

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

PETITION NO. 1347 — GRE GACRUX LLC petition	:	Petition No. 1347
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 located at 117 Oil	:	
Mill Road and associated electrical interconnection to	:	
Eversource Energy's existing substation at 325 Waterford	:	January 23, 2020
Parkway North in Waterford, Connecticut.	:	

**MOTION OF GRE GACRUX LLC TO REOPEN AND MODIFY THE DECISION IN  
PETITION NO. 1347 DUE TO CHANGED CONDITIONS**

**I. Introduction**

Pursuant to Conn. Gen. Stat. §4-181a(b),<sup>1</sup> GRE GACRUX LLC (“Greenskies” or the “Petitioner”) respectfully moves the Connecticut Siting Council (the “Council”) to reopen this Petition and modify, based on changed conditions and new facts, its *Decision on Petition for Reconsideration* dated December 11, 2018 (the “Decision”) on Petition No. 1347. The Decision denied, without prejudice, Greenskies’s petition for a Declaratory Ruling to construct, operate, and maintain a ground-mounted solar photovoltaic (“PV”) electric generating facility (the “Project”) at 117 Oil Mill Road in Waterford, Connecticut (the “Project Site”). Based on changed conditions and new facts discussed in this Motion, and as further supported by the Testimony of Jean-Paul La Marche, the Project Development Director of Greenskies Clean Energy LLC, (the “La Marche Testimony”), attached hereto, Greenskies respectfully requests that the Council reopen the Petition No. 1347 proceeding, modify the Decision, and issue a

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<sup>1</sup> Conn. Gen. Stat. § 4-181a(b) provides, in pertinent part 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.”

Declaratory Ruling that will allow for the construction, maintenance, and operation of the Project.

## **II. Procedural Background**

On June 20, 2018, Greenskies submitted a petition to the Council for a Declaratory Ruling pursuant to Connecticut General Statutes §4-176 and §16-50k, for the proposed construction, maintenance, and operation of an approximately 16 megawatt alternating current (MW AC) ground-mounted solar photovoltaic electric generating facility located at 117 Oil Mill Road in Waterford, Connecticut (the “Waterford Project”). The Project will provide the state’s electrical system with additional generating capacity that will meet demand using renewable energy, contribute to grid stability, and foster the redevelopment and reuse of underutilized industrial property. As the Council is aware, the Project was selected as part of the Department of Energy and Environmental Protection’s Clean Energy RFP and was found to be consistent with Connecticut’s 2013 Comprehensive Energy Strategy (CES).

By Council Decision on Petition for Reconsideration dated December 11, 2018, the Council notified Greenskies that it had denied, without prejudice, the Petition on three bases. For the reasons discussed in section IV below, Greenskies respectfully submits that it has satisfied the Council’s concerns, along with the concerns raised by the Town of Waterford and Save the Rivers/Save the Hills, each of which is addressed *seriatim* herein.

## **III. The Council has the Statutory Authority to Reopen and Modify its Decision**

Pursuant to Conn. Gen. Stat. §4-181a(b), the Council has the authority to reopen and modify its Decision regarding Petition 1347 due to new facts and changed conditions that have occurred since the Council’s denial thereof. Conn. Gen. Stat. §4-181a(b) provides, in relevant part 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." Changed conditions exist when there is "new information or facts, identification of any unknown or unforeseen events or evidence...that were not available at the time of the final decision." See Council Administrative Notice Item No. 34, *Town of Fairfield, et al v. Connecticut Siting Council*, 238 Conn. 361, 372; 679 A.2d 354, 359 (1996).

Consistent with its authority under §4-181a(b), the Council has reopened a number of electric generating facilities dockets and modified its final decisions based on changed conditions and new facts. See, e.g., Docket No. 187, *PDC-El Paso Milford LLC (a.k.a. Milford Power, LLC) Certificate of Environmental Compatibility and Public Need: Reopening pursuant to Connecticut General Statutes (CGS) §4-181a (b), that permits an agency to consider whether changed conditions exist, and then consider whether such changes, if any, justify reversing or modifying the Council's original decision dated January 8, 1999*, Council Opinion, April 7, 2009, p.2, where the Council reopened the docket to allow for the continued use of potable water because "at the time of certification, the record did not speak to sources of cooling water for contingency events."; Docket No. 265A, *Dominion Nuclear Connecticut, Inc. Application to Amend and Modify the Certificate of Environmental Compatibility and Public Need for the existing independent spent fuel storage installation at Millstone Power Station, Rope Ferry Road, Waterford, Connecticut pursuant to Connecticut General Statutes §4-181a(b) for the limited purpose of determining if changed conditions related to the existing independent spent fuel storage installation justify a modification of the Decision and Order*, Council Findings of Fact, May 2, 2013, p.5, where the Council found, *inter alia*, that changes in Dominion's planned plant operations and changes in its original Independent Spent Fuel Storage Installation pad design that would improve the spent fuel loading process, constituted changed conditions.

The Council has re-opened several other matters for similar reasons. *See*, Docket No. 461A, *Eversource Energy Application For A Certificate Of Environmental Compatibility And Public Need For The Construction, Maintenance, And Operation Of A 115-Kilovolt (kV) Bulk Substation Located At 290 Railroad Avenue, Greenwich, Connecticut, And Two 115-kV Transmission Circuits Extending Between The Proposed Substation and The Existing Cos Cob Substation, Greenwich, Connecticut, and Related Substation*, where the Council originally denied Eversource's Application without prejudice based on an insufficient record. The Council granted Eversource's Motion to Reopen based on changed circumstances, Council Decision on Motion to Reopen dated May 26, 2017, and ultimately issued a Certificate for the project. Decision and Order, November 9, 2017; Docket No. 208, *Cross-Sound Cable Company, LLC application for a Certificate of Environmental Compatibility and Public Need for the construction, operation, and maintenance of a high-voltage direct current (HVDC) submarine electric transmission and fiber optic cable system from One Waterfront Street, New Haven, Connecticut to Brookhaven, New York.*, where on March 28, 2001, the Council denied without prejudice an application a Certificate for the construction, maintenance, and operation of an HVDC submarine electric transmission and fiber optic cable system from New Haven to Long Island. The Council ultimately issued a Certificate based on a modified design that satisfied the Council's original concerns. Council Opinion, January 3, 2002.

Recently, in Docket No. 1310A, *Quinebaug Solar, 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 50 megawatt AC solar photovoltaic electric generating facility on approximately 561 acres comprised of 29 separate and abutting privately-owned parcels located generally north of Wauregan Road in Canterbury and south of Rukstela Road and Allen*

*Hill Road in Brooklyn, Connecticut*, the Council reopened Quinebaug Solar, LLC's petition based on changed conditions pursuant to Connecticut General Statutes §4-181a(b). Council Decision on Motion to Reopen, December 6, 2019.

As the discussion of changed conditions below demonstrates, Greenskies satisfies the applicable standards with respect to reopening the Petition 1347 proceeding and modifying the Decision.

#### **IV. Changed Conditions for the Waterford Project – The Project Size has been Reduced**

First, it is important to note that the Project has been redesigned with a resulting decrease in physical size and electrical capacity. As noted in the La Marche Testimony, the number of panels has decreased from 55,692 panels (370 watts per panel) to 45,976 panels (400 watts per panel), with a corresponding reduction to the cleared area from 98 acres to 75 acres – a reduction in the Project footprint of 23 acres. This reduction is clearly articulated in the figure on Page 4 of the La March testimony. This results in the original 20.16 MW DC (16.78 MW AC) being reduced to 18.4 MW DC (15.3 MW AC). As a result, the project will have less impact on water quality, storm drainage and wildlife.

##### **1. Potential Impacts on Water Quality.**

As noted above, the Council Decision on Greenskies's Petition for Reconsideration found that Greenskies needed to provide additional information on:

Potential impacts on water quality, including, but not limited to, the absence of additional geotechnical analysis to determine the appropriate design of stormwater controls for the proposed project and the impacts of the stormwater controls on water quality, as recommended by DEEP in correspondence submitted to the Council on August 24, 2018 and December 4, 2018, and referenced in the Town's July 18, 2018 comments, Save The Rivers-Save The Hills (STRSTH) August 20, 2018 and November 20, 2018 comments and the November 27, 2018 written statement of Council Chairman Stein.

Recognizing that stormwater management is an important consideration in the Council's analysis, Greenskies made a number of substantive changes to the Project's design and the Project's stormwater management plan ("SMP") that it had previously filed with the Council.

As articulated in the La Marche Testimony, following the Council's denial of the Petition, the Project hired a new third party environmental and engineering consultant, VHB. VHB met with CT DEEP's stormwater staff on several occasions and modified the design of the Project to comply with CT DEEP's new, stricter guidelines for stormwater runoff from solar PV facilities. VHB also performed a number of additional sub-surface investigations to confirm the Project's modified storm water design is correct. Indeed, approximately 100 test pit investigation holes were excavated and inspected across the Site since 2018 to aid in the design of stormwater management features. Infiltration testing was performed in the locations of proposed infiltration basins, and these infiltration rates were then incorporated into the hydrologic modelling for the Project Site. This information was then discussed with CT DEEP stormwater staff to get the staff's assessment of this work.

## **2. Storm Drainage Facilities.**

The Council Decision on Greenskies's Petition for Reconsideration also found that Greenskies needed to provide additional information regarding:

The Petitioner's admissions, November 7, 2018 Petition for Reconsideration, and Petitioner's response to STRSTH's Interrogatory, October 12, 2018, that more geotechnical investigation will be required to determine the functionality and constructability of each proposed detention basin; and concerns that the results of such further investigation could have impacts on not only the design and location of these storm drainage facilities but on the design of the entire project

The studies and testing noted above were conducted to address this issue, at least in part. In addition, since the filing of the original Petition, the CT DEEP has been developing guidance on

stormwater discharges from solar facilities. This guidance is sometimes referred to as “Appendix I.” The Project’s stormwater design was altered over the past six months in order to bring it into compliance not only with applicable state regulation, but also the guidance found in Appendix I. For example, the Project now incorporates the loss of a Hydrologic Soil Group class in its design as a conservative measure for sizing the Project’s stormwater basins. Channel protection is also provided at each stormwater basin in accordance with the 2004 Connecticut Stormwater Quality Manual by mitigating 2-year proposed peak flows to 50% of the pre-condition rates. In addition, a new construction sequence and phasing plan has been designed for the Project. The Project team has met with CTDEEP Stormwater staff on several occasions to discuss the Project and in an effort to incorporate requested modifications. Most recently, on December 17, 2019, representatives of the Project met with CT DEEP Stormwater Permitting/Enforcement personnel. At that meeting, the Project team suggested that it would be willing to clear the Project Site during the spring/summer of 2020 (assuming regulatory approvals are obtained), and then hydroseed the site before beginning construction. The construction would begin in 2021 after the Site had achieved some level of stabilization. These are all changes that have been incorporated to address the water quality and storm drainage issues that were identified by the Council and others during the course of the Petition.

### **3. Wildlife Survey.**

As abovementioned, the Council’s Decision indicated that the third reason the Petition was denied was due to the fact that Greenskies did not complete a “wildlife survey” that was recommended by the CTDEEP:

Concerns from the Connecticut Department of Energy and Environmental Protection (DEEP) regarding a recommended wildlife survey in correspondence submitted to the Council on August 24, 2018 and December 4, 2018, and referenced in the Town of Waterford’s (Town) July 18, 2018 comments, Save the River Save the Hills’ (STRSTH)

August 20, 2018 and November 20, 2018 comments and the October 25, 2018 written statement of Council member Klemens.

The Project undertook additional wildlife/NDDB work as a direct result of the comments the Project received as referenced above. In response to those comments, an NDDB Determination Request was prepared and submitted to NDDB staff for which a Preliminary Assessment was provided in response. Each species listed on the assessment was surveyed for at the Site, and the findings and any associated proposed conservation measures are included in a comprehensive wildlife report which was re-submitted to NDDB for its review. In response to the comments regarding a wildlife survey, the report has also been included as Appendix I of the re-submitted Petition.

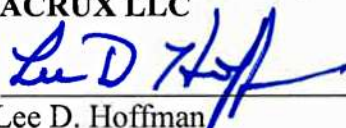
**V. Conclusion**

For the foregoing reasons, Greenskies respectfully requests that the Council reopen the Petition No. 1347 proceeding, modify the Decision, and issue a Declaratory Ruling for the proposed Waterford Project.

Respectfully Submitted,

**GRE GACRUX LLC**

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