

**ORIGINAL**

| Complainant:

| Town of Middlebury, CT  
| 1212 Whittemore Road  
| Middlebury, CT 06762  
| tel. 203-758-2439

| Respondent:

| STATE OF CONNECTICUT  
| DEPARTMENT OF  
| ENERGY & ENVIRONMENTAL  
| PROTECTION  
| Dr. Robert Klee, Commissioner  
| 79 Elm Street, Hartford, CT  
| 06106-5127

| JANUARY 8, 2016

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**JAN 08 2016**

CT DEPT OF ENERGY &  
ENVIRONMENTAL PROTECTION  
COMMISSIONER'S OFFICE

**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:

Sec. 22a-174. (Formerly Sec. 19-508). Powers of the commissioner. Regulations. Fees. Exemptions. General permits. Appeal of commissioner's action re permit applications.

(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.

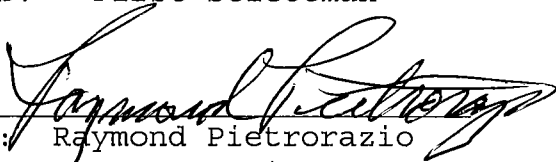
- (b) Official CT-DEEP communication to the CSC, that the above requested reversal of decision has occurred.

Respectfully submitted, this 8<sup>th</sup> 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

Mr. Stephen Savarese, Attorney, Town of Middlebury,  
Docket No. HHB-CV-15-6029869-S, Town of Middlebury, ET  
AL vs: State of Connecticut Siting Council, ET AL,  
Superior Court Judicial District of New Britain

file

