

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 10, 2020

REQUEST FOR PARTY STATUS AND NOTICE OF CEPA INTERVENTION BY SAVE THE RIVER-SAVE THE HILLS, INC.

Save the River-Save the Hills, Inc. (“STR-STH”) is a Waterford, Connecticut-based grassroots environmental organization with the mission of preserving the health of the Niantic River Estuary. STR-STH participated in Petition No. 1347 as an intervenor and provided comments and evidence opposing the solar generating facility proposed by GRE GACRUX LLC (“GRE”) due in large part to its erroneous assumptions with respect to stormwater impact. STR-STH has since participated as an intervenor in the Council’s reopening of that petition. STR-STH now seeks party status in this re-opened proceeding and also hereby intervenes in this proceeding under the Connecticut Environmental Protection Act, Conn. Gen. Stat. §§ 22a-16 *et seq.* (“CEPA”).

Contact information for proposed party:

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I. Manner in which proposed party claims to be substantially and specifically affected

The proposed facility will substantially impact STR-STH because of its location between two tributaries to the Niantic River Estuary (the “Estuary”). A large-scale solar facility at that location requires clear-cutting of many acres of core forest. That clear cutting, as well as the installation of the panels themselves, will dramatically change the nature of that habitat and the degree to which stormwater will leave the site. The creation of so many impervious surfaces will increase the amount of and flow rate of runoff significantly. The facility will negatively impact undisturbed wetlands as well as the water quality of the tributaries, which are cold water fisheries streams that feed into the ecosystem of the Estuary. Given STR-STH’s mission of preserving the health of the Estuary, STR-STH’s rights will be substantially and specifically affected by the Council’s decision. STR-STH’s focus on the health of the Estuary, described in more detail below, also gives it an interest in the proceeding, both as a party and as a CEPA intervenor.

II. Contention of the proposed party

STR-STH contends that the proposed solar facility will have a dramatic negative impact on the health of the Estuary because GRE’s site plans and the assumptions included in those and related plans do not comply with the water quality standards of the State of Connecticut and do not demonstrate that its project will not have a substantial adverse impact on the environment.

STR-STH’s mission, in place since its organization in 2001, is specific to preserving the health of the Estuary, its Watershed in the towns of East Lyme, Salem, Montville and Waterford, and the natural beauty of the Oswegatchie Hills. It fulfills that mission by, among other programs:

- Operating a pumpout boat on the Niantic River;
- Water Quality Testing the waters of the River;
- Advocating for the preservation of the Oswegatchie Hills and other strategic Niantic River Watershed lands, such as Grimsey Beach;

- Advocating sewers for East Lyme waterfront neighborhoods;
- Creating and sponsoring an annual Niantic River Appreciation Day with a Kayak Regatta; and
- Encouraging the towns of Waterford and East Lyme to fulfill their obligations under the Federal Phase II Storm Water Regulations.

STR-STH intervened in this proceeding and the underlying petition due to the location of the Site, which is an environmentally sensitive parcel of land on hilly terrain between two streams that currently support native brown and brook trout and feed into the Niantic River. STR-STH believes that installing a solar array of this size and with these grossly insufficient stormwater plans is irresponsible development.

The most troublesome elements of the current design, all of which fail to comply applicable regulations and standards, including water quality standards and standards of care with respect to professional engineering, fall into several categories: (1) The solar panels themselves were not considered impervious, resulting in GRE grossly under-estimating the peak rates and runoff volumes for post-development conditions. (2) The elevated solar panels are no different than a car port, which is a roof supported by four or more posts and open on all four sides. The roof of the car port is impervious and thus the elevated solar panels are impervious. At the solar array in East Lyme was also developed by Greenskies, there was clear evidence that runoff from the solar panels is not infiltrating, but occurring as concentrated flow, causing erosion and resultant sedimentation. (3) The multiple types of stormwater basins proposed by GRE are not in compliance with the design standards found in the CT DEP 2004 Storm Water Quality Manual. (4) The Water Quality Volume calculated by GRE is not in compliance with the newly proposed Appendix I to the CT DEEP General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities, as the solar panels themselves were not

considered impervious. All of these issues mean that the project does not comply with the water quality standards of the State of Connecticut and will cause sediment and warmer water to be discharged from the site into the environmentally sensitive tributaries flanking it, which will impact native trout populations living in the brooks and ultimately will harm the health of the Estuary.

STR-STH also believes that the fragmentation of core forest blocks for the placement of many thousands of ground-mounted photovoltaic panels is not good policy for the State of Connecticut. It is environmentally irresponsible to clear cut 75 acres of deciduous forest for the installation of a solar panel farm. The natural wooded, undisturbed environment provides the following environmental benefits which will be completely lost if this project is approved and constructed as proposed. Besides the complete loss of habitat for obligate forest species, other effects to vegetation and forest blocks as a result of land clearing and the accompanying fragmentation of forest lands include induced edge effects, such as changes to topography, light regimes, hydrology, substrates, and the introduction and proliferation of non-native invasive species. Passage corridors for wildlife are also diminished. In fact, for these very reasons, the legislature enacted statutory changes to protect core forests from large-scale solar array installations in 2017 - protections that unfortunately excluded projects solicited by DEEP before its enactment, including this one. *See* Public Act No. 17-218 ("An Act Concerning the Installation of Certain Solar Facilities on Productive Farmlands...").

STR-STH also contends that GRE failed to provide evidence that would provide the Siting Council with the information necessary to fulfill its obligation of balancing 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 the scenic, historic, and recreational values while also assuring the welfare and protection of the people of the state.

GRE simply ignored significant components of the local environment and their biota (e.g., aquatic species and water quality parameters of the streams that will be impacted). Some of the environmental studies submitted by GRE were cursory and lacked complete data. GRE has simply not presented any sound basis for its claim that its project will cause no significant environmental effects is true, which should by itself prevent the Siting Council from granting its petition.

III. Relief sought by the proposed party

STR-STH seeks to have the Council deny GRE's petition with prejudice. This is GRE's second filing with respect to this project; its first attempt was denied by the Council in October 2018. Despite having more than 15 months to remedy the issues with its original petition – or to explore other sites in the area that might have been more suitable, such as the Waterford landfill -- GRE returned with a new proposal that contains many of the same issues that led the Council to deny it originally. For example, the Council specifically noted that GRE admitted that it had not completed the investigations necessary to determine the functionality and constructability of each proposed detention basin, which could impact not only the design and location of those basins but could impact the design of the entire project. Just recently in this proceeding, GRE admitted in interrogatories that at least three of its detention basins will not work as designed – meaning that it submitted its new plans to the Council *knowing* that it had not remedied the problems with its original plans. All of these facts and more demonstrate that GRE's new petition should be denied with prejudice so that GRE does not continue to waste the resources of the Council, the Town or STR-STH in pursuing a project that is simply not appropriate for the site.

IV. Statutory or other authority therefore

STR-STH is entitled to party status pursuant to Sections 4-177a, 16-50l, 16-50n, 22a-14 through 22a-20 of the Connecticut General Statutes and Sections 16-50j-13 through 17, 16-50j-40

and 16-50j-43 of the Regulations of the Siting Council. STR-STH is also requesting party status as an intervenor under the Connecticut Environmental Protection Act (“CEPA”), which permits any person to “intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.” *See* Conn. Gen. Stat. §§ 22a-19, 22a-20.

V. Nature of the evidence that the petitioner intends to present

If granted party status, STR-STH intends to present evidence including, but not limited to:

- Testimony by an STR-STH officer about matters concerning STR-STH and its conservation efforts and concerns of its members, including the overall health of the Estuary and its tributaries and the impact a large-scale solar facility at the proposed location would have on the Estuary’s health;
- Studies, surveys and expert opinion about the adverse impact of the solar facility on the wetlands, forest, Estuary and other natural resources located on and around the proposed site;
- Evidence, whether by testimony or otherwise, about other solar facility projects in the state and elsewhere that contained the same flawed assumptions as are present in the site plans, stormwater management plans and erosion control plans presented by GRE and which led to the impairment and/or destruction of wetlands, watercourses and other natural resources both on and off the sites of the failed projects;
- Evidence, whether by testimony or otherwise, that the proposed solar facility will unreasonably impair and/or destroy the public trust in the water of the state and in the natural resources of the state by clear cutting acres of core forest and

introducing impervious surfaces, thereby disturbing or destroying wetlands and watercourses and wildlife habitats, including those in the tributaries to the Estuary.

SAVE THE RIVER-SAVE THE HILLS, INC.

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VERIFICATION

I, Deborah Moshier-Dunn, being duly sworn, depose and say that I am vice president of Save the River-Save the Hills, Inc., and therefore authorized to act on its behalf, that I have read the foregoing Request for Party Status and Notice of Intervention, and that the allegations contained therein are true to the best of my knowledge.

By: Deborah Moshier-Dunn
Deborah Moshier-Dunn, Vice President

Subscribed and sworn to before me this 9th day of June, 2020.

Natalie Opstrup
Notary Public / Commissioner of the Superior Court
My Commission Expires:

NATALIE OPSTRUP
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 30, 2023



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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