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August 30, 2018

VIA U.S. MAIL AND HAND DELIVERY

Melanie Bachman
Acting Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Petition 1347 - 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 MW AC Ground-mounted Solar Photovoltaic Electric Generating Facility Located on Oil Mill Road in Waterford, Connecticut

Dear Ms. Bachman:

I am enclosing an original and sixteen copies of GRE's Objection to the request to intervene in this matter brought by Save the River-Save the Hills. Please return one copy of this submittal, date-stamped, in the enclosed return envelope.

If you have any questions concerning this submittal, please contact the undersigned at your convenience. I certify that copies of this submittal have been submitted to the Town of Waterford and to Save the River-Save the Hills.

Sincerely,

Lee D. Hoffman

Enclosures

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Petition of GRE GACRUX LLC for a Declaratory Ruling pursuant to C.G.S. §4-176 and § 16-50k, for the proposed construction, maintenance and operation of a 16.78 MW AC ground-mounted solar photovoltaic electric generating facility located on Oil Mill Road in Watertown, Connecticut

Petition No. 1347

August 30, 2018

GRE GACRUX LLC'S OBJECTION TO SAVE THE RIVER-SAVE THE HILLS, INC.'S REQUEST FOR INTERVENTION

The petitioner, GRE GACRUX LLC ("GRE" or "the Petitioner"), respectfully submits this Objection to the request for intervention made by Save the River-Save the Hill, Inc. on August 20, 2018. For the reasons set forth below, Save the River-Save the Hill's request to intervene in this Petition are both procedurally and substantively deficient. As such, the request should be denied.

The Procedural Defects in the Request for Intervention Render it Improper

It is unclear to GRE exactly what Save the River-Save the Hills is seeking in its August 20, 2018 request. Although the letter from the organization makes no mention of requesting intervenor status or providing public comment, the e-mail that accompanied that letter states, "I am writing to request Intervenor status for Save the River-Save the Hills, Inc., in CSC Petition No. 1347 (GRE GACRUX LLC Petition for declaratory ruling for Proposed Photovoltaic Installation at 177 Oil Mill Road, Waterford, CT) and to submit Public Comments on behalf of Save the River-Save the Hills, Inc., for the above referenced Petition." As a procedural matter, these two requests, namely for intervenor status and to submit public comment, are mutually exclusive.

RCSA § 16-50j-1(b) provides the relevant standard for this request: "The public may participate in the Council process in one of two ways: through party or intervenor status, or through a limited appearance by submission of oral or written comments to the Council. Thus, Save the River-Save the Hills must make a choice – either move for intervenor status or move to submit public comments. The Council's own regulations do not allow for both, and each path for participation carries with it different rights and obligations, as the Council well knows.

Indeed, RCSA § 16-50j-15 addresses the requirements for filing for intervenor status, which Save the River-Save the Hills did not meet. According to subsection (b) of that regulation, in addition to stating the name and address of the petitioner, and the facts that the proponent will provide to "furnish assistance to the Council in resolving the issues in the proceeding," the entity seeking intervention status must show how the proposed intervention is "in the interests of justice and will not impair the orderly conduct of the proceedings pursuant to Section 4-177a of the Connecticut General Statutes." Save the River-Save the Hills's request for intervention fails to do that. As will be discussed shortly, the information proffered by Save the River-Save the Hills will actually serve to impair the conduct of these proceedings if the organization is permitted to become an intervenor.

Before coming to the substance of what the organization is attempting to proffer, there is one last procedural matter to consider. The letter that Save the River-Save the Hills submitted requests that the Council deny the Petition in favor of having GRE seek to obtain a certificate for its project. However, Save the River-Save the Hills offers no rationale for why the certificate process would provide greater scrutiny or analysis than the petition process does. Moreover, such a request flies directly in the face of Conn. Gen. Stat. § 16-50k which states in pertinent part:

> Notwithstanding the provisions of this chapter or title 16a, the council ***shall***, in the exercise of its jurisdiction over the siting of generating facilities, approve by declaratory ruling … (B) the construction or location of any fuel cell, unless the council finds a substantial adverse environmental effect, or of any customer-side distributed resources project or facility or grid-side distributed resources project or facility with a capacity of not more than sixty-five megawatts, as long as such project meets air and water quality standards of the Department of Energy and Environmental Protection…

(Emphasis added)

Section 16-50k is quite clear that the distinction between the petition and certificate processes for the Siting Council is not discretionary. So long as a project meets certain requirements, such as being a grid-side distributed resource of less than sixty-five megawatts (as is the case here), the Siting Council must use the declaratory ruling process for project approvals, not the certificate process. It has no discretion to do otherwise. Thus, the ultimate relief being sought by Save the River-Save the Hills is unavailable to the organization. If the organization wanted to make the Council aware of certain information in its possession, it can do so (and indeed *has* done so) through its filing of public comments. What it cannot do, however, is cause the Council to convert this proceeding to a certificate proceeding. Because its ultimate goal cannot be accomplished, Save the Rivers-Save the Hills's intervention serves no discernable purpose.

The Substantive Defects Associated with this Intervention Also Warrant its Denial

It may be argued that the procedural issues, on their own, are not enough to warrant the dismissal of the request for intervention. However, the substantive issues associated with the request demonstrate that if the request is granted, it will only result in confusion and delay. This runs counter the rationale for why interventions are granted in the first place. Interventions are to be granted where such interventions will assist the Council, and the burden is on those who

seek such interventions to demonstrate to the Council that the intervention is "in the interests of justice and will not impair the orderly conduct of the proceedings pursuant to Section 4-177a of the Connecticut General Statutes." RCSA § 16-50j-15. Given the substantial misstatements and irrelevant information provided with the request for intervention, GRE predicts that the Council will need to spend considerable time and effort to address the baseless accusations and extraneous information contained in the Save the River-Save the Hills request for intervention. If granted, this intervention will only serve to cause confusion and delay.

The bulk of the substantive argument proffered by Save the River-Save the Hills comes in the form of Steve Trinkaus's Review of the filings made by GRE. Although he is a professional engineer, Mr. Trinkaus has done no calculations of his own to justify his opinions, nor has he even visited the site in question. Nonetheless, he views himself as qualified to offer his "expert opinion" on the efficacy of the stormwater controls and other issues at the site. Comments of Trinkaus, p. 1.

The crux of Mr. Trinkaus's opinion (and the comments of Save the River-Save the Hills for that matter) is based on a false assumption. On page one of his opinion, Mr. Trinkaus states that "it is environmentally irresponsible to clear cut over 90 acres of deciduous forest for the installation of a solar panel farm." He then goes on to explain why this is the case. What Mr. Trinkaus conveniently ignores, however, is that the forest in question is being harvested regardless of what the Siting Council decides in this manner. It is not being harvested by GRE for the solar project; it is being harvested by the current owner as a source of revenue. Moreover, Mr. Trinkaus fails to acknowledge that the Siting Council, through its inherent power, and through the powers of the Department of Energy and Environmental Protection's stormwater

program, will have a greater ability to impact stormwater management than can be levied against the entities doing the timber harvesting.

The timber harvest issues are spelled out more completely in the Ground Lease between the owners of the project site and GRE. A complete copy of the Ground Lease (redacted for pricing information only) will be provided to the Council as part of GRE's response to Interrogatory 15, however, selected pages of the lease are appended to this objection for the Council's review.

The excerpts from the Ground Lease show two inescapable facts. The first is that the Ground Lease was executed on April 30, 2016, fully a year before Public Act 17-218 (addressing core forest issues) was enacted. The second is that regardless of the outcome of this Petition, pursuant to section 2.3 of the Ground Lease, the current landowner has maintained the right "to conduct a timber harvest of all timber on the Leased Premises and to retain the proceeds obtained from such timber harvest." As the Council is well aware from its July 25, 2018 site visit, timber harvesting activities are well underway at the site. As the Ground Lease demonstrates, those activities are being conducted by the landowner regardless of whether solar construction happens on the site. Therefore, the first third of Mr. Trinkhaus's commentary is without merit.

Similarly, Mr. Trinkhaus's comments regarding stormwater are to be discounted. As an initial matter, Mr. Trinkhaus ignores the fact that Connecticut's regulations put greater stormwater controls on construction activities than they do on timber harvesting. His failure to recognize this fact renders most of his stormwater complaints invalid.

In fairness, Mr. Trinkhaus is correct that more work will be needed from GRE before a final stormwater management plan can be developed and before the project will be ready to apply for and receive a DEEP general permit for stormwater for construction-related activities.

Indeed, as indicated in GRE's responses to interrogatories 80-82 (which will be filed with the Council shortly), GRE representatives met with the DEEP stormwater permitting team on May 2, 2018 to ascertain what additional work would need to be completed. DEEP was kind enough to provide feedback on what was needed, both in that meeting and DEEP's August 20, 2018 comments.

Although this is the case, Mr. Trinkhaus's comments belie a fundamental misunderstanding of both the DEEP stormwater permitting process and the Siting Council process. The project has not yet selected a general contractor to construct this site, and will not do so unless and until the Council grants this petition. If the Council grants this petition, GRE will be required not only to submit a detailed Development and Management (D&M) plan for the Council's approval, GRE will also be required to obtain a general permit for stormwater discharges from DEEP before any construction can commence.

GRE has no objection to the Siting Council requiring GRE to obtain a stormwater general permit prior to construction as a condition of approval. Indeed, GRE expects that it must proceed in such a fashion even if it is not required by the Siting Council. However, GRE cannot be expected to do the final geotechnical work and engineering required to fully address all of the issues to demonstrate full stormwater compliance at this time. Waiting until the project has preliminary approval and contractors have been selected is not only not what is suggested by the Siting Council's process, GRE has been informed by DEEP's stormwater staff that undertaking such work would be premature. At GRE's May 2nd meeting with DEEP stormwater staff, GRE was informed that until it selected a construction contractor, it would be premature to file an application for a stormwater permit. GRE intends to abide by that guidance, but is more than willing to abide by restrictions that make it clear that GRE will apply for, and obtain such a

permit before it begins construction activities. GRE will also abide by the September 8, 2017 Stormwater Management Guidance Document issued by DEEP.

Finally, Save the River-Save the Hills attempts to bootstrap an argument that because one project had a failure of stormwater systems, this project will have a similar failure of stormwater systems. Save the River-Save the Hills provides no basis for this allegation, nor does Save the River-Save the Hills provide any context for what happened at the site nor any mention of the remedial measures that were taken that satisfied the Town of East Lyme's officials in connection with that site. Put simply, if Save the River-Save the Hills's request for intervention is granted, GRE will be forced to defend itself from allegations from another project that was undertaken five years ago. Such information is irrelevant to the current proceedings, which should be judged on their own merit.

GRE has no wish to silence Save the River-Save the Hills, and Save the River-Save the Hills has made its point through the filing of these materials as public comment. If the Council wishes to grant Save the River-Save the Hills intervenor status, however, then GRE will be forced to defend itself vigorously from the irrelevant accusations and questionable engineering that make up the comments proffered by Save the River-Save the Hills. This will only serve to delay these proceedings and will not result in the Council's obtaining of any new information that will inform its decision.

Wherefore, GRE respectfully requests that the Council denies Save the River-Save the Hills's request for intervention.

Respectfully Submitted,
GRE GACRUX LLC

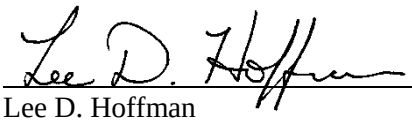
By: 

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Exhibit A – Excerpts of Ground Lease

GROUND LEASE

BY AND BETWEEN

Carl Willis Jr. and Rosalie Watson f/k/a Rosalie Irene McGuire and Thomas J. Londregan, Co-Trustees

(LANDLORD)

AND

GRE GACRUX LLC
(TENANT)

GROUND LEASE

THIS AGREEMENT is dated as of the 30th day of April, 2016 (the "Effective Date") by and between **CARL WILLIS JR.** with an address of 866 Noank Ledyard Road, Mystic, Connecticut and **ROSALIE I. WATSON F/K/A ROSALIE IRENE MCGUIRE AND THOMAS J. LONDREGAN, CO-TRUSTEES OF THE TESTAMENTARY TRUST ESTABLISHED UNDER THE LAST WILL AND TESTAMENT OF VIVIAN M. WILLIS** ("Landlord") and **GRE GACRUX LLC**, a Connecticut limited liability company with an address c/o Greenskies Renewable Energy LLC, 10 Main Street, Suite E, Middletown, Connecticut 06457 ("Tenant").

IT IS AGREED:

ARTICLE I.

Description of Leased Premises

Section 1.1 - Leased Premises. The Landlord hereby leases to the Tenant that certain piece of land known as 117 Oil Mill Road, Waterford, Connecticut containing approximately 88 acres of land, together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto and any right, title and interest of the Landlord in and to any land lying in the bed of any street, road or highway to the center line thereof in front of or adjoining said parcel of land, which is more particularly described in **Exhibit A**, attached hereto and made a part hereof (collectively the "Leased Premises" or "Premises").

Section 1.2 - Initial Term. The initial term of this Lease shall commence on the Commencement Date, as hereinafter defined, and shall end on the date which is twenty (20) years from the end of the calendar month in which the Commencement Date occurs, which time period is referred to herein as the "Initial Term".

When such dates have been determined, Landlord and Tenant agree to execute a memorandum in recordable form setting forth the Commencement Date, and Lease Term in the form attached hereto as **Exhibit B**.

Section 1.3 - Options to Extend. In addition, provided that Tenant is not in default in the performance of any of its obligations under this Lease beyond applicable notice and cure periods, Tenant shall have the option to extend the term of this Lease for four (4) extension periods of five (5) years each (each an "Extension Period"). If Tenant elects to exercise any such Extension Period, it shall do so by giving notice of such election to Landlord at any time during the term of this Lease on or before the date which is ninety (90) days prior to the commencement of the Extension Period for which such election is exercised. Such Extension Periods shall be upon the same terms and conditions of this Lease, except as otherwise provided herein. If Tenant fails to send notice of its exercise of any Extension Period in a timely manner, Landlord shall send Tenant a reminder notice and Tenant shall have an additional thirty (30) day period after receipt of Landlord's notice in order to exercise any such Extension Period. The Initial Term and all

activities of the Tenant on the Leased Premises including the activities of Tenant's environmental consultants, engineers, surveyors, contractors and other consultants. This hold harmless and indemnification provision shall extend to reasonable attorney's fees and costs incurred by the Landlord in the defense of any claim against the Landlord arising out of the activities of the Tenant on the Leased Premises while conducting its due diligence inspections, including, but not limited to, claims arising out of the non-payment of any such environmental consultant, engineer, surveyor, contractor or other consultant retained by the Tenant.

Section 2.3 - Lease Commencement. At any time during the Development Period, Tenant may give notice to Landlord calling for the delivery of the Leased Premises to Tenant and the commencement of this Lease. Upon receipt of such notice, Landlord shall select a delivery date that is within forty-five (45) days of the date Landlord received Tenant's notice ("Commencement Date") and so notify Tenant.

On the Commencement Date, Landlord shall deliver possession of the Leased Premises to Tenant in substantially the same condition as existing as of the date of this Lease, free and clear of all rights of any tenants or parties in possession and subject to only those encumbrances affecting title to the Leased Premises as set forth on **Exhibit D** attached hereto and made a part hereof. Notwithstanding anything herein contained to the contrary, Landlord shall have the right, at any time prior to, and for a period of ninety (90) days subsequent to the Commencement Date, to conduct a timber harvest of all timber on the Leased Premises and to retain the proceeds obtained from such timber harvest. In conjunction therewith, Landlord shall have no obligation to stump the Leased Premises nor to remove slash from the Leased Premises; provided, however, that if Landlord does proceed to conduct a timber harvest, Landlord shall leave three (3) to four (4) feet of stump in each instance in order to allow for the ease of removal of the stumps by the Tenant. Landlord agrees that Landlord shall, prior to conducting such timber harvest, obtain any and all permits and authorizations to conduct such timber harvest, and that Landlord shall complete such timber harvest within ninety (90) days subsequent to the Commencement Date.

ARTICLE III.

Rent

Section 3.1 - Definition of Lease Year. "Lease Year" shall mean, in the case of the first Lease Year, the number of full and partial calendar months following the Commencement Date of this Lease through the end of the twelve calendar months following the Rent Commencement Date. Thereafter, "Lease Year" shall mean each successive twelve calendar month period following the expiration of the first Lease Year, except that in the event of the termination of this Lease on any day other than the last day of a Lease Year, then the last Lease Year shall be the period from the end of the preceding Lease Year to such date of termination.

Section 3.2 - Basic Rent. Commencing on the Rent Commencement Date, as defined hereafter, and continuing for the remainder of the Lease Term, Tenant shall pay Landlord monthly Basic Rent on the first day of each month, in advance, in accordance with the following schedule: