

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

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September 24, 2013

Andrew W. Lord, Esq.
Murtha Cullina LLP
CityPlace I, 185 Asylum Street
Hartford, CT 06103-3469

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

RE: **DOCKET NO. 190B** – Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW combined cycle generating plant in Meriden, Connecticut. Reopening of this docket pursuant to Connecticut General Statutes § 4-181a(b) limited to Council consideration of changed conditions and Decommissioning Plan.

Dear Attorneys Lord and Small:

By its Decision and Order dated September 19, 2013, the Connecticut Siting Council (Council) found changed conditions in the above referenced matter and acknowledges the surrender of the Certificate subject to documentation of compliance with the Council's original Certificate and Development and Management Plan Conditions, to the extent practicable and to the satisfaction of the Council.

Enclosed are the Council's Findings of Fact, Opinion, Conclusions of Law, and Decision and Order.

Very truly yours,

Melanie Bachman
Acting Executive Director

MB/cm

Enclosures (4)

c: Parties and Intervenors (without Certificate enclosure)
State Documents Librarian (without Certificate enclosure)

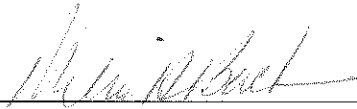
STATE OF CONNECTICUT)

ss. New Britain, Connecticut :

COUNTY OF HARTFORD)

I hereby certify that the foregoing is a true and correct copy of the Findings of Fact, Opinion, and Decision and Order issued by the Connecticut Siting Council, State of Connecticut.

ATTEST:



Melanie Bachman
Acting Executive Director
Connecticut Siting Council

I certify that a copy of the Findings of Fact, Opinion, and Decision and Order in Docket No. 190B has been forwarded by Certified First Class Return Receipt Requested mail, on September 24, to all parties and intervenors of record as listed on the attached service list, dated September 18, 2013.

ATTEST:



Carriann Mulcahy
Secretary II
Connecticut Siting Council

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Certificate Holder	Meriden Gas Turbines, LLC	<p>Andrew W. Lord, Esq. Murtha Cullina LLP CityPlace I, 185 Asylum Street Hartford, CT 06103-3469 (860) 240-6180 alord@murthalaw.com</p> <p>Raymond G. Long Director, Government Affairs NRG Energy, Inc. Middletown Station P.O. Box 1001 1866 River Road Middletown, CT 06457 ray.long@nrgenergy.com</p> <p>Judith Lagano. NRG Energy, Inc. Manresa Island Avenue South Norwalk, CT 06854 judith.lagano@nrgenergy.com</p> <p>NRG Energy, Inc. Mahendra Churaman, Esq. 211 Carnegie Center Princeton, NJ 08540 mahendra.churaman@nrgenergy.com</p>
Intervenor	The Connecticut Light and Power Company	<p>Stephen Gibelli, Esq. Associate General Counsel The Connecticut Light & Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5513 Gibels@nu.com</p>

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Intervenor	The Connecticut Light and Power Company	<p>John R. Morissette Manager-Transmission Siting and Permitting The Connecticut Light & Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2036 morisjr@nu.com</p> <p>Christopher R. Bernard Manager, Regulatory Policy (Transmission) The Connecticut Light & Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5967 bernacr@nu.com</p> <p>Elizabeth Maldonado Senior Counsel Northeast Utilities Service Company 107 Selden Street Berlin, CT 06037 Elizabeth.maldonado@nu.com</p>
Intervenor	Rivers Alliance of Connecticut Farmington River Watershed Association	<p>Eric Hammerling, President Rivers Alliance of Connecticut P.O. Box 1797 Litchfield, CT 06759</p> <p>Kevin Case Farmington River Watershed Association 749 Hopmeadow Street Simsbury, CT 06070</p>
Party	Quinnipiac River Watershed Association	<p>Mary Mushinsky Executive Director Quinnipiac River Watershed Association P.O. Box 2825 Meriden, CT 06450 (203) 237-2237 (phone and fax) qrwa@sbcglobal.net</p>
Party (Approved on April 18, 2013)	City of Meriden	<p>Philip M. Small Scott A. Muska Brown Rudnick LLP CityPlace I, 185 Asylum Street Hartford, CT 06103 psmall@brownrudnick.com smuska@brownrudnick.com</p>

		Deborah L. Moore City Attorney City of Meriden 142 East Main Street Meriden, CT 06450 dmoore@meridenct.gov
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<p>DOCKET NO. 190B – Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW combined cycle generating plant in Meriden, Connecticut. Reopening of this docket pursuant to Connecticut General Statutes § 4-181a(b) limited to Council consideration of changed conditions and Decommissioning Plan.</p>	<p>} Connecticut } Siting } Council } September 19, 2013</p>
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Findings of Fact

Introduction

1. On April 27, 1999, pursuant to Connecticut General Statutes §16-50k, the Connecticut Siting Council (Council) granted a Certificate of Environmental Compatibility and Public Need (Certificate) to PDC-El Paso Meriden LLC (PDC-El Paso) for the construction, operation and maintenance of a 530-megawatt (MW) combined-cycle electric generating facility (Facility) in Meriden, Connecticut. In 2001, NRG Energy, Inc. (NRG) acquired majority stock ownership of PDC-El Paso and changed the name of the Certificate Holder to Meriden Gas Turbines, LLC (MGT), a wholly-owned subsidiary of NRG. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 25)
2. On March 18, 2013, the Council received a Petition from the City of Meriden (City) to Reopen and Modify the Decision and Order in Docket No. 190 Due to Changed Conditions and for Party Status (City Petition to Reopen). The changed condition cited by the City was MGT’s planned abandonment of the Facility. In its petition, the City requested that the Council reopen Docket 190 and modify its Decision to require MGT to remove the Turbine building and other structures, and to submit and implement a Project Decommissioning Plan. (City 1, pp. 1-2)
3. On March 22, 2013, the Council issued a memorandum to parties and intervenors to the original Docket 190 proceeding requesting comments or statements of position in writing to the Council with respect to whether the City Petition to Reopen should be granted or denied on or before the close of business on April 5, 2013. The memorandum also stated that the City Petition to Reopen would be placed on the Council meeting agenda scheduled for April 18, 2013 for Council consideration. (CSC Memorandum re Docket 190, dated March 22, 2013)
4. The City submitted comments to the Council on April 5, 2013 requesting the Council to reject MGT’s claim that its surrender of the Certificate moots the City Petition to Reopen, and to grant the City Petition to Reopen. (City of Meriden letter to Chairman Stein, dated April 5, 2013)
5. MGT submitted comments to the Council on April 5, 2013 requesting the Council to dismiss the City Petition to Reopen for lack of jurisdiction or requesting the Council to deny the City Petition to Reopen because the City has not proven that MGT’s surrender of the Certificate constitutes a changed condition. (MGT 4, p.5)
6. At a meeting held on April 18, 2013, the Council voted to reopen the Docket 190 proceeding and to grant the City party status. The reopened proceeding, which was captioned as Docket 190B, was to be limited to consideration of changed conditions and a Decommissioning Plan. (CSC Memorandum re Docket 190B, dated April 19, 2013)

7. Pursuant to C.G.S. § 16-50m, the Council, after giving due notice thereof, held a public hearing on June 4, 2013, beginning at 3:00 p.m. in the Council Chambers in the Meriden City Hall, 145 East Main Street, Meriden, Connecticut. (Council's Hearing Notice dated May 3, 2013; Transcript 06/04/13, 3:05 p.m. [Tr. 1], p. 3; Transcript 06/04/13, 7:04 p.m. [Tr. 2], p. 5)
8. The evidentiary hearing was continued on July 16, 2013 at the office of the Council, 10 Franklin Square, New Britain, Connecticut. (Transcript 07/16/13 [Tr. 3], p. 4)
9. The Council and its staff conducted a public field review. The following locations within the City of Meriden were visited: Preston Avenue overpass over I-691; Quiet Brook Court; South Mountain Road; and Broadview Terrace. (Council Field Review Notice, dated May 24, 2013)
10. For the field review, MGT did not grant access to its site, only to the access road as far as the gate of the fence enclosing the site. (Tr. 1, pp. 40, 70, 87-88)
11. The parties to this proceeding are MGT and the City. (Tr. 1, pp. 6-7)
12. Other parties and intervenors were those who participated in the original Docket 190 proceeding. They included the Quinnipiac River Watershed Association as a party and The Connecticut Light and Power Company (CL&P) and Rivers Alliance of Connecticut/Farmington River Watershed Association as intervenors. The City was not a party to the original Docket 190 proceeding, the Docket 370B proceeding or the Docket 190A proceeding. (For a description of these latter two dockets, see the *Reopenings* section of these Findings of Fact) (Tr. 1, pp. 6-7, 89; Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 25; Council Administrative Notice Item No. 29)
13. Public notice of the hearing was published in the Meriden Record Journal. (Council Hearing Package dated May 3, 2013; Record)

State Agency Comments

14. Pursuant to General Statutes §16-50j (h), on May 3, 2013 and July 18, 2013, the following state agencies were requested to submit written comments regarding the reopened proceeding: Department of Energy and Environmental Protection (DEEP); Department of Agriculture; Department of Public Health; Council on Environmental Quality; Public Utilities Regulatory Authority; Office of Policy and Management; Department of Economic and Community Development; Department of Emergency Services and Public Protection; Department of Consumer Protection; Department of Labor; Department of Construction Services; Department of Transportation and the Connecticut Airport Authority. (Council Hearing Package, dated May 3, 2013; CSC Memorandum Re State Agency Comments, dated July 18, 2013)
15. No comments from any state agencies were received. (Record)

Agreements between MGT and the City of Meriden

16. On October 29, 2001, the City and MGT entered into a Property Tax Payment Agreement (Payment Agreement). Section 14 of the Payment Agreement states, "...MGT shall have the right to terminate this Agreement at any time by giving written notice to the City in the event that for any or no reason the Generating Station is decommissioned or otherwise permanently shut down and removed from service." (MGT 6, Response 1 – Attachment Property Tax Payment Agreement, Exhibit A; City 10, Response 8)
17. The City and MGT entered into a Property Tax Payment Settlement Agreement (Settlement Agreement) that has an Effective Date of November 20, 2008. Paragraph 6 of the Settlement Agreement states, "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... 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." (MGT 6, Response 1 – Attachment Property Tax Payment Settlement Agreement; City 10, Response 8)
18. Paragraph 6 of the Settlement Agreement also states, "... the termination provisions set forth in Section 14 of the [Payment] 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 [Payment] Agreement pursuant to Section 14 if the conditions of this Paragraph 6 are met." (MGT 6, Response 1 – Attachment Property Tax Payment Settlement Agreement; City 10, Response 8)
19. Paragraph 10 of the Settlement Agreement states, "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..." (MGT 6; Response 1 – Attachment Property Tax Settlement Agreement; City 10, Response 8)
20. As part of the original site plan and subdivision approvals issued by the City for the MGT facility in September 1998, the City required MGT to provide cash bonds that originally totaled \$1,886,490. In 2003, the City Planning and Zoning Commission reduced the cash bonds at the request of MGT and in response to MGT's completion of a substantial portion of the site work. The balance of the bonds held by the City as of May 30, 2012 was \$693,620. (Council Administrative Notice Item No. 24; Tr. 1, p. 96; City 8, p.13; City 10, Response 7)
21. Paragraph 9 of the Settlement Agreement states, "... no later than thirty (30) days from the Effective Date, the City shall notify MGT in writing of any unsatisfied conditions that prevent 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." (MGT 6, Response 1 – Attachment Property Tax Payment Settlement Agreement; City 10, Response 8; Tr. 1, pp. 95-101; Tr. 3, p. 201)

22. Since 2003, the City has not released or drawn upon the balance of the bonds. (Tr. 1, pp. 81-84; City 5; City 8, pp. 13-15; Tr. 3, pp. 144-145)
23. The City's position is that the balance of the bonds is not sufficient to cover the work the City seeks to have completed by MGT. (Tr. 1, p. 82; Tr. 3, pp. 21-24)

Certificate Status

Jurisdiction, General

24. The Council has jurisdiction over electric generating facilities pursuant to C.G.S. §16-50i(a)(3) of the Public Utility Environmental Standards Act. Under C.G.S. §16-50k, "... no person shall... commence the preparation of the site for, commence the construction or supplying of a facility... that may, as determined by the Council, have a substantial adverse environmental effect in the state without first having obtained a certificate of environmental compatibility and public need... issued with respect to such facility... by the Council." (C.G.S. §16-50i(a)(3); C.G.S. §16-50k(a))
25. MGT was issued a Certificate by the Council on April 27, 1999 for the construction, maintenance and operation of a 530 MW combined cycle electric generating facility located in the City of Meriden. The Certificate is valid until April 27, 2016. No condition of the Certificate requires a decommissioning plan. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 25; Tr. 1, p. 90; Tr. 3, p. 72)

Jurisdiction, Certificate Surrender

26. MGT's April 27, 1999 Certificate for Docket 190 contains Condition 4(d), which states, "The Certificate Holder shall provide the Council notification of the following events not less than two weeks in advance of their occurrence: ... permanent termination of any operation of the project." (Council Administrative Notice Item No. 24)
27. MGT's April 27, 1999 Certificate for Docket 190 was modified in Docket 190A on March 3, 2011 at which time additional conditions were attached to the Certificate, including Condition 14, which states, "Not less than 30 days in advance, the Certificate Holder or facility owner/operator shall provide the Council with written notice that the facility plans to cease operation." (Council Administrative Notice Item No. 25)
28. On May 8, 1989, in Docket 96, the Council issued a Certificate to Killingly Energy Limited Partnership for the construction of a 32.2 MW wood burning electric generating facility in Killingly, Connecticut. (Council Administrative Notice Item No. 20)
29. On November 22, 1989, in Docket 103, the Council issued a Certificate to Bio-Gen Torrington Partnership for the construction of a 15 MW wood burning electric generating facility in Torrington, Connecticut. (Council Administrative Notice Item No. 21)

30. In 1992, the Certificate Holders for the two wood burning electric generating facilities approved by the Council in Docket 96 and Docket 103 notified the Council in writing that the Certificate Holders ceased efforts to develop the facilities due to the provisions of Public Act 92-13, "An Act Concerning Transportation Management Programs Required Under the Clean Air Act and Wood-Burning Facilities," and therefore surrendered their Certificates. (Council Administrative Notice Item No. 20; Council Administrative Notice Item No. 21)
31. The Certificates for Docket 96 and Docket 103 contained a condition that stated, "The Certificate Holder shall notify the Council, and all parties and intervenors, when operations terminate." (Council Administrative Notice Item No. 20; Council Administrative Notice Item No. 21)
32. The requests to surrender the Certificates in Docket 96 and Docket 103 were discussed and acknowledged by the Council during regular meetings held in 1992. (Council Administrative Notice Item No. 20; Council Administrative Notice Item No. 21)
33. MGT is not familiar with the Council's discussion and acknowledgment of the surrender of the certificates in Docket 96 and Docket 103. (Tr. 3, p. 112)

Requests for Extensions

34. Condition 7 of the Council's April 27, 1999 D&O in Docket 190 states, "Unless otherwise approved by the Council, this Decision and Order shall be void if all construction authorized herein is not completed within four years of the effective date of this Decision and Order or within four years after all appeals to this Decision and Order have been resolved." (Council Administrative Notice Item No. 24)
35. On October 22, 2002, the Council approved a request filed by MGT for an extension of the Certificate to April 27, 2006. On February 22, 2006, the Council approved a second request filed by MGT for an extension of the Certificate to April 27, 2011. On March 3, 2011, the Council approved a third request filed by MGT for an extension of the Certificate to April 27, 2016. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 25)

Reopenings

Docket 370B

36. On March 19, 2009, in response to the Connecticut Energy Advisory Board Request for Proposals for Non-Transmission Alternatives pursuant to Connecticut General Statutes §16a-7c, NRG submitted an application pursuant to Connecticut General Statutes §16-50/(a)(3) requesting that the Council consider NRG's Meriden project as an alternative to CL&P's application for the Greater Springfield Reliability Project (GSRP). NRG's competing application was captioned as Docket 370B. (Council Administrative Notice Item No. 29)
37. During the proceedings held on Docket 370B, NRG described a series of external events that precluded completion of construction of the MGT facility. These events included simultaneous crises of the Enron bankruptcy, the Arthur Andersen scandal, the major regulatory entrenchment in the California wholesale energy market and the bankruptcy of many wholesale merchant power producers, including NRG in 2002-2003. Since NRG emerged from bankruptcy, it remained

committed to completing the MGT facility and actively pursuing off-take contracting opportunities to help secure financing for the MGT facility. (Council Administrative Notice Item No. 29, Response to CL&P Interrogatories No.17; Tr. 1, p. 93)

38. In the final decision for Docket 370B, the Council denied the NRG application, as the Council found that the MGT facility would not meet the same need as the GSRP, but also stated in the D&O for Docket 370B, "The denial of the Meriden Facility as part of Docket 370 will not affect NRG's current Certificate for the Meriden Facility." (Council Administrative Notice Item No. 29)

Docket 190A

39. On February 7, 2010, there was an explosion at the Kleen Energy Systems, LLC facility in Middletown, Connecticut. The Kleen Energy Plant Investigation Review Panel (Nevas Commission) was established to identify the cause and origin of the explosion. The Nevas Commission issued a Final Report on June 3, 2010 that included a recommendation that the Council review all gas-fired baseload power plants within its jurisdiction. Thereafter, a second commission was established, the Thomas Commission, to recommend any necessary specific legislative or regulatory changes to prevent such an event in the future. (Council Administrative Notice Item No. 25; Council Administrative Notice Item No. 30)
40. On July 7, 2010, MGT filed a request for an extension of the Certificate to April 27, 2016. During a public meeting held on July 15, 2010, the Council voted to reopen the final decision in Docket 190 limited to Council consideration of changed conditions and the attachment of conditions to the certificate consistent with the findings and recommendations contained in the Final Report issued by the Nevas Commission. The reopened proceeding was captioned Docket 190A. A public hearing was held on August 24, 2010. (Council Administrative Notice Item No. 25)
41. On September 21, 2010, the Thomas Commission issued an Executive Report that included recommendations for regulatory changes that could be accomplished by executive order, state legislation and/or the adoption of regulations. (Council Administrative Notice Item No 25; Council Administrative Notice Item No. 30)
42. During a public meeting held on October 7, 2010, the Council moved to reopen the evidentiary record in Docket 190A limited to Council consideration of changed conditions and the attachment of conditions to the certificate consistent with the findings and recommendations in the Executive Report issued by the Thomas Commission. (Council Administrative Notice Item No 25; Council Administrative Notice Item No. 30)
43. On March 3, 2011, the Council issued a final decision in Docket 190A that included, among other additional conditions to the Docket 190 D&O, Condition 14, which states, "Not less than 30 days in advance, the Certificate Holder or facility owner/operator shall provide the Council with written notice that the facility plans to cease operation." (Council Administrative Notice Item No. 25)

Surrender of Certificate

44. On April 3, 2012, MGT notified the City of its intent to relinquish its permits to construct and operate the facility certificated by the Council. (City 1, Exhibit 1 – NRG Energy, Inc. Letter, dated April 3, 2012; MGT 6, Response 1, Attachment – Notice of Abandonment; Tr. 1, pp. 27, 91)

45. On May 29, 2012, MGT representatives met with staff members of the Council at which time the representatives indicated MGT did not intend to continue development of the project. MGT explained that in accordance with Paragraph 6 of the Settlement Agreement, MGT was required to provide the City with a minimum of one year prior written notice before relinquishment or surrender, including non-renewal or expiration, of permits for construction and operation of the facility. (Tr. 3, pp. 111-112; MGT 5, p.4; MGT 6, Response 1, Attachment – Property Tax Settlement Agreement; City 10, Response 8)
46. On March 20, 2013, March 25, 2013 and March 26, 2013 MGT submitted correspondence to the Council indicating MGT would be surrendering its Certificate on April 3, 2013, the intent of which was to comply with Condition 14 of the Docket 190A D&O. (Tr. 3, p. 110; Council Administrative Notice Item No. 25)
47. MGT has no intention of retaining ownership of the site for future use as an electric generating facility and intends to sell the site property as is with the structures that are on site. The property has been listed with a broker. Interest in the site property has contemplated an adaptive reuse of the existing facilities. (MGT 8, Responses 9-21, 30; MGT 6, Response 1; Tr. 3, pp. 123,133, 195-197)
48. There are no FERC or ISO requirements that must be fulfilled prior to the abandonment of the facility. (Tr. 3, p. 119-120)

Changed Conditions

49. Construction on this site was halted in 2002. Gas turbines were installed in 2002 but removed in 2003. (Tr. 3, pp.73, 80-81, 153-154)
50. In May 2009, during the proceedings held on Docket No. 370B and in response to interrogatories from the Council, MGT identified the following changes since the facility application was approved in 1999:
 - a. Plans for the cooling system;
 - b. Environmental regulations;
 - c. Status of required permits; and
 - d. Cost data.(Council Administrative Notice Item No. 25)
51. In November 2011, ISO-New England, Inc. (ISO) determined that MGT's facility would not qualify as deliverable capacity in the New England market without transmission upgrades, which determination was upheld by the Federal Energy Regulatory Commission (FERC). MGT unsuccessfully appealed the determination. (MGT 5, p. 7; MGT 6, Response 1; Tr. 3, pp. 96, 120)
52. On April 3, 2012, MGT hand-delivered a Notice of Abandonment to the City in accordance with Paragraph 6 of the Settlement Agreement thereby notifying the City of MGT's intent to relinquish, surrender and/or not renew its permits to construct the MGT facility. (City 1, Exhibit 1 – NRG Energy, Inc. Letter, dated April 3, 2012; MGT 6, Response 1, Attachment – Notice of Abandonment; Tr. 3, p. 38)

53. On June 14, 2012, DEEP issued the 2012 Integrated Resource Plan for Connecticut, which concluded adequate generating resources will likely be available in Connecticut to serve electricity loads reliably through 2022. (Council Administrative Notice Item No. 44; MGT 5, p. 7; MGT 6, Response 1; Tr. 3, pp. 97, 212)

Docket 190 Decision and Order Conditions

54. In its Decision and Order for Docket 190, the Council included the following conditions:
- a) 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;
 - b) The exhaust stacks shall be no higher than necessary, consistent with air emission modeling conducted by the Department of Environmental Protection (DEP);
 - c) Unless incompatible with provisions ordered by the DEP, selective catalytic reduction shall be used to reduce nitrogen oxide levels, an oxidation catalyst shall be used to reduce carbon monoxide, and water injection shall be used in the combustion turbines while firing on fuel oil and dry low-nitrogen oxide combustion shall be used in the combustion turbines while firing natural gas to reduce nitrogen oxide levels;
 - d) The project shall operate on natural gas, except during curtailment of natural gas when the project may operate on low sulfur (0.05 percent) distillate fuel oil as permitted by the DEP;
 - e) Submittal of a petition, amendment, or an application pursuant to CGS section 16-50g et seq., for Council approval, for development of the electric interconnection or modifications to existing electric transmission structures with sufficient detail to determine the jurisdiction, route, type and location of all such changes, and to confirm environmental and health effects consistent with the Council's Electric and Magnetic Field Best Management Practices; and
 - f) Submittal of a petition, amendment, or an application pursuant to CGS 16-50g et seq., for Council approval, for construction of any new natural gas pipeline to the facility, with sufficient detail to determine the jurisdiction, route, type, and location of all support equipment, effect on and changes necessary to existing infrastructure, health and safety effects, and possible alternative configuration and routes for the proposed new pipeline.

(Council Administrative Notice 24 – Docket 190, Final Decision and Development & Management Plan)

Docket 190 Development and Management Plan Elements

55. As part of the Development and Management (D&M) Plan for Docket 190, the Council included the following elements:
- a) Provisions for 1) water diverted from the Connecticut River, including the acquisition of all required rights-of-way; permits from the Department of Environmental Protection, Army Corps of Engineers, Amtrak, Connecticut Department of Transportation, and local municipalities; final

engineering plans for the water pipeline and intake structures; and access for public recreation along the transmission line right-of-way or, 2) dry cooling for the facility including a revised site plan to accommodate the dry cooling equipment;

- b) A final site plan showing all roads, structures and other improvements on the site. The final site plan shall, to the greatest extent possible, maximize placement of facility components within the existing quarry; preserve the existing natural vegetation on the site; establish open space buffer areas; develop conservation easements over traprock ridges, vernal pools, seeps, and areas with habitat for species of special concern; and minimize impacts on inland wetlands;
- c) Detailed project schedules for all work activities with weekly work plans;
- d) Provisions for adequate oil storage, unloading, and pumping facilities including tanker queuing and turn-around areas sufficient to allow for the arrival of five trucks per hour, to ensure continuous burn on oil for up to 720 hours per year during natural gas curtailment;
- e) Plans for landscaping, including preservation of the existing natural vegetation; configuration of earthen berms; and planting of new coniferous vegetation to provide ecological habitat, visual screening, and acoustical buffers;
- f) Provisions for architectural treatment of all building components, especially, but not limited to, those components, such as the exhaust stacks, which can be seen from off-site locations, to minimize visual effects on scenic resources;
- g) Detailed erosion and sedimentation control and stormwater management plans with provisions for inspection, enforcement, and revision;
- h) A spill prevention and countermeasure plan;
- i) A construction blasting plan; and
- j) A final site plan and engineering details for the electrical interconnection with measurements of pre- and post-construction electric and magnetic field (EMF) levels, and provisions for optimum phasing and compact spacing to maximize cancellation of EMF to the greatest extent practically possible.

(Council Administrative Notice 24 – Docket 190, Final Decision and Development & Management Plan)

Status of D&M Plan Elements

56. On April 12, 2000, the Council approved portions of the D&M Plan for the possession and handling of explosives, the placement of erosion and sediment controls prior to initial clearing and grubbing, and commencement of clearing and grubbing subject to 24 hour advance notice to the Council.
(Council Administrative Notice Item No. 24)

57. On September 12, 2001, the Council approved portions of the D&M Plan for construction of the access road, site excavation and grading, and the upgrade of facility components, which included a change from the construction of two turbine buildings at a height of 72 feet to the construction of one main turbine building at a height of 82 feet and a 90-degree reorientation of the single main turbine building, and a condition that a 100-foot conservation buffer to restrict development be established on each side of the Metacomet Trail. The Council also required weekly progress reports from the contractor's consultant to be provided to the Council. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29)
58. On December 11, 2001, the Council approved portions of the D&M Plan for site preparation and construction within the joint utility corridor and the facility design. (Council Administrative Notice Item No. 24)
59. On August 1, 2002, the Council voted to approve a redesigned fuel oil storage unloading and pumping system. (Minutes of Council Meeting of August 1, 2002)
60. On September 5, 2002, the Council approved construction of the water main. (Council Administrative Notice Item No. 24)
61. As of June 5, 2009, the following D&M plan elements have been completed in accordance with the Council's approvals:
 - a. Possession and handling of explosives;
 - b. Placement of erosion and sediment controls consistent with the National Pollutant Discharge Elimination System Storm Water Pollution Prevention Plan of Stormwater Associated with Construction Activities;
 - c. Subdivision roadway;
 - d. Site access road;
 - e. Construction of South Mountain Drive;
 - f. Site excavation and grading of the facility site;
 - g. Installation of equipment foundation;
 - h. Construction of the building to house the turbines;
 - i. Construction of the administrative, control and maintenance building;
 - j. Site stabilization;
 - k. Architectural treatment of the turbine building and the administrative building;
 - l. Site preparation activities associated with the joint utility corridor, including erosion and sedimentation controls, clearing and grubbing;
 - m. Establishment of 1-acre conservation easement ordered by the U.S. Army Corps of Engineers (USACE) and conveyance to the City of Meriden;
 - n. Transfer of property to the City of Meriden and the Town of Berlin.(Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29; MGT 7, Response 22; MGT 8, Response 4)
62. As of June 5, 2009, the following D&M Plan elements were partially completed in accordance with the Council's approvals:
 - a. Fuel oil storage, unloading and pumping facilities;
 - b. Landscaping and stormwater controls;
 - c. Delivery of the steam turbine generator that was subsequently sold in 2003 as a result of bankruptcy;

- d. Delivery of the gas turbine generators that were subsequently sold in 2003 as a result of bankruptcy; and
- e. Construction of the gas main associated with the joint utility corridor, including installation of the tap at the end of the corridor and the trap rock corridor for the pipe, which was later backfilled for safety.

(Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29)

63. As of June 5, 2009, the following D&M Plan elements were not completed in accordance with the Council's approvals:
- a. Steam and gas turbine generators were not erected;
 - b. Plant equipment was not installed;
 - c. Facility start-up, testing and acceptance;
 - d. Landscaping Plan;
 - e. Construction of electric poles associated with the joint utility corridor; and
 - f. Construction of the water main associated with the joint utility corridor.

(Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29; Tr. 3, p. 155-160)

64. The physical status of the site is unchanged since 2010. MGT indicated in its July 6, 2010 request for an extension of the Certificate dated July 6, 2010 that all of the civil site work had been completed and nearly all of the power island structures were ready to accept installation of the actual equipment. (Council Administrative Notice Item No. 25; MGT 6, Response 15)

Permits

65. The following permits have expired:
- a. USACE Permit for Water and Electric;
 - b. USACE Fill Permit; and
 - c. Connecticut DEP 401 Water Quality Certification.
- (MGT 7, p.1; MGT 8, Response 1; City 8, Attachment – Letter from Charles D. Ray to Philip Small, dated May 17, 2013)
66. The following permits were relinquished or surrendered:
- a. DEP Water Diversion Permit; and
 - b. National Railroad Passenger Corporation License Agreement.
- (MGT 8, Response 1; City 8, Attachment – Letter from Charles D. Ray to Philip Small, dated May 17, 2013)
67. The DEP Air Permit was revoked on April 5, 2013. The DEP General Permit Registration for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities and Application was not applicable due to construction inactivity. (MGT 8, Response 1; City 8, Attachment – Letter from Charles D. Ray to Philip Small, dated May 17, 2013)

Project Status

Site Parcel

68. The facility site is a 36-acre parcel north of Sam's Road in Meriden, Connecticut that had been previously used for gravel operations and previously disturbed by a proliferation of unpaved roads for logging, quarrying and dirt-biking. The site is within the Quinnipiac River Basin system, on Cathole Mountain, between two traprock ridgelines running southwest to northeast, and is underlain by Holyoke basalt or traprock. (Council Administrative Notice Item No. 24; Tr. 3, p. 14; MGT 8, Response 3– Attachment – Monthly Site Inspection Reports)
69. The site has a property address of 600 South Mountain Drive. It is located in the City of Meriden Planned Development District (PDD). Electric generation facilities are permitted uses in the PDD zone under the City's zoning regulations. (Tr. 1, p. 45; Tr. 3, p. 82; City 10, Response 1)
70. The site is not located on a ridgeline or within a ridgeline protection area. (City 10, Response 1; MGT 6, Response 16; Tr. 3, p. 137)
71. Land uses surrounding the proposed site include the Meriden Square Mall approximately 4,000 feet to the south; Route 71/Chamberlain Highway approximately 1,000 feet to the west; residential development in the Town of Berlin 10,500 feet to the northeast; residential areas and Beaver Pond, a recreational area, 3,000 feet to the northeast; and mixed land use, including apartment complexes, on Sam's Road 2,000 feet to the south. (Council Administrative Notice Item No. 24; Tr. 1, pp. 47-50)
72. In accordance with Exhibit A to the Payment Agreement, excavation and civil improvements to the site are permanent, defined as not economically practicable to physically remove from the site, to reinstall at another site, or to use for a similar purpose. Permanent improvements include: clearing and grubbing; site leveling, excavation and backfill; trenching and backfill associated with buried pipe and utilities; erosion control measures; landscaping; silt fencing; surfacing of roads and parking areas; foundations; secondary containment areas; and cooling tower basin. (MGT 6; Response 1 – Attachment Property Tax Payment Agreement, Exhibit A; City 10, Response 8; Tr. 3, pp. 116-118)

Access Drive

73. Access to the facility site begins at a locked gate at the beginning of South Mountain Drive off of Route 71 and extends from there up to a second locked gate, where South Mountain Drive ends. MGT constructed South Mountain Drive in 2001 and donated the land upon which the road is constructed and immediately on either side to the City in 2006. Although the City owns South Mountain Drive, it has not accepted the road as a city road. MGT has been plowing and maintaining the road since it was constructed in 2001. (Council Administrative Notice Item No. 24; Tr. 1, pp. 52, 73-74; Tr. 3, pp. 13, 30, 124; MGT 6, Response 8; MGT 8, Response 25)
74. The access drive to the facility site begins at a second locked gate at the end of South Mountain Drive. MGT owns the land from there to the facility site. (Tr. 1, pp. 52, 73-74; Tr. 3, pp. 13, 30)
75. The City has access to improvements made to South Mountain Road up to the second locked gate, including, but not limited to, drainage structures and detention ponds. (Tr. 3, pp. 100-104)

76. The site parcel is located north of Sam's Road, which was originally to be used for emergency access and the delivery of heavy equipment. Sam's Road is a private road. Residential development has been constructed on Sam's Road since the DO 190 Certificate was issued in 1999. (Council Administrative Notice Item No. 24; Tr. 1, p. 47-50)

Electric Generating Facility Components

77. MGT removed the steam turbine generator, the cooling tower, transformers and unused materials and components. (MGT 8, Response 5; Tr. 3, p. 190)
78. MGT obtains temporary retail electricity from CL&P from a distribution pole on the access road to the site. There are no other public utilities at the site. (MGT 6, Response 3; MGT 8, Response 26)
79. The natural gas supply line between the end of the main and the site was not constructed. (MGT 6, Response 4)
80. No fuel oil is currently being stored on the site. (MGT 6, Response 6)
81. Work on the water diversion infrastructure for the cooling of the plant was not initiated. (MGT 6, Response 7)
82. Step-up pipes and other underground infrastructure were installed as part of site construction. (Tr. 3, pp. 149-151)

Buildings and Equipment

83. The site parcel contains two unfinished buildings: a large power plant generator building and a smaller control/administration building. (MGT 6, Response 10; Tr. 3, pp. 184-186)
84. The power plant generator building was designed to house the turbines and is 82 feet in height. The Council's original approval was for two main turbine buildings with a height of 72 feet. As part of the D&M approval dated September 12, 2001, the Council approved a change to construct one main turbine building with a 10-foot increase in height. The City Planning Commission also approved a 10-foot increase in the height of the main turbine building, which height is permitted in the PDD zoning regulations. (Tr. 3, pp.57, 68; City 10, Response 1; Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29)
85. The main turbine building consists of a concrete foundation, structural steel and a factory finish metal siding without any interior finishing. (MGT 8, Response 10)
86. The main turbine building contains a 65-ton bridge crane affixed to a track along one of the roof beams. The crane is a permanent fixture, not removable without altering the structure of the building. (MGT 8, Response 20; Tr. 3, pp. 119, 147)
87. The site parcel contains a fuel oil tank and a water tank that were constructed, but never commissioned or used. Condition 1(d) of the Docket 190 D&O required the facility to have dual fuel capability. (MGT 8, Response 9; Council Administrative Notice Item No. 24; Tr. 3, pp. 187-189)

88. All stored material and equipment has been removed from the site, including the laydown area west of the site. Small amounts of metal grating, railings, siding and miscellaneous scrap material remain on the site. (MGT 8, Response 31)

Site Security and Public Safety

89. The site is secured by a six-foot tall, chain-link fence with a locked gate and a gatehouse that is manned 24-hours per day, seven days per week. (MGT 6, Response 14; MGT 5, p. 2; Tr. 1, p.72)
90. MGT installed fencing at the tops of steeply sloped rock on MGT's property. (MGT 8, Response 27)
91. There are no hazardous materials on the site. During construction, MGT remediated preexisting contamination that was identified by initial environmental site assessments, and has met the reporting and inspection requirements associated with the remediation. (Tr. 1, p. 72; Tr. 3, pp. 129, 132, 134-136)
92. MGT does not have an Emergency Response /Safety Plan for the site property because the plan contemplated power plant operations. (MGT 7, Response 25; Council Administrative Notice Item No. 25)

Environmental Considerations

93. Neither the City nor any other governmental agencies or authorities have issued any notices of violations or similar notices regarding any environmental issues at the site. (MGT 5, p. 2; City 10, Response 4)
94. MGT performs environmental and safety inspections of the site on a monthly basis. (MGT 5, p. 2; MGT 8, Response 3 – Attachment – Monthly Site Inspection Reports)

Visibility and Scenic Resources

95. Visibility of two 180-foot exhaust stacks was analyzed as part of the original application. It was determined that the exhaust stacks would be visible from portions of Berlin and Meriden, but the exhaust stacks were not constructed. Visibility of the 82-foot power plant generator building was analyzed as part of the D&M Plan approved by the Council on September 12, 2001. (Council Administrative Notice Item No. 24; Tr. 3, pp. 56, 69-71, 83-88)
96. As part of this proceeding, the City submitted a Visibility Analysis that evaluated the visibility of the existing buildings on MGT's site. (City 9 – Attachment - Visibility Analysis)
97. The New England Trail/Metacomet/Blue-Blazed Trail runs north-south along a ridge adjacent to Cathole Mountain west of the MGT facility site. The nearest portion of the trail lies approximately 200 feet northwest of the boundary of the facility site. The trail is not identified in the City's Visibility Analysis. (Council Administrative Notice Item No. 24; Tr. 3, p. 31; City 9 – Attachment - Visibility Analysis)

98. The parcels that were donated by the original certificate holder to the municipalities of Berlin and Meriden surround the MGT site. These parcels were not identified in the City's Visibility Analysis. (Council Administrative Notice Item No. 24; Tr. 1, p. 52; Tr. 3, pp. 32, 72-74; City 9 – Attachment - Visibility Analysis)

Wetlands and Vernal Pools

99. MGT created a .9-acre wetland down the hill from the administrative building to mitigate the .098-acres of wetlands that were filled to build the foundation and structure of the main turbine building pursuant to Finding of Fact No. 76 of the Council's April 27, 1999 final decision in Docket 190 and the D&M Plan submitted by MGT on August 2, 2001 and approved by the Council on September 12, 2001. (MGT 6; Response 13; MGT 7; Response 20; MGT 8, Response 6; Tr. 3, pp. 107-108, 138-141)
100. Pursuant to Finding of Fact No. 77 of the Council's April 27, 1999 final decision in Docket 190, MGT created a vegetative buffer consisting of natural forest around the vernal pool. (MGT 7, Response 22)
101. Pursuant to an order of the US Army Corps of Engineers, MGT created a 1-acre conservation easement and conveyed the property to the City. (Tr. 3, pp. 99, 137-139)
102. Wetland/watercourse and upland area restoration following construction activities was completed. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29; Tr. 3, p. 169; MGT 6, Response 12; MGT 7, Response 18)
103. All storm-water features have been installed in accordance with the approved plans, except for seeding the detention area with wetland plant species and installing the detention pond outlet box cover. (MGT 7, Response 23; Tr. 3, pp. 141-143, 181)

DOCKET NO. 190B – Meriden Gas Turbines, LLC } Certificate of Environmental Compatibility and Public } Need for a 530 MW combined cycle generating plant in } Meriden, Connecticut. Reopening of this docket pursuant } to Connecticut General Statutes § 4-181a(b) limited to } Council consideration of changed conditions and } Decommissioning Plan.	Connecticut Siting Council September 19, 2013
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CONCLUSIONS OF LAW

1. The Connecticut Siting Council (Council) has jurisdiction to reopen the final decision in Docket 190 pursuant to the Uniform Administrative Procedure Act (UAPA) and pursuant to the Public Utility Environmental Standards Act (PUESA).

The Council is an administrative agency of specific and limited jurisdiction. It operates pursuant to the provisions of the UAPA, C.G.S. §4-166, *et seq* and under the authority granted to the agency pursuant to the PUESA, C.G.S. §16-50g, *et seq*. Under the UAPA, “agency” means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases.¹ Contested case is defined as a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by state statute to be determined by an agency after an opportunity for hearing.² A final decision is an agency determination in a contested case or an agency decision made after reconsideration.³ Licensing includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license, which includes the whole or part of an agency certificate.⁴

Pursuant to C.G.S. §4-181a(b), “On a showing of changed conditions, the agency may reverse or modify the final decision, at any time, at the request of any person or on the agency’s own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered.” In accordance with the statute, the Council has jurisdiction to interpret its original decision and to decide whether or not to reverse or modify the original decision. The Council rendered a final decision in the Docket 190 matter in 1999. The City of Meriden (City) filed a request to reopen the final decision under C.G.S. §4-181a(b) and a request for party status on March 18, 2013. After soliciting comments from the parties and intervenors to the original Docket 190 final decision relative to the City’s request, the Council granted the City’s request to reopen and request for party status over the objections of Meriden Gas Turbines, LLC (MGT or the Certificate Holder) at a regular meeting held on April 18, 2013.

¹ Conn. Gen. Stat. §4-166(1) (2013).
² Conn. Gen. Stat. §4-166(2) (2013).
³ Conn. Gen. Stat. §4-166(3) (2013).
⁴ Conn. Gen. Stat. §4-166(7) (2013).

The legislative finding under the PUESA states, in relevant part, “power generating plants... have had a significant impact on the environment and ecology of the state of Connecticut; and that continued operation and development of such power plants,... if not properly planned and controlled, could adversely affect the quality of the environment and the ecological, scenic, historic and recreational values of the state.” The purposes under the PUESA are, in relevant part, “to provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state...” Under C.G.S. §16-50i(a)(3), the Council has exclusive jurisdiction over the siting of electric generating facilities, including associated equipment for furnishing electricity, and under C.G.S. §16-50k, no person shall commence the construction or modification of a facility that may have a substantial adverse environmental effect in the state without first having obtained a certificate of environmental compatibility and public need (Certificate) issued with respect to such facility or modification by the Council. Furthermore, “any facility with respect to which a certificate is required shall thereafter be built, maintained and operated in conformity with such certificate and any terms, limitations or conditions contained therein.”⁵ The MGT facility was granted a Certificate by the Council on April 27, 1999 subject to seven conditions listed in the Council’s Decision and Order (D&O).

Therefore, pursuant to the provisions of the UAPA and the PUESA, the Council has jurisdiction to reopen the final decision in Docket 190.

a. The Council issued PDC-El Paso Meriden, LLC, Meriden Gas Turbines, LLC’s predecessor in interest, a Certificate of Environmental Compatibility and Public Need for an electric generating facility on April 27, 1999 that is valid until April 27, 2016.

On August 27, 1998, PDC-El Paso Meriden, LLC (PDC-El Paso) filed an application with the Council pursuant to C.G.S. §16-50k for a Certificate for the construction, maintenance and operation of a 544 megawatt (MW) natural gas-fired combined cycle electric generating facility. The Council designated this matter as Docket 190 and held public hearings on the application on January 25, 1999 and January 26, 1999, as well as granted party status to the Quinnipiac River Watershed Association, and intervenor status to the Connecticut Light & Power Company (CL&P), Rivers Alliance of Connecticut and the Farmington River Watershed Association. A final decision was rendered granting a Certificate to PDC-El Paso for the construction, maintenance and operation of the electric generating facility on April 27, 1999 with an expiration date of April 27, 2003. Pursuant to C.G.S. §16-50p, the Certificate was issued subject to seven conditions and requirements, including, but not limited to, a Development and Management Plan (D&M Plan) to be submitted to and approved by the Council prior to commencement of construction of the facility to ensure compliance with the Council’s D&O.

⁵ See *Town of Preston, et al v. Connecticut Siting Council*, 20 Conn. App. 474, 487 (Conn. App. 1990) (“An agency’s factual and discretionary determinations are to be accorded considerable weight by the courts.”); *Town of Killingly, et al v. Connecticut Siting Council*, 220 Conn. 516, 526 (1991) (“...the decision of the siting council granting KELP a certificate of environmental compatibility and public need was a final decision...”)

Between 1999 and 2002, the D&M Plans for the Docket 190 facility construction were submitted to and approved by the Council in phases. In December 2000, MGT, a wholly owned subsidiary of NRG Energy, Inc. (NRG), purchased the membership interests in PDC-El Paso at which time MGT agreed to comply with the terms, limitations and conditions of the Certificate. In 2002, MGT requested the Council grant an extension of the Certificate to April 27, 2006, which was approved. In 2006, MGT requested the Council grant a second extension of the Certificate to April 27, 2011 stating that it would not be in a position to finance or construct the electric generating facility without a long-term power supply contract. The second extension request was also approved.

In 2009, the Connecticut Energy Advisory Board (CEAB) issued a Request for Proposal (RFP) for Non-Transmission Alternatives pursuant to C.G.S. §16a-7c that was triggered by an application filed with the Council by CL&P for an electric transmission line designated as Docket 370. In response to the RFP, NRG submitted to the CEAB the Docket 190 approved facility as a non-transmission alternative and subsequently filed a competing application with the Council, designated as Docket 370B, for consideration in a consolidated hearing process as an electric generation project that would meet the same public need as the proposed CL&P electric transmission line project.⁶ Although the NRG Meriden facility was ultimately not selected as a non-transmission alternative that would meet the same public need presented in the CL&P electric transmission line application, the Council's D&O in Docket 370B clearly indicated, "The denial of the Meriden facility as part of Docket 370 will not affect NRG's current Certificate for the Meriden facility."

In 2010, MGT requested the Council grant a third extension of the Certificate to April 27, 2016 stating again that it would not be in a position to finance or construct the electric generating facility without a long-term power supply contract. During a regular meeting of the Council held on July 15, 2010, the Council, on its own motion, voted to reopen the docket in accordance with C.G.S. §4-181a(b) and to hold a public hearing limited to Council consideration of changed conditions and of the attachment of conditions to the certificate consistent with the findings and recommendations contained in the Final Report issued by the Kleen Energy Plant Investigation Review Panel (Nevas Panel).⁷ The Council designated this reopened proceeding as Docket 190A and held a hearing for this matter on August 24, 2010. Subsequently, the Thomas Commission, the panel charged with providing recommendations for regulatory changes consistent with the findings of the Nevas Panel, issued a Report on September 21, 2010. As a result, the Council reopened the evidentiary record for Docket 190A and held an additional public hearing on December 7, 2010.⁸ As part of the D&O for Docket 190A, on March 3, 2011, the Council attached conditions to the Certificate consistent with the Nevas and Thomas Commission Reports, and granted the request to extend the Certificate to April 27, 2016.

⁶ Council Administrative Notice Item No. 29 (Docket No. 370B Record).

⁷ Council Administrative Notice Item No. 25 (Docket No. 190A Record); Council Administrative Notice Item No. 30 (Docket No. NT-2010 Record).

⁸ *Id.* (The Council reopened all of the final decisions of jurisdictional, natural gas-fired electric generating facilities to attach conditions to the certificates and declaratory rulings consistent with findings and recommendations of the Nevas Panel and Thomas Commission).

Therefore, the Certificate issued by the Council on April 27, 1999 in Docket 190 and amended on March 3, 2011 for the construction, maintenance and operation of MGT's 544 MW natural gas-fired combined cycle electric generating facility, as defined under C.G.S. §16-50i(a)(3), is valid until April 27, 2016.

b. There is evidence of changed conditions pursuant to C.G.S. §4-181a(b).

Conditions have changed since the Certificate was issued for the MGT project in 1999. A changed condition requires new information or facts, identification of any unknown or unforeseen events or any relevant circumstances, or evidence of scientific or technological breakthroughs that were not available at the time of the final decision.⁹ The burden is on the moving party to make the necessary showing of changed conditions.¹⁰ During the Docket 370 proceedings, in response to pre-hearing interrogatories, MGT represented there were several changes to the Meriden facility since the original application was approved in 1999, including type of turbine installation, plans for the cooling system, changes in environmental regulations, the status of permits, public need and cost data. These changes constitute new information or facts that were not available at the time of the final decision. By its own admission in the interrogatory responses, had MGT moved forward with the project at that time and anytime thereafter, changed conditions since the original application was approved would have required a reopening of Docket 190 under C.G.S. §4-181a(b) and modifications to the existing Certificate.

In November 2011, ISO-New England, Inc. determined that MGT's facility would not qualify as deliverable capacity in the New England market without transmission upgrades.¹¹ This determination was an unforeseen event that was upheld by the Federal Energy Regulatory Commission and was unsuccessfully appealed by MGT. Furthermore, new information and facts relative to Connecticut's resource adequacy are contained in the Department of Energy and Environmental Protection (DEEP) 2012 Integrated Resource Plan (IRP), which indicates that there is likely not a need for additional generating capacity in Connecticut until 2022.¹² These relevant market circumstances were unknown and unforeseen by the Certificate Holder, the Council or any of the parties or intervenors to the original Docket 190 proceeding when the Certificate was issued in 1999. In the past, on its own motion or upon the motion of another person, the Council has reopened final decisions pursuant to C.G.S. §4-181a(b) on the basis of similar unknown, unforeseen and relevant market circumstances, such as an increase in the natural gas supply and improvements to pipeline infrastructure in New England.¹³ With

⁹ Council Administrative Notice Item No. 34 (*Town of Fairfield, et al v. Connecticut Siting Council*, 238 Conn. 361 (1996)).

¹⁰ *Id.*; See also Council Administrative Notice Item No. 35 (*Sielman v. Connecticut Siting Council*, 2004 Conn. Super. LEXIS 119 (Conn. Super. Ct. 2004)).

¹¹ MGT Exhibit 5 (Pre-filed Testimony of Judith Lagano).

¹² Council Administrative Notice Item No. 44 (DEEP 2012 Integrated Resource Plan for Connecticut).

¹³ See Council Administrative Notice Item No. 22 (Docket No. 187A Record) and Council Administrative Notice Item No. 23 (Docket No. 189A Record) (The Council, on motions from the Certificate Holders, reopened these

more than adequate electric generation supply projected, this may further complicate MGT's position to finance or construct the electric generating facility without a long-term power supply contract. MGT's parent company, NRG, commented on the draft IRP in March 2012 indicating that "NRG is prepared to proceed with... projects as soon as suitable off-take contracts can be secured..."¹⁴ At that time, the MGT project was listed in NRG's comments on the IRP as one of the projects that is prepared to proceed.

Despite representations to the DEEP in March 2012 that NRG was prepared to proceed with the MGT project, pursuant to Paragraph 6 of the Property Tax Settlement Agreement between MGT and the City dated November 20, 2008, MGT provided the City with a Notice of Abandonment of its intent to relinquish, surrender and/or not renew its permits to construct and operate the electric generating facility on April 3, 2012.¹⁵ Approximately one year later, in its request to reopen the final decision for Docket 190 under C.G.S. §4-181a(b), the City of Meriden presents this Notice of Abandonment as a changed condition. The Certificate Holder argues that it was clearly contemplated at the time of the final decision that MGT might abandon the project and cites to Condition No. 4 of the Council's 1999 Decision and Order, which states, "The Certificate Holder shall provide the Council notification of the following events not less than two weeks in advance of their occurrence... d) permanent termination of any operation of the project." However, this condition does not preclude the Council from reviewing and reopening the final decision upon notification of permanent termination of any operation of the project, which MGT provided on March 20, 2013, March 25, 2013 and March 26, 2013.

Therefore, the Notice of Abandonment, as well as the changes identified by the Certificate Holder during the proceedings of Docket 370 and the changes in the natural gas market presented in the IRP, constitute changed conditions for which the Council may modify the final decision in Docket 190B.

dockets pursuant to C.G.S. §4-181a(b) to modify the decision and orders to allow suspension of the backup fuel systems based on changed conditions that "natural gas supply has increased considerably and improvements have been made to the pipeline infrastructure in New England; there have been improvements to the Connecticut electric transmission grid; and new power generation facilities have been constructed. As a result, the reliability of Connecticut's natural gas and electric energy supply has increased and the ability to immediately operate on fuel oil is no longer desirable for reliability or economic reasons.")

¹⁴ Council Administrative Notice Item No. 44, *supra* note 12.

¹⁵ City Exhibit 10, Response 8; MGT Exhibit 6, Response 1 (The Council was not provided a copy of this Notice of Abandonment at the time it was submitted to the City, but representatives from NRG met with Council staff on May 29, 2012 indicating NRG had no intent to continue development of the project, but was required under the Property Tax Settlement Agreement to provide a written Notice of Abandonment to the City of Meriden a minimum of one year prior to relinquishment or surrender of permits for construction and operation. Council staff instructed the NRG representatives to submit a letter of notification to the Council when the time was appropriate.)

2. The Council has yet to acknowledge the Certificate Holder's Requests to Surrender the Certificate dated March 20, 2013, March 25, 2013 and March 26, 2013 with an effective date of April 3, 2013.

On March 18, 2013, the City filed a Request to Reopen and Modify the Decision and Order in Docket 190 due to changed conditions and a request for Party Status. On March 20, 2013, MGT submitted a letter to the Council indicating MGT "terminates the project and surrenders" the Certificate thereby rendering the City's petition moot.¹⁶ On March 22, 2013, the Council issued a memo requesting parties and intervenors to the Docket 190 proceeding to submit comments or statements of opinion in writing to the Council with respect to whether the City's Petition to Reopen should be granted or denied on or before the close of business on April 5, 2013.¹⁷ On March 25, 2013, MGT submitted a second letter to the Council indicating the March 20, 2013 letter was intended to have an effective date for the termination of the project and surrender of the Certificate on April 3, 2013.¹⁸ On March 26, 2013 MGT submitted a third letter to the Council indicating in accordance with a stipulation filed in court, that the effective date for the termination of the project and surrender of the Certificate is April 3, 2013.¹⁹ On April 5, 2013, MGT submitted comments to the Council in response to the March 22, 2013 memo indicating the Council lacks jurisdiction and MGT's abandonment of the project does not constitute a changed condition.²⁰ During a meeting held by the Council on April 18, 2013, the Council voted to grant the City's Petition to Reopen, the City's request for party status and to hold a public hearing specifically limited to consideration of changed conditions and a decommissioning plan.²¹

The surrender of a valid Certificate for a partially built electric generating facility is a case of first impression for the Council. In rendering the decision to reopen the matter in response to the City's petition, the Council was guided by a decision rendered by the Department of Public Utility Control (DPUC, now known as the Public Utilities Regulatory Authority or PURA) in Docket No. 97-03-25, entitled, "Application of Teleglobe USA, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Telecommunications Services - Reopening."²² As part of the

¹⁶ MGT Exhibit 1 (Letter from Jane K. Warren to Robert Stein, dated March 20, 2013).

¹⁷ Council Memorandum re Docket 190, dated March 22, 2013.

¹⁸ MGT Exhibit 2 (Letter from Jane K. Warren to Robert Stein, dated March 25, 2013).

¹⁹ MGT Exhibit 3 (Letter from Jane K. Warren to Robert Stein, dated March 26, 2013, with attached stipulation, dated March 25, 2013).

²⁰ MGT Exhibit 4 (NRG comments regarding the City of Meriden's Request to Reopen Docket No. 190, dated April 5, 2013).

²¹ Council Memorandum Re Docket 190B, dated April 19, 2013.

²² Council Administrative Notice Item No. 55. *See also* Department of Public Utility Control, Docket No. 97-09-42, "Petition of Teleglobe, USA, Inc. for Expansion of Its Certificate of Public Convenience and Necessity." (On November 5, 1997, the DPUC granted Teleglobe the authority to expand its service authority to provide local exchange service throughout the state. On June 2, 2005, Teleglobe notified DPUC that it wished to surrender any service authority that it currently had to provide local exchange telecommunications services. Pursuant to C.G.S. §§ 16-247g(g) and 4-181a, the DPUC reopened the decision in the docket to consider Teleglobe's request to withdraw its local authority.)

original decision in Docket No. 97-03-25, on August 20, 1997, the DPUC granted Teleglobe America, Inc. (Teleglobe) a Certificate of Public Convenience and Necessity (CPCN) to provide resold intrastate long distance telecommunications services in Connecticut. By letter dated August 23, 2005, Teleglobe informed DPUC that it surrenders its CPCN to provide resold intrastate long distance services, it does not provide any telecommunications services in the state, and therefore, no customers would be affected. On September 14, 2005, the DPUC rendered a decision as follows: "Pursuant to Sections 16-247g(g) and 4-181a of the General Statutes of Connecticut, the Department hereby reopens the Decision in the instant docket to consider Teleglobe's request to surrender its CPCN. Since Teleglobe has requested that its CPCN be surrendered, the Department has determined that a hearing is not necessary. Therefore, the CPCN for Teleglobe is hereby revoked, effective the date of this Decision."

C.G.S. §247g(g) provides the DPUC with specific authority to suspend or revoke the authorization to provide telecommunications service or to take any other action it deems appropriate, *after holding a hearing with notice to all interested persons and determining continued provision of service would be contrary to the goals of the state, the provider does not have adequate financial resources, managerial ability or technical competency to provide the service, or the provider has failed to comply with a Department order or regulation.* (Emphasis added). There is no similar provision under the PUESA. C.G.S. §16-50k provides for Certificate issuance, transfer and amendment only. However, under the UAPA, pursuant to C.G.S. §4-182(d), "When an agency is authorized under the general statutes to issue a license, but is not specifically authorized to revoke or suspend such license, the agency may (A) Revoke or suspend such license in accordance with the provisions of subsection (c) of this section; or (B) (i) adopt regulations...consistent with the requirements of said subsection (c), and (ii) revoke or suspend such license in accordance with such regulations." C.G.S. §4-182(c) states, "No revocation, suspension, annulment or *withdrawal* of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license." (Emphasis added).

Had the City not filed a petition to reopen Docket 190 and had MGT submitted a letter to the Council seeking to surrender its Certificate, the Council, consistent with past practice, would have provided parties and intervenors to the original proceeding notice of the request and an opportunity to be heard on the request, and thereafter, placed the request to surrender the Certificate for the Docket 190 matter on a regular meeting agenda for Council discussion. Although rare and infrequent, this has been past Council practice. For example, Council Docket 96- Certificate of Environmental Compatibility and Public Need for Killingly Energy Limited Partnership for construction of a 32.2 MW Wood-Burning Electric Generating Facility, and Council Docket 103- Certificate of Environmental Compatibility and Public Need for Bio-Gen Torrington Partnership for construction of a 15 MW Wood-Burning Electric Generating Facility. Each of these projects were approved and granted Certificates by the Council in 1989; however, in 1992, pursuant to the provisions of Public Act 92-13, "An Act Concerning Transportation

Management Programs Required under the Clean Air Act, and Wood-Burning Facilities,” both project developers submitted to the DPUC offers to rescind their electricity purchase agreements, received payments from CL&P and submitted notification to the Council of their intent to surrender their Certificates in accordance with notification conditions contained in the Certificates.²³ The dockets were placed on a Council regular meeting agenda at which time the surrender of the Certificates was discussed and acknowledged by the Council.²⁴ The submission of the City’s Request to Reopen Docket 190 preceded MGT’s requests to surrender its Certificate. Once the Council voted to reopen Docket 190, the surrender of the Certificate became an issue to be decided as part of the Docket 190B proceeding.

Therefore, the Council has yet to acknowledge MGT’s requests to surrender its Certificate dated March 20, 2013, March 25, 2013 and March 26, 2013 with an effective date of April 3, 2013; however, acknowledgment of the surrender of the Certificate is to be concurrent with the disposition of the Docket 190B matter.

3. A decommissioning plan is not a condition of the April 27, 1999 Certificate nor is a decommissioning plan warranted.

As part of its request to reopen Docket 190, the City requests the Council add a condition to MGT’s Certificate for a decommissioning plan that includes a requirement that all buildings and structures shall be removed to grade level; identification and completion of all D&M Plan measures that have not been implemented except for those measures the Council determines are no longer applicable; site access restriction with physical barriers and signage; and provision of financial assurance to ensure the plan will be completed. Further, the City requests Council approval and a timeframe for completion of the decommissioning plan, as well as submission of quarterly reports to the Council and the City on progress with the decommissioning plan. In support of its request, the City relies on a statement made by a witness for MGT’s predecessor in interest during a public hearing in 1999 as follows, “But in the event that the plant was retired... 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, and then the property would be marketed and sold for another purpose.”²⁵ Despite this discussion relative to decommissioning during the public hearings held in 1999, the Council did not order a decommissioning plan as a condition of approval in issuing the Certificate.

²³ Council Administrative Notice Item No. 19 and Council Administrative Notice Item No. 20 (Copies of the notification letters indicating intent to surrender certificates were mailed to the parties and intervenors for the respective docket at the same time as the Council. Each docket decision and order contained a notice provision similar to the notice provision in Docket 190 discussed in Paragraph 1(b) *infra*, which stated, “The Certificate Holder shall notify the Council, and all parties and intervenors when operations terminate.”).

²⁴ *Id.*; The Council also follows a similar procedure for withdrawal of declaratory rulings. *See* Petition 794 and Petition 893.

²⁵ Council Administrative Notice Item No. 24 (Docket 190, Record, Public Hearing Transcript, January 26, 1999, 11:00 a.m., pages 59-61)

The City did not avail itself of party status nor did the City avail itself of the opportunity to issue a “regulate and restrict” order under C.G.S. §16-50x(d) at the time the MGT facility was proposed.²⁶ In fact, the City issued its own site plan and subdivision approvals for which the City required MGT to provide cash bonds in the original amount of \$1,886,490.²⁷ Both parties subsequently entered into two settlement agreements related to tax payments that contain several provisions for resolution of disagreements over unsatisfied conditions and the release of the bonds.²⁸ Furthermore, although the City was formally notified of MGT’s intent to abandon the project in the Notice of Abandonment that was provided April 3, 2012, the City did not request the matter to be reopened by the Council until March 18, 2013.

As part of the D&O in Docket 190, the Council required MGT to meet seven conditions for the construction, maintenance and operation of the approved facility. Condition No. 2 required the submission of a D&M Plan for Council approval prior to commencement of construction. The D&M Plan was required to include the following elements: provisions for water diversion from the Connecticut River or dry cooling for the facility; a final site plan; detailed project schedules for all work activities; provisions for adequate oil storage; plans for landscaping; provisions for architectural treatment of all building components; detailed erosion and sedimentation control and stormwater management plans with provisions for inspection, enforcement and revision; a spill prevention and countermeasure plan; a construction blasting plan; and a final site plan for the electrical interconnection.²⁹ MGT submitted D&M Plans to the Council for the facility in several phases between 1999 and 2002. In 2009, as part of the record for Docket 370B, MGT identified the D&M Plan measures that have been completed, that have been partially completed and that have not been completed.³⁰

Compliance with the conditions of the D&O and the D&M plan, to the extent practicable at this time, represents the scope of the Council’s enforcement authority in this matter. It is through the certification process that the Council evaluates and minimizes activities at the site of a jurisdictional facility that may have a significant adverse environmental effect.³¹ According to the Connecticut Supreme Court, certification requirements imposed by regulation or statute are a valid administrative device reasonably designed to

²⁶ Council Administrative Notice Item No. 24 (Docket 190 Record); Finding of Fact No. 11, Docket 190B Record (The City also did not avail itself of party status during the proceedings for Docket 370B or for Docket 190A).

²⁷ *Id.*; City Exhibit 8 (Pre-Filed Testimony of Lawrence Kendzior); City Exhibit 10, Response 7.

²⁸ MGT Exhibit 6, Response 1; City Exhibit 10, Response 7 (Property Tax Payment Settlement Agreement).

²⁹ Council Administrative Notice Item No. 24 (Docket 190 Record)

³⁰ Council Administrative Notice Item No. 29 (Docket 370B Record); Findings of Fact Nos. 61-64, Docket 190B Record.

³¹ *Mario v. Town of Fairfield*, 217 Conn. 164 (1991)(A non-wetland property owner challenged a regulation of the Conservation Commission requiring an owner of a parcel of land partially within a designated wetlands area to apply to the commission before erecting any structure on the non-wetlands portion of the parcel. The Court upheld the regulation as a valid exercise of the Commission’s statutorily delegated police power to regulate the use of property within its borders to carry out legislative objectives and to protect and preserve the natural resources located within the town.)

enable administrative bodies to perform the duties delegated to them by the legislature.³² The Council's certification requirements were imposed on the Certificate Holder on April 27, 1999 when the final decision was rendered and the Certificate was issued. Additional certification requirements were imposed on the Certificate Holder on March 3, 2011 when the final decision was rendered in Docket 190A. Pursuant to the legislative intent under the PUESA, it is incumbent upon the Council to ensure the conditions of the Docket 190 D&O and D&M plan are fulfilled to the satisfaction of the Council. This is a condition precedent to the Council's acknowledgment of the surrender of the Certificate.

Therefore, in consideration of the fact that a decommissioning plan was not a condition of the Certificate when it was issued by the Council on April 27, 1999 and in consideration of the Certificate Holder's intent to abandon the project, a decommissioning plan is not warranted and the surrender of the Certificate will be acknowledged once the conditions of the Docket 190 D&O and D&M Plan are fulfilled to the satisfaction of the Council.

³² *Id.*; See also *City of New Haven v. Stanley J. Pac.*, 1991 Conn. Super. LEXIS 3037 (Conn. Super. Ct. 1991)(DEP determined that a proposed system to treat stormwater and sewage into the Quinnipiac River in connection with a plan to construct a mall in North Haven would protect the river from pollution. DEP denied a request by the City to reconsider based on a major storm that flooded the mall site and that one of the anchor tenants for the mall had withdrawn from the project. The court upheld the DEP decision to deny the request for reconsideration on the basis that there is no requirement that DEP consider economic values in reaching its decision.); *Turgeon v. Town of East Lyme*, 2007 Conn. Super. LEXIS 690 (Conn Super. Ct. 2007)(Plaintiff landowner filed an appeal against the East Lyme Conservation Commission and the DEP relating to denial of an application to conduct regulated activities on a residential lot containing wetlands. The court remanded the application to the Commission to approve the application with conditions as it found reasonably necessary to protect the wetlands on and adjacent to the site based on the landowner's reasonable investment-backed expectation of development and that the public benefit was not strong enough to outweigh the harm to plaintiff that would result from the denial of the application.)

<p>DOCKET NO. 190B – Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW combined cycle generating plant in Meriden, Connecticut. Reopening of this docket pursuant to Connecticut General Statutes § 4-181a(b) limited to Council consideration of changed conditions and Decommissioning Plan.</p>	<p>} Connecticut } Siting } Council } September 19, 2013</p>
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Opinion

On April 27, 1999, pursuant to Connecticut General Statutes §16-50k, the Connecticut Siting Council (Council) granted a Certificate of Environmental Compatibility and Public Need (Certificate) to PDC-El Paso Meriden LLC (PDC-El Paso) for the construction, operation and maintenance of a 530-megawatt (MW) combined-cycle electric generating facility (Facility) in Meriden, Connecticut. In 2001, NRG Energy, Inc. (NRG) acquired majority stock ownership of PDC-El Paso and changed the name of the Certificate Holder to Meriden Gas Turbines, LLC (MGT), a wholly-owned subsidiary of NRG.

On March 18, 2013, the Council received a Petition from the City of Meriden (City) to Reopen and Modify the Decision and Order in Docket No. 190 Due to Changed Conditions and a Request for Party Status. The changed conditions cited by the City were MGT’s planned abandonment of the project to build the certificated generating facility and adverse visual, environmental, public safety and other effects that could result from this abandonment.

After receiving and considering statements of position from the City and MGT, the Council voted to reopen the Docket No. 190 proceeding and to grant the City party status at a meeting held on April 18, 2013. Subsequent to this vote, the Council held a public evidentiary hearing that continued over two separate sessions. The first of these sessions was held at the Meriden City Hall on June 4, 2013. The second, continued, session was held at the Council offices in New Britain on July 16, 2013.

Subsequent to receiving its Certificate in 1999 and receiving the Council’s approval of a Development and Management Plan, MGT began construction on its facility and installed gas turbines in 2002. This was the same year that construction at the site was halted. In 2003, MGT removed from the site all of the power generating equipment that it had installed. In November 2011, New England’s Independent System Operator (ISO-NE) determined that MGT’s facility would not qualify as deliverable capacity in the New England market without transmission upgrades; a determination that was upheld by the Federal Energy Regulatory Commission (FERC). Following this determination, MGT delivered a Notice of Abandonment to the City notifying it of MGT’s intent to abandon the project on April 3, 2012. In addition, on June 14, 2012, Connecticut’s Department of Energy and Environmental Protection issued the 2012 Integrated Resource Plan for Connecticut, which concluded that the generating resources currently available in Connecticut are adequate to serve electric loads reliably through 2022.

Although MGT has removed all power generating equipment from its site, many of the improvements it made to the site to accommodate this equipment are still in place. There is an access road from Route 71 to MGT’s property, although it has not been accepted by the City. There are two unfinished buildings on the site: a large power plant building and a smaller control building. The larger building is 82 feet in height and is prominently visible from numerous vantage points in the City. Also on the site are a fuel oil tank and a water tank that were built but never commissioned or used. Small amounts of metal grating, railings, siding and miscellaneous scrap material remain on the site.

During this proceeding, MGT's compliance with the conditions of the Council's original Decision and Order (D&O) was an issue of some contention, particularly because many of the Council's original conditions were predicated on having a fully constructed and operating electric generating facility at this site. This is not the case, and, in fact, several of the major infrastructure components required to operate the facility were never built. For example, the exhaust stacks envisioned to be 180 feet in height were not built; no natural gas pipeline to provide fuel for the gas turbines was built; no transmission line capable of carrying the load generated by the plant was built; and the underground water pipeline that was to carry water from the Connecticut River to be used for cooling at the plant was not built. MGT's decision not to complete this project makes many of the Council's original D&O conditions inapplicable to any considerations of how to proceed from the present day situation at this site.

In its petition to reopen, the City asked the Council to require a decommissioning plan of MGT. The Council, however, believes that requiring such a plan at this juncture, given the moribund status of the project, is unwarranted and, in fact, may be confiscatory. Instead, the Council believes that it would be a more profitable use of the time and energies of the parties involved in this proceeding to address any environmental issues that may be outstanding, such as stabilizing the site where necessary and mitigating any remaining wetlands problems that may have been caused by the disturbance of wetlands during the period when construction did occur. In order to accomplish this, there should be an inspection of the site to identify outstanding environmental issues and to prepare a plan of how they will be addressed.

In taking this position, the Council acknowledges that the City and MGT have a number of unsettled issues remaining between them including, but not limited to, cash bonds being held by the City against the successful completion of items that were required under the site plan and subdivision approvals issued by the City. There are also a number of contractual issues between the parties for which litigation has ensued.

As to the question of whether or not changed conditions apply to this project, it is the consensus of the Council that there are, indeed, such conditions. The most obvious changed condition is the presence of site improvements and unfinished buildings that are the remnants of the abandoned project. In addition, economic and regulatory changes that have occurred since the Council's initial approval have had a significant impact on determining the status of this project. Deregulation of electric utilities certainly changed the landscape against which MGT sought to bring its approved project to completion. Although deregulation did introduce many opportunities for competitive merchant power plant projects, as intended, some of its consequences have been unpredictable and adverse. Moreover, in recent years, the global economy suffered an enormous crisis from which we are still slowly recovering and which, no doubt, affected MGT's ability to raise the financing necessary to complete the project.

In conclusion, the Council feels that these changed economic and regulatory conditions will prevent this project from ever being completed. Given that MGT long ago removed all of the power generating equipment from this site, the Council does not believe that a full-fledged decommissioning plan is necessary. The Council does believe, however, that MGT must address any outstanding environmental issues on the site, and, to this end, will order that a public site inspection open to all parties and intervenors who participated in this proceeding will be conducted and that an action plan to address any concerns identified by the Council's representatives during this inspection will be prepared and submitted to the Council for its review and approval.

DOCKET NO. 190B – Meriden Gas Turbines, LLC Certificate }
of Environmental Compatibility and Public Need for a 530 MW }
combined cycle generating plant in Meriden, Connecticut. }
Reopening of this docket pursuant to Connecticut General }
Statutes § 4-181a(b) limited to Council consideration of changed }
conditions and Decommissioning Plan.

Connecticut
Siting
Council
September 19, 2013

Decision and Order

Pursuant to Connecticut General Statutes §§ 4-181a(b) and 16-50p, and the foregoing Findings of Fact and Opinion, the Connecticut Siting Council (Council) finds that there are changed conditions and that the effects associated with the partial construction of the facility, including effects on the natural environment; ecological integrity and balance; public health and safety; scenic, historic, and recreational values; forests and parks; air and water purity; and fish and wildlife are of concern to the Council, but do not warrant a decommissioning plan. The Council therefore acknowledges the surrender of the Certificate of Environmental Compatibility and Public Need (Certificate), as provided by General Statutes § 16-50k, issued to the Certificate Holder on April 27, 1999, and amended on March 3, 2011, subject to the following conditions:

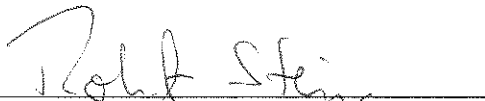
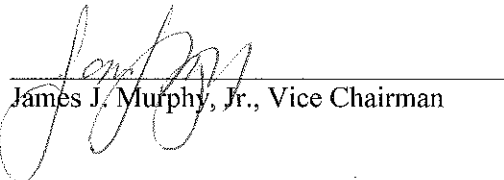

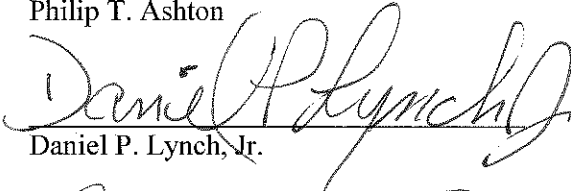
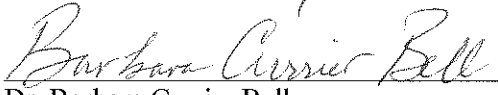

1. The Certificate Holder shall remit timely payments associated with invoices submitted by the Council for expenses attributable to the proceedings held on this facility under Conn. Gen. Stat. §16-50v.
2. The Certificate Holder shall arrange for a public field review of the site for the Council to identify outstanding Certificate and Development and Management Plan (D&M Plan) conditions on the site, as that term is defined under R.C.S.A. §16-50j-2a(22). Such field review shall take place within 30 days of the date of this decision.
3. Within 60 days of Council written notification to the Certificate Holder of those outstanding Certificate and D&M Plan conditions identified by the Council, the Certificate Holder shall submit to the Council and parties and intervenors detailed plans to address such outstanding Certificate and D&M Plan conditions identified by the Council. Such plans shall be reviewed and approved by the Council.
4. Within 90 days of the Council's approval of the Certificate Holder's plans to address the outstanding Certificate and D&M Plan conditions, the Certificate Holder shall submit detailed reports itemizing the completion of measures taken to remediate such Certificate and D&M Plan conditions. Such reports shall be reviewed and approved by the Council.
5. Any request for extension of the time periods referred to in Conditions 2, 3, and 4 shall be filed with the Council not later than 2 weeks prior to the expiration of the designated time period and shall be served on all parties and intervenors, as listed in the service list. Any proposed modifications to this Decision and Order shall likewise be so served.

We hereby direct that a copy of the Findings of Fact, Opinion, and Decision and Order be served on each person listed in the Service List, dated April 18, 2013, and notice of issuance published in the Meriden Record Journal.

By this Decision and Order, the Council disposes of the legal rights, duties, and privileges of each party named or admitted to the proceeding in accordance with Section 16-50j-17 of the Regulations of Connecticut State Agencies.

CERTIFICATION

The undersigned members of the Connecticut Siting Council (Council) hereby certify that they have heard this case, or read the record thereof, in **DOCKET NO. 190B** – Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW combined cycle generating plant in Meriden, Connecticut - Reopening of this docket pursuant to Connecticut General Statutes § 4-181a(b) limited to Council consideration of changed conditions and Decommissioning Plan, and voted as follows to find changed conditions and to acknowledge surrender of the Certificate subject to documentation of compliance with the Council's original Certificate and Development and Management Plan Conditions, to the extent practicable and to the satisfaction of the Council:

<u>Council Members</u>	<u>Vote Cast</u>
 Robert Stein, Chairman	Yes
 James J. Murphy, Jr., Vice Chairman	No
Chairman Arthur House Designee: Michael Caron	Abstain
 Commissioner Daniel Esty Designee: Robert Hannon	Yes
Philip T. Ashton	Recused
 Daniel P. Lynch, Jr.	No
 Dr. Barbara Currier Bell	Yes
 Edward S. Wilensky	Yes

Dated at New Britain, Connecticut, September 19, 2013.