, the plaintiffs never raised a claim of bias before the council. Not only does this fact preclude review on appeal; see *Solomon v. Connecticut Medical Examining Board*, *supra*, 85 Conn. App. 862; but it also reveals that the plaintiffs themselves did not deem their claim worthy of consideration by the council. It is hard to see why the claim warrants any further attention now.

Indeed, there is no merit to the plaintiffs' claim. The 5-2 vote, with the chairman in the

minority, in itself reveals that some members agreed with the plaintiffs' opposition to the project. (ROR, Vol. XII, p. 98.) Beyond that point, the plaintiffs present three substantive rulings by the council with which they disagree as the basis for their charge of bias. Interestingly, the plaintiffs do not challenge any of these rulings in this appeal, thus revealing that even the plaintiffs do not view these rulings as sufficiently erroneous to deserve separate review by the court.¹² In any event, the plaintiffs overlook the rule that adverse rulings, even if erroneous, do not establish bias. See *Burton v. Mottolese*, 267 Conn. 1, 49-50, 835 A.2d 998 (2003), cert. denied, 541 U.S. 1073 (2004). As our courts have stated: "Obviously, if a ruling against a party could be used as an indicia of bias, at least half of the time, every court would be guilty of being biased against one of two parties. Moreover, the fact that a trial court rules adversely to a litigant, even if some of these rulings were determined on appeal to have been erroneous, [still] does not demonstrate personal bias. . . . The fact that the plaintiff strongly disagrees with the substance of the court's rulings does not make those rulings evidence of bias." (Citations omitted; internal quotation marks omitted.) *Burns v. Quinnipiac University*, 120 Conn. App. 311, 317, 991 A.2d 666 (2010). For these reasons, the court rejects the plaintiffs' claim of bias.

VII

The plaintiffs next attempt to portray the council's proceedings as a denial of due process. The plaintiffs' approach to this matter is primarily to provide a long list of grievances, including

¹²The three substantive issues identified by the plaintiffs are: 1) the council's refusal to extend the time for filing initial comments on CPV's petition; 2) the council's denial of the plaintiffs' request at the January 15, 2015 initial evidentiary hearing to set additional hearing dates; and 3) the council's alleged failure to follow up on plaintiff Raymond Pietrorazio's claims that the proposed exhaust stacks would not provide adequate dispersion of pollutants.

the refusal of the council to set a definitive hearing schedule and consider scheduling witnesses by topic, the council's failure to accommodate the schedule of a witness for a plaintiff, the council's assignment of arbitrary time limits to cross-examine CPV's witnesses, its decision not to permit the plaintiffs to present rebuttal witnesses, the council's allowance of late filings, and the council's failure to review fully the factors included in § 16-50p and to consider neighborhood concerns. However, the plaintiffs fail to supply a procedural history of each claim, they present almost no citations to the record, and they provide virtually no legal analysis of why each claim violates either the relevant case law or the UAPA. Instead, the plaintiffs essentially dump a grab bag of claims on the court, ask the court to sort them out, and somehow conclude that they amount to a violation of due process.¹³

Under these circumstances, the court deems the due process claim abandoned.

"[R]eviewing courts are not required to review issues that have been improperly presented to th[e] court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without discussion or citation of authorities, it is deemed to be abandoned. . . . These same principles apply to claims raised in the trial court." (Citations omitted; internal quotation marks

¹³Illustrative of the difficulties that the plaintiffs' brief creates for the court and for the defendants is the following sentence, which appears in the due process section and follows immediately after a paragraph that appears to address both the denial of equal opportunity to participate in evidentiary hearings and the council's failure to grant continuances: "The new evidence submitted by CPV as part of the [development and management] plan does not qualify as the substantial evidences [sic] of the proposed re-designed project worthy of the Council's consideration." (Plaintiff's brief, p. 38.)

omitted.) *Connecticut Light & Power Co. v. Dept. of Public Utility Control*, 266 Conn. 108, 120, 830 A.2d 1121 (2003). See also *Connecticut Coalition Against Millstone v. Connecticut Siting Council*, 286 Conn. 57, 87, 942 A.2d 345 (2008) (“mere conclusory assertions regarding a claim, with no mention of relevant authority and minimal or no citations from the record, will not suffice.”)¹⁴

The plaintiffs also trivialize constitutional claims by denoting routine procedural matters such as a decision on a request for a continuance or a ruling on the admission of evidence as a denial of due process. “[R]obing garden variety claims [of an evidentiary nature] in the majestic garb of constitutional claims does not make such claims constitutional in nature. . . . Putting a constitutional tag on a nonconstitutional claim will no more change its essential character than calling a bull a cow will change its gender.” (Citations omitted; internal quotation marks omitted.) *State v. McHolland*, 71 Conn. App. 99, 108 n.8, 800 A.2d 667 (2002).

Indeed, the plaintiffs’ claim that the council’s proceedings constituted a violation of due process completely mischaracterizes those proceedings. The administrative process involved seven days of hearings and exhibits, interrogatories, and testimony that created an administrative record of approximately 9,000 pages. The plaintiffs enjoyed a full opportunity to present their case. Although every ruling did not go in the plaintiffs’ favor, “Constitutional principles permit an administrative agency to organize its hearing schedule so as to balance its interest in reasonable, orderly and nonrepetitive proceedings against the risk of erroneous deprivation of a

¹⁴For example, a full analysis would reveal that the plaintiffs never requested and the council never denied them an opportunity to present rebuttal. The plaintiffs did not object when the council closed the hearings on March 26, 2015. (ROR, Vol. IV, pp. 538-39.)

private interest.” *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council*, 215 Conn. 474, 486, 576 A.2d 510 (1990).¹⁵

Finally, the plaintiffs never establish any harm from any of the various rulings that allegedly violated due process. For example, the plaintiffs fail to state what additional evidence they would have presented with additional cross-examination, continued hearings, or the opportunity to call rebuttal witnesses and what significance this evidence might have had. Thus, the plaintiffs cannot demonstrate that “substantial rights of the person appealing have been prejudiced” as a result of any of the rulings that they purport to challenge. General Statutes § 4-183 (j). See *FairwindCT, Inc. v. Connecticut Siting Council*, supra, 313 Conn. 734-35 (“We need not decide whether the council abused its discretion in denying the requests for continuance, however, because the plaintiffs have identified no evidence that they would have produced, arguments that they would have made or questions that they would have posed to BNE’s witnesses if the council had granted their requests that likely would have affected the council’s decisions.”) Accordingly, the court rejects the plaintiffs’ effort to create a due process claim.

VIII

The final claim raised by the plaintiffs is that the council’s decision was not supported by substantial evidence. See *Schallenkamp v. DelPonte*, supra, 229 Conn. 40. Unfortunately, the plaintiffs’ brief does not identify any specific statutory criterion or any specific finding by the

¹⁵The plaintiffs also overlook the fact that the right in this state to fundamental fairness in administrative proceedings stems not so much from the constitution but rather from a “common-law right to due process in administrative hearings ... [that] is not coextensive with constitutional due process.” (Internal quotation marks omitted.) *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 711, 99 A.3d 1038 (2014).

council that lacked the support of substantial evidence. The brief also fails to marshal the evidence that supported that criterion or finding, provide citations to the record for that evidence, and then analyze the way in which the finding was insufficient. The plaintiffs instead merely present a laundry list of complaints – such as that the council failed to grant an extension of time, the council limited the plaintiffs’ right of cross-examination, the council allowed expert testimony instead of actual surveys, and the council failed to call its own experts – that have nothing to do with a substantial evidence issue. (Plaintiffs’ brief, pp. 40-47.) Under these circumstances, the court is compelled to conclude that the plaintiffs’ have abandoned their substantial evidence claim by inadequately briefing the matter. See *Connecticut Coalition Against Millstone v. Connecticut Siting Council*, supra, 286 Conn. 87; *Connecticut Light & Power Co. v. Dept. of Public Utility Control*, supra, 266 Conn. 120.

The fact is that the council crafted a detailed, 85 page decision based on approximately 9,000 pages of evidence. For each of its 314 findings of fact, the council cited the portion of the record that provided the supporting evidence. (ROR, Vol. XII, pp. 20-68.) On issues of particular concern to the plaintiffs, such as aviation safety, wetlands, and wildlife, the council provided multiple findings of fact with accompanying citations to the record. (ROR, Vol. XII, pp. 41- 43 (aviation safety); pp. 54-57 (wetlands); pp. 57-59 (wildlife).)¹⁶ Therefore, there was substantial

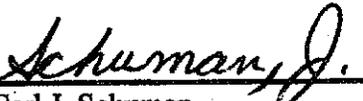
¹⁶The plaintiffs cite no authority for their additional, untitled contention that, unless it called its own expert, the council did not possess the ability to understand and evaluate the factual accuracy of expert aviation testimony provided by CPV. (Plaintiff’s brief, p. 46.) An administrative agency such as the council has the “right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part.” *Briggs v. State Employees Retirement Commission*, 210 Conn. 214, 217, 554 A.2d 292 (1989). Further, in administrative cases, the agency’s “experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.” General Statutes § 4-178 (8). See also *Levinson v. Board of*

evidence to support the council's decision.

IX

The court affirms the council's decision and dismisses the appeal.

It is so ordered.



Carl J. Schuman
Judge, Superior Court

Chiropractic Examiners, 211 Conn. 508, 532-33, 560 A.2d 403 (1989) (a hearing officer's "use of his experience in evaluating proof that has been offered is not only unavoidable but, indeed, desirable.") [Internal quotation marks omitted.]