

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**

**June 24, 2020**

**SAVE THE RIVER-SAVE THE HILLS, INC.'S  
OBJECTION TO PETITIONER'S MOTION TO COMPEL**

Save the River-Save the Hills, Inc. ("STR-STH") hereby objects to the motion to compel filed by GRE GACRUX LLC ("GRE"). In that motion, GRE seeks to compel STR-STH to file its membership list under seal with the Council and to preclude anyone on that list from speaking at the public comment session via Zoom videoconferencing that the Council has scheduled for June 25, 2020 at 6:30 p.m. GRE argues that "administrative expedience" and "fairness to [GRE]" command that the Council to take such an extraordinary measure to silence members of the public and chill public participation in a process that already significantly curtails local control and involvement. For the reasons set forth below, GRE's motion should be denied.

First, it is not clear that GRE even has standing to bring this motion, as the interrogatory response to which GRE is objecting and seeking to compel a more comprehensive answer to was issued by the Council, not by GRE. The Council has not taken the unprecedented step of forcing STR-STH to reveal its donors in order to silence the public's voices, and GRE cites to no authority that provides it has standing to move to force STR-STH to amend its response to an interrogatory it did not issue. Surely if GRE was so concerned that STR-STH would flood the public hearing with hundreds of its supporters, it would have included the question of membership lists in its own interrogatories issued to STR-STH. It did not. It cannot now try to repair its apparent omission by piggybacking onto the work of the Council.

STR-STH's response to the Council's interrogatory laid out clearly its objections to the request for a membership list, namely that (1) members are actually just individuals who choose to donate to STR-STH and its mission to protect the Niantic River watershed and the Oswegatchie Hills; (2) individual members do not control STR-STH's decisions, positions or policies; and (3) members, outside of STR-STH's leadership, have not authorized STR-STH to identify them publicly in this way. (See Motion at 2-3 (providing STR-STH's interrogatory response in full); see also Declaration of Deborah Moshier-Dunn, dated June 24, 2020 ("Moshier-Dunn Decl."), ¶ 5 (attached as Exhibit A).) STR-STH then provided the Council with a list of its leadership team, which includes four officers and four people who serve the organization in other ways. All of those people, as leaders of STR-STH, understand that they may not speak at the public comment session. Given that the purpose of the Council's restriction on public comment by "members" of parties and intervenors is to ensure that the public comment session is open to members of the public rather than those who are already participating in the proceeding, its purpose is served by that restriction.

GRE is not satisfied by that restriction, however, and is essentially seeking to prevent any person who has ever supported STR-STH from making a public comment on its proposed project – while at the same time claiming that it “welcomes public involvement in the Petition.”<sup>1</sup> (Motion at 6.) The idea that people who live in Waterford and send a donation to a local nonprofit and so are on a “membership list” despite having no further involvement in the organization would then be precluded from offering public comment on a significant proposed development in their town is offensive the very notion of public participation and indeed to the fundamental principle of free speech. That person may be an abutter, or may be concerned only with how the project will affect

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<sup>1</sup> That a developer could pen a lengthy motion seeking to prevent people from making public comments, yet claim in that same document that it “welcomes public involvement,” is truly extraordinary.

his taxes, or may actually support the idea of solar panels in her town. There is simply no support for GRE's wild speculation that a monolith of people will sign up to make "identical (or nearly identical) comments." (Motion at 5.) This is not a situation where, as GRE's counsel opined in the Hartford Courant in December 2019, "[c]itizen groups spring up near project sites claiming to be protecting the environment" but engage in "NIMBY-ism disguised as environmental advocacy" to "thwart" the development of renewable energy projects. STR-STH is an established nonprofit that has been advocating for the watershed and its hills for nearly 20 years and has only been involved with GRE's project since late 2018, because of the proximity of this site to two highly important tributaries to the Niantic River. Making a donation to an organization does not necessarily mean opposing this project, and that is especially true here given that STR-STH is not a single-purpose neighborhood group that was created just to participate in this proceeding. The Council should not permit GRE to manipulate the Council's rules to prevent STR-STH's donors from speaking.

Moreover, although GRE complains at length about the unfairness of having to endure a public comment session filled with comments from people who oppose the project (*see* Motion at 3-5): (1) it does not point to anything other than speculation that people will turn out in large numbers to oppose its petition; and (2) listening to public comment is part of the process for any developer, and is certainly part of the Council's obligation when it opts to hold a public hearing. On the first point, STR-STH assumes that if in fact hordes of people had signed up last week to be on the list for public comment on June 25, Council staff would have already reached out to the parties and intervenors to discuss the matter so that arrangements could be made to accommodate such a large number of people. Indeed, given the extra burden imposed on the public due to the Council's decision to require people to sign up a full week in advance of the

hearing, STR-STH would be surprised to learn that the public comment list was so long as to be administratively unmanageable for Council staff.

To allay GRE's purported concern that "350 identical (or nearly identical) comments" will be put into the evidentiary record (Motion at 6), STR-STH is willing to disclose that in this fiscal year, it has to date had far fewer donors, likely due to STR-STH's decision to forego its spring fundraising/membership drive and USPS mailing of its winter and spring newsletters, and otherwise attributable to the COVID-19 pandemic, which of course has limited STR-STH's usual activities. (*See* Moshier-Dunn Decl. ¶¶ 7-9.) At the time Ms. Moshier-Dunn made the representation of 350 members to the Council, back in late 2018, STR-STH was nearing the end of a successful fundraising year and indeed had a list of donors that included about 350 people and organizations. (*Id.* ¶ 6.)

And while STR-STH certainly appreciates GRE reviewing the content of its Facebook page and website, it is grossly inaccurate to claim that STR-STH was "actively soliciting its members" by posting about the deadline to sign up to make a public comment on the petition. (Motion at 5.) STR-STH's Facebook posts are public - which is why GRE was able to review them. They are not directed only to STR-STH members/donors; they are not even directed only to people who have "liked" STR-STH's Facebook page. (*See* Moshier-Dunn Decl. ¶¶ 11-12.) And a careful perusal of the content of those Facebook posts, which GRE was so kind to copy into its motion (*see* Motion at 5-6), shows that STR-STH's posts did nothing more than encourage the people reading the post to sign up to comment on the petition and provide details (from the Council's own public notice) about how to do that. STR-STH did not even advocate that people speak against the project in those posts. STR-STH does not know how many people have signed up to speak, who has signed up to speak, or what they will say. (*See* Moshier-Dunn Decl. ¶¶ 13-14.)

It is also grossly inaccurate to equate people who signed up on STR-STH's website to receive a free newsletter as a "membership list." (Motion at 6-7.) They are simply people who signed up to receive a newsletter; they are not even necessarily donors to STR-STH. STR-STH may not have any more information about those people than their email address. The Council should give no weight to GRE's speculations and accusations.<sup>2</sup> It should also not permit its rules to be expanded to broadly preclude public participation in this way. Based on its motion, GRE is seeking to preclude from public comment anyone who (1) has ever donated to STR-STH; (2) "liked" its Facebook page; or (3) signed up to receive a free newsletter. None of these activities should preclude a person from exercising his or her right to free speech at a public hearing.

For all of the foregoing reasons, STR-STH asks the Council to deny GRE's motion and let the public participate in the scheduled public hearing.

**SAVE THE RIVER-SAVE THE HILLS, INC.**

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<sup>2</sup> To demonstrate how speculative GRE's motion is, STR-STH points out that GRE could have been "actively soliciting" people to speak in favor of its project at the public comment session in order to try to weigh the public comment session in its favor. For all STR-STH or the Council knows, people who are connected to GRE or its vendors or its witnesses could be signed up to speak. Of course, STR-STH has no evidence of that, but neither does GRE have any evidence that STR-STH has been engaging in such underhanded behavior.

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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