



Daniel F. Caruso
Chairman

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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CERTIFIED MAIL RETURN RECEIPT REQUESTED

January 11, 2007

Paulann H. Sheets, Esq.
87 Neptune Drive
Groton, Connecticut 06340-5421

RE: **Petition No. 802**- Petition for a Declaratory Ruling filed by the Town of Middlebury, Mr. Raymond Pietrorazio, Citizens for the Defense of Oxford, William Stowell, and Mira Schachne (Petitioner) contending that the Connecticut Siting Council actions to extend the Certificate deadline are void in accordance with Conn. Gen. Stat. § 16-50k(c), § 16-50l(d), § 16-50m(b), or § 4-181a(b).

Dear Attorney Sheets:

At a public meeting held on January 4, 2007, the Connecticut Siting Council (Council) considered and ruled on said petition.

Enclosed for your information is a copy of the Council's decision in this matter.

Very truly yours,

Daniel F. Caruso
Chairman

DFC/foc/laf

c: Docket No. 192 Service List

Petition No. 802- Petition for a Declaratory Ruling filed by the Town of Middlebury, Mr. Raymond Pietrorazio, Citizens for the Defense of Oxford, William Stowell, and Mira Schachne (Petitioner) contending that the Connecticut Siting Council actions to extend the Certificate deadline are void in accordance with Conn. Gen. Stat. § 16-50k(c), § 16-50l(d), § 16-50m(b), or § 4-181a(b).	}	Connecticut
	}	Siting
	}	Council

January 4, 2007

DECISION OF THE STATE OF CONNECTICUT SITING COUNCIL

I. INTRODUCTION

Pursuant to Connecticut General Statutes (Conn. Gen. Stat.) § 4-176, the Town of Middlebury, Mr. Raymond Pietrorazio, Citizens for the Defense of Oxford, Ms. Mira Schachne, and Mr. William Stowell (hereinafter “Petitioners”), represented by Paulann H. Sheets, Esq., filed the instant Petition for Declaratory Ruling (hereinafter “Petition”) to the State of Connecticut Siting Council (hereinafter “Council”). The Petition was filed on or about December 7, 2006 and concerns the Council’s Decision in Council Docket No. 192, granting a Certificate of Environmental Compatibility and Public Need (hereinafter “Certificate”) to Towantic Energy LLC (hereinafter “Towantic”) to construct a power plant in the Town of Oxford, Connecticut (hereinafter “Docket No. 192 Decision”). The Council’s Docket No. 192 Decision was issued in June of 1999, and contained the following language:

“Unless otherwise approved by the Council, this Decision and Order shall be void if all construction authorized herein is not completed within four years of the effective date of this Decision and Order or within four years after all appeals to this Decision and Order have been resolved.”

Paragraph 9 of the Decision and Order Section of the Docket No. 192 Decision.

The Council, relying upon the language “Unless otherwise approved by the Council”, extended the construction period of the Certificate multiple times without either amending the Docket No. 192 Decision pursuant to Conn. Gen. Stat. § 16-50k(c) and Conn. Gen. Stat. § 16-50l(d), or modifying the decision pursuant to Conn. Gen. Stat. § 4-181a(b), the changed conditions provision. The Petitioners are requesting that the Council rule that its prior extensions are void and that, since the power plant has still not yet been built, the Certificate has expired.

II. DISCUSSION.

There is no language in Chapter 277a of the Connecticut General Statutes (the Public Utility Environmental Standards Act or “PUESA”), the chapter governing the Council, that *expressly* governs the duration of certificates issued by the Council. Conn. Gen. Stat. § 16-50p(a)(1) does, however, state:

“In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.”

Conn. Gen. Stat. § 16-50p(a)(1).

In interpreting statutes, courts will consider the legislative policy the statute was designed to implement. Of course, where the language of the statute is plain and unambiguous, Courts will not

look beyond the statutory language. *Southern New England Telephone Co. v. Department of Public Utility Control*, 64 Conn. App. 134, 138, 779 A.2d 817 (2001), appeal dismissed, 260 Conn. 180, 779 A.2d 294 (2002). The plain language of the statute gives the Council very broad discretion to insert time conditions in its charge to balance environmental concerns with public need and benefit. Clearly, there is no conflict between the legislative policy behind the PUESA as stated in Conn. Gen. Stat. § 16-50g and the plain language of Conn. Gen. Stat. § 16-50p. While we have found no case law interpreting the limits of the above language, the Council believes that granting approvals without time limits may cause havoc with energy and telecommunications infrastructure planning if approved projects languish without limitation. At the same time, to implement its statutory obligations, the Council must have flexibility to evaluate and extend such deadlines without creating a new contested case with subsequent appeals each time an extension is needed. The Council sees nothing in the PUESA or the Uniform Administrative Procedure Act (UAPA) that prohibits the insertion of the language in its decisions that was used in the Docket No. 192 Decision.

The remaining question, then, is whether, by using the phrase, "Unless otherwise approved by the Council", the Council reserved onto itself the power to extend the time limitation short of using the amendment procedure or the changed conditions procedure. While the Petitioners have discussed court cases showing that state agencies have the authority to set time limits on approvals, and have discussed different language used by the Council in various decisions, they have not cited any court cases rejecting an agency reserving onto itself the power to extend a time limit without utilizing the PUESA amendment process or the UAPA changed conditions process. Clearly, had the Council not used the phrase "Unless otherwise approved by the Council", extensions of time could still be obtained through the amendment process or changed conditions process. If, however, even with the phrase "Unless otherwise approved by the Council" in the Docket No. 192 Decision, the only paths to extending the time are through the amendment process or the changed conditions process, then the phrase "Unless otherwise approved by the Council" is mere surplusage, adding no meaning to the Docket No. 192 Decision. In *Vibert v. Board of Education*, 260 Conn. 167, 793 A.2d 1076 (2002), the Connecticut Supreme Court reiterated that in interpreting statutes, "Every word and phrase is presumed to have meaning, and we do not construe statutes so as to render certain words and phrases surplusage." *Id.*, 260 Conn. at 176. Applying this principle to the Docket No 192 Decision, the Council clearly intended to and did reserve onto itself the power to extend the deadline without amending or modifying the Certificate and Decision and Order. The broad language of Conn. Gen. Stat. § 16-50p(a)(1) gives the Council the power to make such a time limit with such a reservation a condition of a certificate.

III. CONCLUSION.

The Council hereby rules, concludes and decides the following: 1) Conn. Gen. Stat. § 16-50p(a)(1) gives the Council the discretion to insert time limits in its approvals; 2) if the Council inserted a time limit without the words, "Unless otherwise approved by the Council", or similar words fulfilling the same function, the amendment procedure of Conn. Gen. Stat. § 16-50k(c) and Conn. Gen. Stat. § 16-50l(d), and the changed conditions provisions of Conn. Gen. Stat. § 4-181a(b) are the only means of extending such time limits (unless the reconsideration procedure under Conn. Gen. Stat. § 4-181a(a) is used, which would generally expire before a need for a time extension arose); 3) if the above-cited statutory provisions were the only means of extending the time limits, even with the language "Unless otherwise approved by the Council", the phrase "Unless otherwise approved by the Council" would be meaningless surplusage; 4) by inserting the language "Unless otherwise approved by the Council", the Council intended to be able to extend the time limit contained in the Docket No. 192 Decision without amending or modifying that decision and did so make such reservation; 5) Conn. Gen. Stat. § 16-50p(a)(1) permits such a time limitation with such a reservation to so extend such limitation; and 6) the time extensions rendered by the Council in Docket No. 192 are valid and any extension of the Certificate is likewise valid.

**LIST OF PARTIES AND INTERVENORS
SERVICE LIST**

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	Towantic Energy, L.L.C.	Alan M. Kosloff, Esq. Mary McQueeney Levy & Droney, P.C. 28 North Main Street West Hartford, CT 06107 (860) 521-7004 (860) 521-3352 – fax akosloff@ldlaw.com mmcqueeney@ldlaw.com
Party	Citizens for the Defense for Oxford	Jay Halpern – CDO 58 Jackson Cove Road Oxford, CT 06478 h: 203-888-4976 Paulann H. Sheets, Esq. Consulting Attorney 87 Neptune Drive Groton, CT 06340-5421 (860) 536-2152 (860) 572-8266 - fax phsheets536@tvconnect.net
Intervenor	Town of Middlebury	Robert B. Hanahan, Esq. 365 Main St. Suite 3 Watertown, CT 06795-2249
Intervenor	Connecticut Light and Power Company (CL&P)	Daniel P. Venora Senior Counsel Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-3395 (860) 665-5504 –fax Dorian E. Hill, Principal Engineer Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-6765 (860) 665-2820.– fax hillde@NU.COM

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
	CL&P continued...	<p>Paul Sousa, Senior Engineer Northeast Utilities Service Company Transmission and Interconnection Dept. P.O. Box 270 Hartford, CT 06141-0270</p> <p>Brian T. Henebry Carmody & Torrance LLP 50 Leavenworth Street P.O. Box 1110 Waterbury CT 06721-1110</p>
Party	Town of Oxford	<p>Robert J. Uskevich, Esq. 1 Pomperaug Office Park Suite 303 Southbury, CT 06488 (203) 888-2543 (203) 888-2136 – fax herman.schuler@oxfordedc.com</p>
Party	Naugatuck Valley Chapter Trout Unlimited	<p>Albin Weber President Naugatuck Valley Chapter Trout Unlimited 584 South Britain Road Southbury, CT 06488</p>
Intervenor	Town of Southbury	<p>Mark A. R. Cooper First Selectman Town of Southbury 501 Main Street Southbury, CT 06488 (203) 262-0647 (203) 264-9762 - fax</p>
Party	The Pomperaug River Watershed Coalition	<p>Marc J. Taylor, MD Pomperaug River Watershed Coalition P.O. Box 814 Southbury, CT 06488-0814 (203) 267-1700 (203) 264-0222 – fax marctaylor411@earthlink.net</p>

Date: December 8, 2006

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LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Intervenor (approved 06/07/06)	Raymond Pietrorazio 40 Whittemore Road Middlebury, CT 06762 (203) 758-2413 (203) 758-9519 – fax ray@ctcombustion.com	Paulann H. Sheets, Esq. 87 Neptune Drive Groton, Connecticut 06340-5421 (860) 536 2152 (860) 572-8266 - fax phsheets536@tvconnect.net
Intervenor (approved 10/10/06)	GE Energy Financial Services, Inc.	Jay F. Malcynsky The Law Offices of Jay F. Malcynsky, P.C. One Liberty Square New Britain, CT 06051 (860) 229-0301 (860) 225-4627 – fax Jmalcynsky@gaffneybennett.com