

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

MERIDEN GAS TURBINES, LLC CERTIFICATE : DOCKET NO. 190B
OF ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR A 530 MW COMBINED :
CYCLE GENERATING PLANT IN MERIDEN, :
CONNECTICUT. **Reopening of this docket** :
pursuant to Conn. Gen. Stat. § 4-181a(b) limited to :
Council consideration of changed conditions and : July 9, 2013
Decommissioning Plan.

PRE-FILED TESTIMONY OF LAWRENCE KENDZIOR

INTRODUCTION

Q.1. Please state your name and position.

My name is Lawrence Kendzior. I am the City Manager of the City of Meriden (the “City”). Prior to becoming City Manager in 2005, I was the City’s Corporation Counsel from 1985 to 2005 as well as the City Attorney from 1994 to 2005. Additional biographical and background information is contained in **Exhibit CITY-7**.

Q.2. What is the purpose of your testimony?

I will provide background and historical information regarding Meriden Gas Turbines, LLC’s (“MGT”) 530-megawatt combined-cycle electric generating facility (the “Project”) at 500 South Mountain Road in Meriden (the “Site”). I will also identify and discuss the changed conditions that have occurred since the Connecticut Siting Council (the “Council”) issued its Decision and Order (“D&O”) granting a certificate of environmental compatibility and public need (the “Certificate”) for the Project in Docket No. 190 on April 27, 1999. Further, I will explain why these changed conditions justify the Council reopening Docket No. 190 and imposing a decommissioning plan. Finally, I will address certain issues raised by the Council member and staff and MGT at the public hearing on June 4, 2013.

Q.3. Describe your involvement with the Project.

I was involved with the Project early in its history and have been involved ever since. Among the issues I dealt with were the review of property tax payment agreement, negotiation of a property tax settlement agreement, and the transfer by MGT to the City of approximately 350 acres of land, a transfer that occurred after litigation in which the Council sought to enforce its order for MGT to transfer the property. Recently, I have been involved in negotiations and legal proceedings regarding the consequences of MGT's decision to abandon the Project, including the issues involved in this proceeding.

Q.4. Please describe what remains at the Site?

The best description of the remaining buildings, structures, and equipment at the Site is contained in MGT's appraisal report. **Exhibit CITY-2**. According to the report, the following remains at the Site:

1. Control Building – a one-story, 15,000 sq. ft. building designed to support computer systems.
2. Power Plant – Generator Building – a 43,776 sq. ft. building designed to support the turbines and other equipment. The largest portion of the building has a roof height of 82 feet. The building contains turbine pedestals and a 65-ton bridge crane.
3. Above Ground Water and Fuel Tanks – Two steel tanks with capacities of 800,000 and 500,000 gallons.
4. Cooling Tower Foundation – Approximately 20,000 sq. ft. concrete foundation with walls to a height of 2 feet. The foundation was designed like a pool with a sloping floor to collect water.
5. Third Building Foundation – a 4,600 sq. ft. concrete foundation to support another building.
6. Miscellaneous Improvements – Scattered throughout the Site are concrete footings and foundations and exposed pipes and conduits that were installed for power plant use.

Exhibit CITY-2, pp. 50-52.

Importantly, all of the remaining infrastructure was designed specifically for and were components of MGT's electric generating facility. According to MGT's appraisal, the buildings and structures have little or no value to other potential users and are "not easily or economically convertible to an alternate use." **Exhibit CITY-2**, pp. 50-56. The descriptions contained in MGT's appraisal are consistent with the appraisal performed for the City by Italia & Lemp, Inc., dated October 12, 2012. **Proposed Exhibit CITY-8** (which was provided in response to Council Interrogatory Q-CSC-006).

CHANGED CONDITIONS

Q.5. The City's Petition to Reopen and Modify the Decision and Order in Docket No. 190 asserts that changed conditions warrant the reopening of the docket. What are the changed conditions?

There are at least three distinct changed conditions that warrant the reopening and modification of the D&O:

1. At the time the Council issued the Certificate, it was not expected that MGT would abandon the Project after completing a substantial portion of the construction and causing significant environmental and visual impact.
2. MGT was expected, but failed, to fully comply with the environmental restoration and mitigation requirements contained in the D&O, the approved development and management plans ("D&M Plans"), and the City of Meriden's site plan, subdivision, and wetlands approvals.
3. The extent of the visual impact of the Project on this environmentally sensitive area is far greater than when the Certificate was granted, and the intended visual mitigation measures have either not been implemented (i.e. plantings) or have not been effective (i.e. architectural treatment).

Q.6. Why is MGT's abandonment of the Project a changed condition?

MGT's abandonment of the partially completed Project was an unforeseen event that was not contemplated when it issued the Certificate or when it extended the construction completion deadline on several occasions, including as recently as March 2011. During the Docket No. 190 proceedings, MGT testified that it had analyzed the

long-term economic viability of the Project and determined the Project would not be economically obsolete for at least 20 years. Docket No. 190, Transcript, January 26, 1999 (11:00 AM), p. 60. A scenario where MGT would commence and essentially complete the infrastructure of the Project, irreparably disturbing an environmentally and visually sensitive area, and would then abandon the Project prior to operation was simply not contemplated. As a result, MGT's decision to abandon the Project was an unforeseen event and constitutes a changed condition.

MGT is not simply surrendering a permit for an electric generating facility that it never started to build, an outcome which does occur in the industry. Here, MGT substantially constructed the Project, extensively disturbing an area that contains sensitive resources such as inland wetlands, vernal pools, and scenic traprock ridges. MGT purports to abandon the Project, the substantial adverse environmental, visual, and safety impacts of the Project, and MGT's obligations pursuant to the Council's original and subsequent approvals. Further, the Project will have no public benefit to offset these public harms.

Q.7. Has MGT failed to comply with the Decision and Order and is that a changed condition?

MGT has not complied with the express decommissioning and restoration commitment it made to the Council in Docket No. 190. This noncompliance is a changed condition.

Condition 1.a. of the D&O states that the "facility shall be constructed and operated substantially as specified by the Certificate Holder in the application and record, except where otherwise ordered by the Council." In testimony before the Council, MGT stated that "if it was decided the plant was economically unviable, the plant would be dismantled, we would obviously obtain as much as we could in salvage costs," Docket No. 190, Transcript, January 26, 1999 (11:00 AM), pp. 60-61. In fact, MGT estimated that decommissioning would cost approximately \$12 to \$14 million. *Id.*, p. 77.

MGT commenced construction of the Project in October 2001 and continued construction until approximately May 2002. During that period of time, MGT completed a substantial portion of the Project. Docket No. 190, MGT's Request for Extension of Construction Schedule, dated October 4, 2002.

Starting approximately ten years ago, MGT removed the major electrical generating equipment from the Site, including the gas turbines, the steam turbine, the generator units, the heat recovery steam generators, and the step-up transformers. However, MGT has not dismantled and removed the remainder of Project, including the Power Plant-Generator Building, the Control Building, the 800,000-gallon water tank, the 500,00-gallon fuel storage tank, cooling tower foundation and other electric-generation specific improvements at the Site. MGT's appraisal states that most of the structures on the Site, including the fuel and water tanks, the cooling tower foundation, and Power Plant-Generator Building, are not suitable for any use other than electric generation. **Exhibit CITY-2**, pp. 54-56. In particular, the Power Plant-Generator Building "was built specifically to house the turbine systems for the power plant. Its long and narrow shape and excessive height have little adaptability for most (if not all) industrial users." *Id.*, p. 55. Therefore, although MGT removed some of the electric generating equipment from the Site, MGT has not fully satisfied its commitment to dismantle the Project by also removing the associated equipment, including Power Plant-Generator Building, Control Building, storage tanks, and other infrastructure. Consequently, MGT has failed to comply with the D&O.

MGT's failure to comply with the D&O is a changed condition because the Council, when issuing the Certificate, would not have anticipated that MGT would disregard a requirement contained in the D&O as well as its own decommissioning commitment.

Q.8. Has MGT failed to comply with the Council-approved Development and Management Plans and is that a changed condition?

Yes. MGT has failed to comply with the requirements in the D&M Plans intended to mitigate the environmental and visual harms caused by the Project. This non-compliance is a changed condition. The following are examples of some of the known deficiencies at the Site based on MGT's own filings with the Council:

1. Failure to install required landscaping and vegetative screening – MGT was required to install evergreen and deciduous trees to mitigate the visual impact of the Project. MGT has installed none. In its supplemental response, dated

June 5, 2009, to Council Interrogatory Q-CSC-3 in Docket No. 370B, MGT acknowledged that “[t]he landscaping plan has not been implemented.”

2. Failure to complete wetland and upland restoration – The restoration of disturbed wetland and upland areas was required by the Council in the D&M Plan approved December 13, 2001. In its supplemental response, dated June 5, 2009, to Council Interrogatory Q-CSC-3 in Docket No. 370B, MGT stated that “wetland/watercourse restoration following construction activities was not completed and upland area restoration following construction activities was not completed.”
3. Failure to complete wetland mitigation – MGT was required to establish more than 35,000 sq. ft. of scrub shrub, wet meadow, marsh, and aquatic habitat to mitigate the removal and disturbance of existing wetlands. See Docket No. 190, Decision and Order, Finding of Fact #76. MGT, however, admitted in its response, dated May 29, 2009, to Council Interrogatory Q-CSC-13 in Docket No. 370B, that “[n]o wetlands were created following the project.”
4. Failure to complete stormwater controls. The D&M Plans required MGT to install stormwater controls. In its supplemental response, dated June 5, 2009, to Council Interrogatory Q-CSC-3 in Docket No. 370B, MGT stated that “stormwater controls not adversely affected by unbuilt portions of the facility were completed.” Based on this statement, portions of the stormwater management system remain incomplete.

These admissions by MGT are consistent with the deficiencies identified by the City’s Planning and Engineering Staff during reviews of the Site. In 2008 and 2012, the City’s staff visited the Site to determine if MGT had completed the site improvements required by the City’s Planning and Zoning Commission site plan and subdivision approvals. The City found that site work was either incomplete or needed repair. See **Exhibit CITY-4**. Specifically, City staff found:

1. paving and curbing, which are relevant to erosion control, were incomplete;
2. stormwater catch basins were damaged and in need of repair;
3. trees intended to screen the Power Plant-Generator Building were never planted;

4. shrubs, sod and ground cover for bank stabilization and slope restoration were never planted or maintained; and,
5. erosion of steep banks had occurred.

In addition, the City's staff reviewed South Mountain Road and found that deficiencies identified in 2008 either remained or had worsened. See **Exhibits CITY-4, CITY-5, and CITY-6**. Notably, City staff observed:

1. overgrown vegetation in the drainage swales and the detention pond;
2. improper construction of the detention pond bottom and sides;
3. loose rock and talus at numerous points along the roadway;
4. insufficient fall zones in some sections to prevent falling rocks from landing in the roadway;
5. lack of stormwater and erosion controls at rock slopes; and,
6. downed trees along rock slopes.

MGT has not complied with the requirements of the Planning and Zoning Commission's site plan and subdivision approvals, which are substantially the same requirements contained in the Council's D&M Plans. The City has not had access to the Site since the July 2012 inspection; however, I am not aware of any landscaping, construction, or maintenance performed by MGT at the Site since that time. Therefore, MGT has failed to remedy the deficiencies previously identified by the City, and the deficiencies may have worsened.

At the time the Council issued the Certificate, the Council ordered MGT to comply with the Council's D&M Plan requirements. MGT's failure to comply constitutes a changed condition and justifies imposition of a decommissioning plan by the Council.

Q.9. Why is the Project's visibility a changed condition?

The existing Power Plant-Generator Building and related infrastructure are far more visible than anticipated at the time the Certificate was issued. The visual impact of the Project results from the height and mass of the structures, the color of the structures,

the Project's location near the top of a traprock ridge, and the absence of Council-required vegetative screening.

The Council evaluated the visual impact of the proposed Project in Docket No. 190 relying upon a visibility report prepared by the applicant's consultant, EarthTech. The line of sight diagrams provided by EarthTech depict the Power Plant-Generator Building as being entirely or almost entirely obscured by vegetation. Docket 190, Applicant's Response to Interrogatory CSC 1-18, October 26, 1998. Further, in an interrogatory response, MGT stated that "the [180 feet tall] stack may be visible through the trees during the winter season. Due to distance, however (over one half mile), any such views would be considered minimal and difficult to distinguish without careful observation." Id.

Despite this prediction, the Council required the D&M Plans to include the "planting of new coniferous vegetation to provide ecological habitat, visual screening, and acoustical buffers" and "architectural treatment of all building components . . . to minimize visual effects on scenic resources." Docket No. 190, Decision and Order, §§ 2.e. and 2.f.

Importantly, MGT, through the D&M Plan approval process, subsequently increased the height of the massive Power Plant-Generator Building to the current height of 82 feet.

Now that the Power Plant-Generator Building and tanks have actually been constructed, the visibility of the Project is far greater than what was presented to or expected by the Council, even without the stacks. In fact, a member of the Council recently noted that "[the Project] is highly visible. . . . The sand color is what I'm amazed at because . . . it sticks out. It really does. And it sticks out along [Interstate] 691, as well as over to the east side where there's an unobstructed view." Docket No. 190A, Transcript, August 24, 2010 (2:05 p.m.), Statements of Philip Ashton, p. 33. Mr. Ashton recommended that the Council "leave [the visibility issue] until the plant gets under construction and then if we can, we'll put a note to revisit the issue once again." Id.

The extent of the visibility of the Project is greatly exacerbated by MGT's failure to install the vegetative screening required by the Council. This combination is a changed condition.

Q.10. Do the changed conditions identified by the City justify the reopening of Docket No. 190 and the implementation of a decommissioning plan?

MGT's decision to abandon the Project, its failure to comply with the Council's requirement to properly decommission the Project or to fully implement the D&M Plans, and the unanticipated visibility of the Project each have a significant adverse effect on the environment and the City. As the Council is aware, the Project is located in an environmentally sensitive area. The Project disturbed fragile wetlands, vernal pools, and traprock ridges. Further, the abandoned Power Plant-Generator Building and other infrastructure are far more visible than expected from many locations throughout the City. Critically, with MGT's abandonment of the Project, these adverse impacts are no longer offset by any benefits to the City or the State. These unmitigated adverse impacts will continue unless the Council reopens the docket and requires MGT to implement a comprehensive decommissioning plan.

TIMING OF THE CITY'S PETITION

Q.11. Did the City believe that MGT would complete the outstanding environmental and visual mitigation?

Yes. The City relied upon and acted in accordance with MGT's actions and its public pronouncements that MGT was going to resume construction of the Project and that, once it did, MGT would satisfactorily complete the environmental and visual measures required by MGT's various permits and approvals.

Ever since MGT mothballed the Project in 2003, it continued to provide assurances that it was only a matter of when, rather than if, the Project would be completed. In its February 1, 2006 letter to the Council requesting a five-year extension, MGT stated that "the project is designed, permitted and partially constructed [which] will allow MGT to move forward quickly and efficiently when market conditions are again favorable for generation projects." Similarly, MGT's July 6, 2010 letter to the Council requesting an additional five-year extension stated that it "remains committed to completing the Meriden Project." In support of MGT's request for the extension, the City affirmed its "strong support" for the Project and noted that "[i]t is the hope of the

City and its officials that the circumstances are favorable for future completion of the plant” **Proposed Exhibit CITY-9.**

MGT continued to state publicly that the Project would be completed. In October 2011, NRG Northeast Region President Lee Davis stated “[w]e have a project in Meriden that we’re very close to finishing the permitting on, but more importantly that project is nothing but shovel-ready.” **Proposed Exhibit CITY-10.** On March 2, 2012, only one month before the notice of its intent to abandon the Project, NRG stated in comments to the Department of Energy and Environmental Protection that “NRG is prepared to proceed with the [Project] as soon as suitable off-take contracts can be secured, such as in response to an RFP pursuant to the Final IRP” **Proposed Exhibit CITY-11.**

Further, over the years, the City met with MGT representatives several times to discuss the installation of visual mitigation measures and the completion of site work subject to the bond held by the City. At no time during these discussions did MGT indicate that the work would not be completed. For example, in 2008, the City met with MGT to review concerns with South Mountain Road and provided to MGT a summary of the issues to be addressed by MGT. See **Exhibit CITY-5.**

Even after MGT provided notice in April 2012 that it might abandon the Project (as discussed in more detail below), the City relied on MGT’s commitment to comply with its obligations to complete the environmental and visual mitigation. In July 2012, the City again met with MGT to review the Site and to itemize the remaining work to be completed by MGT. See **Exhibit CITY-4.** More recently, on December 19, 2012, Judith Lagano from MGT and MGT’s engineer from Milone & MacBroom met with me, Dominick Caruso, and Tom Skoglund to discuss the remaining work to be completed at the Site. Consequently, through the end of 2012, the City was working with MGT to develop a consensual resolution to the issues. Only when MGT filed suit in February 2013 did we think that MGT would not satisfy its environmental and visual mitigation obligations.

Q.12. Why did the City wait until March 2013 to petition the Council to reopen Docket No. 190?

Before March 2013, the City continued to work with MGT to fulfill MGT’s legal obligation to the City. Based on MGT’s representations over the years, the City

reasonably believed until February 2013 that MGT would restart construction of the Project and, even if it did not, complete the required environmental and visual mitigation. Further, any allegation by the City that the Project had been abandoned would have been speculative given MGT's recent statements and its refusal to confirm if or when the abandonment would occur.

For background, attached as **Proposed Exhibit CITY-12** is a series of documents and correspondence between MGT and the City related to MGT's abandonment of the Project. The documents can be summarized as follows:

Under Section 6 of the Property Tax Payment Settlement Agreement (**Proposed Exhibit CITY-13**), MGT was obligated to provide the City with a minimum of one (1) year written notice before MGT could abandon the Project by relinquishing or surrendering its permits to construct and operate the Project. On April 3, 2012, MGT sent the City a letter (the "Notice") notifying the City of MGT's "intent to relinquish, surrender and/or not renew its permits to construct and operate the Generating Station." The Notice did not definitively state that MGT would abandon the Project or specify a date of abandonment. Rather, the Notice only informed the City that MGT intended to abandon the Project on some unspecified date in the future. Thus, the Notice merely gave MGT the open-ended option to abandon the Project at some time on or after April 3, 2013.

After receiving the Notice, the City and its attorney sent a number of correspondences to MGT requesting that MGT clarify its intended abandonment of the Project. The issue as to if and when the Project would be abandoned was repeatedly and candidly raised with MGT; however, MGT never responded to the City's inquiries with information as to if or when MGT would actually abandon the Project.

Instead, about ten months after its Notice letter, on February 14, 2013, MGT filed a Motion to Enforce Judgment in Connecticut Superior Court. In its motion, MGT stated that MGT had delivered the Notice "one year prior to its planned 'relinquishment or surrender . . . of permits for construction and operation of the Generating Station.'" Consequently, MGT's February 14, 2013 court filing is the first time that MGT

specifically stated that the Project would be abandoned and that the date of abandonment would be April 3, 2013.

However, the ambiguity with regard to when MGT would abandon the Project continued throughout March and April of 2013. Finally, on May 17, 2013, more than six weeks after April 3, 2013, and following repeated inquiries from the City, MGT provided documentation to the City that it had in fact abandoned the Project by surrendering and relinquishing its permits in accordance with Paragraph 6 of the Property Tax Payment Settlement Agreement.

In light of MGT's numerous representations regarding the viability of the Project and our discussions with MGT regarding completion of the remaining work, the City reacted reasonably to MGT's Notice letter in 2012. First, the letter did not definitively state that MGT would abandon the Project or specify a date of abandonment. Rather, the Notice only informed the City that MGT intended to abandon the Project on some unspecified date in the future. The Notice gave MGT the open-ended option to abandon the Project at some time on or after April 3, 2013. Second, MGT subsequently refused to confirm when and if the Project would actually be abandoned. Finally, as noted in my response to Question No. 11, the City continued to have discussions with MGT regarding the scope of remaining work to be performed by MGT.

Consequently, although MGT's 2012 Notice letter raised the specter of MGT's abandonment, the City simply did not have sufficient information before February 2013 to know if and when MGT would actually abandon the Project and, more importantly, that MGT would not complete the environmental and visual mitigation. Petitioning the Council before that time would have been speculative and may have further jeopardized the Project, thereby reducing the likelihood of MGT's voluntary compliance with its environmental mitigation obligations. Once the City had confirmation that MGT was abandoning the Project without completing the environmental and visual mitigation, the City moved expeditiously to petition the Council to redress the impact of MGT's abandonment.

STATUS AND USE OF THE BOND HELD BY CITY

Q.13. What is the status of the development bond held by the City?

As part of the site plan and subdivision approvals issued by the City to MGT in 1998, the City required MGT to provide cash bonds for each of the two approvals. The construction bonds originally totaled \$1,886,490.

In 2003, the City's Planning and Zoning Commission reduced the cash bonds to \$626,000, with \$210,000 allocated to the subdivision approval and \$416,000 allocated to the site plan approval. The reduction was at the request of MGT and in response to MGT's completion of a substantial portion of the site work. The remaining amount was released to MGT. The balance held by the City as of May 30, 2012, was \$693,620.

Q.14. Why has the City not used the bond to address its current concerns?

The City has not called the bond for several reasons.

First, as noted in my response to Question No. 11, MGT continuously made representations that the remaining environmental and visual mitigation measures would be completed. MGT asked the City to hold off on enforcing the requirements contained in the site plan and subdivision approvals until MGT moved forward with construction. In fact, Section 10 of the 2008 Property Tax Payment Settlement Agreement states that MGT and the City would implement the agreed visual mitigation measures only upon recommencement of construction or abandonment. Importantly, MGT and the City had been in prolonged negotiations regarding the unfinished site work secured by the bonds. Section 9 of the 2008 Property Tax Payment Settlement Agreement requires the City and MGT to have "good faith discussions concerning whether any Planning Commission conditions remain unsatisfied." As a result, the City has participated in a number of meetings and discussions in an effort to identify any issues at the Site and to encourage MGT to resolve the issues. We also provided summaries to MGT in 2008 and 2012 of the work remaining to be completed at the Site. **Exhibits CITY-4 and CITY-5.** Drawing upon the bonds would not be consistent with our commitment to good faith discussions.

Second, cash bonds are generally used to encourage a developer to complete site work that was approved by the City's Planning and Zoning Commission. Drawing on the

bonds to perform the work is a last resort and is usually only done where the developer is no longer able to complete the project, such as in the event of a bankruptcy or dissolution of the developer corporation. Here, MGT is fully able (although unwilling) to complete the site work and environmental and visual mitigation measures on its own.

Third, MGT has made clear to the City that any attempt to draw upon the bonds and to complete the work would be challenged. Specifically, MGT's attorney stated that MGT would "strongly protest" use of the bonds because it "would be economic waste to perform work in the near term that may be unnecessary or at least could be performed at lower cost as part of a new development." E-mail from Timothy Fischer to Philip Small, July 20, 2012. **Proposed Exhibit CITY-12.** A MGT legal action would cause the City to incur unnecessary legal cost and would delay the performance of any related work.

Fourth, the bonds, which may not be sufficient to cover the current scope of outstanding work, were certainly not intended to address the adverse effects of MGT's abandonment of the Project. The funds would not provide an adequate remedy for removing, mitigating, or making safe the vacant, partially-completed infrastructure on the Site. Pursuant to Section 9 of the Property Tax Payment Settlement Agreement, if the City draws upon the bonds to address remaining deficiencies in the site work, the bonds would be "in full satisfaction of any and all MGT obligations in respect of roadway construction and subdivision improvement." As a result, drawing on the bonds would impair the City's ability to require MGT to properly perform the necessary environmental, visual, and other mitigation.

Finally, the bonds relate to site work required as part of planning and zoning approvals which MGT has asserted have expired. See Letter from Charles Ray, counsel for MGT, to Philip Small, counsel for the City, dated May 17, 2013. **Proposed Exhibit CITY-12.** Consequently, MGT would likely challenge the City's jurisdiction to enforce conditions in the expired site plan and subdivision approvals, just like MGT is doing in this proceeding as to the Council's jurisdiction. Further, MGT might challenge the City's right to enter the Project Site to perform the remaining work, as it already has in this proceeding and the related Superior Court proceeding. The possibility of litigation, coupled with our seemingly productive discussions with MGT, persuaded us to focus on developing alternative resolutions to the issues with MGT.

The City believed and still believes that drawing upon the bond is not an effective solution for addressing the adverse environmental, visual, and other impacts resulting from the Project. Given that MGT has abandoned the Project, any unfinished site work should be completed in conjunction with a decommissioning plan approved by the Council.

REMOVAL OF BUILDINGS AND STRUCTURES

Q.15. Why does the City want the visible infrastructure removed?

The remaining visible infrastructure should be dismantled for the following reasons:

1. With MGT's abandonment of the Project, there is no longer any public benefit to justify the continuing presence of a massive facility on this environmentally sensitive traprock ridge. When the Council originally authorized the Project, it struck a careful balance between the substantial environmental and visual impacts of the Project with the public need for cleaner, more reliable, and cost-effective energy generation. The 82-foot high, acre-sized Power Plant-Generator Building and the associated infrastructure, including water and oil tanks, are highly visible throughout the City. The color and size of the Power Plant-Generator Building and its location near the top of Cathole Mountain, along with the absence of Council- and City-required mature plantings, make its presence particularly visible. However, this visual degradation of one of the City's natural resources was accepted by the Council and the City because the Project was to provide a number of public benefits, including energy generation and property tax revenues. These benefits will not occur given MGT's abandonment of the Project; therefore, the rationale for allowing such a highly visible development to remain on an environmentally sensitive traprock ridge is no longer valid.
2. MGT previously committed to dismantling the facility upon abandonment. In testimony before the Council, MGT stated that "if it was decided the plant was economically unviable, the plant would be dismantled, we would obviously obtain as much as we could in salvage costs," Docket No. 190,

Transcript, January 26, 1999 (11:00 AM), pp. 60-61. Importantly, Condition 1.a of the D&O states: “The facility shall be constructed and operated substantially as specified by the Certificate Holder in the application and record, except where otherwise ordered by the Council.” Here, MGT clearly committed on the record that the Project would be dismantled if it was not viable. As a result, MGT is obligated under the D&O to remove the building unless the Council orders otherwise.

3. The Power Plant-Generator Building and related infrastructure are not adaptable to another use and should, therefore, be removed. Even MGT’s appraisal report states that the “building was designed for a specific use which is not easily or economically convertible to an alternate use.” **Exhibit CITY-2**, p. 51. In particular, the Power Plant-Generator Building “was built specifically to house the turbine systems for the power plant. Its long and narrow shape and excessive height have little adaptability for most (if not all) industrial users.” *Id.*, p. 55. MGT’s appraisal states that the 82 feet height of the building is well in excess of the maximum height of 30 feet typically used for manufacturing or light industrial uses and that the excess height substantially increases heating and air conditioning costs. *Id.*, pp. 51, 55. Similarly, the MGT appraisal states that the “water and fuel tanks and cooling tower foundation have no use or value to any other user.” **Exhibit CITY-2**, p. 51.
4. The cost to remove the Power Plant-Generator Building and related infrastructure would be offset to some degree by the scrap value of the building materials and savings associated with eliminating maintenance costs. Much of the steel and metal from the Project can be recovered for the scrap metal market. The revenue from salvaging the building materials would go towards the cost of dismantling the structures. Also, MGT would substantially reduce its maintenance costs by removing the existing structures. Based on MGT’s appraisal, it is unlikely that the Site will be reutilized in the near future. Consequently, MGT is potentially facing years of maintenance costs to maintain and upkeep the infrastructure at the Site in a safe and

reasonable condition. These costs would be substantially reduced by removing the remaining buildings and tanks.

SOUTH MOUNTAIN ROAD

Q.16. What is the status of South Mountain Road?

MGT transferred the land on which South Mountain Road was built to the City. MGT constructed the road which was required by the City to be built consistent with the City's requirements for public roads. The road has not yet been accepted by the City due to deficiencies in the construction. MGT remains obligated to maintain the road and to address the deficiencies identified by the City.

CONCLUSION

Q.17. Does this conclude your testimony?

Yes.

LIST OF PROPOSED EXHIBITS

1. **Proposed Exhibit CITY-8** Appraisal Report by Italia & Lemp, Inc., dated October 12, 2012.
2. **Proposed Exhibit CITY-9** Letter from Deborah L. Moore to Daniel F. Caruso, dated December 3, 2010
3. **Proposed Exhibit CITY-10** Record Journal, NRG Energy Says Its Ready to Finish Plant, Adam Wittenberg, October 8, 2011
4. **Proposed Exhibit CITY-11** Comments of NRG Energy, Inc. on the Department of Energy and Environmental Protection 2012 Integrated Resource Plan, March 2, 2012
5. **Proposed Exhibit CITY-12**
 - Letter from Judith Lagano, NRG Energy, Inc., to Lawrence Kendzior, City Manager, City of Meriden, dated April 3, 2012, re: Notice of Abandonment
 - Letter from Lawrence Kendzior, City Manager, City of Meriden to Judith Lagano, NRG Energy, Inc., dated April 24, 2012
 - E-mail correspondences between Philip Small, attorney for City of Meriden, and Timothy Fisher, attorney for NRG Energy, Inc., dated July 20, 2012, August 5, 2012, August 7, 2012, and August 9, 2012.
 - Memorandum of Law in Support of Motion to Enforce Judgment, dated February 14, 2013.
 - Letter from Lawrence Kendzior, City Manager, City of Meriden to Stephen Cinoski, NRG Energy, Inc., dated March 21, 2013
 - Stipulation between Meriden Gas Turbine LLC and the City of Meriden, dated March 25, 2013
 - Letter from Lawrence Kendzior, City Manager, City of Meriden to Stephen Cinoski, NRG Energy, Inc., dated April 11, 2013
 - Letter from Charles Ray, attorney for Meriden Gas Turbine LLC , to Philip Small, attorney for the City of Meriden, dated May 17, 2013.
6. **Proposed Exhibit CITY-13** Property Tax Payment Settlement Agreement

Proposed Exhibit CITY-8

Appraisal Report by Italia & Lemp, Inc., dated October 12, 2012

(provided in response to Council Interrogatory Q-CSC-6)

Proposed Exhibit CITY-9

Letter from Deborah L. Moore to Daniel F. Caruso, dated December 3, 2010



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Daniel F. Caruso, Chairman
Linda Roberts, Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

VIA FACSIMILE (860)-827-2950

RE: **DOCKET 190A-** Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a 530 MW combined cycle generating plant in Meriden, CT.
Reopening of the docket pursuant to C.G.S. § 4-181a(b) limited to Council consideration of changed conditions and of the attachment of conditions to the certificate consistent with the findings and recommendations in the Final Report issued by the Kleen Energy Plant Investigation Review Panel (Nevan Commission) and the findings and recommendations in the Executive Report issued by the Thomas Commission.

Dear Chairman Caruso and Ms. Roberts:

Thank you very much for your November 1, 2010 correspondence to the City of Meriden and Mayor Michael Rohde, City Manager Lawrence Kendzior, and City Planner Dominick Caruso regarding the above referenced matter. The City of Meriden appreciates the invitation to provide its views to the Siting Council and to participate in the hearing of this proceeding.

The City of Meriden wishes to express to the Siting Council its continued strong support for the Meriden Gas Turbine's construction and completion of the combined cycle generating plant in Meriden, CT. It is the hope of the City and its officials that the circumstances are favorable for future completion of the plant, which is already substantially constructed, to commence operating at some point in the near future. Further, the City of Meriden appreciates the efforts already undertaken by the power plant officials to minimize the visibility of the existing structure – a source of ongoing concern for Meriden residents- and look forward to further efforts by the MGT to minimize structure's visibility in the future.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Deborah L. Moore
City Attorney

cc: Judith Lagano, NRG/MGT

Proposed Exhibit CITY-10

Record Journal, NRG Energy Says Its Ready to Finish Plant, Adam Wittenberg, October 8, 2011

NRG Energy says it's ready to finish plant

By Adam Wittenberg, Record-Journal staff | Posted: Saturday, October 8, 2011 3:05 am

MIDDLETOWN - The grand opening was in Middletown but the news was all about Meriden.

As executives from NRG Energy gathered to celebrate the opening of a new peaking plant in Middletown, NRG President David Crane and Northeast Region President Lee Davis told the crowd of dignitaries and officials that Meriden is one of the plants it's targeting next.

"We have a project in Meriden that we're very close to finishing the permitting on, but more importantly that project is nothing but shovel-ready," Davis told the 100 guests, which included officials from United Illuminating, which collaborated on the 200-megawatt Middletown plant.

Work in Meriden "can create jobs now and create more reliability and create a better energy product for our New England area as well as Connecticut," Davis said. "We need to be focused on making that happen, so that's one of my top priorities as region president."

The partially built power plant on Cathole Mountain has been an empty white shell since construction stopped in 2002.

The city is still receiving tax revenue from the project - \$2 million a year under an agreement reached in 2008 - but the amount would increase to about \$3 million if construction resumed. A 32-year, \$111 million tax deal was signed with the city in 2001, although payments were reduced to \$2 million annually for five years under the 2008 agreement, which settled a lawsuit over how much the plant should be taxed.

Speaking outside the event, Davis explained why the company is "very excited" about the project.

"The foundation's already poured. There's buildings there. A lot of the stuff has already been done there," he said, which could lead to a faster turnaround time than building a plant from the ground up. He estimated it would take 30 months to complete the work using more than 500 workers and 1.5 million work hours.

ISO New England, which runs the region's power grid, has reported that one-quarter of the region's electricity generation capacity comes from plants that are at least 40 years old, and Davis said NRG sees a wave of those older facilities closing in the next five to seven years.

Meriden's plant would produce about 550 megawatts. It would have two combustion turbines, two heat recovery steam generators and "one big steam turbine on the back," Davis said. It would also create about 25 permanent, full-time jobs.

The combined cycle plant - which means it can provide base load power and also start quickly during spikes in demand - would run on natural gas and would require water for cooling. Those

obstacles helped derail the original plant, but Davis was "extremely confident" the company has them surmounted.

The firm is looking at several options for bringing water to the plant, including some that were considered 10 years ago, although he declined to elaborate. Natural gas lines are "a couple of miles away," he said, "and we believe we've figured out the best path for that and so we're negotiating with some folks on how we get the gas there."

Yankee Gas had sued NRG for allegedly violating a 2002 agreement involving Yankee's building a 4.4-mile pipeline from Southington, which wasn't completed, to service the plant. The status of the suit could not be determined Friday.

The state Department of Energy and Environmental Protection is determining the state's power needs through a process called integrated resource planning. Once finished, it could issue a request for proposals to meet those needs.

Davis is confident the Meriden plant would be "if not the best project, (then) at the very top of the projects" that would be considered in the competitive bidding process. The state could consider many options, including bringing in hydro power from Canada or transmitting electricity from other regions, he said.

The company is working with politicians to make them aware of Meriden and is interested in collaborating with state and local officials, as it did in Middletown, to make it a reality.

Crane, who is also NRG's chief executive officer, said he mentioned the Meriden plant to Gov. Dannel P. Malloy in a meeting Friday morning.

"He's supportive of jobs and revitalizing" the economy and industry, Crane said. "We think it can do all of those things. We think it would be very competitive, so hopefully there'll be some sort of solicitation."

State Sen. Leonard F. Suzio, R-Meriden, also supports the project.

He attended Friday's event because Middletown is part of his district, but he said he plans to work in a bipartisan manner with Meriden's legislative delegation to keep the focus on Meriden.

"It's got to become a high priority," he said. The environment would also benefit from a cleaner plant and state labor union support it because of the construction jobs, he said. "We've got to get the wheels rolling again."

Meriden City Council Majority Leader Keith Gordon, who was not at the event, was aware that NRG had been keeping up permits on the plant, although he wasn't aware of specific plans to finish it. He noted that the city has received well in excess of \$20 million in revenue even though the plant is not done.

Mayor Michael S. Rohde could not be reached Friday for comment and City Manager Lawrence J. Kendzior was on vacation.

awittenberg@record-journal.com

(203) 317-2231

Proposed Exhibit CITY-11

Comments of NRG Energy, Inc. on the Department of Energy and Environmental Protection
2012 Integrated Resource Plan, March 2, 2012

**COMMENTS OF NRG ENERGY, INC. ON THE DEPARTMENT OF ENERGY AND
ENVIRONMENTAL PROTECTION 2012 INTEGRATED RESOURCE PLAN**

March 2, 2012

NRG Energy, Inc. ("NRG") appreciates the opportunity to comment on the 2012 Draft Integrated Resource Plan developed by The Department of Energy and Environmental Protection ("DEEP") Policy Group as called for in Sections 89 and 90 of Public Act No. 11-80. NRG applauds DEEP's efforts to prepare this significant document under a very compressed timeline that coincided with the statutory reorganization of the state's energy regulatory and policy functions within DEEP. While the draft plan reflects substantial effort and a strong commitment to end-use energy efficiency as Connecticut's resource of choice, the draft plan falls short in several areas. Without substantial revisions, the plan sets the stage for overbuilding the transmission system at a significant cost to Connecticut electric customers and missing opportunities to develop new generation resources that can moderate electricity pricing, bolster reliability and improve the efficiency and emissions profile of Connecticut's generation fleet.

NRG's comments focus on i) ensuring that all reasonable alternatives are fairly evaluated in establishing the 'base case' for the IRP; ii) assessing the timing and magnitude of electric generation retirements and quantifying the benefits to Connecticut consumers of taking definitive and timely steps to replace those resources with new, efficient, lower emitting generating units; iii) integrating Governor Malloy's energy goals into the plan, iv) highlighting the role of NRG's Montville biomass project as a means to

interconnection infrastructure already on site to serve the existing fossil steam turbines at that facility. Additionally, while all Connecticut municipalities can use new tax base, the town of Montville is currently grappling with the large economic shortfall left by the retirement and likely decommissioning of the AES Thames facility in that town. Expediting development of the NRG Montville biomass conversion project would help the town of Montville restore its grand list to previous levels.

V. NRG'S COMMITMENT TO CONNECTICUT

Over the past 11 years, NRG has permitted and commissioned several power projects in Connecticut and is currently developing a growing retail presence in the state. The Cos Cob peaking units were expanded by 40 MW. The GenConn projects (a joint venture between NRG and United Illuminating) included two 200 MW quick start peaking plants on NRG property in Milford and Middletown. Additionally, NRG is prepared to proceed with the following repowered and new generation projects as soon as suitable off-take contracts can be secured, such as in response to an RFP pursuant to the Final IRP:

- Meriden Gas Turbines – 530 MW natural gas combined cycle plant in Meriden. This project has approvals from both the Siting Council and DEEP.
- Montville Biomass – 40 MW clean wood biomass repowering of an existing boiler at the NRG plant in Montville. This project is currently the lowest cost renewable project proposed in CT, and, similar to the Meriden project, this project has approvals from both the Siting Council and DEEP.
- Solar – NRG has identified several sites for MW-scale solar development in Connecticut, including land located at NRG's Norwalk Harbor facility.

All of these proposed projects would provide substantial benefits to Connecticut and help to achieve the goals for energy policy set by Governor Malloy. Natural Gas

Combined Cycle projects like the one proposed in Meriden are the most efficient and economical projects at this time. In addition to helping lower energy costs, these projects will create substantial construction jobs and on-going economic activity to support the plant over its lifespan. Montville Biomass is currently the lowest cost renewable project in the state, and substantially below the cost of any greenfield biomass project, since it involves conversion of an existing boiler rather than construction of an entirely new facility. This project can be completed within 18 months of signing an off-take contract.

VI. CONCLUSION

NRG Energy, Inc. appreciates the opportunity to comment on the DEEP's 2012 Procurement Plan. To help ensure effective modeling of resource alternatives, the Draft IRP analysis should be modified to reflect the following:

- A direct comparison of the relative economics and reliability performance of in-state generation and demand resources to the proposed NEEWS project, to ensure that the Final IRP reflects the most cost-effective means to meet Connecticut's power supply needs.
- Lower energy market prices and the accompanying job creation from new supply resource additions (efficiency or generation) should be modeled and presented on an apples-to-apples basis.

- Resource adequacy analysis should recognize that impending retirements of incumbent generation,¹⁵ likely delays in transmission projects and long power plant permitting and construction lead times make it critical that Connecticut move forward with a development plan now. A generation procurement process held in 2012 will ensure that new resources are brought on line in the 2015-2016 time frame – at a time when ISO-NE has noted a significant risk of capacity shortfalls.¹⁶

Connecticut has the opportunity in the 2012 IRP procurement plan to proactively and decisively address these impending concerns thoughtfully to put the state on a smooth path to a more efficient, lower-emitting and lower cost future, and NRG urges the DEEP to seize the opportunity for the good of the people of Connecticut.

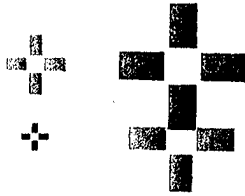
NRG again appreciates this opportunity to provide Comments on the Draft 2012 Integrated Resource Plan.

¹⁵ Although the exact timing of when these pressures will force existing resources to exit the market and exactly how many resources will exit is unknown, a substantial number of units are undoubtedly at risk. The number and impact will become more readily apparent after capacity auctions that will take place in 2012, 2013 and 2014. The anticipated substantial market exit will not only create reliability problems, but also the potential for significant increased costs associated with mitigating these concerns in haste.

¹⁶ ISO New England, 2011 Regional System Plan, October 21, 2011, p. 4.

Proposed Exhibit CITY-12

- Letter from Judith Lagano, NRG Energy, Inc., to Lawrence Kendzior, City Manager, City of Meriden, dated April 3, 2012, re: Notice of Abandonment
- Letter from Lawrence Kendzior, City Manager, City of Meriden to Judith Lagano, NRG Energy, Inc., dated April 24, 2012
- E-mail correspondences between Philip Small, attorney for City of Meriden, and Timothy Fisher, attorney for NRG Energy, Inc., dated July 20, 2012, August 5, 2012, August 7, 2012, and August 9, 2012.
- Memorandum of Law in Support of Motion to Enforce Judgment, dated February 14, 2013.
- Letter from Lawrence Kendzior, City Manager, City of Meriden to Stephen Cinoski, NRG Energy, Inc., dated March 21, 2013
- Stipulation between Meriden Gas Turbine LLC and the City of Meriden, dated March 25, 2013
- Letter from Lawrence Kendzior, City Manager, City of Meriden to Stephen Cinoski, NRG Energy, Inc., dated April 11, 2013
- Letter from Charles Ray, attorney for Meriden Gas Turbine LLC , to Philip Small, attorney for the City of Meriden, dated May 17, 2013.



NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

CONFIDENTIAL

April 3, 2012

VIA Hand Delivery

The City of Meriden
142 East Main Street
Meriden, Connecticut, 06450
Attention: Lawrence Kendzior, City Manager

Re: Notice of Abandonment

Dear Mr. Kendzior:

On behalf of NRG Energy, Inc. ("NRG") and pursuant to paragraph 6 of the Property Tax Payment Settlement Agreement (the "Settlement Agreement") between the City of Meriden (the "City") and Meriden Gas Turbines LLC ("MGT"), which modifies that certain Property Tax Payment Agreement entered into by the parties on or about October 29, 2001, MGT hereby notifies the City in this Notice of Abandonment of its intent to relinquish, surrender and/or not renew its permits to construct and operate the Generating Station. Capitalized terms used in this letter and not defined herein shall have the meaning assigned to them in the Settlement Agreement.

In accordance with the Settlement Agreement, upon delivery of this Notice of Abandonment, the City shall no longer regard the Site as a power generating facility property for all purposes, effective on the beginning of the 7/1/2012 tax year. In accordance with the Settlement Agreement, MGT will work cooperatively and in good faith with the City to cause a new tax assessment to be established based upon the fair market value of the real and personal property assuming the Site's best and highest use other than a power generation facility.

NRG appreciates the support the City has provided MGT in its effort to develop the site. We look forward to working cooperatively with the City of Meriden to successfully transition the property.

Sincerely,

Judith Lagano
Vice President, Asset Management
NRG Energy, Inc.

cc: Steve Cinoski



LAWRENCE J. KENDZIOR
CITY MANAGER

City of Meriden, Connecticut

OFFICE OF THE CITY MANAGER

142 East Main Street, City Hall

Meriden, CT 06450-5605

Telephone (203) 630-4123 • Fax (203) 630-4274

April 24, 2012

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attn: Judith Lagano,
Vice President Asset Management

RE: April 3, 2012 Meriden Gas Turbine LLC Notice to City of Meriden

Dear Ms. Lagano:

The City of Meriden ("City") acknowledges receipt of your April 3, 2012 letter, which you describe as a "Notice of Abandonment" by Meriden Gas Turbine LLC ("MGT") of the Generating Station pursuant to the Property Tax Payment Settlement Agreement ("Settlement Agreement") between MGT and the City. Specifically, your letter states that MGT intends to "relinquish, surrender and/or not renew its permits to construct and operate the Generating Station."

Your letter was unexpected in light of NRG's March 2, 2012 comments to the Connecticut Department of Energy and Environmental Protection ("DEEP") stating that it "is prepared to proceed" with the Generating Station project and two other generating projects "as soon as suitable off-take contracts can be secured...." As you might expect, the City is disappointed that MGT has so soon thereafter expressed its intention to abandon development of the Generating Station. We urge you to reconsider that decision or sell this project to an entity that will develop it, as we believe there is much potential interest in developing this project and adding the resultant power generation to the State's resources.

In the interim, the City will work with you cooperatively to fully and properly implement the provisions of the Settlement Agreement relating to abandonment of the Generating Station by MGT. To do so, however, we also urge you to begin with a closer reading of the Settlement Agreement, given that your letter misstates and ignores key provisions of the Agreement related to abandonment of the Generating Station.

First, Section 6 of the Settlement Agreement requires one year advance notice of abandonment. As defined in the Settlement Agreement, abandonment is MGT's relinquishment, surrender and/or non-renewal of its construction and operating permits. The advance notice provision was inserted to ensure there is adequate time to negotiate in good faith to establish the value of the property for its highest and best use other than a power generating plant, as required by the Settlement Agreement, and implicitly to give the City sufficient advance warning to adjust its budget and its mill rate to avoid future revenue shortfalls. Hence, your assertion that such a new assessment becomes "effective on the beginning of the 7/1/2012 tax year", more than six months after the statutory October 1 annual assessment date, less than two months from the date

of delivery of the notice, one month before the City adopts its 2012-13 budget and while the Site remains fully permitted as a power plant, cannot be squared with the plain language of the Settlement Agreement's advance notice requirement.

Second, contrary to the assertions in your letter: (i) the effective date of MGT's Notice of Abandonment under the Settlement Agreement is the date MGT actually abandons the Generating Station-- i.e., MGT surrenders or relinquishes its permits for construction and operation of the Generating Station; and (ii) the new non-generating facility tax assessment only becomes effective for the first full Tax year after MGT actually abandons the Generating Station. Your letter does not state when, or even if, MGT will actually abandon the Generating Station and your comments made only last month to DEEP add to the uncertainty of the intent expressed in the letter. MGT appears to take the position that the Site would no longer be regarded as a power generating facility property for the Tax Year beginning July 1, 2012, even though MGT has not yet abandoned the Generating Station, cannot do so before April 3, 2013, and the timing of any abandonment is uncertain. Under your interpretation, MGT could extract itself from its tax payment obligations under the Settlement Agreement merely by sending the City a Notice of Abandonment, but never actually abandoning the Generating Station. It appears that MGT is taking the position that it would also avoid its abandonment-related obligations including repaying the City the entire accrued amount of Deferred Payments and mitigating visual impacts, as discussed in more detail below. The plain language of the Settlement Agreement clearly does not support your assertion or such unintended results.

Third, Paragraph 6 of the Settlement Agreement explicitly states that the new tax amount (based on the new non-generating facility tax assessment) takes effect for the first full Tax Year after the "*effective date of the Notice of Abandonment.*" Plainly, this term must have a different meaning than "delivery of the Notice of Abandonment" which is used earlier in Paragraph 6. Notice of intent to abandon is not the same thing as abandonment, and the effective date of the Notice of Abandonment can only mean the date on which abandonment actually occurs, which, given the explicit requirement of one year's notice, can be no earlier than April 3, 2013.

Fourth, upon the "effective date" of MGT's "abandonment" (i.e., its relinquishment, surrender and/or non-renewal of construction and operating permits), pursuant to Paragraph 3 of the Settlement Agreement, MGT must "repay [the City] the entire remaining accrued and unpaid Deferred Amounts immediately...." Your Notice of Abandonment was delivered without such payment, a further indication that and an admission on your part that the effective date of the Notice of Abandonment is not the same as its delivery date. If MGT abandons the Generating Station between April 3, 2013 and June 30, 2013, it must immediately repay the City \$2,512,500. If MGT abandons the Generating Station between July 1, 2013 and June 30, 2014 (or anytime thereafter), it must immediately repay the City \$3,287,500. MGT's failure to repay the accrued and unpaid Deferred Amounts immediately upon abandonment of the Generating Station would constitute a material breach by MGT of the Settlement Agreement, as well as of the Stipulated Judgment between MGT and the City.

MGT and the City are required by the Settlement Agreement to work cooperatively and in good faith to establish a tax assessment by October 1 of a calendar year for the "next succeeding full Tax Year after the effective date of the Notice of Abandonment." As stated above, the "effective date of the Notice of Abandonment" is the actual date of abandonment, not the delivery date of the Notice of Abandonment.

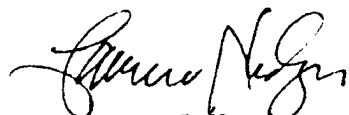
By way of example, if MGT actually abandons the Generating Station between April 3, 2013 and June 30, 2013, MGT and the City would have to attempt to establish a tax assessment by October 1, 2013 that would be implemented for the Tax Year beginning July 1, 2014. Similarly, if MGT actually abandons the Generating Station between July 1, 2013 and June 30, 2014, MGT and the City would have to attempt to establish a tax assessment by October 1, 2014 that would be implemented for the Tax Year beginning July 1, 2015. In the interim, until the new tax assessment is implemented, MGT is required to make the full payments required by Section 2 of the Settlement Agreement for Tax Year July 1, 2012 to June 30, 2013 and Tax Year July 1, 2013 to June 30, 2014 (in addition to repaying the Deferred Amount upon abandonment, as described above). If abandonment occurs between July 1, 2013 and June 30, 2014, MGT would also be required to make the full tax payment required by Section 2 and the Property Tax Payment Agreement for Tax Year July 1, 2014 to June 30, 2015.

The City is willing to begin the process of establishing a new tax assessment. However, pursuant to the Settlement Agreement, the City does not implement that assessment unless and until MGT actually abandons the Generating Station, repays the full Deferred Amounts and meets its other contractual obligations. Absent MGT's actual abandonment of the Generating Station and satisfaction of MGT's other contractual obligations, the Settlement Agreement and the Property Tax Agreement will stay in full force and effect. The City will vigorously enforce its rights under those agreements and the Stipulated Judgment.

Finally, Paragraph 10 of the Settlement Agreement requires MGT to engage in good faith discussions with the City to identify and attempt to agree upon reasonable and commercially feasible options for migrating the visual impact of the Generating Station project on the community. The mutual agreements must be implemented by MGT upon the date of Notice of Abandonment, at the latest. To date, MGT has neither engaged in good faith negotiations with the City on mitigation of the visual impact of the Generating Station, nor implemented mitigation measures. Therefore, it is in breach of the Settlement Agreement. MGT must remedy this breach immediately by engaging in good faith discussions with the City and implementing any mutual agreements regarding visual impact.

As I stated above, the City is willing to work cooperatively with MGT with respect to its abandonment of the Generating Project as required by the Settlement Agreement and the Property Tax Agreement and expects MGT similarly to fully honor the requirements of the agreements.

Very truly yours,



Lawrence J. Kendzior
City Manager

cc: Atty. Deborah Moore
✓ Atty. Phil Small

From: Fisher, Timothy [<mailto:TFisher@McCarter.com>]
Sent: Thursday, August 09, 2012 1:56 PM
To: Small, Philip M.
Subject: RE: MGT - bond account, appraisal and negotiations schedule

Thanks for the confirmation, Phil. A couple of questions:

- Can you provide the account number at Naugatuck? If you would rather we seek that by a formal FOIA request we can [d]o so.
- On the assessment, we understand your position as to when it will be "implemented." But can you confirm that the City is prepared to "work in good faith" to set that assessment as of this October 1, 2012? Among other things, we would like to be assured of that for purposes of scheduling the discussions.

- Tim

From: Small, Philip M. [<mailto:PSmall@brownrudnick.com>]
Sent: Tuesday, August 07, 2012 7:28 PM
To: Fisher, Timothy
Subject: FW: MGT - bond account, appraisal and negotiations schedule

Tim,

The construction bond funds are deposited in Naugatuck Savings Bank. At this time, the City is not planning any imminent withdrawal and expenditure of those funds. However, the City reserves its right withdraw and use the funds as appropriate.

The City has hired Patrick Lemp of Italia & Lemp as its appraiser, and he has commenced his work to value the property. Once Patrick completes his initial analysis, the parties and their appraisers can meet and attempt to agree on a tax assessment based on the fair market value of the property. That assessment will be implemented only if and after MGT actually abandons the Generating Station by relinquishing, not renewing and/or surrendering all of its permits.

Please contact me with any further questions.

Phil

From: Fisher, Timothy [<mailto:TFisher@McCarter.com>]
Sent: Sunday, August 05, 2012 7:56 AM
To: Small, Philip M.
Subject: RE: MGT - bond account, appraisal and negotiations schedule

Phil – can you give me an update?

- Tim

From: Fisher, Timothy

Sent: Friday, July 20, 2012 2:19 PM
To: 'Small, Philip M.'
Cc: Mahendra Churaman (Mahendra.Churaman@nrgenergy.com);
dmoore@meridenct.gov
Subject: MGT - bond account, appraisal and negotiations schedule

Good to talk with you, Phil. Can you get back to me on the points below that we discussed this afternoon?

With respect to the updated construction bond cost information, please provide us the bank and account name and number where the funds are held.

Also, please notify the City that we would strongly protest any expenditure of those funds or drawing on those funds during the course of our negotiations. As contemplated by the Settlement Agreement, MGT is contemplating a sale of the property. A new owner will most likely pursue development plans that call for different improvements from those secured by the construction bond funds. It would be economic waste to perform work in the near term that may be unnecessary or at least could be performed at lower cost as part of a new development.

As I mentioned, we expect to have an appraisal to share with the City in the weeks ahead. I understand that the City has chosen its appraiser and that he/she has commenced work. Can you provide us that person's name and company? (We have provided you with that information as to our appraiser.) Also, can you give us assurance that you expect your appraisal in time for our clients to negotiate the new assessment before October 1, 2012?

- Tim

Timothy Fisher // Partner
McCARTER & ENGLISH, LLP

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STAMFORD // WILMINGTON

.....
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NO. NNI-CV-05-4003243S

MERIDEN GAS TURBINE LLC) SUPERIOR COURT
)
) JUDICIAL DISTRICT OF NEW
) HAVEN AT MERIDEN
)
CITY OF MERIDEN) FEBRUARY 14, 2013

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO ENFORCE JUDGMENT**

Meriden Gas Turbines, LLC (“MGT”) respectfully submits this Memorandum of Law in support of its request that this Court enforce the Stipulated Judgment entered by this Court in this matter on November 20, 2008 (copy attached at Exhibit A).

Specifically, MGT requests that this Court enforce the terms of the Property Tax Payment Settlement Agreement (“Settlement Agreement”) (copy attached at Exhibit B) entered into by and between MGT and the defendant, City of Meriden (“City”) and incorporated by this Court in its Stipulated Judgment. MGT requests that the Court grant this motion and enforce the terms of the Settlement Agreement by ordering that a new tax assessment be established effective as of October 1, 2012, and that such assessment govern the tax due as of the next full Tax Year (as that term is defined in the Settlement Agreement) commencing July 1, 2013. The court derives its authority to enforce the Stipulated Judgment and the Settlement Agreement pursuant to its inherent equitable

authority to vindicate judgments. Avalonbay Cmtys., Inc. v. Plan and Zoning Comm'n of the Town of Orange, 260 Conn. 232, 241 (2002); Connecticut Pharm. Ass'n, Inc., et al. v. Anthony Milano, Sec'y, Office of Policy and Management, 191 Conn. 555, 558-59 (1983).

The Settlement Agreement governed the property tax treatment of property in Meriden (the "Site") where MGT intended to build an electric generating station ("Generating Station"). In response to changed market conditions, however, MGT has abandoned its plans for the Generating Station, and gave notice to the City to that effect on April 3, 2012. Pursuant to the Settlement Agreement, the property's valuation for tax assessment purposes reverts to the fair market value of the Site as of October 1, 2012, as if no Generating Station were planned. The Settlement Agreement further states that the taxes for the next full Tax Year (i.e. commencing July 1, 2013) are to be based on that October 1, 2012 valuation. The City, however, has refused to comply with those requirements of the Stipulated Judgment.

In furtherance of its motion, MGT states the following:

1. On April 3, 2012 MGT delivered, pursuant to paragraph 6 of the Settlement Agreement, a written Notice of Abandonment to the City one year prior to its planned "relinquishment or surrender (including its non-renewal or the

expiration without efforts to renew) of permits for construction and operation of the Generating Station.” *Letter from Judith Lagano, Vice President, Asset Management, NRG Energy, Inc., to Lawrence Kendzior, City Manager, The City of Meriden (Apr. 3, 2012)* (Attached hereto at Exhibit C).

2. The Settlement Agreement states that “upon delivery of the Notice of Abandonment, the City shall cease to regard the Site as a power generating facility property for all purposes effective beginning the next full Tax Year.” *Settlement Agreement §6*. The next full Tax Year after the April 3, 2012 Notice of Abandonment began July 1, 2012. *Settlement Agreement §2*. Thus, as of July 1, 2012 the City was no longer entitled to regard the Site as a power generating facility property.
3. The Settlement Agreement further states that “the parties shall work cooperatively and in good faith to cause a tax assessment to be established based upon the then fair market value of the real and personal property assuming the Site’s best and highest use other than use as a power generating facility as of the first property valuation date (i.e., October 1) occurring after the giving of the written notice.” *Settlement Agreement §6* (emphasis added).

The first valuation date following the giving of written notice on April 3, 2012 was October 1, 2012.

4. The City and MGT have commenced the effort to set the October 1, 2012 valuation, and both parties have obtained and exchanged appraisals of the Site effective as of October 1, 2012. On October 2, 2012 the City obtained and delivered to MGT an appraisal that sets the fair market value of the property as of October 1, 2012 as \$2,935,000 (Cover page and cover letter with statement market value attached as Exhibit D). (MGT contends that the fair market value as of that date was lower, but that difference is not relevant to this Motion.)
5. The Settlement Agreement further states that the “new tax amount shall be effective for the next succeeding full Tax Year after the effective date of the Notice of Abandonment.” *Settlement Agreement §6*. The “effective date” of the notice is one year from the delivery of the notice on April 3, 2012, i.e. April 3, 2013. That one year period is set by paragraph 6 of the Settlement Agreement which states that “MGT shall provide the City with a minimum of one (1) year prior written notice” before abandonment. *Settlement Agreement §6; Lagano Letter, supra*.

6. The effective date of the abandonment as being one year from the delivery of the notice is confirmed by paragraph 3 of the Settlement Agreement, which states that "MGT shall repay the entire remaining accrued and unpaid Deferred Amounts immediately upon the effective date of such abandonment." *Settlement Agreement* §3. MGT will pay the Deferred Amounts on April 3, 2013, the effective date of abandonment measured from the notice given one year before.
7. By stating that the "new tax amount shall be effective for the next succeeding full Tax Year after the effective date of the Notice of Abandonment," the Settlement Agreement is internally consistent. The next full Tax Year after April 3, 2013 commences on July 1, 2013. That is the same date as the Tax Year governed by the October 1, 2012 assessment.
8. Notwithstanding its obligation to set the assessment of the Site based on its fair market value on October 1, 2012, the City published its Grand List on January 31, 2013 (GIS cards for the property attached in Exhibit E) showing a valuation of the real property at the Site of \$141,072,800, nearly fifty times what the City itself contends is the actual fair market value of the property. (There is no personal property of any material amount at the Site.)

9. To date MGT has paid the City of Meriden over \$30 million in property taxes in the hopes that the project could be developed as a generating station, will pay another \$2,512,500 in deferred tax amounts on April 3, 2013, and has lost the benefit of all of those investments in the property.

The Timeline attached hereto as Exhibit F sets these events out in chronological order.

Notwithstanding the foregoing, the City of Meriden has breached the Settlement Agreement by issuing its October 1, 2012 Grand List showing a valuation of the Site contrary to the requirements of the Stipulated Judgment herein.

For the aforementioned reasons MGT requests that the Court enforce the Stipulated Judgment in this case by ordering that the tax assessment for the Site be established based on the property's value as of October 1, 2012, and that such assessment govern the taxes for the next full Tax Year thereafter, commencing July 1, 2013.

THE PLAINTIFF,
MERIDEN GAS TURBINES LLC

By:  _____

Timothy S. Fisher
Charles D. Ray
McCarter & English, LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
860-275-6700
Juris #41909

Its Attorneys



LAWRENCE J. KENDZIOR
CITY MANAGER

City of Meriden, Connecticut

OFFICE OF THE CITY MANAGER

142 East Main Street, City Hall

Meriden, CT 06450-5605

Telephone (203) 630-4123 • Fax (203) 630-4274

March 21, 2013

Stephen Cinoski
NRG Tax Department
NRG Energy Inc.
211 Carnegie Center
Princeton, NJ 08540

RE: Payment of Deferred Tax Amounts and Purported Surrendering or Relinquishment of Permits for Construction and Operation of Generating Station

Dear Mr. Cinoski:

The City of Meriden ("City") acknowledges receipt on March 21, 2013 of your March 20, 2013 letter enclosing a check of \$2,512,500 as the Deferred Payment under the Property Tax Payment Settlement Agreement ("Agreement") between the City and Meriden Gas Turbines, LLC ("MGT"). Your letter states that "MGT hereby relinquishes and surrenders permits for construction and operation of the Generating Station effective April 3, 2013."

As your letter implicitly recognizes, MGT may not abandon the Generating Station by relinquishing and surrendering its permits until April 3, 2013 at the earliest. Nor can MGT relinquish and surrender its permits through a letter to the City. Therefore, please be advised that the City will not deposit your Deferred Payment check until MGT has in fact relinquished and surrendered its permits on or after April 3, 2013.

Further, by depositing the check, the City is not waiving its right to the \$1,808,756 payment it believes is entitled to from MGT on July 1, 2013 pursuant to the Agreement, and which is the subject of current litigation between MGT and the City.

Very truly yours,

Lawrence J. Kendzior
City Manager

NO. NNI-CV-05-4003243S

MERIDEN GAS TURBINE LLC

v.

CITY OF MERIDEN

) SUPERIOR COURT

)

) JUDICIAL DISTRICT OF NEW HAVEN

) AT MERIDEN

)

) MARCH 25, 2013

STIPULATION

Plaintiff Meriden Gas Turbine LLC (“MGT”) and Defendant City of Meriden (“City”),
by their respective counsel, hereby stipulate to the following:

1. Both the prior lawsuit with MGT’s motion to enforce and MGT tax appeal on the real estate shall be transferred to the Tax Court docket of the Superior Court in New Britain, and MGT’s tax appeal on the personal property shall be transferred as well once it is filed.
2. The City will file its brief in opposition to MGT’s motion to enforce by April 5.
3. The City will withdraw its motion to dismiss now, with the understanding that if MGT has not completed the abandonment of the material permits, the City can reassert that motion. Once MGT has surrendered the material permits, the City shall stipulate that MGT has abandoned the Project for purposes of the Stipulated Judgment and Settlement Agreement.

4. Other than as noted in this paragraph, the City agrees that it will not assert any preconditions to MGT's abandonment of its permits or approvals and the City will not seek to assert any delay of the effective date of the abandonments including as a consequence of any claim that surrender of a permit requires agency approval or justified other agency action. While the City and MGT agree that the surrender or abandonment or relinquishment of those permits are effective for purposes of the abandonment provided for in Paragraph 6 of the Property Tax Settlement Agreement, the City and MGT reserve their rights as to any other claims or defenses regarding such permits and the surrender of such permits, including any claim that permit surrender does or does not require agency approval, or that any conditions or obligations may or may not survive surrender of any permit. No such claims or defenses are established or conceded by this agreement, and the parties will address such matters at another time or times. As to those the City may assert that MGT will have some continuing obligations under those permits even after they are abandoned, but those continuing obligations will not delay the effective date of the abandonment.

5. MGT will immediately inform the Siting Council in writing, with copies to counsel for the City, that the effective date of its surrender or relinquishment of its certificate is April 3, 2013.

The City does not and will not contend that any actions by the Siting Council can have the effect of delaying the date of abandonment for purposes of Paragraph 6 of the Property Tax Settlement Agreement.

PLAINTIFF,
MERIDEN GAS TURBINES LLC

DEFENDANT,
THE CITY OF MERIDEN

Dated: March 25, 2013

Dated: March 25, 2013

By: /s/ Timothy S. Fisher
Timothy S. Fisher
McCarter & English, LLP
185 Asylum Street
CityPlace I
Hartford, CT 06103
860-275-6700
Juris # 41909

By: /s/ Philip M. Small
Philip M. Small
Lee S. Sharp
Brown Rudnick LLP
185 Asylum Street, 38th Floor
Hartford, CT 06103
(860) 509-6575
Juris # 403862

Its Attorneys

Its Attorneys

CERTIFICATION

The undersigned hereby certifies that a copy of the foregoing was sent electronically and via U.S. Mail, postage prepaid to the following counsel of record this 25th day of March, 2013:

Timothy S. Fisher
Charles D. Ray
McCarter & English, LLP
185 Asylum Street
Hartford, CT 06103

/s/ Philip M. Small
Philip M. Small

61131024 v1-024513/0002



LAWRENCE J. KENDZIOR
CITY MANAGER

City of Meriden, Connecticut

OFFICE OF THE CITY MANAGER

142 East Main Street, City Hall

Meriden, CT 06450-5605

Telephone (203) 630-4123 • Fax (203) 630-4274

April 11, 2013

Mr. Stephen Cinoski
NRG Tax Department
NRG Energy Inc.
211 Carnegie Center
Princeton, NJ 08540

RE: Payment of Deferred Tax Amounts and Surrender or Relinquishment of Permits for Construction and Operation of Generating Station

Dear Mr. Cinoski:

This letter follows up on my March 21, 2013 letter to you responding to your March 20, 2013 letter to me. Your letter enclosed a check of \$2,512,500 as the Deferred Payment under the Property Tax Payment Settlement Agreement between the City and Meriden Gas Turbines, LLC ("MGT") and purported to relinquish and surrender MGT's permits for its Generating Station.

As my March 21 letter pointed out, MGT could not abandon the Generating Station by relinquishing and surrendering its permits until April 3, 2013 at the earliest, or by a letter to the City. Although over a week has passed since April 3, the City has still not received any information from MGT demonstrating that it has relinquished and surrendered its material permits for the Generating Station through filings with the appropriate regulatory agencies.

Given that April 3 has passed, the City will deposit your Deferred Payment check. In addition to the reservation of rights stated in my March 21, 2013 letter, by depositing the Deferred Payment check, the City is not waiving its right to contest whether and when MGT has relinquished and surrendered its material permits.

Very truly yours,

Lawrence J. Kendzior
City Manager

May 17, 2013

Via: Email psmall@brownrudnick.com

Philip M. Small
Brown Rudnick
CityPlace I
185 Asylum Street
Hartford, CT 06103

**Re: Relinquishment or Surrender of Permits for Construction and
Operation of a Generating Facility**

Charles D. Ray
Partner
T. 860.275.6774
F. 860.560.5981
cray@mccarter.com

Dear Attorney Small:

This letter is in response to your request that Meriden Gas Turbines LLC ("MGT") demonstrate its relinquishment or surrender of the material permits for the construction and operation of a combined cycle electricity generating station ("Generating Station") pursuant to the terms of the Property Tax Settlement Agreement between MGT and the City of Meriden ("City") and pursuant to the Stipulation signed by the parties and filed with the Court on March 26, 2013 ("Stipulation"). The Stipulation provides in part that "[o]nce MGT has surrendered the material permits, the City shall stipulate that MGT has abandoned the Project of purposes of the Stipulated Judgment and Settlement Agreement."

Review of the relevant records reveals that all of the material permits associated with construction and operation of the Generating Station either: 1) have been relinquished; 2) have been surrendered; 3) have not been renewed; or 4) have previously expired. Accordingly, we hereby request that the City, in accordance with its obligations under the Stipulation, provide its stipulation that MGT has abandoned the Project for purposes of the Stipulated Judgment and Settlement Agreement.

In this regard and more particularly, the following are permits/approvals that have expired and/or have been relinquished or surrendered by MGT and/or have previously expired:

- Town of Berlin Approvals
 - Berlin Planning and Zoning Commission
 - Site Plan Approval for a Utility (GIS) Substation. **Issued 12/16/1999 and now expired.**

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PHILADELPHIA

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WILMINGTON

Philip M. Small, Esq.
May 17, 2013
Page 2

- Section 8-24 approval to grant easement to install a water pipeline. **Relinquished or surrendered by April 4, 2013 correspondence (copy attached).**
- Berlin Zoning Board of Appeals
 - Special Permit for a proposed gas insulated switchgear facility. **Issued 11/29/1999 and now expired.**
- Berlin Inland Wetlands
 - Permit for Joint Utility Corridor. **Approved 10/5/1999 and now expired.**
- City of Meriden
 - Meriden Planning Commission
 - Site Plan Approval. **Expired.**
 - Meriden Inland Wetlands and Watercourse Commission
 - Declaration of Minor Activity. **Expired.**
 - Declaration of Minor Activity and Approval of Subdivision and Roadway. **Expired.**
 - Approval Letter for Joint Utility Corridor. **Expired and relinquished or surrendered by April 3, 2013 correspondence (copy attached).**
 - Meriden Department of Public Works Public Utility Commission
 - Conceptual Approval for Connection to Municipal Wastewater System. **Relinquished or surrendered by April 3, 2013 correspondence (copy attached).**
 - Other
 - Water and Sewer Agreement by and between City of Meriden and Meriden Power Company. **Relinquished or surrendered by April 3, 2013 correspondence (copy attached).**
 - Variance for Equipment Storage. **Expired and not material (copy of certificate attached).**
 - Site Plan Approval for New Laydown Area. **Expired.**

Philip M. Small, Esq.
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Page 3

- Wetlands Approval for Equipment Storage and Ass. Access Road. **Expired and/or not material.**
- Building permits. **Not Material.**
- State of Connecticut
 - Connecticut Siting Council
 - Docket 190 and 190A Certificate of Environmental Compatibility and Public Need. **Relinquished or surrendered by correspondence dated March 20, 2013; March 25, 2013, and March 26, 2013 (copies attached).**
 - Department of Energy and Environmental Protection
 - Air Permit. Permit No. 100-0088-Stack 1; Permit No. 100-0089-Stack 2. **Permit revoked effective 4/5/2013 (copy attached).**
 - General Permit Registration for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities and Application. **Not applicable due to construction inactivity.**
 - Water Diversion Permit. **Relinquished or surrendered by April 3, 2013 correspondence (copy attached).**
 - Connecticut River Watershed Council
 - Enhancement Agreement. **Relinquished or surrendered by April 3, 2013 correspondence (copy attached).**
- Federal
 - National Railroad Passenger Corporation.
 - License Agreement. **Relinquished or surrendered by March 25, 2013 correspondence (copy attached).**
 - EPA
 - CAMD Status. **Cancelled 4/5/2013.**

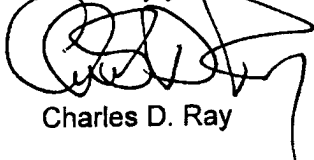
Philip M. Small, Esq.
May 17, 2013
Page 4

- o Army Corps of Engineers
 - Fill Permit. **Expired.**

Given the foregoing, all permits have been relinquished or surrendered (to the extent possible), have expired, or are not material. MGT is not aware of any material permits or approvals that are still in full force and effect and that it has not relinquished or surrendered. Moreover, as indicated in its letter dated September 26, 2012, to the City, MGT has launched a sale process for the Meriden site and MGT clearly has no intention of ever building a generating station at the Meriden site.

Given the foregoing and in accordance with the Stipulation, please provide me with the City's stipulation that MGT has abandoned the material permits and has also abandoned the Project for purposes of the Stipulated Judgment and Settlement Agreement.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Charles D. Ray', written over a circular stamp or mark.

Charles D. Ray

Enclosures

Proposed Exhibit CITY-13
Property Tax Payment Settlement Agreement
(without exhibits)

PROPERTY TAX PAYMENT SETTLEMENT AGREEMENT

THIS PROPERTY TAX PAYMENT SETTLEMENT AGREEMENT (the "Settlement Agreement") is made and entered into by and between Meriden Gas Turbines LLC, a Delaware limited liability company ("MGT"), and the City of Meriden, Connecticut ("City") a Connecticut municipal corporation as of the Effective Date (as defined in paragraph 13 below).

WHEREAS, MGT intends to construct, install, own and operate at a location on the extension of South Mountain Road from its intersection with the Chamberlain Highway, in the City of Meriden, Connecticut (the "Site"), a combined cycle electricity generating station with a Summer Seasonal Claimed Capability of 510 MW, including all structures, equipment, fixtures, machinery and appurtenances related thereto and used in connection therewith (the "Generating Station"); and

WHEREAS, MGT and the City entered into a Property Tax Payment Agreement, a copy of which is attached hereto as Exhibit "A", on or about October 29, 2001 (the "Agreement"); and

WHEREAS, on September 30, 2004 MGT notified the City that it was terminating the Agreement and the City thereafter informed MGT it was rejecting the MGT termination; and

WHEREAS, on May 24, 2005, MGT filed suit against the City in the Connecticut Superior Court, Judicial District of New Haven at Meriden (and assigned Docket Nos. NNI-CV-0504003243S and NNI-CV-0504003244S), seeking, among other relief, a declaratory judgment that the Agreement was properly terminated (the "Litigation"); and

WHEREAS, after extensive discussions, MGT and the City have entered into this Settlement Agreement to resolve the Litigation; and

WHEREAS, each of MGT and the City acknowledges and believes that the Agreement and the Settlement Agreement comply with applicable Connecticut law, including Connecticut General Statutes § 32-71a(a) (Section 86 of Connecticut Public Act 01-09); and

WHEREAS, each of MGT and the City represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement and that this Agreement constitutes a legal, valid and enforceable obligation.

NOW THEREFORE, it is hereby agreed as follows:

1. Retention of Tax Payments. The City shall retain all tax payments made by, for or on behalf of MGT subsequent to the execution of the Agreement in full satisfaction of any and all tax payments, interest or penalties due under the terms of the Agreement or as otherwise assessed by the City through and including Year 7 of the Payment Schedule in Exhibit B to the Agreement ("Exhibit B") and/or the 2007 Grand List (Tax Year 7/1/08-6/30/09) for the real and personal property comprising the Generating Station or located at or on the Site. No additional tax payments, interests or penalties shall be due for any prior tax year.

2. Revised Payments. For so long as MGT has not submitted a Notice of Abandonment (as defined in Paragraph 6 below) to the City and prior to the earlier of (a) the first day of the Exhibit B Year after Recommencement of Construction (as defined below) or (b) the first day of Exhibit B Year 13 (Tax Year 7/1/14 – 6/30/15) (such date, the "Exhibit B Resumption Date"), MGT shall make the following indicated payments ("Revised Payments") to the City, in full satisfaction (except as provided in Paragraph 3 with respect to the Deferred Amount) of all real and personal property taxes due and payable on the subject real and personal property on the Site under the terms of the Agreement or as otherwise assessed by the City:

Exhibit B Year	Payment Due Date	Tax Year	Revised Payment Amount	Deferred Amount
8	7/1/2009	7/1/09 – 6/30/10	\$2,331,600	\$ 450,000
9	7/1/2010	7/1/10 – 6/30/11	\$2,012,916	\$ 625,000
10	7/1/2011	7/1/11 – 6/30/12	\$1,919,545	\$ 687,500
11	7/1/2012	7/1/12 – 6/30/13	\$1,826,491	\$ 750,000
12	7/1/2013	7/1/13 – 6/30/14	\$1,808,756	\$ 775,000

For greater certainty, the July 1, 2009 payment shall correspond to and be in lieu of the required Exhibit B Year 8 payment and/or the 2008 Grand List assessment (Tax Year 7/1/09-6/30/10). A payment on July 1, 2010 under this paragraph shall correspond to the required Exhibit B Year 9 payment and the 2009 Grand List (Tax Year 7/1/10-6/30/11), etc. For the purposes of this Settlement Agreement, "Recommencement of Construction" shall mean the delivery to the Site hereafter of at least one of the following major components of the Generating Station: a gas turbine, a steam turbine, a complete heat recovery steam generator, or a generator step-up transformer unit.

3. Deferred Payment Amounts. For each Exhibit B Year that a Revised Payment is made, the associated Deferred Amount shall be accrued and, beginning with the Exhibit B Resumption Date, repaid without interest in equal installments over five (5) years ("Deferred Payment Installments") on each date normally scheduled for payments under the Agreement. If MGT has submitted a Notice of Abandonment pursuant to Paragraph 6, or if the Generating Station, the Site or MGT shall be sold,

prior to the end of the term of the Agreement, MGT shall repay the entire remaining accrued and unpaid Deferred Amounts immediately upon the effective date of such abandonment or upon the date of such sale. MGT shall provide the City security for any accrued and unpaid Deferred Amounts in the form of: (a) a letter of credit from a bank with a minimum credit rating of AA- (by a nationally recognized rating agency such as Moody's or Standard & Poors) in a form reasonably acceptable to the City or (b) a corporate guarantee from NRG Energy Inc. in the form attached as "Exhibit B" to this Settlement Agreement.

4. Reversion to Exhibit B Payment Schedule. Beginning with the payment due on the Exhibit B Resumption Date, all remaining payments under the Agreement shall revert to the tax payment schedule in Exhibit B of the Agreement (plus the Deferred Payment Installments as indicated in Section 3 above).
5. Generating Station Capacity. To the extent the Generating Station that becomes commercially operational varies in net megawatt ("MW") output by more than 10% from that described in the Agreement, the tax payments shall be revised by scaling the remaining annual payments up or down in accordance with the following formula:

$$\text{New annual tax payment} = \text{Original annual tax payment} * (\text{Summer Seasonal Claimed Capability established upon commercial operation date} / 510\text{MW}).$$

6. Notice of Abandonment. MGT shall provide the City with a minimum of one (1) year prior written notice (the "Notice of Abandonment") before its relinquishment or surrender (including its non-renewal or the expiration without efforts to renew) of permits for construction and operation of the Generating Station (to the extent such permits may be relinquished or surrendered or expire); provided, however, that MGT shall not be required to relinquish its rights with respect to interconnection in connection with the foregoing. Upon delivery of the Notice of Abandonment, the City shall cease to regard the Site as a power generating facility property for all purposes effective beginning the next full Tax Year. The parties shall work cooperatively and in good faith to cause a tax assessment to be established based upon the then fair market value of the real and personal property assuming the Site's best and highest use other than use as a power generating facility as of the first property valuation date (i.e., October 1) occurring after the giving of the written notice. The new tax amount shall be effective for the next succeeding full Tax Year after the effective date of the Notice of Abandonment. Additionally, the termination provisions set forth in Section 14 of the Agreement shall remain in full force and effect; provided, however, prior to the commercial operation date of the Generating Station, MGT may only terminate the Agreement pursuant to Section 14 if the conditions of this Paragraph 6 are met. Additionally, the provisions of this Settlement Agreement shall survive any termination of the Agreement by MGT under Section 14 thereof.

7. Buyer Credit Requirements. With respect to any sale of the Generating Station, the Site or MGT, the buyer must meet minimum credit requirements to be established by the parties, unless the Generating Station Project has been abandoned pursuant to Paragraph 6 and the required permits or approvals have expired or been surrendered, relinquished or not renewed. MGT shall notify the City in writing within seven (7) days of the execution of a binding purchase and sale document with respect to the Generating Station, the Site or MGT. Additionally, MGT shall provide the City written notice at the time of launch of a sale process related to MGT, the Generating Station or the Site that involves negotiation simultaneously with more than two potential buyers, a public auction or general solicitation. The City agrees to keep this information confidential to the extent permitted by law.

8. Quarterly Reporting. MGT shall provide the City with a written quarterly report discussing the status of its efforts to secure a commercially operational Generating Station Project. Provision of the reports shall be a condition of this Settlement Agreement, which also serves to settle the parties pending litigation, and the City shall, to the extent permitted by law, keep these reports confidential.

9. Construction Bonds. Upon satisfaction of Planning Commission conditions, the City shall release all bonds or other security (totaling approximately \$600,000 as of the Effective Date) posted by or on behalf of MGT for roadway construction, subdivision improvements and other improvements related to the Site. The City agrees that, upon the Effective Date, the City and MGT shall commence good faith discussions concerning whether any Planning Commission conditions remain unsatisfied. In any event, no later than thirty (30) days from the Effective Date, the City shall notify MGT in writing of any such unsatisfied conditions that prevent the release of the referenced bonds. If the parties are unable to agree on the remaining unfulfilled conditions within 30 days after delivery of this notice or if the parties agree that the cost of satisfaction of the remaining conditions may exceed the value of the bonds, the City may draw upon the bonds in full satisfaction of any and all MGT obligations in respect of roadway construction and subdivision improvements.

10. Visual Impacts. Upon the Effective Date, the City and MGT shall commence good faith discussions to identify and attempt to agree upon reasonable and commercially feasible options for mitigating the visual impact of the Generating Station project on the community. The parties shall implement any such mutual agreement on this matter upon Notice of Abandonment or, if earlier, as soon as practicable after Recommencement of Construction. Any agreed upon activities to mitigate visual impacts shall be incorporated into updates to the Development and Management Plan submitted to the Connecticut Siting Council ("CSC") and shall be subject to CSC's final approval.

11. Stipulated Judgment. This Settlement Agreement, and the settlement reflected herein, shall be memorialized in a stipulated judgment and the parties shall request a determination by the Superior Court that the Agreement, as modified by this Settlement Agreement and the referenced Stipulated Judgment, complies with Connecticut General Statutes Section 32-71a(a).

12. Notices. All notices, reports and other communications required under this Settlement Agreement shall be in writing and shall be made in accordance with the requirements set out in Section 13 of the Agreement.

13. Mutual Covenants and Releases.

a. Release.

i. As of the Effective Date (as defined below) and in consideration of this Settlement Agreement, each of Meriden Gas Turbines LLC on its own behalf and on behalf of each of its respective former, current and future partners, successors, subsidiaries and affiliates, and their respective parent entities, affiliates, stockholders, officers, directors, principals, advisors, employees and agents (collectively, the "MGT Releasing Parties") hereby releases and forever discharges the City of Meriden, Connecticut, all of its former, current, and future subsidiaries and affiliates and successors and its respective managers, elected officials, boards, commissions, tax assessors and tax collectors, employees and agents (collectively, the "City Released Parties") against and from all liabilities, damages, losses, claims, demands, suits, costs and expenses (collectively "Liabilities") to MGT's Releasing Parties, arising out of or relating to the Property Tax Payment Agreement, including any real and personal property taxes due the City by MGT, from the date of the Agreement through and including the date of this Settlement Agreement.

ii. As of the Effective Date (as defined below) and in consideration of this Settlement Agreement, the City of Meriden, Connecticut on its own behalf and on behalf of each of its respective former, current and future subsidiaries and affiliates and successors and its respective managers, elected officials, boards and commissions, tax assessors and tax collectors, employees and agents (collectively, the "City Releasing Parties") hereby releases and forever discharge each of Meriden Gas Turbines LLC on its own behalf and on behalf of each of its respective former, current and future partners, successors, subsidiaries and affiliates, and their respective parent entities, affiliates, stockholders, officers, directors, principals, advisors, employees and agents (collectively, the "MGT Released Parties") against and from all Liabilities to City Releasing Parties, arising out of or relating to the Property Tax Payment Agreement, including any real and personal property taxes due the City by MGT, from the date of the Agreement through and including the date of this Settlement Agreement.

iii. The MGT Releasing Parties and the City Releasing Parties are herein collectively referred to as the "Releasing Parties", and the MGT Released Parties and the City Released Parties are herein referred to collectively as the "Released Parties."

iv. The releases provided in this Paragraph 12(a) do not extend to or affect the rights of the Releasing Parties to enforce this Settlement Agreement against the Released Parties.

b. Covenant Not to Sue.

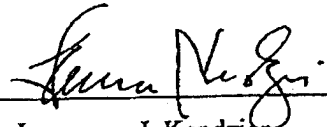
i. As of the Effective Date, each of the Releasing Parties covenants and agrees with respect to any matters released pursuant Section 12(a) above not to (a) seek indemnification or contribution from any Released Party, (b) initiate legal action against any Released Party, or (c) implead or interplead any Released Party in any legal action initiated by any governmental authority, any third party or otherwise; provided however, that nothing in this Agreement shall affect the ability of the Releasing Parties to take testimony or other discovery, or to compel testimony, from the Released Parties.

ii. The covenants described in Paragraph 13.b.i shall run between all Releasing Parties, on the one hand, and all Released Parties, on the other hand. These covenants do not apply to any Liabilities arising from a failure of MGT and/or the City to meet a requirement of this Settlement Agreement or to any action or failure to act occurring under the Agreement or this Settlement Agreement occurring on or after the Effective Date. This covenant cannot be relied on by any other person or entity.

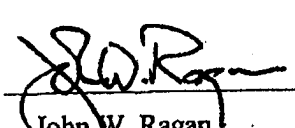

14. Effective Date. Notwithstanding anything to the contrary, this Settlement Agreement shall become effective upon the date of approval by the Connecticut Superior Court of a Stipulated Judgment, which judgment shall include as an exhibit a fully executed copy of this Settlement Agreement, settling the Litigation between the parties (the "Effective Date").
15. Definitions and Defined Terms. All capitalized terms not otherwise defined in this Settlement Agreement shall have the meaning ascribed to them in the Agreement.
16. The Agreement. As of the Effective Date, all remaining contingencies under the Agreement shall be waived and released with the result that the Agreement, as modified and amended by this Settlement Agreement and the Stipulated Judgment, shall be deemed to be in full force and effect.
17. July 7, 2008 Order. Also as of the Effective Date, all amounts due and owing under orders entered into the record in the Litigation on July 7, 2008 shall be deemed fully paid as part of the amounts paid under this Settlement Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Settlement Agreement by their duly authorized representatives as of the day and year first written above

CITY OF MERIDEN, CONNECTICUT

By: 
Lawrence J. Kendzior
Its: City Manager

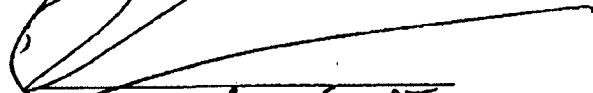
MERIDEN GAS TURBINES LLC

By:  
John W. Ragan
Its: President

ACKNOWLEDGEMENTS

State of Connecticut)
) ss At: Meriden *New Britain*
County of New Haven)

The foregoing instrument was acknowledged before me this 20th day of November, 2008, by Lawrence J Kendzior, City Manager of Meriden, a municipal corporation, on behalf of said corporation as the free act and deed of the City and his free act and deed in such capacity.


Notary Public *Comm. Exp. CT*

State of New Jersey)
) ss At: Princeton
County of)

The foregoing instrument was acknowledged before me this 18th day of November, 2008, by John W. Ragan, President of Meriden Gas Turbines LLC, a limited liability company, on behalf of said limited liability company as the free act and deed of Meriden Gas Turbines LLC and his free act and deed in such capacity.


Notary Public

LISA A. CALCAGNO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/19/2012