PETITION FOR DECLARATORY RULING

Pursuant to C.G.S. § 4-176, the Complainant, Town of Middlebury, CT (hereafter, "Middlebury") herein petitions the Respondent, State of Connecticut, Department of Energy & Environmental Protection (hereafter, "CT-DEEP") for declaratory ruling of its decision regarding proposed construction of single point-source pollutants as referenced under the Connecticut Siting Council (hereafter,
"CSC") docket No. 192B (CPV Towantic, LLC Motion to Reopen and Modify the June 23, 1999 Certificate of Environmental Compatibility and Public Need). In particular, this Petition for Declaratory Ruling specifically challenges the CT-DEEP’s final decision on November 30, 2015, for approval of two (2) twin stack designs to be utilized for the main plant’s dispersion of exhaust gases resulting from the proposed 805 megawatt power generating plant operations. These stacks have been classified by the US Environmental Protection Agency (hereafter, “US-EPA”) and the CT-DEEP as a "Title V source".

As this Petition is dated and has been hand-delivered on 1/8/2016, a time period of less than forty (40) days from the date of the CT-DEEP’s final decision, this Petition is herein deemed to be timely.

The grounds for the submission of this petition are as follows:

1. Error of Law.

   (a). Connecticut General Statutes, §22a-174 states:
   
(a) The commissioner, in the manner provided in subdivision (1) of section 22a-6, shall have the power to formulate, adopt, amend and repeal regulations to control and prohibit air pollution throughout the state or in such areas of the state as are affected thereby, which regulations shall be consistent with the federal Air Pollution Control Act and which qualify the state and its municipalities for available federal grants. Any person heard at the public hearing on any such regulation shall be given written notice of the determination of the commissioner.

(b) By implementation of the above Statute, the CT-DEEP did formulate and adopt the following Regulation, which is current and was effective as of 4/4/2006, as follows:

Sec.22a-174-33. Title V Sources.

(a) Definitions. For the purposes of this section:

(2) "Applicable requirements" means:

(A) Any standard or other requirement in the State implementation plan or in a federal implementation plan for the State of Connecticut promulgated by the Administrator pursuant to the Act;

(B) Any term or condition of a permit issued pursuant to former section 22a-174-3 or section 22a-174-3a of the
Regulations of Connecticut State Agencies;

(C) Any standard or other requirement of the acid rain program pursuant to 40 CFR Parts 72 to 78, inclusive; and

(D) Any standard or other requirement pursuant to 40 CFR 51, 52, 59, 60, 61, 62, 63, 64, 68, 70, or 82.

{Emphasis Added}

(c). 40 CFR 51, Appendix W to Part 51 - Guideline on Air Quality Models, as defined above by the CT-DEEP as an "Applicable Requirement" (not a "guideline"), further defines the modeling techniques and usage for analysis and for determination of the efficacy of design parameters of exhaust stack construction and their applicability and impact on and by surrounding topography and as point sources of pollutants.

(d). The CT-DEEP did not utilize ANY of the above referenced 40 CFR 51 Appendix W modeling guidelines, of which the CT-DEEP itself has defined above as "Applicable Requirements", in its single point modeling of the proposed 805
megawatt power generation plant as described in CSC Docket No. 192B.

(e). The above failure of the CT-DEEP to follow its own regulations in its adjudication of its final decision regarding this 805 megawatt power generating plant constitutes a serious error of law. This failure is of such significant magnitude as to require the reversal of the Commissioner’s Final Decision and the Air Permit issued.

2. Additional "good cause" for consideration, amongst others:

a. The Town of Middlebury also claims the CT-DEEP did not maintain the careful and diligent adherence to the United States Department of Environmental Protection (EPA) Guidelines and Regulations in its conduct of dispersion modeling reviews and proper determination of adequate stack height and performance of the twin 150 ft. high stacks of the CPV project, particularly that contained in:

   Clean Air Act #123, 42 USC
and,
EPA -450/4-80-023R, June 1985, Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document For the Stack Height Regulations) (Revised), also constituting errors of law.

b. Improper use of Danbury Airport weather data in lieu of local Oxford data.

c. Administrative failure to properly respond to a formal Petition, timely filed by the Town of Middlebury, pertaining to, and as a result of, information obtained in a Freedom of Information request to the CT-DEEP for documentation.

d. Improperly allowing capricious and erroneous classification of site with respect to complex terrain impacts.

e. Inadequate modeling of the emissions.

f. Capricious acceptance by CT-DEEP of applicant interrogatory responses.

Based on the above, we respectfully request the following actions by the CT-DEEP as soon as practical:

(a) Reversal of its November 30, 2015 Final Decision
regarding the approval of the 805 megawatt power generating plant proposed criteria for exhaust stack design construction.

(b) Official CT-DEEP communication to the CSC, that the above requested reversal of decision has occurred.

Respectfully submitted, this 8th day of January, 2016.

THE COMPLAINANT,

THE TOWN OF MIDDLEBURY, CT

By: Edward B. St. John
Its: First Selectman

By: Raymond Pietrorazio
Its: Representative to the OXC Airport/Power Plant

Cc: Ms. Dana D'Angelo, Town Attorney
