

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
 :
APPLICATION OF NTE CONNECTICUT, LLC : DOCKET NO. 470
FOR A CERTIFICATE OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED FOR :
THE CONSTRUCTION, MAINTENANCE AND :
OPERATION OF AN ELECTRIC POWER :
GENERATING FACILITY OFF LAKE ROAD, :
KILLINGLY, CONNECTICUT : JANUARY 18, 2019

**MOTION OF NTE CONNECTICUT, LLC TO REOPEN AND MODIFY
THE DECISION IN DOCKET NO. 470 DUE TO CHANGED CONDITIONS**

I. Introduction

Pursuant to Conn. Gen. Stat. § 4-181a(b), NTE Connecticut, LLC (“NTE”) hereby moves the Connecticut Siting Council (“Council”) to reopen this docket and modify, based on changed conditions, its Decision and Order, Opinion and Findings of Fact (collectively the “Decision”) in Docket No. 470. The Decision denied, without prejudice, NTE’s request for a Certificate of Environmental Compatibility and Public Need (“Certificate”) to construct, operate and maintain the Killingly Energy Center (“KEC”), a 550 megawatt¹ (“MW”) dual fuel combined cycle electric generating facility (the “KEC Facility”) on property at 180 and 189 Lake Road in Killingly, Connecticut (“Property”). Based on changed conditions, discussed in this motion and as further described in the Testimony of Timothy Eves, Vice President of NTE (“Eves Testimony”), attached hereto as Exhibit 1, the Testimony of Paul J. Hibbard, a Principal at Analysis Group, Inc. (“Hibbard Testimony”), attached hereto as Exhibit 2, and the Environmental Overview in Support of Petition for Changed Conditions dated January, 2019 and

¹ As discussed below, NTE intends to present the Council with a proposal to modify the KEC generating facility, increasing power output to approximately 650 MW, which modification has already received approval from the Connecticut Department of Energy and Environmental Protection.

prepared by Tetra Tech, Inc. (“Environmental Overview”), attached hereto as Exhibit 3, NTE respectfully requests that the Council reopen the Docket No. 470 evidentiary proceeding, modify the Decision and issue a Certificate for the KEC Facility.

II. Procedural Background

On August 17, 2016, NTE filed with the Council an Application for a Certificate pursuant to Conn. Gen. Stat. Section 16-50g et seq. for the construction, maintenance and operation of the KEC Facility in Killingly, Connecticut (“NTE Application”). The KEC Facility will enhance the reliability of the electric power supply in Connecticut and throughout the New England region and promote the competitive market place for electricity, increase the efficiency and resiliency of and reduce the emissions from the region’s electric generation fleet and provide substantial benefits to Killingly and the surrounding communities in eastern Connecticut, as well as to Connecticut ratepayers. The Council conducted a public hearing on the NTE Application in Killingly on October 20, 2016, and a series of evidentiary hearings between November 3, 2016 and March 23, 2017.

In early February 2017, NTE participated in the New England Independent System Operator (“ISO-NE”) Forward Capacity Auction (“FCA”) No. 11 (“FCA 11”). At the time of FCA 11, there remained a number of cost and schedule uncertainties associated with the KEC Facility. Given these uncertainties, NTE elected to withdraw from FCA 11 prior to bidding in the final round of the auction. NTE’s bidding strategy and reasons for withdrawing from FCA 11 were discussed in detail at the Council’s final evidentiary hearing on March 23, 2017.

On May 11, 2017, the Council issued the Decision denying, without prejudice, the NTE Application finding that, following the results of FCA 11, the ISO-NE had determined the KEC Facility was not required for resource adequacy, at least through the capacity commitment period of 2020 through 2021. During its deliberations on the Decision, the Council recognized and

discussed NTE's ability to request that the Docket No. 470 proceeding be reopened on a showing of changed conditions. A determination by ISO-NE issuing NTE and the KEC Facility a capacity supply obligation ("CSO") in a future auction would be a clear example of such changed conditions.

On January 19, 2018, NTE filed with the Council, a motion to reopen and modify the Council's decision in Docket No. 470 on a showing of changed conditions (the "2018 Motion"). The 2018 Motion, described the significant steps taken by NTE to secure certain permits, finalize project-related agreements and make beneficial facility modifications. These efforts put NTE and KEC in a strong position heading into FCA 12 in February of 2018. On February 8, 2018, however, NTE notified the Council that KEC was not selected by ISO-NE to receive a CSO in FCA 12 and, NTE withdrew the 2018 Motion.

On September 28, 2018, NTE received notice, i) that it has been pre-qualified by ISO-NE to participate in FCA 13; and ii) that ISO-NE established a minimum offer price for KEC. FCA 13 will begin on February 4, 2019.

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 Docket No. 470 and modify its Decision due to changed conditions that have occurred since the Decision of May 11, 2017. Specifically, "on 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". Conn. Gen. Stat. § 4-181a(b). The Council has previously exercised its authority under Conn. Gen. Stat. § 4-181a(b) which "permits an agency to consider whether changed conditions exist and then consider whether such changed conditions if any justify reversing or modifying the Council's original Decision...". See *Council Docket No. 192 Reopening Pursuant to Conn. Gen. Stat. § 4-181a(b) Proceeding*, Opinion dated January 4, 2007 p. 1. The Council will find

changed conditions 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 *Docket No. 190B, Meriden Gas Turbine LLC reopening pursuant to Conn. Gen. Stat. § 4-181a(b)*, Conclusions of Law.

Consistent with this legal standard, the Council has reopened a number of electric generating facilities dockets and revised final decisions under Conn. Gen. Stat. §4-181a(b) based on new facts or when circumstances not previously contemplated by the Council have arisen. *Docket No. 187, Milford Power, LLC, Reopening Pursuant to for Conn. Gen. Stat. §4-181a(b) Proceeding*, Opinion, April 7, 2009, page 2 (reopening the docket to allow 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 NT-2010, Reopening of Final Decisions*, Opinion, March 17, 2011 (finding that the adoption of new industry practices regarding gas pipe cleaning constituted changed conditions warranting prohibitions and limitations on fuel pipeline/system cleanings); *Docket No. 187A, Milford Power, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, Dec. 2, 2010 (finding that an increase in natural gas supply, improvements to the electrical transmission grid and construction of other generation facilities were changed conditions supporting removal of dual fuel requirements); *Docket No. 225B, Kleen Energy Systems, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, July 22, 2009 (finding that the State's imposition of an aquifer protection zone was a changed condition justifying relocation of oil pipeline route); *Docket No. 189A, Lake Road Generating Co., Reopening Pursuant to Conn. Gen. Stat §4-181a(b)*, Findings of Facts, Jan. 19, 2012, ¶ 20-21 (finding that the increases in the natural gas supply, natural gas pipeline capacity, and the price of fuel oil created changed conditions supporting removal of dual fuel requirements);

Docket No. 265A, Dominion Nuclear Connecticut, Inc., Reopening Pursuant to Conn. Gen. Stat §4-181a(b), Findings of Facts, May 2, 2013, 1129-33 (finding that the changes in federal policy regarding the management of spent nuclear fuel and changes in the facility's management of spent fuel constituted changed conditions allowing the change to spent fuel storage installation).

As the discussion of changed conditions below underscores, NTE more than satisfies applicable standards with respect to reopening the docket and modifying the Decision.

IV. Changed Conditions for the KEC Facility

A. Cost and Schedule Uncertainties Resolved

As discussed in testimony from NTE's CEO on March 23, 2017, and in the attached Eves Testimony (Exhibit 1), at the time of FCA 11, there remained a substantial number of cost and schedule uncertainties associated with the KEC project. At that time for example, NTE had not received its air permit from the Connecticut Department of Energy and Environmental Protection ("DEEP") and had not finalized many of the substantive agreements (water supply and associated construction agreements, natural gas supply and associated engineering and construction agreements, Community Environmental Benefits Agreement ("CEBA"), and Tax Stabilization Agreement) that are important to the ultimate success of the KEC project. Given the cost and schedule implications of these incomplete efforts, NTE withdrew from FCA 11 prior to the final round of bidding.

Recognizing that securing a CSO is an important factor in the Council's needs analysis, NTE has taken several significant steps, both in 2017, following FCA 11, and in 2018, following FCA 12, to remove the uncertainties discussed above and to further strengthen the KEC Facility as it prepares to participate in FCA 13 on February 4, 2019.

- As discussed in more detail below, NTE has been pre-qualified by ISO-NE to participate in FCA 13, including the establishment of a minimum offer price for

KEC that is substantially below the minimum offer price ISO-NE set for KEC in both FCA 11 in 2017 and FCA 12 in 2018.

- On December 10, 2018, NTE secured the approval of a minor modification to its air permit from the DEEP for the KEC Facility reflecting NTE's plan to utilize improved turbine technology and increase generation output from the KEC Facility to approximately 650 MW, as discussed in more detail below.
- NTE has executed an Engineering Agreement with Yankee Gas for engineering and permitting of the lateral gas service line, to be owned by Yankee Gas, necessary to provide for the delivery of natural gas from the Algonquin transmission line to the KEC Facility. Yankee Gas has commenced its permitting process for installation of this new gas distribution line.
- NTE has entered into a Water Supply Agreement with the Connecticut Water Company ("CWC"), dated October 31, 2017, for the delivery of up to 400,000 gallons per day of water to the KEC Facility.
- NTE has entered into two separate Construction Agreements with CWC through which NTE has committed to pay all costs associated with the installation of a new water service line connecting the CWC system to the KEC Facility and the Killingly Industrial Park and for the interconnection of CWC's Plainfield and Crystal Water Company systems.
- On January 30, 2018, the Town of Killingly Town Council approved and executed NTE's proposed Tax Stabilization Agreement and CEBA for the KEC Facility.

- NTE has finalized the form of a Property Valuation Guarantee Agreement (“PVG”) and has committed to offer the PVG to all property owners within 2,500 feet of the KEC project site.
- NTE has worked with Yankee Gas in finalizing a service agreement.

B. Improvements to Turbine Technology

As previously described in the 2018 Motion and as discussed in the current Eves Testimony and Environmental Overview, attached as Exhibit 1 and Exhibit 3 respectfully, NTE has selected the Mitsubishi Model M501JAC (“J Series”) combustion turbine generator to replace the Siemens Model SGT6-8000H turbine described in the NTE Application. The benefits to using the Mitsubishi turbine system, including an increase in the KEC Facility’s nominal rating to approximately 650 MW, include:

- improved efficiency;
- continued rapid starts and dual fuel rapid switching ability;
- reduction in short-term particulate matter emission rates while maintaining a similar emissions profile for the balance of the associated air emissions parameters;
- higher design turbine heat input rating and output allowing for a reduction in fuel consumption by the system’s duct burners; and
- increased output at essentially no additional cost or environmental impact.

In order to accommodate these changed conditions NTE applied for and on December 10, 2018 received a final approval from the DEEP for a “minor modification” to the existing KEC Facility air permit.

C. Beneficial Adjustments to the KEC Facility Layout

As described in more detail in the attached Environmental Overview, NTE has improved the overall layout of the KEC Facility with minor repositioning of certain facility components, relocating the perimeter access road and eliminating the proposed retaining wall in the northeasterly portion of the site resulting in an increased setback from sensitive on-site environmental resources.

V. Continued Community Outreach²

In an effort to keep the Killingly community informed on NTE's progress with the project and its efforts to reopen this proceeding, NTE held additional community outreach meetings on December 18, 2017 and June 20, 2018, at the Killingly High School. Notice of these additional public information sessions were published in *The Bulletin* and *Killingly Villager* and posted on the Property. At these meetings, NTE described the changed conditions referenced in this Motion, updated Killingly residents on the status of the Tax Stabilization Agreement and the CEBA with the Town and answered questions regarding the KEC Facility and NTE's plans to file this Motion with the Council. KEC continues to publish its monthly newsletter, update the KEC project's website and make publicly available copies of all new reports, applications, materials, permits and presentations made on behalf of KEC on its website and in hard copy in the Killingly Public Library.

VI. Forward Capacity Auction 13

After reviewing KEC's detailed financial information and its development and construction schedule, ISO-NE notified NTE on September 28, 2018, that KEC is pre-qualified


² Notwithstanding NTE's continuing commitment to public and community outreach, it should be noted that the Town of Killingly is no longer listed as a Distressed Municipality by the Connecticut Department of Economic and Community Development. Regardless, NTE has committed to submit an Updated FINAL Environmental Justice ("EJ") Report to DEEP describing its most recent community outreach efforts. A copy of the Updated Final EJ Report will also be filed with the Council.

to participate in FCA 13 and set a minimum offer price for KEC. This price is significantly less than the minimum offer price ISO-NE set for KEC's participation in FCA 12. For this reason, and for the reasons discussed in the attached Eves Testimony and the attached Hibbard Testimony, including, among other things, ISO-NE's recent revocation of the 500 MW CSO previously issued to the Clean River Energy Center in Burrillville, Rhode Island, NTE is confident that, based on the changed conditions described above, it will receive a CSO in FCA 13. Moreover, NTE is confident that, as addressed in the Hibbard Testimony, the "need" criterion of the Council's statute has been amply demonstrated. NTE, therefore, respectfully requests that the Council postpone any decision on this Motion until after the results of FCA 13 are made publicly available. NTE will report these results to the Council as soon as possible.

VII. Conclusion

For all of the reasons discussed above and in the attached, NTE respectfully requests that the Council grant its Motion to Reopen this proceeding and modify the Docket No. 470 Decision.

Respectfully submitted,
NTE CONNECTICUT, LLC

By: 
Kenneth C. Baldwin
ROBINSON & COLE LLP
280 Trumbull Street
Hartford, CT 06103-3597

CERTIFICATION OF SERVICE

I hereby certify that on this 18th day of January 2019, a copy of the foregoing was sent via electronic mail and first class U.S. Mail, to the following:

John Bashaw, Esq.
Mary Mintel Miller, Esq.
Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
jbashawfilrrlawpc.com
mmiller@rrlawpc.com

Paul Hopkins, Acting Town Manager
Town of Killingly
172 Main Street
Killingly, CT 06239
shendricks@killinglyct.org

Joshua Berman, Staff Attorney
Sierra Club
50 F Street NW., 8th Floor
Washington, DC 20001
josh.berman@sierraclub.org

John Looney, Esq.
Roger Reynolds, Esq.
Connecticut Fund for the Environment
900 Chapel Street
Upper Mezzanine
New Haven, CT 06510
jlooney@ctenvironment.org
rreynolds@ctenvironment.org



Kenneth C. Baldwin