

STATE OF CONNECTICUT

SITING COUNCIL

\* \* \* \* \*

MERIDEN GAS TURBINES, LLC \* JUNE 4, 2013  
 \* (3:00 p.m.)

MOTION TO REOPEN THE FINAL DECISION \*  
 ON THE CERTIFICATE OF \*  
 ENVIRONMENTAL COMPATIBILITY AND \*  
 PUBLIC NEED HELD BY MERIDEN GAS \*  
 TURBINES, LLC FOR A 530 MW \* DOCKET NO. 190B  
 COMBINED CYCLE GENERATING PLANT IN \*  
 MERIDEN, CONNECTICUT \*  
 \* \* \* \* \*

BEFORE: ROBIN STEIN, CHAIRMAN

BOARD MEMBERS: Robert Hannon, DEP Designee  
 Larry P. Levesque, DPUC Designee  
 Edward S. Wilensky  
 Daniel P. Lynch, Jr.  
 James J. Murphy, Jr.  
 Dr. Barbara Bell

STAFF MEMBERS: David Martin, Siting Analyst  
 Melanie Bachman, Staff Attorney

APPEARANCES:

FOR THE CERTIFICATE HOLDER MERIDEN GAS TURBINES, LLC:

MURTHA CULLINA, LLP  
 CityPlace I  
 185 Asylum Street  
 Hartford, Connecticut 06103-3469  
 BY: ANDREW W. LORD, ESQUIRE

## APPEARANCES (Continued):

FOR THE INTERVENOR, THE CONNECTICUT LIGHT AND  
POWER COMPANY:

STEPHEN GIBELLI, ESQUIRE  
Associate General Counsel  
The Connecticut Light and Power Company  
P.O. Box 270  
Hartford, Connecticut 06141-0270

ELIZABETH MALDONADO, Senior Counsel  
Northeast Utilities Service Company  
107 Selden Street  
Berlin, Connecticut 06037

FOR THE INTERVENOR, RIVERS ALLIANCE OF  
CONNECTICUT - FARMINGTON RIVER WATERSHED  
ASSOCIATION:

ERIC HAMMERLING, PRESIDENT  
Rivers Alliance of Connecticut  
P.O. Box 1797  
Litchfield, Connecticut 06759

KEVIN CASE  
Farmington River Watershed Association  
749 Hopmeadow Street  
Simsbury, Connecticut 06070

FOR THE PARTY, THE QUINNIPIAC RIVER WATERSHED  
ASSOCIATION:

MARY MUSHINSKY  
Executive Director  
Quinnipiac River Watershed Association  
P.O. Box 2825  
Meriden, Connecticut 06450

## APPEARANCES (Continued):

FOR THE PARTY, THE CITY OF MERIDEN:

BROWN, RUDNICK, LLP  
CityPlace I  
185 Asylum Street  
Hartford, Connecticut 06103  
BY: PHILIP M. SMALL, ESQUIRE  
SCOTT A. MUSKA, ESQUIRE

DEBORAH L. MOORE, CITY ATTORNEY  
City of Meriden  
142 East Main Street  
Meriden, Connecticut 06450

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1 . . .Verbatim proceedings of a hearing  
2 before the State of Connecticut Siting Council, Re:  
3 Motion to Reopen Final Decision on a Certificate by  
4 Meriden Gas Turbines, LLC, held at the Meriden City Hall,  
5 145 East Main Street, Meriden, Connecticut, on June 4,  
6 2013 at 3:00 p.m., at which time the parties were  
7 represented as hereinbefore set forth . . .

8  
9

10 CHAIRMAN ROBIN STEIN: Good afternoon,  
11 ladies and gentlemen. I call this meeting to order of  
12 the Connecticut siting Council today Tuesday, June 4,  
13 2013 at approximately 3:00 p.m.

14 My name is Robin Stein and I'm Chairman of  
15 the Connecticut Siting Council.

16 Other members of the Council are Mr.  
17 Hannon, who is the designee from the Department of Energy  
18 and Environmental Protection; Mr. Levesque, the designee  
19 from the Public Utilities Regulatory Authority; Senator  
20 Murphy; Mr. Lynch; Dr. Bell; and Mr. Wilensky.

21 Members of the staff present are Attorney  
22 Bachman, who is our Acting Executive Director; Mr.  
23 Martin, our Siting Analyst; and Gail Gregoriades, who is  
24 our court reporter and sound person I guess today.

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1                   This hearing is held pursuant to the  
2 provisions of Title 16 of the Connecticut General  
3 Statutes and of the Uniform Administrative Procedure Act  
4 upon a Motion to Reopen the final decision on the  
5 Certificate of Environmental Compatibility and Public  
6 Need held by the Meriden Gas Turbines, LLC for a 530  
7 megawatt combined cycle generating plant in Meriden,  
8 Connecticut.

9                   On April 18, 2013, the Council, pursuant  
10 to a request filed by the City of Meriden and the  
11 provisions of Connecticut General Statutes, Section 4-  
12 181a(b), reopened the final decision rendered in this  
13 docket and specifically limited this hearing to Council  
14 consideration of changed conditions and a decommissioning  
15 plan.

16                   As a reminder to all, off-the-record  
17 communications with a member of the Council or a member  
18 of the Council staff upon the merits of this request is  
19 prohibited by law.

20                   The parties and intervenors to the  
21 proceedings are as follows: Meriden Gas Turbines is the  
22 Certificate Holder. An Intervenor is the Connecticut  
23 Light and Power Company. Other intervenors are the River  
24 Alliance of Connecticut and the Farmington River

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1 Watershed Association. The parties are the Quinnipiac  
2 River Watershed Association and the City of Meriden.

3 We will proceed in accordance with the  
4 prepared agenda, copies of which are available here.  
5 Also available are copies of the Council's Citizen Guide  
6 to Siting Council Procedures.

7 At the end of this afternoon's session, we  
8 will recess and resume again at 7:00 p.m.

9 The 7:00 p.m. hearing will be reserved for  
10 the public to make brief oral statements into the record.  
11 I wish to note for the parties and intervenors present,  
12 including their representatives and witnesses, they are  
13 not allowed to participate in the public comment  
14 session.

15 I also wish to note for those who are here  
16 and for the benefit of your friends and neighbors who are  
17 unable to join us for the public comment session, that  
18 you or they may submit written statements to the Council  
19 within 30 days of the date hereof. And such written  
20 statements will be given the same weight as if spoken at  
21 the hearing.

22 If necessary, party and intervenor  
23 presentations may continue after the public hearing if  
24 time remains or at some subsequent date.

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1 A verbatim transcript will be made of this  
2 hearing and deposited with the Town Clerk's Office in  
3 Meriden and Berlin for the convenience of the public.

4 I'd like to start -- is there any public  
5 official that wishes to make a comment at this time?  
6 Okay.

7 We'll go to the motions. The City of  
8 Meriden has filed a request for administrative notice of  
9 prior Council decisions. Does the Certificate Holder or  
10 any party or intervenor have any objection to the items  
11 that the City has requested to be administratively  
12 noticed?

13 A VOICE: No objection.

14 CHAIRMAN STEIN: Okay. Hearing and seeing  
15 none, we will take notice of those prior Council  
16 decisions.

17 I wish to call your attention to those  
18 items shown in the hearing program marked as Roman  
19 Numeral I-D, Items 1 through 71. Does the Certificate  
20 Holder or any party or intervenor have any objection to  
21 the items that the Council has administratively noticed?

22 MR. PHILIP SMALL: No -- no objection --

23 COURT REPORTER: Your Microphone --

24 MR. SMALL: -- from --

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1 CHAIRMAN STEIN: Okay --

2 MR. SMALL: No objections from the City of  
3 Meriden, Mr. Chairman.

4 CHAIRMAN STEIN: Okay. Hearing and seeing  
5 none, accordingly the Council hereby administratively  
6 notices these existing documents, statements, and  
7 comments.

8 We'll now proceed with the appearance by  
9 one of the parties, the City of Meriden. And will the  
10 City present its witness council for the purpose of  
11 taking the oath. And the Council's staff attorney will  
12 administer the oath.

13 MR. SMALL: Just prior to that, just for  
14 the record, on behalf of the City of Meriden, Philip  
15 Small and Scott Muska, and Deborah Moore, who is the city  
16 attorney, so I wanted to add to the representatives of  
17 the City for that purpose.

18 Our witnesses are Michael Libertine,  
19 Robert Bass, Dominick Caruso, and Larry Kendzior. And  
20 they can all stand to be sworn.

21 MS. MELANIE BACHMAN: Please raise your  
22 right hand.

23 (Whereupon, the City of Meriden's witness  
24 panel was duly sworn in.)



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1 MS. BACHMAN: Thank you.

2 CHAIRMAN STEIN: Would you please continue  
3 by numbering the exhibits of the filings you have made in  
4 this matter and making requests to administratively  
5 notice documents --

6 MR. SMALL: Certainly --

7 CHAIRMAN STEIN: -- and verifying all  
8 exhibits by the appropriate sworn witnesses.

9 MR. SMALL: Certainly, Mr. Chairman. We  
10 have asked for administrative notice of three items,  
11 they're listed in the program, and I would move those --  
12 I'd move that the Council grant that administrative  
13 notice unless there's any objection.

14 A VOICE: No objection.

15 CHAIRMAN STEIN: No objection. Hearing  
16 and seeing none, these will be admitted.

17 MR. SMALL: And then, Mr. Chairman, with  
18 respect to the exhibits for identification, we've listed  
19 seven items. We'll obviously verify -- once we introduce  
20 the witnesses, we'll -- we'll verify those and ask that  
21 they be fully admitted

22 There is one exhibit that we do have a  
23 revision of, which Mr. Muska could hand out. It's a  
24 revision to our Exhibit 7, it contains some additional

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1 biographical information on one of the witnesses that  
2 wasn't -- that was less detailed in what we provided. So  
3 we -- we will hand that out and we will ask that that be  
4 made a full exhibit ultimately.

5 In the meantime, let me just for the  
6 record just -- and for the stenographer -- starting with  
7 Mr. Libertine on my far right, would you just introduce  
8 yourself and your position.

9 MR. MICHAEL LIBERTINE: My name is Michael  
10 Libertine. I'm the Director of Environmental Siting and  
11 Permitting for All Points Technology.

12 MR. ROBERT BASS: My name is Robert Bass,  
13 Director of Public Works for the City of Meriden.

14 MR. DOMINICK CARUSO: Dominick Caruso,  
15 Director of Planning and Development for the City.

16 MR. LAWRENCE KENDZIOR: And I'm Larry  
17 Kendzior. I'm the City Manager here.

18 MR. SMALL: Okay, thank you, gentlemen.  
19 Mr. Chairman, our first -- the first exhibit, which -- I  
20 don't -- I think the Council must have added to our list  
21 of exhibits is our initial filing, dated March 18, 2013,  
22 requesting that this docket be reopened and certain --  
23 and that the City obtain certain relief. I'm not sure  
24 how you or Attorney Bachman wants to handle it. It's --

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1 I mean do you want some verification of the facts in it  
2 or -- okay --

3 MS. BACHMAN: That would be fine. Thank  
4 you.

5 MR. SMALL: If we could have a minute for  
6 Mr. Kendzior just to refresh his recollection on that.

7 (pause)

8 MR. JAMES J. MURPHY, JR.: Attorney Small  
9 --

10 MR. SMALL: Yes --

11 MR. MURPHY: -- I have one question before  
12 we start.

13 MR. SMALL: Certainly.

14 MR. MURPHY: Do you have any prefiled  
15 testimony from Mike Libertine because I haven't seen  
16 anything from him. I mean he's been with us, I see him  
17 there, and I know what he does, but --

18 MR. SMALL: Mr. Murphy, we do not because  
19 the Council moved the pre-filing hearing testimony  
20 deadline back --

21 MR. MURPHY: Okay --

22 MR. SMALL: -- as a result of various  
23 motions from the parties. So it's now I believe June --  
24 July 9th if my memory is correct --

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1 A VOICE: That's correct --

2 MR. SMALL: -- so there's no prefiled  
3 testimony. We're -- you know, we'll put our exhibits in  
4 and the City can clearly be cross-examined on the  
5 exhibits.

6 MR. MURPHY: Okay. Thank you.

7 MR. DANIEL P. LYNCH, JR.: Mr. Small, is -  
8 -

9 MR. SMALL: Yes, sir --

10 MR. LYNCH: -- is the handout we just got  
11 part of Exhibit 7 or is there a new 8?

12 MR. SMALL: It is -- no, that is -- that  
13 is a replacement for Exhibit 7. That's a revised version  
14 of Exhibit 7.

15 MR. LYNCH: Thank you.

16 MR. SMALL: Mr. Kendzior, have you  
17 reviewed the factual -- the factual portion of what's  
18 listed here as Exhibit 1, which was the City's Petition  
19 to Reopen and Modify the decision and order in Docket No.  
20 190?

21 MR. KENDZIOR: I have.

22 MR. SMALL: And are the factual statements  
23 in there true and correct to the best of your knowledge  
24 and belief?

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1 MR. KENDZIOR: Yes, they are.

2 MR. SMALL: Okay. And let me move on then  
3 to what's listed as Exhibit 2, which is the Prospective  
4 Real Estate Appraisal of Property located at Meriden Gas  
5 Turbines, LLC, 600 South Main Street -- South Mountain  
6 Drive, excuse me. Are you familiar with that document?

7 MR. KENDZIOR: I -- I have read the  
8 document, yes.

9 MR. SMALL: Are you -- and can -- who --  
10 are you familiar with who prepared it?

11 MR. KENDZIOR: It was a real estate  
12 appraisal prepared by an appraiser that was hired by NRG  
13 Energy.

14 MR. SMALL: And NRG Energy is a parent  
15 company of MGT?

16 MR. KENDZIOR: That's correct.

17 MR. SMALL: And how did that -- this  
18 document come into your possession -- or in the City's  
19 possession I should say?

20 MR. KENDZIOR: It was delivered to us by  
21 NRG.

22 MR. SMALL: Okay. And can you just --  
23 what was the context of that delivery? Why was it  
24 delivered to you by NRG?

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1 MR. KENDZIOR: We have been in discussions  
2 with NRG in accordance with a modification to the  
3 original tax agreement. One of the requirements there  
4 was that if MGT decided to abandon its permits and so  
5 forth, that we would evaluate what the property would be  
6 worth if it were not a power -- a permitted power plant  
7 site. So both sides prepared appraisals, and this is the  
8 appraisal that was prepared by NRG --

9 MR. SMALL: Okay --

10 MR. KENDZIOR: -- for MGT.

11 MR. SMALL: Okay, thank you. Now with  
12 respect to item -- well let me -- let me pass on Item No.  
13 3 for the moment. Let me move to Item No. 4, which is a  
14 Memorandum, dated July 14, 2012, from Tom Skogland --  
15 Skoglund to Dominick Caruso. Mr. Caruso, are you  
16 familiar with that document?

17 MR. CARUSO: I am.

18 MR. SMALL: Okay. And who is Mr.  
19 Skoglund?

20 MR. CARUSO: He's the Assistant City  
21 Planner.

22 MR. SMALL: So he works for you?

23 MR. CARUSO: Yes, sir.

24 MR. SMALL: And he -- this memo was

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1 addressed to you?

2 MR. CARUSO: Yes, sir.

3 MR. SMALL: And -- and you have reviewed  
4 it and are familiar with it?

5 MR. CARUSO: Yes.

6 MR. SMALL: Okay, thank you. And -- and  
7 you believe that the factual statements in that memo are  
8 true and correct?

9 MR. CARUSO: I do.

10 MR. SMALL: Okay, thank you. Let me move  
11 on to Item No. 5, which is the Memorandum, dated  
12 September 4, 2008, from Brian Ennis to Dominick Caruso.  
13 Mr. Caruso, who is Brian Ennis?

14 MR. CARUSO: He's the Associate City  
15 Engineer.

16 MR. SMALL: And again he works for you?

17 MR. CARUSO: No, he works for the City  
18 Engineer --

19 MR. SMALL: Okay --

20 MR. CARUSO: -- Mr. Bass.

21 MR. SMALL: Okay. But he addressed this  
22 memo -- this memo to you?

23 MR. CARUSO: Yes, sir.

24 MR. SMALL: Okay. And are the factual

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1 statements in that -- in this memo true and correct to  
2 the best of your knowledge and belief?

3 MR. CARUSO: Yes, sir.

4 MR. SMALL: Okay, thank you. And -- I'm  
5 not sure if this is for you, Mr. Caruso, or for you, Mr.  
6 Bass, but let me start with you, Mr. Caruso. There's a  
7 one-page e-mail, which the Siting Council has designated  
8 as Exhibit 6, an e-mail dated July 5, 2012 from Brian  
9 Ennis, who we've already identified, to Tom Skoglund, who  
10 we've already identified, regarding the NRG site. Mr.  
11 Caruso, are you familiar with this e-mail?

12 MR. CARUSO: I am.

13 MR. SMALL: Okay. And do you believe it  
14 is correct -- true and correct to the best of your  
15 knowledge and belief?

16 MR. CARUSO: I do.

17 MR. SMALL: Okay, thank you. And finally,  
18 in what we're calling -- what I'm calling revised Exhibit  
19 7, background and biographical information for Messrs.  
20 Libertine, Kendzior, Caruso, and Bass, have each of you -  
21 - let me start with Mr. Kendzior -- have each of you  
22 reviewed the description of your background and  
23 biographical information in the revised exhibit?

24 MR. KENDZIOR: Yes.



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1 MR. SMALL: Okay.

2 MR. CARUSO: Yes.

3 MR. SMALL: Okay. Mr. Bass?

4 MR. BASS: Yes.

5 MR. SMALL: And Mr. Libertine?

6 MR. LIBERTINE: Yes.

7 MR. SMALL: And is it true and correct to

8 the best of your knowledge and belief in each case?

9 Starting again with you, Mr. Kendzior.

10 MR. KENDZIOR: It is true and correct.

11 MR. CARUSO: It is true and correct for  
12 me.

13 MR. BASS: It is true and correct.

14 MR. LIBERTINE: Yes.

15 MR. SMALL: Okay, thank you. So the --  
16 the one remaining exhibit that I skipped was Exhibit 3.  
17 Exhibit 3 is an excerpt of a transcript from the original  
18 hearing in this docket. None of the -- none of the  
19 witnesses were at that hearing to my knowledge, nor were  
20 any of us. It's -- it's a transcript that was cited by  
21 NRG in one of their motions in this case. And we -- it's  
22 an important piece of transcript we believe. So we just  
23 thought rather than having it just buried in the Siting  
24 Council's file, we wanted to make it an exhibit for the

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1 purpose of convenience. So I'm not sure what Miss  
2 Bachman's thought is, but mine might be to just leave it  
3 as an exhibit for identification. Would that -- is that  
4 -- would that work or how do you want to handle that?

5 MS. BACHMAN: That would be fine subject  
6 to any objection --

7 MR. SMALL: Okay --

8 MS. BACHMAN: -- from the Certificate  
9 Holder.

10 MR. SMALL: Okay. So given that, with the  
11 -- I would like to move into evidence as full exhibits  
12 Items 1, 2, and 4-7, with 7 being the revised Exhibit 7,  
13 as full exhibits.

14 CHAIRMAN STEIN: Is there any objection?

15 MR. ANDREW LORD: Yes, I object. A couple  
16 of procedural comments to start with first of all. For  
17 the record, this is Andrew Lord from Murtha Cullina on  
18 behalf of Meriden Gas Turbines.

19 Just for the record and simply to put it  
20 on the record, as you know, MGT currently has an action  
21 in Superior Court questioning the jurisdiction of this.  
22 And we'd like to reserve our rights to make the claim  
23 that our participation in this docket in no way relieves  
24 us of whatever solution the court may remedy. So for the

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1 record.

2 This is a bit of a procedural predicament  
3 that we have. We -- the Petitioner, if you will, has  
4 submitted a series of exhibits, a series of witnesses,  
5 and no prefiled testimony to follow up on Mr. Murphy's  
6 point. Obviously, they knew that we had a hearing coming  
7 up. Obviously, they knew that we can't have cross-  
8 examination unless we have direct testimony, so it's a  
9 little bit of a procedural predicament. So, I don't  
10 really know how we'd proceed at this point in terms of  
11 going forward. How can you do cross-examine when there's  
12 no testimony in the record. I'll leave that aside for  
13 you to consider.

14 If you do go forward however, I object to  
15 the admission of what's been marked as B-2, which is the  
16 real estate appraisal. That is a document that was  
17 prepared for NRG. They have no witness on their panel  
18 that can testify as to the veracity or the accuracy of  
19 that report. So, I would object on those grounds.

20 With regard to Exhibit 3, it's already in  
21 the record as an administrative notice document, so it  
22 doesn't need to be admitted for any other purpose than  
23 that. So, I would object to that.

24 And as for the remaining exhibits, I

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1 object to them on the basis that there's no foundation.  
2 Without having testimony that says this is our position  
3 and this is what we're going to testify to and this is  
4 the exhibit that supports our position or provides the  
5 analysis, it has no bearing or relevancy on your  
6 consideration. So those are my objections. Thank you.

7 MR. SMALL: May I address --

8 CHAIRMAN STEIN: Attorney -- yes, would  
9 you --

10 MR. SMALL: Okay, thank you, Mr. Chairman.  
11 Let me start with the reservation of rights by MGT. We -  
12 - we understand they have the litigation pending in  
13 Superior Court. We obviously have different views of its  
14 merits, but we have no objection whatsoever to their  
15 reservation of whatever rights they want. And we  
16 appreciate the fact that they are, subject to that  
17 reservation, participating in this case.

18 With respect to their objection to the  
19 prospective real estate appraisal, it's a document that  
20 they prepared. We can demonstrate chain-of-custody if  
21 necessary. It would be admissible in any court as an  
22 admission against interest. It's -- it's their document.  
23 We -- we can -- it states their position. We have asked  
24 in some interrogatories about whether they agree with the

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1 position stated by their appraiser. And when we get  
2 their interrogatory responses, we'll know that answer.  
3 But we are providing it as a document that was provided  
4 to us by MGT and it's fully admissible. We are not -- we  
5 are going to rely on it as MGT's admission of their  
6 position on some of the contested issues in this case.

7 Shall we go and debate this one first or  
8 shall I go through all of -- because I see Mr. Lord has  
9 risen.

10 CHAIRMAN STEIN: Well why don't we --  
11 because I think this is probably the most significant of  
12 the ones that have been questioned, so -- Mr. Lord, why  
13 don't we continue with this.

14 MR. LORD: That's a commercial document  
15 that was prepared in conjunction with pending litigation  
16 and was not intended for this purpose and has no  
17 relevance on this purpose. The City of Meriden I believe  
18 prepared their own appraisal, which they certainly could  
19 have provided instead of ours that probably had the same  
20 or very similar information. It's just improper to have  
21 an exhibit presented by a party that doesn't have an  
22 expert to swear to it.

23 MR. SMALL: I mean we can -- if necessary,  
24 we will subpoena their appraiser and bring him in at the

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1 next hearing. The -- this is their exhibit. It's their  
2 admission. It's -- it's highly relevant to the issues in  
3 this case, including the highly contested issue of  
4 jurisdiction.

5 CHAIRMAN STEIN: Do you have any comments  
6 on the other --

7 MR. SMALL: I -- I do, Mr. Chairman. With  
8 respect to the lack of prefiled testimony, I understand  
9 that's not the way procedure is normally done here.  
10 However, this case has been anything but normal with  
11 respect to procedure. The prehearing -- the prefiling  
12 testimony deadline was moved back by the Council in its  
13 ruling on various motions filed primarily by MGT but also  
14 by -- by the City. So we're abiding by the prefiled  
15 testimony deadline the Council suggested.

16 The exhibits were put in -- we have -- our  
17 application is before the Council, our responses to the  
18 Council -- our May 5th, I believe it is, response to the  
19 Council's request for comments on the petition is  
20 available and has been administratively noticed as part  
21 of the docket, and we've introduced exhibits today. The  
22 Council and other parties are free to cross-examine us on  
23 those exhibits.

24 We will file prefiled testimony, you know,

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1 on the required date, and we'll also at that point have  
2 the benefit of each -- presumably the benefit of the  
3 interrogatory responses, both to our questions and to the  
4 Council's questions, and there will be an additional --  
5 at least one additional hearing session on that. But in  
6 the meantime, we're -- we -- you know, we're here because  
7 the Council decided it wanted to have the hearing today  
8 on changed conditions and at the same time it moved back  
9 the -- the Council also moved back the prefiled  
10 testimony deadline. We were prepared to file it, but it  
11 wasn't necessary given the schedule. So we're -- we're  
12 here at the Council's request on changed conditions. And  
13 the --

14 CHAIRMAN STEIN: Well the procedure has  
15 been challenging, but we do the best we can given the  
16 circumstances. Mr. --

17 MR. SMALL: I have one more -- I just  
18 omitted -- I have one more thing I wanted to add, I just  
19 recalled it. It is correct that the City prepared its  
20 own appraisal. Our own appraisal did not -- and two  
21 things on that -- it did not go into the same level of  
22 detail and was not as -- it did not have as many pictures  
23 of the site or as much detailed description of what was  
24 remaining there. I would also note that in a separate

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1 litigation MGT filed our appraisal. So there's no --  
2 there can't be any claim that either appraisal is  
3 confidential or somehow cannot be filed in any forum. So  
4 our appraisal -- and we also, I would note, filed  
5 excerpts of out -- significant excerpts of the appraisal  
6 without any objection or motion to strike from MGT as  
7 part of our May 5th response to the Council's request for  
8 comments. Sorry -- I'm sorry to -- thank you.

9 CHAIRMAN STEIN: Do you have any more  
10 comments at this point?

11 MR. LORD: I just -- I just don't see how  
12 the Siting Council can accept an exhibit that was  
13 prepared for another party without an expert to attest to  
14 it. I don't see how the Siting Council can go forward  
15 with direct -- or with cross-examination when there is no  
16 direct testimony in the record at this time. Those are  
17 simply exhibits. They are not testimony. I will leave  
18 it for you to make your ruling.

19 (pause)

20 CHAIRMAN STEIN: We've noted the  
21 objections, but I'm going to allow admission of these  
22 items for what they're worth.

23 (Whereupon, City of Meriden Exhibit Nos.  
24 1, 2, 4, 5, 6, and 7 were received into evidence; Exhibit



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1 No. 3 marked for identification.)

2 CHAIRMAN STEIN: I -- I understand that  
3 there are these issues and -- I also understand that --  
4 that the Certificate Holder will be of course allowed to  
5 submit the City's appraisal as part of your --

6 MR. LYNCH: Mr. Chairman --

7 CHAIRMAN STEIN: -- prefiling. So that's  
8 --

9 MR. LYNCH: Mr. Chairman -

10 CHAIRMAN STEIN: -- but -- just a minute.

11 MR. LYNCH: Attorney Small --

12 MR. SMALL: Yes, sir --

13 MR. LYNCH: -- are you going to submit  
14 your appraisal as part of your docket so we can compare  
15 them?

16 MR. SMALL: We -- we certainly can. Yes,  
17 we will do that.

18 MR. LYNCH: And you would have the witness  
19 that prepared it available?

20 MR. SMALL: We can have -- we'll have to  
21 check to make sure he's available for that date, but we  
22 can have Mr. Limp, who was our appraiser, available yes.

23 MR. LYNCH: Thank you.

24 MR. SMALL: And if necessary and if the

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1 Council thinks it's appropriate, we can subpoena or --  
2 either -- either we can subpoena MGT's appraiser or MGT  
3 can agree to produce their appraiser to answer questions.  
4 We can do that either way. But I would think that  
5 symmetry would require that if we're going to have to --  
6 if we should have our appraiser available, and that's  
7 reasonable, they should have their appraiser available  
8 also.

9 CHAIRMAN STEIN: Yes, Mr. Lord.

10 MR. LORD: I'd just like to point out that  
11 as the moving party, they have the burden of making their  
12 case. There's no requirement that we put on our case to  
13 prove that they're right or they're wrong. They simply  
14 have to prove that they're right to you about changed  
15 conditions or that a decommissioning plan is warranted.  
16 We have the opportunity to cross, but we have no  
17 obligation to put on a direct case. So the idea that  
18 some materials or exhibits or witnesses might be  
19 forthcoming from us is speculative at this point.

20 CHAIRMAN STEIN: I -- I understand that.  
21 It might be helpful though if the preparer of the  
22 appraisal -- because it might have a bearing on whether  
23 or not there are changed conditions -- is available. I  
24 don't necessarily want to go that route, but the Council

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1 also has subpoena power if necessary, but it might be  
2 helpful if at least we knew that -- and we -- I mean our  
3 problem is since we haven't seen both appraisals, we  
4 don't know if it's relevant or not. But assuming, and it  
5 appears that we're going to get the City's appraisal, I  
6 think it might be helpful if we -- if the preparers of  
7 both those reports were to be available.

8 MR. LORD: I understand your position.  
9 Thank you.

10 CHAIRMAN STEIN: So we'll now, to the best  
11 we can, do our cross-examination. Mr. Martin.

12 MR. DAVID MARTIN: Thank you, Mr.  
13 Chairman.

14 Can you describe the circumstances that  
15 led the City to petition the Council to reopen this  
16 docket?

17 MR. KENDZIOR: The -- MGT sent us a notice  
18 on April 3rd of 2012 that they intended to abandon their  
19 permits. And subsequently in fact have moved to do that.  
20 That is a very strong indication that they don't intend  
21 to move forward with the project.

22 If they don't move forward with the  
23 project, then the -- if I can characterize them this way,  
24 the remains of the project would still be sitting up on

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1 that mountain. That includes the largest building of the  
2 buildings that you saw even from a very long distance  
3 today, a couple of other buildings, a water tank, an oil  
4 tank, and some other improvements that they made on the  
5 property.

6 It also includes the fact that they -- or  
7 their predecessors took that property -- and actually all  
8 the work was done by them that I'm referring to -- took  
9 the property, very severely changed the existing  
10 topography back at the time that the plant began  
11 construction, there was a lot of grading, filling, taking  
12 off slopes and so forth, and a lot of changes made to the  
13 area on the property of the slope that's just below where  
14 that large building is that you saw today. They began  
15 the construction of the road. You can see what's been  
16 completed there. There are a number of items that --  
17 both on the site itself that they retain ownership of  
18 that they have not completed either in accordance with  
19 the Council's -- I think you call it a development and  
20 management plan, a D&M plan -- I think I've learned that  
21 term so far -- there are a number of items in that D&M  
22 plan which they have not completed.

23 As part of their original approval, even  
24 by the Council, they were required to get zoning approval

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1 from the City of Meriden. They did receive subdivision  
2 approval, and that's what split off the piece that they  
3 retained ownership of, and they received site plan  
4 approval. There are a number of items -- and you can  
5 see those on some of the exhibits that were just admitted  
6 -- a number of items on both the site plan approval and  
7 the subdivision approval, which have not been completed.

8 We negotiated an amendment to the original  
9 tax agreement that we had with MGT. And as part of that,  
10 they undertook some other obligations in addition to  
11 making certain payments. And among those was an  
12 obligation to meet with us and negotiate in good faith to  
13 reduce the visual impact of that plant, of the buildings  
14 that you can see and the other outbuildings. That's  
15 several years ago. During all of that period of time --  
16 and that -- the obligation was to negotiate in good  
17 faith. And if they got to the point where they were  
18 going to abandon the plant, they were supposed to put  
19 into effect the measures that they were supposed to  
20 negotiate with us to mitigate the visual impact.

21 So during the time period from when we  
22 entered into the agreement, which amended the original  
23 tax agreement, until currently, they continue to tell us  
24 and to publicly say that they had every intention of

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1 going forward with the plant. There were several  
2 specific occasions on which they did that with us and  
3 which -- on which they did it in public, including, if I  
4 recall correctly, they had a proceeding in connection  
5 with one of the CL&P transmission cases in front of the  
6 Siting Council, and they made the same representation to  
7 the Council then that they made to us during those  
8 intervening years, that they were going to complete the  
9 plant. So we asked them to talk about -- with us about  
10 the -- mitigating the visual impact, and they just kept  
11 refusing to do that.

12 Even after the period of time when they  
13 gave us their notice of intent to abandon the project,  
14 again we simply -- and I experienced this personally and  
15 I know Mr. Caruso was there -- we had quite a heated  
16 discussion with Judith Lagano, who was one of their  
17 representatives, and she -- she simply wouldn't ever say  
18 what they even had in mind, what the possibilities were,  
19 whether it was plantings, painting, taking the building  
20 down. All the sorts of things that we mentioned to them,  
21 they -- they simply wouldn't negotiate about it, not only  
22 in good faith, they wouldn't negotiate about it at all.  
23 And they have continued to refuse to do that.

24 We're faced then with no alternative, but

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1 -- they need to do what they told the Siting Council they  
2 were going to do, and what the Siting Council ordered  
3 them to do, and what they told the City of Meriden they  
4 were going to do, and what were the conditions of their  
5 approvals. And they're refusing to do it. So that's why  
6 we're here before you, to ask you to intervene and to  
7 essentially order them to do those things which they  
8 indicated right from the original approval.

9           And I think that's probably the point of  
10 that excerpt from the Siting Council testimony, because  
11 even there, back in their predecessor's -- PDC El Paso  
12 back in 1990 in response to a question from one of the  
13 panel members then said if the project doesn't go  
14 forward, if for some reason -- and no one at the time  
15 could imagine that there would be a reason, and that was  
16 pre-Enron -- but if the project didn't go forward, they  
17 would decommission the plant, they would -- and I think  
18 the word that was used was dismantle. And to this day,  
19 they've refused to discuss with us any means of doing so  
20 or otherwise mitigating the visual impact of the plant.

21           And the -- the City supported their  
22 original application. We supported them at the time when  
23 they asked you I think twice to renew their permits.  
24 That was always with the understanding that this plant

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1 would be built, that they would take the steps that they  
2 had said they would take in order to complete the  
3 construction, and do all of the other things which were  
4 undone when the original construction of the plant  
5 ceased. So we're still trying to get those things done.  
6 And we think that they need to be done, both as a  
7 condition of both approvals, both the Council's and the  
8 City's, and because we have residents and citizens all  
9 the time asking us -- and I'm going to phrase this more  
10 delicately than I usually hear it -- you know, what are  
11 you going to do about that gosh darn building up there.  
12 And you can imagine what the real words are. And that's  
13 -- that's a, you know, common occurrence. It doesn't  
14 happen all the time and it doesn't happen -- it hasn't  
15 happened consistently over the years, but each time that  
16 the project for some reason has either hit an impediment  
17 or NRG has come forward and said we are going to complete  
18 the plant, I would have people ask me, you know, what are  
19 you going to do about that building. And I would say  
20 there are things that the Siting Council ordered them to  
21 do in terms of plantings, in terms of paint color, and  
22 plantings even on the slope.

23 We were reviewing this today and I think  
24 the original plan had called for the planting of 90



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1 evergreen trees just along that perimeter, which if  
2 they'd actually been planted when they should have been,  
3 they would be pretty tall right now, and you wouldn't see  
4 as much of the plant as you can see currently. So there  
5 were a number of things that they were supposed to do,  
6 and that's what I would tell the residents, they're going  
7 to do these things, it will not be, you know, as visible  
8 and have the impact on that particular trap-rock  
9 ridgeline that it has today because they -- they were  
10 supposed to take measures and they will take those  
11 measures. And they haven't.

12 MR. MARTIN: Prior to receiving the notice  
13 that they would not continue with the plant in 2012, do  
14 you know the last time they actually did any construction  
15 work on the site?

16 MR. KENDZIOR: We were on the site I  
17 believe in 2006, it might have been a little earlier, at  
18 the time of one of their permit renewal proceedings  
19 before the Council. The Council Members very similar to  
20 today did a site visit. Certainly by that point all of  
21 the construction had ceased.

22 There was a period after they ceased  
23 construction -- and I don't know whether -- to tell you  
24 the truth, whether it was a year or more than a year,

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1 where they weren't constructing, but they were sort of  
2 taking things off site. They took the turbines off site,  
3 they took some of the other equipment and so forth off  
4 site. But in terms of actually doing anything on the  
5 site that was in accordance with the D&M plan or the  
6 City's requirements, it's been certainly not later than  
7 2006, and I think probably two or three years prior to  
8 that time.

9 MR. MARTIN: Thank you. And in its  
10 petition to reopen, the City referred to ongoing  
11 environmental, visual, safety, and other adverse effects.  
12 And it also stated that MGT's abandonment would result in  
13 many adverse impacts to the area without providing any  
14 corresponding public benefit. Could you describe in more  
15 detail what kinds of adverse impacts you were -- you had  
16 in mind in those statements?

17 MR. KENDZIOR: Well I guess I'd divide it  
18 up into two major categories; there's the mitigation of  
19 the visual impact, and there were also things that they  
20 were supposed to do that would, if not stop, certainly  
21 limit the amount of erosion that's occurring up at the  
22 site.

23 As I said in response to one of your  
24 earlier questions, Mr. Martin, part of the D&M plan I

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1 believe was to the planting of 90 evergreen trees on the  
2 face. That would have secured sort of that edge of the  
3 site just above the slope.

4 They were supposed to plant some hardwoods  
5 right on the site, again a visual mitigation of some of  
6 the buildings that you saw today. Along the slope, and  
7 that's the area sort of coming down from the face there,  
8 they were supposed to do ground plantings there. That  
9 was never done. And -- and that rock continues to fall  
10 and deteriorate. And that would not have happened.

11 Even relatively minor things like curbing  
12 on the site -- and curbing has many purposes, but among  
13 it is the fact that it controls erosion, it keeps soil  
14 from spilling out and off the site.

15 I think -- and you'll forgive me because I  
16 haven't been involved in a Siting Council hearing before,  
17 so I may not be entirely familiar with your procedures,  
18 but as I understand it, it's okay to turn to one of my  
19 panel members and ask him to add to the answer.

20 CHAIRMAN STEIN: That's the purpose of  
21 having your panel members there, not to just sit and --  
22 we assume they're -- and we know they're experts, so you  
23 don't have to --

24 MR. KENDZIOR: Mr. -- Mr. Caruso is used

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1 to sitting and listening to me when I sometimes go on a  
2 little long. So I'll stop talking now and turn it over  
3 to him. And I'm sure actually the other two witnesses  
4 also probably have things to contribute in answer to this  
5 question. Thank you.

6 MR. CARUSO: The -- the visual impact and  
7 the erosion, as Larry had pointed out, are our main  
8 concerns from the planting aspect.

9 The -- the approved plan that was approved  
10 by the planning commission and I think is reflected in  
11 your previous discussions, did include over 90 trees.  
12 And the idea is -- and as you planners know, the idea is,  
13 you know, to soften the impact. Obviously, we can plant  
14 all the trees that we can possibly plant, but it's not  
15 going to hide what's there. So the theory is obviously  
16 to soften it and to give that whole slope and that whole  
17 mountain the character that it did have before the  
18 construction. So it was a mixture deciduous as well as  
19 evergreen trees.

20 And the main area of the evergreen  
21 plantings, as we pointed out, is the slope as you're  
22 going up the hill, the driveway that leads right to the  
23 plant. And that is the most highly visible slope that  
24 you can see literally for miles. And the idea was to

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1 intersperse these evergreen trees. And obviously if they  
2 were planted, and I believe there was 72 total on the  
3 plan, but the commission had also indicated that more can  
4 -- more needed to be done in its final approval, so that  
5 was the added trees that Larry had for the 90 total, so -  
6 - of evergreens.

7 Also, there was some ground cover that was  
8 to -- to go over that rock. It's all rock, I mean. But  
9 also as we all know, ground cover is also important in  
10 many instances to stabilize that rock as it's being  
11 worked with.

12 And then to get on the erosion control,  
13 you know, there were supposed to be check dams along the  
14 slope and areas along that line. Even though it's rock,  
15 it's not only slides that we're concerned about -- back  
16 then we were concerned more about water and the gulley  
17 effect that would come off the hill. And that's my  
18 friend the engineer. But from a planting standpoint,  
19 it's not only the practicality of those gullies and what  
20 they could do to the road system, but also from a visual  
21 standpoint what it can do to the trees if they were  
22 planted in the natural environment that we were supposed  
23 to try and restore.

24 On top, which is like a -- I like to call

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1       it a flattened area, where the plant is and all the  
2       buildings are, that too was taken into account. Again,  
3       we're never going to hide the buildings, but again, you  
4       know, there are certain things, natural things that you  
5       can do, and that's planting of those hardwoods, again  
6       interspersed throughout just to -- so that when you do  
7       drive by, you notice that the City of Meriden and the  
8       builders actually thought in terms of -- you know, they  
9       understood that there would be an effect and that, as in  
10      any development, we're going to try to mitigate any  
11      negative aspect of it. So -- so the hardwoods were very  
12      important also.

13                   And then you have the normal plantings,  
14      you know, that you would get in any kind of development  
15      situation, which is more landscaping type of  
16      development. But again, it gives -- it lets people  
17      understand that -- that we were attentive to that and  
18      that the City of Meriden really cared about the  
19      presentation of any development.

20                   And again erosion control, as Larry  
21      pointed out, was very important. The -- the curbing and  
22      the physical aspect of the site, the built aspect of the  
23      site took that into consideration with the curbing, the  
24      drainage, etcetera.

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1                   The -- one other aspect that we lose sight  
2 of is, you know, much of the site wasn't proposed to be  
3 grassed on top, but stone and gravel, and -- and -- and  
4 that's pretty evident when you're standing away from the  
5 site to see this whiteness of the talus that was up  
6 there. It can be worked into the site, it can be worked  
7 into the visual aspect of that site, but it has to be,  
8 just what I said, worked into it. So we did --

9                   COURT REPORTER: One moment please.

10                  MR. CARUSO: Yeah, sure.

11                  (pause - tape change)

12                  COURT REPORTER: Okay.

13                  MR. CARUSO: So we did -- you know, we did  
14 have them disperse some greenery, and again that  
15 landscaping aspect throughout the site to -- to make it  
16 more visual from aesthetically standpoint -- an aesthetic  
17 standpoint.

18                  So I think those are the main aspects that  
19 -- that -- that is in opposition to our original plan and  
20 that we were hoping that -- and -- we were banking on,  
21 let me put it that way, that they would do.

22                  MR. KENDZIOR: If -- if it's alright -- if  
23 it's okay, I'd just like Mr. Bass to talk a little bit  
24 about the engineering aspects, particularly with regard

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1 to the road. The one item that I didn't mention, and I  
2 think Mr. Libertine will address it, is there was a lot  
3 of discussion at the time of your approval of the color  
4 of that large building. It was intended to be a color  
5 that would blend in, that would have some earth tones and  
6 so forth. We don't know -- and we're not allowed access  
7 to the actual plant site by the owner at this point --  
8 but we don't know whether that building in fact was  
9 painted the color that it was supposed to be painted. We  
10 do know that if it was or if it wasn't, it does not blend  
11 in. That -- that lighter sort of cream color, frankly,  
12 it not only stands out in the spring and the summer, it  
13 stands out in the wintertime too. It -- it just doesn't  
14 blend in at anytime of the year.

15 So if it's okay, Mr. Bass can talk about  
16 the roadway conditions and so forth. We -- we do have an  
17 exhibit I believe that lists all of the items that were  
18 incomplete. And you also saw I think on the site visit  
19 that we are having problems with rock coming down the  
20 slope because some of these things haven't been attended  
21 to.

22 MR. BASS: Thank you. As City Manager  
23 Kendzior indicated, we did present a memo as one of our  
24 exhibits. In regards to the roadway, if you did notice



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1 on the left-hand side as we were traveling up there, a  
2 couple of rock areas have slipped considerably, which  
3 creates a safety hazard for any user of the road. So  
4 obviously, we have a concern for that.

5 Additionally, from the environmental side,  
6 there was a detention basin on the left side also that  
7 was supposed to have a mixture of wetland plant seed mix.  
8 The basin is all solid trap-rock now. So from an  
9 environmental standpoint, it's not functioning the way it  
10 should.

11 If you look along the road, there's quite  
12 a bit of sediment as well, which means that they have  
13 some erosion issues on the site because we do have  
14 sediment in the gutter line.

15 Trees have fallen and they have not taken  
16 care of those, so that creates a safety concern for us.

17 So overall, it might -- I'm looking at it  
18 from a safety standpoint in addition to the environmental  
19 side. I think that there are things that need to be  
20 tightened up so that any user of that road is in a safe  
21 environment as they travel from the bottom of the hill  
22 all way up to the power plant.

23 There's one area where the rock slope  
24 wasn't cut to the degree that it was supposed to and it's

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1 actually sliding out farther in addition to the two  
2 earlier ones on the interior portion when you enter the  
3 road. So again, safety-wise I think they've lacked a few  
4 areas that are quite important to ensure that people can  
5 use this and not have a concern as they travel up the  
6 road.

7 MR. KENDZIOR: Mr. Libertine, do you have  
8 any comments?

9 MR. LIBERTINE: I think the three  
10 gentlemen before me stole most of my thunder from the  
11 environmental side. I think the only general comment I'd  
12 make in addition is that -- just to kind of confirm what  
13 was said before and I think it's a matter that there were  
14 certain conditions that were expected to be done, and  
15 it's clear that, from my observations, those obligations  
16 just haven't been met. And those are related to what's  
17 been said here, and primarily on the visual aesthetics  
18 and some of the engineering components associated with  
19 the road.

20 I myself have not had a chance to be up on  
21 the site proper where the power plant is situated, so I  
22 can't comment to a great degree there. But my sense is  
23 what we've seen from some of the road conditions, leads  
24 me to believe that there's likely to be some of those

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1 deficiencies on that property as well.

2 MR. MARTIN: You -- you're talking about  
3 mitigating the visual impact of the buildings that are up  
4 there, the trees that should have been planted and not  
5 planted, but if there's no reason for that building to be  
6 up there, is there -- are there other ways that you could  
7 improve the visibility by perhaps eliminating the  
8 building?

9 MR. KENDZIOR: We in fact believe that  
10 the property is more valuable without that building. So,  
11 I think there is an economic reason for -- I think the  
12 owner should have undertaken that course of their own  
13 accord, but they're not. They have it listed for sale  
14 with the buildings. But we believe actually that the  
15 property is more valuable without the buildings on it.

16 We -- I think we talked in some detail  
17 about what they were originally ordered to do, both by  
18 the Council and in terms of their city approvals, and,  
19 you know, there's a certain expense to that -- to doing  
20 that. It may well be that actually dismantling those  
21 structures is a less expensive alternative than doing  
22 what they were supposed to do in the first place. And  
23 certainly, you know, you can -- you can put trees in  
24 front of things, you can try to change colors, you can do

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1 plantings, but nothing is going to be as effective in  
2 terms of visual mitigation as in fact dismantling the  
3 structures up there and taking them off that site.

4 MR. MARTIN: Since you stated that the  
5 City has other ideas of what would be best suited up  
6 there, the appraisal stated that -- in the opinion of the  
7 appraiser the highest and best use of the land would be  
8 for some kind of industrial use. What would be the  
9 City's preference for the use of that property?

10 MR. KENDZIOR: I'm going to let -- ask Mr.  
11 Caruso to address that question. He's familiar with what  
12 the existing zoning is up there, and also is familiar  
13 with -- although it doesn't impact the site itself, our  
14 thoughts when we updated our plan of conservation and  
15 development, we -- and we did that just a few years ago,  
16 we followed that by -- as the Council I think is aware,  
17 we own all of the property around the site. That was  
18 transferred to us after litigation, but transferred to us  
19 by MGT. We've dedicated over a hundred acres of that  
20 property as open space, much of it sort of alongside the  
21 roadway that you saw today.

22 But in terms of preferable uses from a  
23 zoning point of view, I think Dominick can answer that  
24 question better than I.

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1 MR. CARUSO: We -- the plan of  
2 conservation and development calls for a mixed use type  
3 of situation; light industrial, office. You know, with  
4 the market the way it is, we -- we're looking at the  
5 light industrial situation, very much similar to our  
6 research parkway area. And some people have even come to  
7 call it the research parkway west. But that's what the  
8 POCD calls for.

9 The -- the actual zoning is a planned  
10 development district. And if you look at that zone, it's  
11 -- it's -- it's truly a mixed use zone. I mean there was  
12 some housing, and a continuation would be allowed in that  
13 area. Also industry and --

14 MR. KENDZIOR: Dominick will forgive me  
15 for interrupting, but he made the point about the  
16 residential. And I think when you get our appraisal,  
17 you'll see that our appraiser considered residential to  
18 be the highest and best use.

19 MR. CARUSO: Yeah. So -- I mean mixed use  
20 of virtually all those types. The main aspect of the  
21 PDD, the Planned Development District, is that everything  
22 is done uniformly, meaning that we look at the site --  
23 it's some 300 acres when you take everything into  
24 consideration, obviously now minus the open space area.

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1 But everything should be done to a general conceptual --  
2 to a conceptual development plan. And there have been  
3 some of those plans submitted. As a matter of fact done  
4 by the City ourselves. So that's -- that's -- I don't  
5 know --

6 MR. MARTIN: Could --

7 MR. CARUSO: -- if Dave can answer --

8 MR. MARTIN: -- could the uses that you're  
9 envisioning be put on the site with the way the site  
10 exists today, with all -- the improvements that are on  
11 the site today?

12 MR. KENDZIOR: Yes.

13 CHAIRMAN STEIN: I just have a follow-up.  
14 You talk about it's surrounded by city property. Is the  
15 city property dedicated open space or is that also under  
16 that same zone?

17 MR. CARUSO: It's still the same zone --  
18 it's the same zone. We have out of the, like I said, 300  
19 acres, I think we've dedicated a hundred acres of that.  
20 So maybe about a third of that is open space. But it  
21 would -- we would develop it per the Planned Development  
22 District.

23 MR. KENDZIOR: The hundred acres is  
24 permanently dedicated, so that will always be open space.

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1 There's a portion of the larger site, if you will, that  
2 you wouldn't have been able to see today on the site  
3 visit. It's more towards the Berlin side. And there's  
4 actually a fairly large meadow section out there that is  
5 developable with, you know, a lot of constraints, getting  
6 utilities up there and so forth. So we look at that for  
7 the future. We don't have any actual plans for that.

8 I want to make sure that I didn't  
9 misunderstand Mr. Martin's question. We couldn't put  
10 housing there obviously with the improvements that are  
11 there now. Those would have to be removed in order for  
12 any kind of housing to be placed on the site.

13 MR. MARTIN: Okay. And on the bus trip on  
14 the right-hand side as we were going up there was a -- I  
15 guess it's Sam's Road, there's sort of like a dirt -- at  
16 this point it's a dirt pathway and it goes down and I  
17 guess joins a roadway further down --

18 MR. KENDZIOR: Yeah, we --

19 MR. MARTIN: -- what is -- what are the  
20 City's plans -- or is that a private road at this point  
21 or a city road or what's the status of Sam's Road and the  
22 future of it?

23 MR. KENDZIOR: Sam's Road is a -- is  
24 privately owned property. The actual paved entrance is

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1 out on Kensington Avenue, which is the roadway we came on  
2 before we made the right-hand turn, the one that goes  
3 past the shopping mall. So Sam's Road is a right-hand  
4 turn off of that. It goes up that side of the property.  
5 That's been -- that's part of South Mountain. It's been  
6 developed for a very long period of time by the Carabetta  
7 Company. So there are I think both apartments and  
8 condominiums on that road. And it ends at that point  
9 where you saw the gated area as we made the turn back  
10 down.

11 MR. MARTIN: I guess on the -- on the -- I  
12 looked at some of the city planning documents, the zoning  
13 map, and it shows a road coming through. Are there plans  
14 eventually for that road to come through or it depends on  
15 private development?

16 MR. KENDZIOR: We've looked at it  
17 conceptually. We haven't -- it hasn't gone any further  
18 than that really because of the difficulties of the site  
19 and -- we were also -- you know, we looked at it  
20 conceptually when we were redoing the plan of  
21 conservation and development, but at the same time we  
22 were trying to identify those areas that were  
23 environmentally sensitive. There's -- there's two or  
24 three vernal pools on the larger site, there's a number



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1 of areas of wetlands and so forth, and we wanted to make  
2 sure that those were preserved and taken care of. And  
3 that became how we delineated the hundred acres that's  
4 been dedicated as open space.

5 MR. LYNCH: Mr. Chairman --

6 MR. CARUSO: If I -- if I can just --  
7 that's -- the South Mountain Road, that was to be built  
8 to city standards. And that would be the spine road  
9 going up the mountain. And there was, you know, a theory  
10 about a second road coming off of that and heading more  
11 north into that meadow area that Larry was talking about.  
12 So there would probably be a second road up there. And  
13 obviously, we'll -- we'll look at Sam's Road to get  
14 rights for emergency access.

15 CHAIRMAN STEIN: And Mr. Lynch has a  
16 follow-up question.

17 MR. LYNCH: Either Mr. Caruso or Mr.  
18 Kendzior, the -- on the site visit today there were a  
19 couple of residential areas off site that looked  
20 relatively new. Do you know when they were developed or  
21 built?

22 MR. KENDZIOR: As we came down the  
23 highway, that first more modern looking residential  
24 development --

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1 MR. LYNCH: Yeah, that -- that was what  
2 I'm primarily thinking of, yes.

3 MR. KENDZIOR: That one was -- there was a  
4 plan for its development that had been approved, but the  
5 actual construction of those homes -- probably for  
6 reasons related to the fact that the power plant didn't  
7 go forward, the actual construction of those homes  
8 occurred afterwards.

9 MR. LYNCH: Alright.

10 MR. KENDZIOR: The other area, the last  
11 one that we visited is a longstanding --

12 MR. LYNCH: Yeah, that looked older. I  
13 figured that was older.

14 And just a follow-up to the open space --  
15 and I know -- do you know whether Berlin has designated  
16 their share of this site to open space? I -- I remember  
17 something about trails and bike trails along the road --

18 MR. KENDZIOR: Yeah, I -- I can't  
19 guarantee that this is absolutely correct, but it's my --  
20 what I've been told and what I recall is that they did  
21 dedicate, if not all of it, a very large portion of the -  
22 - they have about 500 acres from this transaction, and I  
23 think almost all of it, if not all of it was dedicated as  
24 open space.

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1                   MR. LYNCH:    Thank you.  That will keep my  
2   friend Adam Selina happy --

3                   MR. KENDZIOR:  I had several meetings with  
4   Mr. Selina over this entire transaction.

5                   MR. LYNCH:  You don't want to be on his  
6   wrong side, he's too big.

7                   MR. KENDZIOR:  No, we actually manage to  
8   work pretty well together.  We -- they have some homes  
9   sort of further down along the Chamberlain Highway, who  
10  feed off of our water and sewer system, which runs right  
11  to the Meriden border there, and we supply water down  
12  further.  So the Mayor -- the Mayor and I have gotten  
13  along pretty well.

14                  MR. LYNCH:  Thank you.

15                  MR. MARTIN:  Okay.  In the materials that  
16  the memorandum -- the inter-staff memoranda talked about  
17  conditions at the site.  To your knowledge is that still  
18  the state of affairs on the site?

19                  MR. KENDZIOR:  We -- I think our staff  
20  members were last up there in 2012.  And we have no  
21  reason to believe, other than getting worse, that  
22  anything has changed since then.

23                                 We went with engineers employed by NRG and  
24  MGT to review the roadway conditions in 2013, and in fact

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1 some of those in terms of rock slopes and so forth did  
2 get worse even within that year period of time.

3 MR. MARTIN: Is South Mountain Road at  
4 this point a city street or is it a private drive?

5 MR. KENDZIOR: It's -- we own the property  
6 around the MGT site. The road has not been accepted  
7 because it has not been completed in accordance with the  
8 subdivision approval and not built to city standards at  
9 this point.

10 MR. MARTIN: Okay, thank you. And what is  
11 the current status of the bond being held by the City  
12 that was mentioned in one of the -- in some of the  
13 materials submitted to the Council?

14 MR. KENDZIOR: We continue to hold those  
15 bonds. They have not been released.

16 MR. MARTIN: Okay, thank you. Those are  
17 my questions, Mr. Chairman.

18 CHAIRMAN STEIN: Could I -- just a follow-  
19 up. What -- what are the amounts of those bonds? And  
20 what the specific purposes are for --

21 MR. KENDZIOR: Those amounts I think are  
22 actually in the memo, which looks like it's Exhibit 4, a  
23 balance of \$693,620.00 as of May 30, 2012. And I think -  
24 - that's the total, right, Dominick -- that's the total

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1 amount of the bond as of 2012. It's not earning very  
2 much interest at this point.

3 MR. EDWARD S. WILENSKY: Mr. Chairman.

4 CHAIRMAN STEIN: Mr. Wilensky.

5 MR. WILENSKY: A question on that bond.  
6 You say the balance. Was there a larger amount or this  
7 is what was left and how was part of that bond expended -  
8 - or spent?

9 MR. KENDZIOR: Mr. Caruso will handle that  
10 one.

11 MR. CARUSO: Upon their request, we  
12 consolidated both the subdivision bond and the site plan  
13 bond. We had two separate bonds and we consolidated them.  
14 I believe some of it was released based upon some of the  
15 work that they did.

16 MR. WILENSKY: How were you able to use  
17 the bond?

18 MR. CARUSO: I'm sorry?

19 MR. WILENSKY: How were you able to use  
20 that bond --

21 MR. CARUSO: We released it --

22 MR. KENDZIOR: We have not --

23 MR. CARUSO: -- we gave back --

24 MR. KENDZIOR: We have not, in fact, used

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1 any of the bond proceeds --

2 MR. WILENSKY: So in other words, you  
3 released the bond to the developer?

4 MR. CARUSO: A very small part of it.

5 MR. KENDZIOR: We can check for you to get  
6 exactly what has been released to this point, if  
7 anything, but Mr. Caruso's recollection --

8 MR. WILENSKY: Okay --

9 MR. KENDZIOR: -- is there was some --  
10 some amounts that were released. And I'm sure we can  
11 supply that to you --

12 MR. WILENSKY: Okay --

13 MR. KENDZIOR: -- so that you'll know  
14 exactly what -- I think the majority of the bond has been  
15 held, it's grown slightly in amount --

16 MR. WILENSKY: And the bond is primarily  
17 for the road?

18 MR. KENDZIOR: There were two bonds. One  
19 was the subdivision bond, and that covers all of the  
20 roadway work. The other was the site plan approval bond,  
21 and that covers the work they were supposed to do on  
22 their site.

23 MR. WILENSKY: Okay, thank you. Thank  
24 you, Mr. Chairman.

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1 CHAIRMAN STEIN: Okay. We'll now proceed  
2 with questions from Council Members. Senator Murphy.

3 MR. MURPHY: Just to follow up on what Mr.  
4 Wilensky said to make it clear. The memo you prepared is  
5 accurate, and that is a total of six-twenty -- six-  
6 hundred -- plus interest -- broken down, two-ten for  
7 engineering in principal, four-sixteen for the other.  
8 That's left -- whatever else there was --

9 MR. CARUSO: That's -- that's correct.  
10 And we -- obviously, the interest does not -- if we were  
11 ever to call that bond, we would not get the interest,  
12 that would go back -- the interest is not part of the  
13 original bond.

14 MR. KENDZIOR: The -- there is a balance  
15 as of 2012 of six-ninety-three, six-twenty. So there's  
16 about six -- seven thousand dollars worth of interest  
17 sitting there.

18 MR. MURPHY: It's interesting you treat  
19 the interest that way. It's really kind of tough to  
20 cross-examine because I think there's a lot more coming  
21 in and it's almost like doing it piecemeal, but I wanted  
22 to ask a couple of questions. There's really one thing  
23 that troubles me and I'll get to it. The stipulation in  
24 the tax repeal, a copy of which is in the materials dated

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1 March 25th of this year, it's a copy. Has that been  
2 signed, filed, and approved, Mr. Small?

3 MR. SMALL: Yes, it has been. It's been  
4 signed and filed with the court. I'm not sure if the  
5 court ever formally entered it, but it -- excuse me, may  
6 I have one minute?

7 (pause)

8 MR. SMALL: Counsel for MGT in that case  
9 and I both believe that the court granted it orally,  
10 yes.

11 MR. MURPHY: And there's -- and that --  
12 that's really a stipulation to an arrangement for taxes  
13 based upon this no longer being a generating facility?

14 MR. SMALL: Correct, with the -- with a  
15 reservation, Mr. Murphy, of both parties rights --

16 MR. MURPHY: I understand --

17 MR. SMALL: -- and every --

18 MR. MURPHY: -- I -- I understand --

19 MR. SMALL: Right --

20 MR. MURPHY: That has nothing to do with  
21 us is what you're saying there?

22 MR. SMALL: Correct.

23 MR. MURPHY: But what really troubles me  
24 is -- and -- and I get more troubled when I listen to the



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1 testimony is the town has been having some problems with  
2 the D&M as we would call it and the site plan as you  
3 would call it, for some time. And the description really  
4 is we really don't get any response and nothing has  
5 happened. Why haven't you been to us earlier?

6 MR. KENDZIOR: If I could try to answer  
7 that?

8 MR. MURPHY: And I'm not really trying to  
9 be critical, but --

10 MR. KENDZIOR: I --

11 MR. MURPHY: -- my concern is that I think  
12 you dug a hole for both yourselves and for us by not  
13 coming in before they surrendered their -- their  
14 certificate. And when they came to surrender it, we  
15 should have been doing all of this at that time. And it  
16 seems to me you knew the surrender was coming and you had  
17 all these problems, and I just -- I'm a little bit at a  
18 loss as I sit here listening to you tell us what should  
19 be a real concern of the municipality.

20 MR. KENDZIOR: I think I would answer that  
21 in two different ways. One would be the technical and  
22 legal response. We entered into a modification of the  
23 tax agreement that, as I indicated earlier, called for  
24 them to negotiate in good faith with us regarding the

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1 visual -- mitigating the visual impact of the building,  
2 which is, as you know, the major issue here. We agreed  
3 there that whatever they were going to do, they did not  
4 have to do until they either began reconstruction and  
5 completion of the plant or they decided to abandon.  
6 Their actual abandonment is only literally a few weeks  
7 ago. So we -- I think -- I don't -- and I don't do law  
8 any more, even though I used to be the city attorney, but  
9 I read that document meaning that we did not have the  
10 ability to enforce them doing something to mitigate the  
11 visual impact earlier than either the time that they  
12 began construction or when they abandoned. The other --

13 MR. MURPHY: Well, let me --

14 MR. KENDZIOR: -- the other answer is the  
15 --

16 MR. MURPHY: Let me -- let me ask you this  
17 then, how did you feel you were going to enforce anything  
18 on them when the time came, whenever that time was?

19 MR. KENDZIOR: We relied -- and this could  
20 be a mistake in judgment, but I think one that legally we  
21 were entitled to make -- we relied on their consistent  
22 repeated over and over and over again representations to  
23 us that they were going to complete that plant. They  
24 told us that, they told you that, they told you that

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1 twice, and they told the public that. Everything that  
2 they had to say was that the plant was going to be  
3 completed. I can assure you that, besides how that site  
4 looks, the City's finances are very dear to my heart, and  
5 my heart took a drop when they came in in April of 2012  
6 and said guess what, we're not going forward, here's your  
7 one-year notice, because they had always represented to  
8 us -- and we relied on them -- they told us they were  
9 going to do this. They said we want your cooperation.  
10 It was obviously in the City's interest for this plant to  
11 be completed --

12 MR. CARUSO: Absolutely --

13 MR. KENDZIOR: -- in terms of, you know,  
14 having a cleaner energy operating plant, and it was in  
15 the state's interest. They represented it to us over and  
16 over again that they were going to do this. And we  
17 relied on that. Their -- we had a period of a minimum of  
18 one-year of notice on abandonment, but I didn't think we  
19 could actually take steps until we knew they were really  
20 going to abandon. It's one thing to hand us a letter  
21 that says we're going to abandon. They could have done  
22 that, you know, six months after they got your original  
23 approval, but until they -- there wasn't -- the agreement  
24 didn't say we're going to give you notice of intent to

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1 abandon and we have to abandon within a certain period of  
2 time. They could have abandon -- they could have given  
3 us the notice and abandon five years later or six years  
4 later. So we had to wait until they actually gave those  
5 permits back. And believe me, we came to you as soon as  
6 we knew that that's actually what they were going to do.

7 MR. MURPHY: When did you think you had to  
8 wait?

9 MR. KENDZIOR: I thought that -- (a) as I  
10 said, we relied on their representations, and I think  
11 those -- we were reasonable in that reliance. And (b)  
12 there is language in the modification of the original tax  
13 agreement that would indicate they didn't actually have  
14 to do those things until they either began construction  
15 again or actually abandoned.

16 MR. MURPHY: Well the -- the effect of the  
17 tax appeal doesn't take effect until they abandon, is  
18 part of what it says as I remember reading it over the  
19 weekend.

20 MR. KENDZIOR: There's a -- and I'm not --  
21 I don't know whether you have the actual modification as  
22 an exhibit. We -- if you don't, we can certainly make  
23 sure that you do. But there's a separate paragraph in  
24 there -- after it talks about deferred payments and so

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1       forth, there's a separate paragraph that addresses the  
2       issue of visual mitigation of the impact of the plant.

3                   MR. MURPHY: I don't recall seeing that,  
4       but --

5                   MR. KENDZIOR: It's -- I think it's  
6       paragraph 6 if I recall, but there is -- it's separately  
7       addressed in the agreement.

8                   MR. MURPHY: So no thought or alternative  
9       plans were made by the town if, which you didn't expect  
10      to have happened, they declined to follow through with  
11      these mitigation effects? Because I think that's what  
12      you're doing here today.

13                   MR. KENDZIOR: That, in fact, is what  
14      we're doing here today. And I think that we took the  
15      action of coming to the Council --

16                   MR. MURPHY: You see where I'm at a loss  
17      is why you didn't come here and say look they're about to  
18      -- they're telling us they're going to abandon this, and  
19      when they come to abandon it, we want to be heard. And  
20      you would have been heard back then and we'd be in a  
21      whole different ballgame.

22                   MR. KENDZIOR: You actually should be  
23      asking Attorney Small this question -- (laughter) --

24                   MR. MURPHY: No --

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1 MR. KENDZIOR: -- you may have a good  
2 point there, but I'll have to do that privately.

3 MR. MURPHY: I'll -- I'll just leave it at  
4 that. I have no further questions, Mr. Chairman.

5 CHAIRMAN STEIN: Mr. Hannon.

6 MR. ROBERT HANNON: I just have a couple  
7 of clarifications. I think you had mentioned that there  
8 are about 300 acres out there. Is that land that the  
9 town owns in addition to what's part of the power plant?  
10 I'm just trying to make sure that I understand correctly  
11 --

12 MR. KENDZIOR: Originally --

13 MR. HANNON: -- what the breakdown is.

14 MR. KENDZIOR: Originally, MGT owned over  
15 800 acres. About 500 of those -- and these aren't the  
16 exact numbers -- but about 500 of those are located in  
17 Berlin, about 300 of those are located in Meriden. That  
18 includes the plant site, which is about 35 acres. At the  
19 time of the Council's original approval, the Council  
20 required MGT to transfer all of the land, all of the 800  
21 acres that wasn't being used for the actual site of the  
22 plant, in other words everything but the 35 acres, to the  
23 Towns of Meriden and to Berlin. MGT actually refused to  
24 do that. And that was our -- I guess our first round of

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1 litigation with them many years ago. And ultimately,  
2 that litigation was settled with them, and in fact,  
3 making the transfer as the Council had required.

4 MR. HANNON: Okay, so -- just so -- I want  
5 to make sure, so the 300 acres you're referring to was  
6 the land that was in Meriden --

7 MR. KENDZIOR: Meriden --

8 MR. HANNON: -- and included the land that  
9 was supposed to be given to the town as well as the site  
10 itself. So that 300 acres combines that?

11 MR. KENDZIOR: Three-thirty-five total --

12 MR. CARUSO: Something like that --

13 MR. KENDZIOR: Three-thirty-five total.  
14 Three hundred that -- about 300 that was transferred and  
15 another 35 for the actual site.

16 MR. HANNON: Okay. And then the other  
17 question I have probably goes more towards Mr. Caruso.  
18 I'm assuming with the subdivision application and zoning  
19 issues, there's an application that's filed and does the  
20 town get authorization from those filings to actually go  
21 out on the site? I mean I'm kind of curious because I  
22 understand it's private property, but in a number of  
23 cases I believe that when people file applications, the  
24 town has the ability to go out and check and make sure

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1 that things are in fact going according to plan. So I'm  
2 just curious as to whether or not the town has authority  
3 to that?

4 MR. CARUSO: I don't -- we don't have a  
5 stipulation in our application that -- which gives us  
6 that right. I don't ever recall not being allowed on the  
7 site, you know, to check on the application, but I'm not  
8 -- I'll have to defer to counsel.

9 MR. KENDZIOR: We -- you know, we -- we  
10 always -- obviously, we have the bonds. We inspect the  
11 sites. If it's a road, we inspect the road and so forth.  
12 We've never encountered a situation where the owner of  
13 the property would not permit us on the site. This is  
14 very unique.

15 MR. HANNON: Okay, thank you.

16 CHAIRMAN STEIN: Dr. Bell.

17 DR. BARBARA C. BELL: I'm just trying to  
18 understand the documents that you gave us. There's the -  
19 - there's the simple short e-mail from Mr. Ennis to Mr.  
20 Skoglund and it says the remaining -- Item No. 3, the  
21 remaining items still need to be addressed, and none of  
22 the three recommendations appear to have been acted on.  
23 Now, I assume that this is -- this e-mail that's dated  
24 July 2012, I'm assuming that the three recommendations



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1 referred to are the ones in the 2008 memo, which does --  
2 which has 13 items in one chunk and then 3 items in  
3 another chunk at the end of the memo. Okay. So what I'm  
4 curious about is -- is this -- there's an intervening  
5 page here, which is labeled NRG site punch list, South  
6 Mountain Road. Is that what Mr. Ennis is referring to as  
7 the remaining items or is he referring back to the 2008  
8 memo? And -- and what does the punch list actually  
9 belong to?

10 MR. BASS: If you'll take a look at Mr.  
11 Ennis' original memorandum, which is dated September 4,  
12 2008, his closing comments says the taxes and approximate  
13 cost estimate for completing the outstanding work. So  
14 that summary of dollars that you see is based on Mr.  
15 Ennis' September 4, 2008 memorandum.

16 MR. HANNON: Okay. Alright. So then when  
17 Mr. Ennis is writing in 2012, he's referring to his  
18 earlier 2008 remaining items that he hadn't talked about  
19 in No. 1 and No. 2 of his little e-mail?

20 MR. BASS: Correct --

21 DR. BELL: Yeah --

22 MR. BASS: -- that's how I read this --

23 DR. BELL: -- okay --

24 MR. BASS: -- is he's making reference to

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1 the September 4th memo, that things have not  
2 significantly altered.

3 DR. BELL: Okay, thanks.

4 MR. BASS: You're welcome.

5 DR. BELL: And now just trying to get -- I  
6 think I'm asking a simple follow-up to what Senator  
7 Murphy asked you. The period of time you -- you referred  
8 earlier to a period of time between when you negotiated a  
9 revised tax agreement and currently. And so that period  
10 of time was spring 2012 until now, is that correct?

11 MR. KENDZIOR: It's a longer period of  
12 time than that -- when was the renegotiation of the tax  
13 agreement -- if I could just have a minute, I actually  
14 have the document here, so just let me check.

15 (pause)

16 MR. KENDZIOR: The modification to the  
17 original tax agreement was approved by our city council  
18 on September 15th of 2008.

19 DR. BELL: So it was -- it wasn't just  
20 from last year until now when these -- when these matters  
21 of visual mitigation were on your mind. It was -- it was  
22 -- it's been ever since September '08?

23 MR. KENDZIOR: Actually, it's longer than  
24 that. The items of visual mitigation were an immediate

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1 and primary concern from day one of this proposal.  
2 That's why there are things that are -- conditions in the  
3 site plan approval that relate to the visual mitigation.  
4 And I'm quite certain that those are the reasons why the  
5 Siting Council back at the time of its original approval  
6 had those items in the D&M plan.

7                   When we had our series of legal disputes  
8 with MGT, the 2008 agreement was the culmination of a  
9 fight over the money to put it simply. And MGT at that  
10 time was asking to be relieved of its obligation to make  
11 the full payments that it had agreed to in the original  
12 tax agreement. And the purpose of their request, as they  
13 represented it to us, was that that would increase the  
14 probability that they would go forward with the  
15 completion of the plant. In other words, we would reduce  
16 their carrying charges sort of for a period of time, and  
17 that would make it much more likely that the plant in  
18 fact would ultimately be completed. We raised with them  
19 -- and that was a piece of litigation that probably went  
20 on for a couple of years, 2006 to 2008 I would imagine.  
21 We raised the issue of the visual impact again with them  
22 then because, you know, for the obvious reasons; they  
23 wanted something from us and we had concerns about the  
24 visual impact. And as I said, that modified tax

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1 agreement contains a paragraph specifically with regard  
2 to the visual impact. We couldn't -- you know, we -- we  
3 semi-separated the issue. We concluded an agreement with  
4 them on the payments and agreed that we would negotiate  
5 in good faith on the visual impact. And that's  
6 memorialized in the agreement. But they never would do  
7 that, they just refused to even talk about it.

8 DR. BELL: Okay. I just have one other  
9 question. Going back to the original documents -- and I  
10 wasn't part of the Council at that time -- various  
11 references have been made to the decision and order. And  
12 then references have made to -- been made to the  
13 transcripts. You've given us part of one transcript.  
14 And other references have been made in various documents  
15 that we've gotten. My question is do you have any -- as  
16 part of your case, as it were, do you have particular  
17 findings of fact that you want us to be -- to find -- to  
18 look at, to find are relevant to the matter at this  
19 point?

20 MR. KENDZIOR: Let me give a brief answer  
21 and then perhaps refer to my counsel there. We want them  
22 to do what the Siting Council ordered them to do in the  
23 most effective way and in the most cost-efficiently. We  
24 have spent many years saying to them there's this

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1 alternative, this alternative, and this alternative, and  
2 we -- we don't get a response. And we've come to the  
3 point where clearly the project isn't going forward and  
4 we want them to do what they promised to do. I know that  
5 we have looked through the Council's records and so forth  
6 and I know we have portions of them -- and I'll just  
7 defer to you to answer the rest of the question.

8 MR. SMALL: Just very generally -- and  
9 obviously we'll cover this in briefs, etcetera -- one is  
10 the Siting Council -- just as -- and these are examples  
11 because we believe there are a lot more -- but as an  
12 example, one of the standard orders that the Council has  
13 in its decision and order is the requirement that the  
14 applicant comply with not only the development and  
15 management plan, and was actually in the decision and  
16 order, but also with other statements -- and I'm not  
17 phrasing it precisely, but with representations made in  
18 the record. And the transcript reference we offered  
19 today as an exhibit, at least for identification, is an  
20 example of a commitment that MGT's predecessor made with  
21 respect properly decommissioning this plant if and when  
22 it is abandoned. So that's -- that's one example.

23 And then we point to the -- to all the  
24 requirements of the decision and order and all the

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1 findings of fact on visual impacts, visual mitigation,  
2 need for appropriate environmental controls with respect  
3 to noise -- I'm sorry -- with respect to erosion,  
4 sedimentation, you know, protection of vernal pools,  
5 protection of sensitive areas. So all those, you know --  
6 and we'll go into more detail, but all of those are items  
7 that we believe -- the expectation was that MGT would  
8 meet a certain standard at the time the Council issued  
9 its decision, and that one of the changes in conditions  
10 is they've not met the standard that they committed to  
11 and were expected to meet as of the time of the Council's  
12 1999 decision in Docket 190. That's -- but those -- so  
13 those are -- things like visual mitigation, plantings,  
14 erosion control, etcetera, are items that we will -- you  
15 know, we will establish through testimony and in our  
16 briefs.

17 And also part of the problem is we -- we  
18 don't have access to the site to inspect and determine  
19 what their compliance -- you know, what their compliance  
20 is. So we're -- you know, some of it is what -- we know  
21 some things, we know with respect to the road, and it's  
22 in the exhibits, but we don't know as well with respect  
23 to the site. I hope -- I hope that was helpful. It  
24 wasn't intended to be testimony. It was intended to be

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1 legal -- our legal position.

2 DR. BELL: Thank you.

3 COURT REPORTER: One moment -- one minute  
4 please.

5 (pause - tape change)

6 CHAIRMAN STEIN: Dr. Bell, are you still -  
7 - are you --

8 DR. BELL: Thank you. Those are my  
9 questions, Mr. Chair.

10 CHAIRMAN STEIN: Mr. Levesque.

11 COURT REPORTER: Microphone please.

12 MR. LARRY LEVESQUE: Thank you. Has the  
13 Meriden fire marshal gone to the property annually to  
14 inspect?

15 MR. KENDZIOR: I don't believe it's  
16 annual. I know he's been there on a couple of occasions.  
17 That's certainly information that we can supply to you.

18 MR. LEVESQUE: Did they make any orders as  
19 far as fire safety instructions?

20 MR. KENDZIOR: The buildings at this point  
21 are empty in the literal sense, but there's -- you know,  
22 it's a steel structure without a heck of a lot inside of  
23 it. Some of the other areas are the remains of -- I  
24 think there's a foundation of another building somewhere

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1 where the cooling towers were supposed to go and the two  
2 tanks. So the site isn't occupied. We don't -- to our  
3 knowledge there's no hazardous materials or anything that  
4 are on-site. We wouldn't normally inspect a site like  
5 that on an annual basis, but we will certainly check with  
6 the fire marshal --

7 MR. LEVESQUE: They're worried about  
8 trespassers in the buildings?

9 MR. KENDZIOR: The -- the site is fenced  
10 off and there is a security guard.

11 MR. LEVESQUE: Okay, thank you.

12 CHAIRMAN STEIN: Mr. Wilensky.

13 MR. WILENSKY: Yes. Who owns the road --  
14 the road that we drove today in the bus, who owns that  
15 portion of the road from the entrance-way to the gate?

16 MR. KENDZIOR: You know, that's a  
17 wonderful legal question. I used to -- when I used to be  
18 the city attorney, I very much enjoyed -- there was a  
19 1980-something article in the Connecticut Bar Association  
20 Journal about who actually owns the land that underlies  
21 roadways, a really well written scholarly article that we  
22 still rely on -- as far as I know, I haven't done any  
23 legal work in a few years -- the -- when -- when someone  
24 brings -- or files a subdivision map, that's a dedication



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1 of the portion of the property on which the roadway is  
2 drawn, so that the owner of the property and the public,  
3 and if there were adjoining owners, the adjoining owners,  
4 all have the right to pass and re-pass on the road. So  
5 that's correct with regard to that roadway at this point.

6 If the roadway were abandoned and that  
7 right ceased to exist, by Connecticut law, and it  
8 actually goes back to like the middle ages, the kings  
9 highway sort of thing, the king could say that's where  
10 the road is. By operation of law, the fee title goes to  
11 the owners on either side of the roadway, which in this  
12 case is the city. So, I guess we own the land underneath  
13 the roadway, subject to the public's right --

14 MR. WILENSKY: But who -- who -- who  
15 maintains that road? I mean has the City of Meriden  
16 accepted that as a road?

17 MR. KENDZIOR: We have not accepted it.  
18 And -- and that's an important distinction --

19 MR. WILENSKY: Yes --

20 MR. KENDZIOR: -- it hasn't been  
21 completed. The items that are on one of your exhibits  
22 haven't been completed, so we have not formally accepted  
23 it. So the obligation remains on MGT to complete the  
24 roadway, at which point --

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1                   MR. WILENSKY: Well in the wintertime, who  
2 plows that road?

3                   MR. KENDZIOR: MGT does.

4                   MR. WILENSKY: But I thought the City did  
5 own -- I thought the City -- that part that we traveled  
6 on today, I thought was City owned?

7                   MR. KENDZIOR: Subject to whatever rights  
8 there are in the roadway, but MGT has continued to plow  
9 the roadway. They're the ones that -- they have a key to  
10 that gate that's down there, that's originally their  
11 gate. They have a gate at the top of the mountain. I'm  
12 not sure how often their security people are there at  
13 this point, but for many many years their security people  
14 were on site.

15                   MR. WILENSKY: So in other words, you --  
16 you are allowed to use that road -- you can't go on the  
17 property, but you're allowed to use that road?

18                   MR. KENDZIOR: It would be -- and again, I  
19 -- I don't practice law any more, but I don't think they  
20 could prohibit us from using a road that's on land that  
21 we own.

22                   MR. WILENSKY: And going off the road part  
23 of it, if MGT abandoned that property -- not abandoned  
24 the property -- abandoned this project and used that

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1 property for industrial use, would the City of Meriden be  
2 happy or unhappy with that?

3 MR. KENDZIOR: A pure industrial use is  
4 not within the allowable zoning. And if I'm wrong, Mr.  
5 Caruso will correct me.

6 MR. CARUSO: Well it depends on the degree  
7 of the industrial --

8 COURT REPORTER: A microphone please --

9 MR. KENDZIOR: Your Microphone.

10 MR. WILENSKY: Well we'll say light --  
11 light industrial.

12 MR. CARUSO: Light industrial would be  
13 allowed -- it would be allowed.

14 MR. WILENSKY: What -- what would make you  
15 folks happy? If they just -- they're not going to  
16 complete the project. What would make you folks happy,  
17 that they completed the issues as mentioned in their D&M  
18 plan, is that -- is that about it?

19 MR. KENDZIOR: It -- it really is that  
20 simple. We want them to do what they promised the  
21 Council they would do. We want them to do what they  
22 promised us they would do.

23 MR. WILENSKY: So in other words, the town  
24 -- the City of Meriden would be happy if the Applicant

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1 completed what they said they would do in the D&M plan  
2 and also in agreement with the City of Meriden?

3 MR. KENDZIOR: And that includes whatever  
4 form of mitigating the visual impact of the plant takes.  
5 Again, we believe that dismantling the plant is the way  
6 to do that; that that's the complete solution and the  
7 most cost-effective solution.

8 MR. WILENSKY: Okay. Did you have an  
9 agreement on visual impact with -- with the developer?

10 MR. KENDZIOR: The -- their predecessor in  
11 title in that transcript portion that was submitted to  
12 you represented to the Siting Council that in fact if  
13 the plant were abandoned, they would dismantle the plant  
14 --

15 MR. WILENSKY: Okay --

16 MR. KENDZIOR: -- and we had those  
17 discussions with them continuously, particularly in the  
18 period leading up to the 2008 modification to the tax  
19 agreement, which contains a specific clause with regard  
20 to mitigating visual impact.

21 MR. WILENSKY: Thank you, Mr. Chairman.

22 CHAIRMAN STEIN: Mr. Lynch.

23 MR. LYNCH: I wasn't going to bring this  
24 up, but I can't help myself. I have to ask the question

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1 why are we here? I happen to think this is -- the whole  
2 hearing this afternoon is premature. I agree with  
3 Attorney Lord. We're going to get testimony and we're  
4 going to get interrogatories, and then we're going to  
5 rehash this all over again. And so I really have to ask  
6 the question why are we here?

7 But that having been said, Mr. Libertine,  
8 when did you come onboard in the project?

9 MR. LIBERTINE: Just about a year ago or  
10 so.

11 MR. LYNCH: Alright. And I saw you taking  
12 pictures this afternoon --

13 MR. LIBERTINE: Yes --

14 MR. LYNCH: -- as we did our ride-about.  
15 And I -- and it is springtime and everything was out, all  
16 the trees are -- and the canopies were all full. And I  
17 did notice that a lot of them were evergreens. But my  
18 vision not being that great, from a distance, you know,  
19 if -- if it was winter, do you have -- (1) do you have  
20 any photos of it in the wintertime; and (2) could you  
21 explain how different the view would have been? You  
22 know, you and I have done a lot of visual impact things  
23 together, so I'll understand what -- hopefully, I'll  
24 understand what you're saying.

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1                   MR. LIBERTINE: Sure. Yeah, I've -- I  
2                   have had an opportunity throughout the seasons to go and  
3                   observe from several vantage-points around the city and  
4                   looking back up at the facility. The select locations we  
5                   went and looked at today were provided with kind of a  
6                   consensus among the panel here. We felt they were good  
7                   representations of some of the different types of views  
8                   you'd get.

9                   To speak directly to what you're asking,  
10                  there is a mix of deciduous and coniferous trees  
11                  throughout the area, including up on the mountain. But  
12                  the views we saw today were somewhat muted in the sense  
13                  that the lines of sight during the winter primarily from  
14                  the two vantage-points that we saw of the very first one  
15                  when we were at the overpass and that general area along  
16                  the avenue as well as that neighborhood tend to open up  
17                  pretty significantly during the wintertime, as you'd  
18                  expect when you have deciduous trees surrounding the  
19                  facility.

20                  What we were really trying to show was the  
21                  fact that -- you know, we -- we went about a lot of ideas  
22                  about how we might be able to mitigate this without  
23                  having the buildings removed. The problem is in some  
24                  locations you do have a backdrop to work with. We didn't

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1 see one of the most I guess prominent views along an area  
2 on the golf course, the Hunter's Golf Course, and that  
3 would have given us a little bit better indication of  
4 when you actually have a backdrop of the mountain behind  
5 the facility. The sites we saw today -- the view  
6 locations we saw today represented more of the profiles  
7 that stood above any backdrop, so it's more of a  
8 silhouette against the sky. And that created a challenge  
9 from my perspective in terms of how we might be able to  
10 think about doing something from either a different color  
11 or some type of camouflaging. You know, the challenge is  
12 --

13 MR. LYNCH: I was going to ask you about  
14 the color. If you could elaborate on that? I know in  
15 the past, especially on the cell towers you've talked  
16 about them being different colors and how that would  
17 affect the backdrop.

18 MR. LIBERTINE: Right. The challenge we  
19 have here is that -- you know, it's two-fold -- well  
20 actually, it's three-fold. When there is a backdrop, the  
21 color of the trap-rock ridge itself certainly is a darker  
22 shade than what the building has been painted. I think  
23 it was represented in the original docket in the  
24 application that there was going to be a neutral shade.

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1 And certainly what's there is neutral, but I'm not sure  
2 that that necessarily fits the environment itself. And  
3 when I said earlier there were some challenges, the  
4 challenges are when there's a backdrop, one color might  
5 work very well. But that same color when it's a profile  
6 against the sky like we have today, may be just the  
7 opposite effect. On top of that, we have the different  
8 parts of the season when the colors up there can change  
9 somewhat, and then you have different times of the day.  
10 So when you start to mix all of those together, any one  
11 color probably isn't going to solve the challenge of  
12 trying to make that more of a softening effect. And  
13 that's why I think the combination of doing some type of  
14 a neutral color, which was originally planned, and the  
15 thought of doing some kind of plantings would at least  
16 combine to give that a little bit of a softening effect.

17 But I guess to get back to your original  
18 question, I will present a little bit more of a detailed  
19 report, which will have what you're normally I guess  
20 accustomed to seeing, which is kind of a viewshed map  
21 around the city to show those areas where both seasonally  
22 and year-round you can see this. And I do have  
23 photographs from the wintertime to be able to compare to  
24 what we saw today. And that's one of the reasons I



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1 wanted to take the photo today, just so we'd have kind of  
2 a complete record of that.

3 So I think that hopefully addressed where  
4 you were going with that.

5 MR. LYNCH: That's fine. We'll wait for  
6 the rest of the photos to come in.

7 Mr. Chairman, I'm going to wait for the  
8 rest of the testimony -- I mean the rest of the  
9 interrogatories and testimony from the witnesses to come  
10 in before I have any more questions. Thank you.

11 CHAIRMAN STEIN: Okay. I -- I have a  
12 question. I understand there's a bond of \$626,000.00  
13 approximately that's outstanding. Have you considered  
14 calling the bond?

15 MR. KENDZIOR: We in fact have  
16 contemplated calling the bond. And MGT has told us that  
17 the response will be to sue us if we call the bond.

18 CHAIRMAN STEIN: Have you ever  
19 successfully called a bond?

20 (pause)

21 MR. CARUSO: (Indiscernible) -- not --

22 MR. KENDZIOR: Well -- it isn't easy --

23 CHAIRMAN STEIN: I know it's an onerous  
24 process, but if I read correctly the memo of Tom Skoglund

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1 from last year, roughly half of that is for the  
2 landscaping that you talked about. Well let me ask the  
3 question, if the bond were to be called of the  
4 \$626,000.00, could you complete most -- most of, if not  
5 all of the work that the town -- or the City of Meriden  
6 wants to have done?

7 (pause)

8 MR. KENDZIOR: We -- we don't think that  
9 the amount of the bond at this point in time is  
10 sufficient to cover all of the work that's required  
11 either by the site plan or subdivision approval or by  
12 your D&M plan.

13 We do think a substantial portion of the  
14 plantings and so forth, which is something that we're  
15 concerned with, regardless of whether the building is  
16 dismantled or not, could be completed. And some of the  
17 road work, the more dangerous conditions could be  
18 addressed. There are other items on the road work, like  
19 installation of lighting and so forth, that the cost  
20 these days would far exceed what the amount of the bond  
21 is. And that lighting item, that was commented in there,  
22 so it wasn't -- it -- the bond would cover some of the  
23 more serious items that we think need to be done, but  
24 would not cover all of the work.

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1                   CHAIRMAN STEIN: Okay. I guess -- but  
2 back to your answer to my original question, is the  
3 reason you're not calling it is because you're concerned  
4 that they're going to sue you if you call? I mean after  
5 -- I mean doesn't -- I think you -- you've testified that  
6 -- or I don't know, I forget the period of time they have  
7 been unwilling to even negotiate, let alone negotiate in  
8 good faith. Isn't -- and they haven't done any work for  
9 a number of years and they now want to abandon or they're  
10 abandoning the project. I can't think of -- I just don't  
11 understand why you're not contemplating that. It seems  
12 to me that would be another tool in your toolbox, you  
13 know, to call the bond.

14                   MR. KENDZIOR: We thought and do think --  
15 and I know our attorney has argued to you that the Siting  
16 Council is the place to go, that you have primary  
17 jurisdiction over this. Those bonds aren't going  
18 anywhere. And it may be something obviously that you may  
19 take into account in whatever decision you make. But at  
20 the same time -- and maybe -- you know, maybe we're wrong  
21 for being too nice. They're trying to sell that  
22 property. They have indicated to us in e-mails that the  
23 kinds of things that are required on the site plan  
24 approval may not be appropriate to the uses of the new

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1 owner. And for that reason, you know, have been rather  
2 insistent that we not go forward with the bond at this  
3 point.

4 And again, just to reiterate, under that  
5 tax agreement modification, their obligation to do the  
6 actual work on visual mitigation did not legally arise  
7 until either they commence reconstruction or actually  
8 abandon. So we did come to the Siting Council first.

9 CHAIRMAN STEIN: I'm not sure that's  
10 really meant to be a compliment or not about the powers  
11 of the Siting Council. And really --

12 MR. KENDZIOR: It's both a compliment and  
13 an indication of an increased burden to the Council, but  
14 you'll have to excuse us for that.

15 CHAIRMAN STEIN: Well burdens we're used  
16 to, but I'm just -- I tend to agree with several of the  
17 other members. I'm not sure that you have not used your  
18 -- I think the significant tools that you have available.  
19 We don't have -- we don't have a bond. We don't have  
20 bonding power -- at least if we do, we haven't used it.  
21 So I'm not exactly -- again fine, we'll go through this  
22 process --

23 MR. KENDZIOR: We --

24 CHAIRMAN STEIN: -- but I think some of

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1 us are concerned that, you know, you could maybe be --  
2 well I won't use -- okay --

3 MR. KENDZIOR: With all the respect in the  
4 world, let me just suggest to you that you granted  
5 approval, you granted it under certain conditions.  
6 There's an approved plan. They haven't complied with  
7 your plan. Putting aside the City's interest in bringing  
8 this forward to you, I would urge you -- again with all  
9 the respect in the world, it's in the Siting Council's  
10 interest to ensure that they do what they said they were  
11 going to do when they asked you to approve this project.  
12 If you let this go -- and again, I'm not the attorney  
13 arguing this case, but just explaining our own  
14 perspective on this, you're going to set a precedent that  
15 you may well come to regret --

16 CHAIRMAN STEIN: Well first of all, let me  
17 just say I didn't say we're going to let it go --

18 MR. KENDZIOR: No, I -- I understand --

19 CHAIRMAN STEIN: -- I think we're  
20 partners, that's the way we work, and I think you by your  
21 approval of a subdivision and a site plan and a bond have  
22 also a responsibility in this matter. I'll just leave it  
23 at that.

24 MR. KENDZIOR: Fair enough. Thank you.

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1 MR. WILENSKY: Mr. Chairman --

2 MR. SMALL: Mr. Chairman, can I just make  
3 one comment? One of the items that was administratively  
4 noticed was a -- at the Council's request was your  
5 decision in Docket No. 225A, which involved Kleen Energy.  
6 And in that decision, the Council in fact ordered a bond.  
7 So the Council does believe, and I think we'd agree, has  
8 the authority to order a bond as well. You didn't in  
9 this case. But I think as a result, you know, you -- it  
10 may have been a lesson learned, but you ordered a bond  
11 that covered things like abandonment of the project even  
12 before it was put into operation. I just wanted to point  
13 that out.

14 CHAIRMAN STEIN: I will let our staff  
15 attorney respond to that.

16 MS. BACHMAN: Attorney Small, in that  
17 particular instance what had transpired was the  
18 certificate holder voluntarily came to the Council with  
19 their own motion to reopen indicating that a condition we  
20 had imposed about financing was way too restrictive. And  
21 they came up with a solution, and it was a bond. And  
22 that bond was submitted to the planning department of the  
23 City of Middletown.

24 MR. SMALL: Thank you.

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1 CHAIRMAN STEIN: Thank you. That's an  
2 important clarification.

3 MR. WILENSKY: Mr. Chairman.

4 CHAIRMAN STEIN: Mr. Wilensky.

5 MR. WILENSKY: Just a quick -- that bond  
6 that you do have, is that a surety bond or is that a cash  
7 bond? And payable to the City of Meriden?

8 MR. KENDZIOR: (Indiscernible) --

9 MR. WILENSKY: I'm sorry?

10 COURT REPORTER: Your microphone please.

11 CHAIRMAN STEIN: Cash bonds --

12 MR. KENDZIOR: It's a cash bond --

13 CHAIRMAN STEIN: -- are much easier --

14 MR. KENDZIOR: -- it's in a bank account.

15 CHAIRMAN STEIN: They're much easier

16 called --

17 MR. WILENSKY: It's a cash bond --

18 CHAIRMAN STEIN: -- than a surety bond.

19 Thank you, Mr. Wilensky. Any other -- Mr. Hannon.

20 MR. HANNON: Just one other question,  
21 which relates to a string of e-mails between Attorney  
22 Lord and Attorney Small. There was a question about  
23 being able to go out on the site and inspect it. There  
24 was a response back saying who was going to be there.

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1 And ultimately what came out is the city experts may have  
2 access to the site during the site visit that's scheduled  
3 for June 4, 2013. I guess my question is the trip today,  
4 did that satisfy what you were looking for based on the  
5 original dialogue?

6 MR. SMALL: No, it didn't because -- we --  
7 and both in the e-mail you quoted and in MGT's filing in  
8 response to our motion for site access, they made that  
9 statement. But they -- they must have -- when those --  
10 when Attorney Bachman and Attorney Lord and the rest of  
11 us were in court about a week ago or so, they challenged  
12 the right to even have a site visit and -- on  
13 constitutional grounds. And just the -- implicitly the  
14 authorization for us to visit the site as part of the  
15 site visit today -- a site visit today would -- was  
16 withdrawn. So the -- I think the -- the answer is no, it  
17 did not because nobody -- nobody got to see the power  
18 plant site.

19 MR. HANNON: Thank you.

20 CHAIRMAN STEIN: Okay, thank you. I think  
21 that ends the Council's cross-examination for the time  
22 being. Does the Certificate Holder -- you have about  
23 five minutes before we break.

24 MR. LORD: Thank you. Before I begin, I'd



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1 just like to confirm that I'm not foreclosed from doing  
2 cross-examination at any subsequent hearing based on new  
3 evidence that might enter into the record?

4 (pause)

5 CHAIRMAN STEIN: He -- you are not  
6 foreclosed. I was afraid I was getting a double  
7 negative, so I wanted to be sure.

8 MR. LORD: Oh, thanks. I just want to  
9 have some short cross-examination while these issues are  
10 on your minds rather than waiting for another month to  
11 come back and rehash it.

12 Just very quickly for the City, I believe  
13 it's true that you were not a party in the original  
14 decision and order, is that correct -- I mean in the  
15 original proceeding --

16 MR. KENDZIOR: You're talking the original  
17 --

18 MR. LORD: -- Docket No. 190 --

19 MR. KENDZIOR: -- the original approval? I  
20 believe that's correct.

21 MR. LORD: But you are familiar with the  
22 decision and order in that docket?

23 MR. KENDZIOR: I've seen portions of it.

24 MR. LORD: Okay. Do you know whether

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1 there's a condition that requires a decommissioning plan?

2 MR. KENDZIOR: I don't know that of my own  
3 personal knowledge. I believe the answer is no, there is  
4 not a --

5 MR. LORD: And that's why you're here  
6 today requesting that they consider putting in that order  
7 to have a decommissioning plan?

8 MR. KENDZIOR: That's one way of phrasing  
9 it I guess, yeah.

10 MR. LORD: Okay. So the Council  
11 considered it and didn't make it a condition of the  
12 decision and order --

13 MR. SMALL: Could you -- I'm sorry, would  
14 you just repeat that last statement? I missed it, Mr.  
15 Lord.

16 MR. LORD: In the original docket there  
17 was a consideration of a requirement for a  
18 decommissioning plan and they didn't incorporate it as a  
19 condition. And that's why you're here today is seeking -  
20 - that the certificate be modified to incorporate a  
21 decommissioning plan --

22 MR. KENDZIOR: Counsel, I -- you know, I  
23 would just suggest to you that you're -- you're making a  
24 legal argument and asking me for a legal conclusion. And

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1 I'm here as a fact witness.

2 MR. LORD: Okay, very good. Then let's go  
3 to some facts. You told Dr. Bell -- I believe it was to  
4 Dr. Bell that you didn't have any inclination that the  
5 site would be abandoned, that the project would be  
6 abandoned until -- I think your answer was around 2012.  
7 That was in response to the question of why did you wait  
8 so long to come to us.

9 MR. KENDZIOR: The notice of intent to  
10 abandon was delivered to us on April 3, 2012. And Judith  
11 Lagano from NRG called me a day or two before that to  
12 tell me that we were going to receive that notice of  
13 abandonment.

14 MR. LORD: And you never foresaw the  
15 possibility that they might abandon the project?

16 MR. KENDZIOR: They continually  
17 represented to us that they were -- you know, all of our  
18 dealings and negotiations and all the representations  
19 they made to us was that they intended to go forward with  
20 the project.

21 MR. LORD: So even after you had  
22 litigation over the transfer of the land, you had no  
23 reason to -- no reason to foresee that the project might  
24 not go forward?

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1                   MR. KENDZIOR: They continually  
2                   represented to us that they wanted to go forward with the  
3                   project, that, you know, at a particular time it wasn't  
4                   feasible, that they needed conditions to change, things  
5                   like the price of gas, the price of electricity, the  
6                   possibility of a long-term power purchase agreement,  
7                   various things. But their own whole purpose in asking us  
8                   to modify the original payment schedule under the  
9                   original tax agreement was, as they said to us, to make  
10                  it more possible and more probable that they would be  
11                  able to go forward with the plan and gave them a period -  
12                  - a five-year period under which -- in which time their  
13                  costs would be reduced because we accepted lower payments  
14                  during that period of time. And they announced it  
15                  publicly, they represented it to the Council and so  
16                  forth.

17                 MR. LORD: You mentioned Enron and - I'm  
18                 sorry, did you conclude your answer?

19                 MR. KENDZIOR: Sure.

20                 MR. LORD: You mentioned Enron and how  
21                 that changed the energy financing market. You didn't  
22                 have any suspicion that the project might not go forward  
23                 after a huge change in the economic structure for power  
24                 plants?

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1                   MR. KENDZIOR: We -- we -- we certainly  
2                   knew that after Enron, they stopped constructing the  
3                   plant, they went into bankruptcy, they came out of  
4                   bankruptcy. But during all of that time and  
5                   subsequently, their representatives represented to us  
6                   and asked us to rely on and to wait and to cooperate  
7                   because they intended to go forward and complete the  
8                   plant. It was not a matter of whether the plant would be  
9                   completed, it was a matter of when the plant would be  
10                  completed.

11                  MR. LORD: So there wasn't anything in the  
12                  back of your mind after all those things happened, that  
13                  there's a -- there wasn't a possibility that this might  
14                  not go forward?

15                  MR. KENDZIOR: Of course there were things  
16                  in the back of my mind, and probably in the front of my  
17                  mind. I'm -- you know, I'm a former lawyer and a city  
18                  manager. My knowledge of the energy industry is not  
19                  great other than what I've managed to learn during the  
20                  course of these proceedings. When the party that you're  
21                  dealing with comes to you and presumably in good faith  
22                  and says to you conditions aren't right, this isn't right  
23                  at this point, this hasn't progressed, things about their  
24                  place in line and some sort of cue that the ISO or FERC

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1 people have or something -- and you guys I'm sure know  
2 what I'm talking about, but I'm not sure I do -- you  
3 know, they -- they referred to specific things and they  
4 represented to us that they needed some of these  
5 conditions to change. They represented to us that they  
6 were going to try and get a long-term power purchase  
7 agreement. I think they even applied to the State of  
8 Connecticut to do that and weren't successful. So they  
9 regularly represented to us that they were going to --  
10 they intended to build this plant and complete it.

11 Our - our documents all reflect that.  
12 Even the tax modification agreement talks about what  
13 would happen when they did recommence construction of the  
14 plant. So they made representations to us, and I think  
15 we were reasonable in relying on them. If you want to  
16 know somewhere in the back of my mind did I think it was  
17 a possibility that they wouldn't go forward, sure. But  
18 they represented to us that they would and we had an  
19 agreement with them that provided for a year's worth of  
20 notice if in fact they decided not to. So we did what we  
21 were supposed to do in the agreement.

22 MR. LORD: So in that agreement -- in the  
23 tax appeal after you renegotiated, at some point there it  
24 was brought to the attention of you by your counsel and

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1 sophisticated business people that it might not go  
2 forward and that you should probably make provisions for  
3 that effect, is that correct?

4 MR. KENDZIOR: No, that's not correct.

5 MR. LORD: There's no provision for tax  
6 relief upon notice of abandonment? There's no provision  
7 --

8 MR. KENDZIOR: There's -- there's a  
9 definition of what they have to do legally in order to  
10 abandon the project. So if you're asking me was it in  
11 our contemplation that the project could be abandoned,  
12 that's not what we understood, that's not what was  
13 represented, but we did include that provision in the  
14 modification in order to make sure that everybody  
15 understood that it wasn't enough to merely announced that  
16 they were going to abandon, they had to actually turn in  
17 their permits.

18 MR. LORD: And isn't there a condition in  
19 that agreement that says if they abandon the project or  
20 don't complete the project, that the City has the  
21 opportunity to take advantage of bonds, and that would be  
22 their full satisfaction?

23 MR. KENDZIOR: I -- if that's in there, I  
24 don't recall it.

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1 MR. LORD: So you basically met, came to  
2 an agreement with MGT that said you guys if you walk  
3 away, we're going to take the bonds and we'll do the work  
4 ourselves, is that correct?

5 MR. SMALL: Objection. That's not in --  
6 the -- the statement Mr. Lord made is not in evidence.  
7 Mr. Kendzior said that he does not believe that provision  
8 is in the agreement. So if you want to --

9 MR. LORD: I think there was --

10 MR. SMALL: -- if you want to show us that  
11 provision, he can then testify on it.

12 MR. LORD: Well I guess suffice it to say  
13 we talked about the fact that there's bonds. Where did  
14 the requirements for bonds come from?

15 MR. KENDZIOR: The requirement for the  
16 bonds comes from the original site plan and subdivision  
17 approval. That has nothing to do with the tax  
18 modification agreement.

19 (pause)

20 MR. LORD: Were you involved in the  
21 negotiation of the tax agreement?

22 MR. KENDZIOR: The original tax agreement?

23 MR. LORD: The modified tax agreement.

24 MR. KENDZIOR: Yes, I was.



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1 MR. LORD: And you don't recall anything  
2 about construction bonds protecting the town in the event  
3 of non-performance by MGT?

4 MR. KENDZIOR: Attorney Lord, I'd be happy  
5 to look at that clause in the agreement if you'd like to  
6 show it to me.

7 MR. LORD: I think you were previously  
8 asked if the amount of money in the bonds would be  
9 sufficient to cover the amount of work that needs to be  
10 done --

11 MR. KENDZIOR: But you're now asking me  
12 whether there's something in the agreement about the  
13 bonds, which I've indicated to you that as I sit here  
14 now, I don't recall. I'm perfectly happy and content if  
15 you show me that clause that you're referring to, to read  
16 it and respond to your question, sir. But if you -- if  
17 you're going to ask me a question representing that  
18 something is contained in the document and you're  
19 unwilling to show me the document, I'm doing my best to  
20 answer.

21 MR. LORD: No, I'm -- I'm willing to show  
22 you the document, that's not the problem. The problem is  
23 that it's not in evidence and I'm not exactly sure how we  
24 should deal with that as we don't have anybody that can

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1 testify to this at this time. So I'll just --

2 MR. SMALL: Well I think Mr. Kendzior  
3 could authenticate the document and it could be admitted  
4 into evidence. And I would not have an objection to  
5 that.

6 CHAIRMAN STEIN: Okay. If there's no  
7 objection, I think you can show it to him.

8 MR. LORD: I haven't had an opportunity to  
9 discuss this with my client just yet, so if I can have a  
10 moment -- or we could just -- we could -- do you want it  
11 in or not -- (pause) -- okay.

12 I'll go back to your response then. On  
13 the bonds when asked if it was sufficient to cover the  
14 work that needed to be done, you said no. If it were a  
15 provision of an agreement between the two parties, what  
16 would be the appropriate resolution for -- let me back up  
17 - you know, I guess I'm going to have to pick this up at  
18 another time once we determine whether or not we can get  
19 this into the record as it is perfectly pertinent to the  
20 bond issue that the Council has already raised, but I  
21 need to be sensitive to my client's interest with regard  
22 to this private agreement. So, I'll leave you with that.

23 MR. KENDZIOR: Again, I'm happy to respond  
24 to the question. I did refresh my recollection by

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1 looking at a copy of the actual agreement that he's  
2 referring to and I can answer the question. It doesn't -  
3 - I would not characterize it the way that you did. What  
4 it says is if the planning conditions are satisfied, the  
5 City shall release all the bonds. That isn't what you --  
6 that isn't the way that you characterized it when you  
7 asked me the question, sir.

8 MR. LORD: Do you actually have the  
9 document in front of you?

10 MR. KENDZIOR: I have a copy of it, yes.

11 MR. LORD: One moment please.

12 (pause)

13 MR. LORD: Do you recall whether or not  
14 the City was required to inventory the work that needed  
15 to be done and to provide notice to MGT upon the  
16 effective date of that agreement?

17 MR. KENDZIOR: We were supposed to go over  
18 the planning commission requirements and make sure that  
19 MGT knew what it was that they needed to do, yes.

20 MR. LORD: And do you remember if that  
21 notice was ever provided to MGT in accordance with the  
22 time frame?

23 MR. KENDZIOR: I know that we had several  
24 discussions concerning what was required. Those were at

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1 different points in time as time passed. There were  
2 discussions shortly after the execution of this  
3 agreement. I don't know whether those were in writing.  
4 I don't believe they were. There was -- the memo which  
5 actually is an exhibit before the Council at this time,  
6 that was in 2008, and clearly that was in response to  
7 another request from MGT that we confirm what things  
8 needed to be done and so forth. I know that we updated  
9 that more recently. And again, that was in response to  
10 an MGT request. But the -- the things that needed to be  
11 done are the things that have been needed to be done  
12 since -- since then.

13 MR. LORD: And if I remember correctly,  
14 that agreement was dated 2008?

15 MR. KENDZIOR: It was -- what I know at  
16 this point is that it was approved by our city council on  
17 September 15, 2008.

18 MR. LORD: Okay, so as of that time,  
19 Meriden had put some provisions into place under the  
20 contemplation that the project might be abandoned?

21 MR. KENDZIOR: Sir, we -- we were asked --  
22 we -- we agreed in the tax modification agreement to tell  
23 them what planning commission conditions they had not  
24 satisfied. We -- the Council has the exhibit from 2008

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1 outlining what those conditions were. You're -- again  
2 with all due respect, you're -- you're making a legal  
3 argument. We -- we had an obligation to tell them what  
4 they needed to do. And we fulfilled that obligation  
5 several times.

6 MR. LORD: But you never came to the  
7 Council to ask for their assistance until just now, is  
8 that correct?

9 MR. KENDZIOR: The -- another paragraph in  
10 this agreement -- paragraph 10 says that the City and MGT  
11 were to negotiate in good faith regarding identifying and  
12 attempting to agree upon reasonable and commercially  
13 feasible options for mitigating the visual impact of the  
14 plant on the community. It then goes on to say the  
15 parties shall implement any such mutual agreement upon  
16 abandonment or if earlier as practical upon  
17 recommencement of construction. Construction did not  
18 recommence. Abandonment has only been accomplished  
19 recently when the permits were given back -- or whatever  
20 the right word is. And we filed with the Siting Council  
21 just about as fast as you could.

22 MR. LORD: Alright, I have no further  
23 questions at this time. Thank you, Council. Sorry to  
24 keep you later than you would like under normal

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1 circumstances.

2 CHAIRMAN STEIN: Thank you. The Council  
3 will recess until 7:00 p.m., at which time we will  
4 commence the public comment session of the hearing.

5

6 (Whereupon, the hearing adjourned at 5:10  
7 p.m.)

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