

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

IN RE:

Petition No. 1347A

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-megawatt AC solar photovoltaic electric generating facility in Waterford, Connecticut. Reopening of this petition based on changed circumstances

June 22, 2020

MOTION OF GRE GACRUX LLC TO COMPEL SAVE THE RIVER-SAVE THE HILLS, INC. TO PROVIDE ITS MEMBERSHIP LIST, UNDER SEAL, TO THE CONNECTICUT SITING COUNCIL

I. Introduction.

Petitioner GRE GACRUX, LLC (“GRE”; or the “Petitioner”) respectfully moves that the Connecticut Siting Council (the “Council”) preclude individual members of Save the River-Save the Hills, Inc. (“STR-STH”; or the “Intervenor”) from making limited appearances in Petition No. 1347A (the “Petition”) and the proceedings associated therewith. In addition, the Petitioner respectfully moves that the Council order STR-STH to provide it with a list of its members (the “Membership List”), under seal, prior to the June 25, 2020 Rescheduled Public Hearing using Zoom Conferencing (the “Public Hearing”).

As set forth in greater detail below, GRE believes that administrative expedience and fairness to the Petitioner requires the denial of such members’ participation in this instance. GRE also submits that its request that STR-STH provide the Council with the Membership List, under seal, is a reasonable compromise that accommodates the concerns of the Petitioner regarding fairness while addressing the Intervenor’s understandable privacy concerns. Because STR-STH already has a Membership List, such a request would not unduly burden the Intervenor, however, it is critical that such list be provided prior to the Public Hearing.

II. Argument.

A. STR-STH Members Should Not Be Permitted to Make Limited Appearances In this Petition.

By way of background, on June 11, 2020, the Council issued several interrogatories to the Intervenor. One such interrogatory asked that the Intervenor “provide a list of all of the names of the members of STR-STH for the record.”¹ By correspondence dated June 18, 2020, STR-STH objected to the Council’s request, responding as follows:

STR-STH objects to this interrogatory. STR-STH’s incorporation documents do not define “member” or include any requirement to be a member. Members of STR-STH do not have voting rights. STR-STH is not a recently formed nonprofit with the single goal of opposing this project; it is an established nonprofit that has been in existence for nearly 20 years. STR-STH’s “membership” consists of people who may have paid \$25 or even less in order to support STR-STH’s mission of protecting the Niantic River watershed and the Oswegatchie Hills. Many people provide a donation in connection with STR-STH’s free boat pumpout service. None of these individuals have agreed to have their names released on a public site. Moreover, as they do not have voting rights or any influence on STR-STH’s policy positions or its programs, the idea that they may be prevented from speaking at a public hearing if they so choose simply because they made a donation to STR-STH would undermine the entire principle of public participation.

Notwithstanding those objections, STR-STH’s officers and those individuals who are otherwise in leadership positions at STR-STH are as follows:

- *Fred Grimsey, President*
- *Deborah Moshier-Dunn, Vice President*
- *Suzanne Thompson, Secretary*
- *Liz Caruso, Treasurer*
- *Eileen O’Pasek, Membership Chair and Legislative Liaison & Fundraising Chair*
- *Petie Reed, Member at Large*
- *David Robinson, Member at Large*

¹ See Connecticut Siting Council’s June 11, 2020 Interrogatories to Save the River-Save the Hills, Inc.

- *Mark Spery, Member at Large*²

While the Petitioner understands and appreciates STR-STH's concerns regarding the privacy interests of its members, GRE is also concerned with the possibility that many of its members will purport to make limited appearances on their own behalf ("Limited Appearances")³ in the Petition, despite the fact that the organization of which they are a member intervened in this Petition to represent the organization and its members. STR-STH would like the best of both worlds – the ability to have its members issue public comments while at the same time availing itself of intervenor/party status, thereby being able to present evidence, issue interrogatories and cross examine witnesses. However, STR-STH's attempt to have its cake and eat it too not only unduly prejudices GRE and the Project, it also violates applicable state law.⁴

STR-STH intervened in the instant Petition with representation that its participation "will furnish assistance to the Council in resolving the issues of the case, is in the interests of justice, and will not impair the orderly conduct of the proceedings."⁵ GRE submits that, if the Council allows individual STR-STH members to make Limited Appearances in this Petition, this representation would be rendered effectively meaningless.

Limited Appearances afford interested stakeholders the opportunity to submit written or oral comments regarding a project. Statements of Limited Appearance are transcribed for permanence, and these Statements of Limited Appearance play an integral part of the Council's approval process the projects subject to the Council's jurisdiction. Indeed, the Petitioner

² See Save the River-Save the Hills, Inc.'s Responses to interrogatories issued by the Connecticut Siting Council, June 18, 2020, p. 1.

³ See RCSA § 16-50j-15b ("Limited appearance"): (a) Status of Limited Appearance. Pursuant to Section 4-177 and Section 16-50n of the Connecticut General Statutes, prior to, during or not later than 30 days after the close of a hearing, any person may make a limited appearance. All oral and written limited appearance statements shall become part of the record. No person making a limited appearance shall be a party or intervenor, or shall have the right to cross-examine witnesses, parties or intervenors. No party or intervenor shall have a right to cross-examine a person making a limited appearance. The Council may require a limited appearance statement to be given under oath.

(b) Form of Limited Appearance.

A limited appearance may be made in the following forms:

(1) a written statement submitted to the Council prior to, during or after the close of a hearing; or
(2) an oral statement made during the public comment session of a hearing held after 6:30 PM pursuant to Section 16-50m of the Connecticut General Statutes.

⁴ See RCSA § 16-50j-15b ("No person making a limited appearance shall be a party or intervenor").

⁵ Sec. 16-50j-15 ("Application to be designated an intervenor").

appreciates this aspect of the process, as it not only provides the Council with a more wholistic—and thereby, accurate—record for its consideration of a project, but also affords petitioners—such as GRE—a more meaningful opportunity to consider feedback regarding their projects.

However, the roles of a party/intervenor and an individual making a Limited Appearance are mutually exclusive. Connecticut law precludes a person that has attained party or intervenor status from making a Limited Appearance:⁶

*RCSA § 16-50j-15b (“Limited appearance”): (a) Status of Limited Appearance. Pursuant to Section 4-177 and Section 16-50n of the Connecticut General Statutes, prior to, during or not later than 30 days after the close of a hearing, any person may make a limited appearance. All oral and written limited appearance statements shall become part of the record. **No person making a limited appearance shall be a party or intervenor**, or shall have the right to cross-examine witnesses, parties or intervenors. No party or intervenor shall have a right to cross-examine a person making a limited appearance. The Council may require a limited appearance statement to be given under oath.*

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(Emphasis Added). The rationale behind this prohibition is to ensure that Limited Appearances are reserved to presenting “public” views not otherwise adequately represented in the proceedings.

By virtue of their affiliation with the STR-STH organization, the members likely share similar—if not the same—view(s)/opinions of the Project. These views, however, are being adequately represented by virtue of STR-STH’s designated “Intervenor” status in the Petition. In fact, the STR-STH members not only have such view(s) represented, but they are afforded a number of benefits/privileges that are not otherwise available to those members of the general public that wish to make Limited Appearances in the Petition, including, *inter alia*:

- Filing pre-hearing questions to the applicant or other parties and intervenors;

⁶ See RCSA § 16-50j-15b and Connecticut Siting Council, *Public Participation*, accessible at, <https://www.ct.gov/csc/cwp/view.asp?a=947&Q=247610>

- Presenting pre-filed testimony for hearing sessions;
- Cross-examination of witnesses at hearing sessions; and
- Filing exhibits, briefs, and proposed findings of fact.⁷

The traded cost for these benefits/privileges, however, is that STR-STH (and correspondingly, its members) is/are precluded from making Limited Appearances in this Proceeding, as is the Petitioner (and its personnel). This principle behind trade-off is well-founded. For example, if all of the STR-STH members are permitted to make Limited Appearances in the Petition, the evidentiary record for same will be overwhelmingly represented by one view, and therefore, misleading. This concern is not unfounded. STR-STH is actively soliciting its members to make Limited Appearances in the Petition:

June 16, 2020 - THE PUBLIC HEARING HAS BEEN SCHEDULED TO BE A ZOOM MEETING ON JUNE 25, 2020!! [Click here](#) for the letter from the CSC with all details on how to participate.

It's a Zoom Public Hearing, or you can join by telephone. BUT!!!! TO HAVE YOUR CHANCE TO BE HEARD ABOUT THE PROPOSED SOLAR INSTALLATION OFF OIL MILL ROAD IN WATERFORD, YOU MUST LET THE CT SITING COUNCIL KNOW BY THIS THURSDAY JUNE 18th if you want to speak!! Everyone gets to speak for 3 mins.

Email: siting.council@ct.gov (with your name, email address and mailing address) or to attend by phone, call 860-827-2935 (leave a message with your name, telephone number, and mailing address)

*See below from the CT Siting Council:
" To participate in the 6:30 p.m. public comment session by computer, smartphone or tablet, please send an email to siting.council@ct.gov with your name, email address and mailing address by June 18, 2020. To participate in the 6:30 p.m. public comment session by telephone, please leave a voicemail message at 860-827-2935 with your name, telephone number, and mailing address by June 18, 2020. Public comments may also be submitted to the Council by email at siting.council@ct.gov or by regular mail."*

[Here's the link to the CT Siting Council page](#) that houses all of the info about the project from the solar company, the Town of Waterford and STR-STH. (You

⁷ See Connecticut Siting Council, *Party, Intervenor, and Limited Appearance Participation*, available at, <https://www.ct.gov/csc/cwp/view.asp?a=947&Q=247610>

can see all the work we are doing!)
<https://www.ct.gov/csc/cwp/view.asp?a=2397&q=611294>.

Needless to say, the Petitioner cannot find any real benefit and/or justification in allowing up to 350 identical (or nearly identical) comments into the evidentiary record for the Petition—especially in light of the fact that these views are already effectively represented in the Petition by virtue of STR-STH’s involvement as an intervenor/party. Although the Petitioner welcomes public involvement in the Petition, it does not necessarily follow that the Council need allow the Petition’s proceedings to be obstructed or overwhelmed by captious or purely disruptive protests from STR-STH members.

B. STR-STH Should Be Required to Provide the Membership List to the Council Under Seal.

If the Council rules that individual members of STR-STH are precluded from making Limited Appearances in the Petition, GRE also respectfully requests that the Council order STR-STH to provide the Council with the Membership List prior to the Public Hearing. This will ensure that the Council can adequately ascertain the identities of said members and limit their participation in the Public Hearing and/or Petition accordingly. In addition, because the Petitioner appreciates the Intervenor’s concerns regarding the privacy interests of STR-STH members, GRE proposes that the Membership List be provided to the Council under seal. *See* STR-STH Interrogatory Responses to the Council (June 18, 2020) (“None of these individuals have agreed to have their names released on a public site”).

While the privacy concerns may be legitimate (and can be resolved by filing the membership list under seal), other concerns raised by STR-STH do not appear to be. Contrary to its response to the Council’s June 11, 2020 interrogatories, STR-STH knows the number of its members and has a listing of those members. By its own admission, STR-STH is a domestic nonprofit corporation with approximately 350 members.⁸ Therefore, the Petitioner does not suspect that providing a list of STR-STH’s members is an overly burdensome request, given that

⁸ *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.

various representations on the STR-STH website suggest the existence of a Membership List, including:

NEW: Please [CLICK HERE](#) to sign up for our emails and newsletters!! We are not sending out paper mail newsletters during the pandemic. We will be sending the content from the latest newsletter in a couple of emails to keep you updated. If you are already getting our emails, you are all set. If you are not, please click the above link and fill out the form so we can keep you up-to-date on STR-STH programs and causes. Also please add us to your Contact List to prevent STR-STH emails from going to your Spam folder. Thank you and #StaySafe!

...

If you would like to support us in the protection of the Watershed through the #SmartSolar initiative, please send a check to PO Box 505 Waterford, CT 06385. Also, please send us your email if we don't have it yet. We are sending out short emails with updates on all of our programs. We're sorry we are not sending out newsletters in the USPS until the Coronavirus situation is better in hand. Thank you all for your continued support!!

Because the Intervenor presently has such email/newsletter list(s), that list also presumably constitutes the STR-STH Membership List. If that list contains more than just members, STR-STH as a 501(c)(3) non-profit must be keeping records of its members for tax reporting purposes. The Petitioner is willing to accept that list as STR-STH's membership list if that is easier for STR-STH. Either way, such a request is not particularly onerous, particularly compared to the potential for individuals who are already represented in this proceeding to unduly prejudice the Petitioner's rights under applicable state law.

III. Conclusion.

In line with the foregoing, GRE moves that the Council preclude individual members of STR-STH from making Limited Appearances in the Petition, and order that STR-STH provide its Membership List to the Council, under seal, prior to the Public Hearing. GRE submits that such a

request would not be overly burdensome to STR-STH, given that its website evidences the existence of such a Membership List.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that a copy of the foregoing document was delivered by e-mail on June 22, 2020 to the following service list:

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