

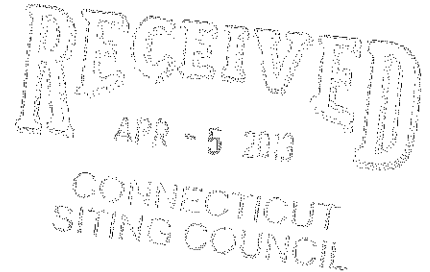
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April 5, 2013

VIA HAND DELIVERY AND ELECTRONIC MAIL

Robert Stein, Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051



ORIGINAL

RE: Docket No. 190 – Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW Combined Cycle Generating Plant in Meriden, Connecticut. Motion to Reopen under C.G.S. §4-181a(b).

Response of the City of Meriden to the Connecticut Siting Council's March 22, 2013 Notice

Dear Chairman Stein:

Enclosed are an original and twenty (20) copies of the Response of the City of Meriden to the Connecticut Siting Council's March 22, 2013 Notice (the "Response").

Please contact me with any questions at (860) 509-6575.

Sincerely,

BROWN RUDNICK LLP

Philip M. Small
Counsel for City of Meriden

Enclosures

cc: Service List, Docket No. 190
Deborah L. Moore, Esq.

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

MERIDEN GAS TURBINES, LLC CERTIFICATE : DOCKET NO. 190
OF ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR THE CONSTRUCTION, :
MAINTENANCE, AND OPERATION OF A 530 :
MW COMBINED CYCLE GENERATING PLANT :
IN MERIDEN, CONNECTICUT. **Motion to Reopen** :
under C.G.S. § 4-181a(b). : April 5, 2013

RESPONSE OF THE CITY OF MERIDEN TO THE CONNECTICUT
SITING COUNCIL'S MARCH 22, 2013 NOTICE

I. INTRODUCTION

The recent filings by the City of Meriden (the "City") and Meriden Gas Turbines, LLC ("MGT") in this docket present a fundamental question for the Connecticut Siting Council (the "Council") as to its statutory mission, the scope of its authority, and the obligations of a party issued a certificate of environmental compatibility and public need ("certificate") to comply with Council requirements. Specifically, the Council must determine the following question: Under the applicable statutes, can a certificate-holder, by unilaterally surrendering its certificate for a partially (or fully) constructed facility, terminate its obligation to comply with conditions imposed by the Council to mitigate the adverse effects of the facility? As the City demonstrates below, the answer to this question is plainly "no."

The City believes that the Council retains its jurisdiction to require a certificate-holder who is surrendering its certificate to comply with existing Council-imposed obligations and with additional Council conditions to mitigate the adverse effects of facility abandonment. MGT's contrary position – that the Council loses jurisdiction over a partially (or fully) constructed facility the moment a certificate is surrendered – deeply troubles the City, as the Project's host community, and should equally trouble the Council. MGT's claim, if accepted, would result in

an outcome irreconcilable with the Council's governing statutes and its very statutory purpose of balancing public need and environmental impact. MGT's position would even allow a certificate holder to avoid specific Council decommissioning, removal and environmental mitigation conditions established in the decision and order issuing the certificate and the approved development and management ("D&M") plans. This result would be absolutely inconsistent with the purpose and language of the Act.

II. BACKGROUND AND SUMMARY

As described in the City's Petition, MGT notified the City that it intended to abandon its 530-megawatt combined-cycle electric generating facility (the "Project") in Meriden. On March 18, 2013, the City filed a petition ("Petition") asking the Council, pursuant to Conn. Gen. Stat. § 4-181a(b), to: (i) reopen Docket No. 190 due to changed conditions resulting from MGT's abandonment of the partially-constructed Project and (ii) to modify the Decision and Order ("Decision") to mitigate the adverse effects of the Project and its abandonment. In the Petition, the City also suggested that the Council consider taking enforcement action under Conn. Gen. Stat. § 16-50u because the City believes MGT has not complied with its obligations under the Decision and the approved D&M plans, including, among other things, its obligation to implement environmental and visual mitigation measures.¹

Subsequent to the City's Petition, MGT filed three letters in this docket, dated March 20, March 25 and March 26, 2013. In its March 20, 2013 letter, MGT notified the Council that it "terminates the project" and "surrenders" the Certificate. MGT asserted that, as a result, the Project "is outside the jurisdiction of the Connecticut Siting Council" and the City's Petition "is rendered moot by MGT's termination of its Certificate." (MGT letter, March 20, 2013). MGT's

¹ The Council required, for example, wetland restoration, erosion and sedimentation control, new coniferous vegetation, visual screening, ornamental plantings, and stormwater management features. (*See, e.g.*, D&M Plan Approval, December 13, 2001)

March 25, 2013 letter clarified that the effective date of MGT's surrender of the Certificate was April 3, 2013. MGT's March 26, 2013 letter provided to the Council a Superior Court Stipulation (the "Stipulation") between MGT and the City.² In Paragraph 4 of the Stipulation, the parties reserved their rights as to any claims and defenses regarding permits and the surrender by MGT of permits, including: (i) whether MGT's surrender of permits requires agency approval, and (ii) whether any permit conditions or obligations survive the surrender of the permits. Additionally, the City "may assert that MGT will have some continuing obligations under those permits even after they are abandoned, but that those continuing obligations will not delay the effective date of the abandonment."³ Importantly, the Stipulation expressly leaves open the issues that the City raises in its Petition and in this filing, including whether MGT's unilateral surrender of the Certificate is effective and whether MGT has continuing obligations under the Certificate.

On March 22, 2103, the Council issued a notice stating that the Petition will be placed on the meeting agenda scheduled for April 18, 2013, and requesting comments or statements of position. This filing responds to the Council's request.

² Under the Stipulation, the parties agreed that, solely for purposes of a prior tax settlement between the parties, MGT's abandonment of Project would be effective April 3, 2013. As noted in the Petition, the City is not attempting to delay the effective date of MGT's abandonment, rather it seeks to have the Council require MGT to properly mitigate the effects of its construction and abandonment of the Project. (Petition, Footnote 2).

³ The Stipulation was approved by the Superior Court on March 25, 2013. Paragraph 4 of the stipulation states: "4. Other than as noted in this paragraph, the City agrees that it will not assert any preconditions to MGT's abandonment of its permits or approvals and the City will not seek to assert any delay of the effective date of the abandonments including as a consequence of any claim that surrender of a permit requires agency approval or justified other agency action. While the City and MGT agree that the surrender or abandonment or relinquishment of those permits are effective for purposes of the abandonment provided for in Paragraph 6 of the Property Tax Settlement Agreement, *the City and MGT reserve their rights as to any other claims or defenses regarding such permits and the surrender of such permits, including any claim that permit surrender does or does not require agency approval, or that any conditions or obligations may or may not survive surrender of any permit. No such claims or defenses are established or conceded by this agreement, and the parties will address such matters at another time or time. As to those the City may assert that MGT will have some continuing obligations under those permits even after they are abandoned, but those continuing obligations will not delay the effective date of the abandonment.*" (emphasis added.)

In its filings, MGT contends that the City's Petition is "rendered moot" because "without a Certificate, MGT's property consists only of two commercial buildings containing no power equipment and is outside the jurisdiction of the Connecticut Siting Council." (MGT Letter, March 20, 2013). As demonstrated below, MGT's contention is legally erroneous and contravenes the Council's enabling statutes, the Public Utility Environmental Standards Act (the "Act"), the Uniform Administrative Procedure Act ("UAPA"), case law and Council precedent. MGT's contention is also factually erroneous because, according to MGT's own documents, its property still contains electric generating-related buildings, structures, and equipment.

The Council's ability to impose conditions through its decisions and orders and the D&M plan process and to then enforce those conditions is fundamental to the Council's statutory purpose to "protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values," and must be preserved. *See* Conn. Gen. Stat. §§ 16-50g, 16-50p, 16-50u. In summary, the City respectfully requests that the Council: (i) reject MGT's claim that its unilateral surrender of the Certificate moots the City's Petition, (ii) grant the City's Petition to reopen Docket No. 190 and modify the Decision to mitigate the adverse environmental, scenic, and public safety effects of MGT's abandoned Project, and (iii) as appropriate, enforce MGT's compliance with Council requirements pursuant to Conn. Gen. Stat. § 16-5u.

III. SUPPLEMENTAL FACTUAL INFORMATION

Pages 1-2 of the City's Petition summarize the relevant facts. The City is providing supplemental factual information solely to rebut MGT's unsupportable statement in its March 20, 2013 letter that "MGT's property consists only of two commercial buildings containing no power equipment" This statement is the foundation of MGT's claims that the Project "is

outside the jurisdiction of the Connecticut Siting Council” and that the City’s Petition “is rendered moot by MGT’s termination of its Certificate.” (MGT Letter, March 20, 2013).

However, the remnants of MGT’s Project on the 500 South Mountain Road property (the “Site”) consist of far more than just “two commercial buildings containing no power equipment” Rather, major components of the Project remain situated on this scenic traprock ridge and are visible from miles away. MGT’s description of its property is completely inaccurate and is contradicted by its own real estate appraisal, dated September 7, 2012 (the “MGT Appraisal”).⁴ The MGT Appraisal contains aerial photographs of the Site, as well as a detailed description of the remaining electric generating facility buildings, structures and equipment. The photographs show that a number of buildings, storage tanks, and other structures remain. Ex. 1, Pgs. 19-20. These portions of the electric generating facility are described in the MGT Appraisal as follows:

- Control Building – A 15,000 sq. ft. one story pre-engineered steel building with insulated metal walls and a pitched metal insulated roof, built on a concrete slab;
- Power Plant-Generator Building – A 43,776 sq.ft. one story pre-engineered steel building with a 9,600 sq.ft. second level mezzanine. Portions of the building reach 82 feet in height. The interior contains several reinforced concrete pads and pedestals which are designed to support the turbines and other equipment. A 65-ton bridge crane was installed and remains;⁵
- Above Ground Water and Fuel Tanks – Two above ground steel tanks with capacities of 800,000 and 500,000 gallons;

⁴ Excerpts of the Appraisal are attached as **Exhibit 1**.

⁵ This building is referred to as the “Turbine Building” in the City’s Petition.

- Cooling Tower Foundation – a 19,500 sq.ft. concrete foundation with 2 feet high concrete walls. It is designed like a pool, with a sloping floor to collect water;
- Third Building Foundation – A 4,600 sq.ft. concrete foundation intended for an additional building; and,
- Access Drive – A 1,350 feet long private access road with water and sewer service.

Ex. 1, Pgs. 51-52.

Importantly, the MGT Appraisal states that “[m]ost commercial uses are also inappropriate” for the abandoned Project “due to the lack of visibility from Route 71 and difficult access.” Ex. 1, Pg. 55. In addition, the MGT Appraisal notes that the Power Plant-Generator Building “*was designed for the specific use of electric power generation, and its unique and special design features are unsuited for alternate uses and will be very costly to remove.*” *Id.*, Pg. 54 (emphasis added).

Consequently, the issue before the Council is not whether it has jurisdiction over “two commercial buildings containing no power equipment” Rather, it is whether the Council continues to have jurisdiction over the substantial remaining electric generating-related structures, facilities and equipment, including the portion of South Mountain Road constructed by MGT as an integral part of the Project, in order to (i) compel MGT to comply with the existing Decision and approved D&M plans which required MGT to mitigate the adverse environmental, scenic and public safety impacts of the Project, and (ii) reopen Docket No. 190 and modify the Decision to address and mitigate the impact of MGT’s abandonment. The City believes that the Council does.

IV. DISCUSSION

A. UNDER THE ACT AND THE UAPA, MGT MAY NOT UNILATERALLY SURRENDER A CERTIFICATE ISSUED BY THE COUNCIL.

MGT's effort to surrender the Certificate without Council approval is ineffective because only the Council is authorized by statute to issue, modify, transfer, or revoke the Certificate. Consequently, MGT's surrender of the Certificate is operative only upon the Council's review, conditioning and approval.

The Act grants the Council broad power to plan and control the development of electric generating (and other) facilities to minimize adverse impacts to "the quality of the environment and the ecological, scenic, historic and recreational values of the state." Conn. Gen. Stat. § 16-50g. Specifically, the Council has "exclusive jurisdiction over the location and type of facilities and over the location and type of modifications of facilities." Conn. Gen. Stat. §§ 16-50x(a); *see, also*, Conn. Gen. Stat. § 16-50w ("In the event of any conflict between the provisions of [the Act] and any provisions of the general statutes, as amended, or any special act, [the Act] shall take precedence."). The Council's statutory authority includes the power to issue certificates for the construction or modification of a facility. Conn. Gen. Stat. § 16-50k(a).

Under the Act, the Council alone is authorized to issue, amend, and transfer certificates. *See* Conn. Gen. Stat. §§ 16-50k(a), 50k(b), 50l(d), 50p(e). In each case, the applicant or certificate holder seeking to construct, modify, or change control of a facility must first request and obtain Council approval. Nothing in the Act or the Council's regulations addresses revocation or suspension of a certificate.

As a result, the Council's authority to suspend or revoke a certificate is contained in the UAPA. Under Conn. Gen. Stat. § 4-182(d)(1): "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; . . .”⁶ As with the Act, nothing in the UAPA authorizes or allows the certificate holder to *unilaterally* surrender a certificate issued by the Council. This contrasts with other sections of the General Statutes in which the General Assembly expressly grants licensees the authority to surrender permits. *See, e.g.,* Conn. Gen. Stat. § 36a-51(c) (“Any licensee may surrender any license issued by the [banking] commissioner under any provision of the general statutes by surrendering the license to the commissioner in person or by registered or certified mail, . . .”). The absence of statutory language regarding the voluntary surrender of a certificate in the Act or the UAPA evidences the General Assembly’s intent to exclusively vest the power to revoke certificates with the Council.

Further, under the UAPA, “[n]o revocation, suspension, annulment or withdrawal of any license is lawful” unless, prior to the agency proceeding, the agency notifies the licensee and provides the licensee the opportunity to be heard. Conn. Gen. Stat. § 4-182(c). Based on the broad language of this provision, the surrender of a license, which is simply a “withdrawal” by the licensee, would require agency action. Consequently, MGT’s surrender of the Certificate is subject to Council review, approval and conditions. *See Stern v. Connecticut Medical Examining Board*, 208 Conn. 492, 505 fn. 2 (1988) (noting that while the Connecticut courts had not yet decided the issue, “other jurisdictions have held . . . that licensees are not entitled to surrender their licenses as of right . . . in order to thwart agency jurisdiction.”); *Senise v. Corcoran*, 552 N.Y.S.2d 483, 485 (1989) (“petitioner’s unilateral attempt to divest the superintendent of jurisdiction [by surrendering his license] would frustrate the legislative directive that the superintendent be empowered to discipline insurance brokers . . .”)(citations omitted); *Serrani*

⁶ A certificate issued by the Council would be subject to the UAPA, which defines a license as “any agency permit, certificate, approval, registration, charter or similar form of permission required by law . . .” Conn. Gen. Stat. § 4-166(6).

v. Board of Ethics of the City of Stamford, CV-920122888-S (Conn. Super. Ct., March 30, 1992) (finding that the city's ethics board "would be meaningless if its investigations were terminated every time a public official resigned or left office.")

Notably, while neither the UAPA nor the Act includes any mechanism by which a licensee may unilaterally surrender a license, they provide specific processes for the Council to modify or revoke certificates. *See, e.g.*, Conn. Gen. Stat. §§ 16-50k(a), 16-50k(b), 16-50l(d), 16-50p(e), 4-181a(b), 4-182(d)(1). Given these specific provisions and the absence of any provision regarding surrender by a certificate-holder, the Council exercises exclusive authority to revoke or withdraw certificates. *See Starks v. University of Connecticut*, 270 Conn. 1, 31 (2004) ("when statutes provide that an activity shall be performed in a certain manner, there ordinarily is an implied prohibition against performing that activity in a different fashion."); *see, also, State v. Kelly*, 208 Conn. 365, 371 (1988) ("[a] statute which provides that a thing shall be done in a certain way carries with it an implied prohibition against doing that thing in any other way").

The Council's sister agency, the Department of Energy and Environmental Protection ("DEEP"), which operates under the UAPA and a statutory scheme similar to the Act, has determined that a permit holder may not unilaterally surrender a DEEP permit. For example, DEEP has the statutory authority to comprehensively regulate air pollution, and its air permitting authority is analogous to the Council's authority over facilities. *See* Conn. Gen. Stat. §§ 22a-171, 22a-174, 22a-174c(a); Conn. Agencies Regs. § 22a-174-3a(f). DEEP, like the Council, exercises exclusive authority to revoke or withdraw its permits. Conn. Gen. Stat. § 22a-174c(a) (DEEP "may, upon a showing of cause, modify, revoke or suspend any permit issued under this chapter . . ."). As with the Council, nothing in DEEP's statutes governing air permits authorizes a permittee to unilaterally surrender its permit.

As a result, DEEP requires permittees to request DEEP approval for the surrender or revocation of air permits. DEEP's air regulations state that DEEP "may revoke any permit on [its] own initiative or at the request of the permittee Any such request shall be in writing and contain facts and reasons supporting the request." Conn. Agencies Regs. § 22a-174-2a(h). In fact, DEEP's Bureau of Air Management uses a "License Revocation Request Form," form DEEP-AIR-REQ-004, that permittees must submit in order to have their air permit revoked by DEEP. Notably, MGT submitted this form in March 2013 to request revocation by DEEP of its two New Source Review Permits for the Project as of April 3, 2013.⁷ Both the General Assembly and DEEP recognize that to ensure a regulated activity is properly terminated, the regulated entity must not have the ability to surrender a license at its own convenience.

For the reasons described in this section, MGT's effort to unilaterally surrender the Certificate fails. No statute, regulation, or other authority allows MGT to unilaterally surrender the Certificate. Consequently, for the surrender to be effective, MGT must obtain Council approval and must comply with any conditions the Council imposes.

B. THE PROJECT CONTINUES TO BE A FACILITY AS DEFINED IN CONN. GEN. STAT. § 16-50i(a) AND, THEREFORE, REMAINS SUBJECT TO COUNCIL JURISDICTION.

Even if MGT could unilaterally surrender the Certificate, the Project remains an electric generating "facility," as defined in Conn. Gen. Stat. § 16-50i(a)(3), and is, therefore, subject to Council jurisdiction. As explained in the supplemental factual information section above, MGT inaccurately asserts that "MGT's property consists only of two commercial buildings containing no power equipment and is outside the jurisdiction of the Connecticut Siting Council." (MGT Letter, March 20, 2013). MGT's argument appears to be that once a certificate holder removes a

⁷ A copy of MGT's DEEP air permit revocation request is attached as **Exhibit 2**.

certain portion of its equipment and surrenders the certificate, Council jurisdiction evaporates. MGT's crabbed view of the Council's statutory authority ignores both the Council's long-held position that it has jurisdiction over the entire electric generating facility site and the Council's statutory authority to mitigate the Project's continuing adverse impacts on the environment.

Under the Act, the Council has jurisdiction over all aspects of a facility, including type, location, site preparation, construction, fuel supply, modification, and operation. Conn. Gen. Stat. §§ 16-50k(a), 16-50p(a)(1), 16-50w, 16-50x(a). The term "facility" includes "any electric generating or storage facility . . . , *including associated equipment for furnishing electricity . . .*." Conn. Gen. Stat. § 16-50i(a)(3)(emphasis added.).

The scope of the term electric generating "facility" is not precisely defined in the Act. *See* Conn. Gen. Stat. § 1-1(a) ("In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . ."). The dictionary defines "facility" to be "something (as a hospital) that is built, installed, or established to serve a particular purpose."⁸ It follows, then, that the Council has broad jurisdiction over electric generating equipment and "associated equipment," including everything "built, installed, or established to serve [the] particular purpose" of electric generation. Importantly, the remaining buildings, storage tanks, structures and equipment on the Site, described in detail in the MGT Appraisal, were solely designed and intended for electric generation and, therefore, fall squarely within the statutory definition of "facility." Ex. 1, Pgs. 51-52.

Further, decades of Council decisions demonstrate that, in the electric generating facility context, the term "facility" encompasses practically anything and everything on a site developed for electric generation. Specifically, the Council has exercised jurisdiction over all aspects of

⁸ Facility [Def. 4.b]. (n.d.). In Merriam Webster Online, Retrieved March 30, 2013, from <http://www.merriam-webster.com/dictionary>.

electric generating facilities, ranging from turbines and generators to training buildings, processing plants, storage sheds, and an indoor firing ranges. (*See, e.g.*, Petition No. 70, Decision, July 2, 1981 (training building); Petition No. 107, Decision, July 26, 1984 (refuse processing plant); Petition No. 521, Decision, Aug. 14, 2001 (sand storage shed), Petition No. 666, Decision, April 27, 2004 (indoor firing range)). As a result, the Council's jurisdiction is not strictly limited to the equipment directly generating electricity. Instead, the Council's jurisdiction extends over the entire electric generating facility site, including buildings, structures and fixtures, even those only tangentially related to electric generation.

As a result, MGT's removal of some electric generating equipment and termination of the Project does not vitiate the Council's jurisdiction over the remainder of the electric generating facility. Importantly, although MGT may have removed some electric generating equipment from the facility, the Site contains a number of significant buildings and structures designed specifically for electric generation, *see* Ex. 1, Pg. 54, and MGT's construction and abandonment of the electric generating facility, along with its failure to implement Council-approved mitigation requirements, continue to cause adverse environmental and visual effects.

In short, MGT's limited removal of equipment does not affect the Council's jurisdiction over the Project and the Site. Therefore, the Council has the statutory authority to mitigate the current and future adverse environmental, scenic, and public safety impacts of the remaining portions of MGT's electric generating facility.

C. EVEN IF MGT SURRENDERS THE CERTIFICATE, IT REMAINS SUBJECT TO THE DECISION AND ORDER AS IT MAY BE MODIFIED PURSUANT TO THE CITY'S PETITION

On April 27, 1999, the Council issued its Decision in Docket No. 190 (along with Findings of Fact, an Opinion and a Dissenting Opinion). The Decision first states that "the

application submitted by [MGT's predecessor] to construct, operate and maintain [the Project] is hereby approved." (Decision, Pg. 1). Next, the Decision states that the Certificate "shall be issued, subject to the following conditions and requirements." (*Id.*) As discussed below, under both the Act and the UAPA, the Decision is an independent legal document binding on and enforceable against MGT by the Council, separate and apart from the Certificate. Therefore, even if MGT can surrender the Certificate without Council approval (which the City believes it cannot), the Decision remains in full force and effect, and MGT is obligated to comply with it.

Under the Act, the Certificate provides MGT the right to construct the Project. By contrast, the Decision and the Council-approved D&M plans establish the associated obligations and duties imposed on MGT by the Council. In other words, MGT's "surrender" of the Certificate merely rescinds MGT's right to build the Project, but it does not rescind the Decision or MGT's obligations under the Decision. The Act does not simply authorize the Council to issue certificates. Instead, the Act requires the Council to issue a "decision" on any certificate application. Specifically, Conn. Gen. Stat. § 16-50p(a)(1) states: "In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or *granting it upon such terms, conditions, limitations or modifications* of the construction or operation of the facility as the council may deem appropriate." (emphasis added). Therefore, the Council's decision is the legal document that grants an applicant the certificate to construct or modify a facility *and* imposes specific obligations and duties on the applicant. *See* Conn. Gen. Stat. § 16-50u (authorizing the Council to enforce compliance with a "certificate *and any other standards established pursuant to this chapter.*") (emphasis added). Consequently, MGT's attempted "surrender" of the Certificate does not affect the viability or enforceability of the Decision or MGT's attendant responsibilities.

The Decision can only be modified, vacated or revoked by Council action in accordance with the Act and the UAPA. The Decision is a "license" subject to the provisions of the UAPA. *See* Conn. Gen. Stat. § 4-166(6) (defining license as "the whole or part of any agency permit, certificate, approval, . . . or similar form of permission required by law , . . ."). As a result, the Decision is subject to the license withdrawal provision in Conn. Gen. Stat. § 4-182(c) (discussed above). Alternatively, MGT may ask the Council to "reverse or modify" the Decision pursuant to Conn. Gen. Stat. § 4-181a(b) due to "changed conditions." Unless and until the Council proceeds under one of these UAPA provisions, the Decision and the obligations it imposes on MGT (as they may be amended by the Council in response to the City's Petition) remain in effect and are binding on MGT, regardless of whether MGT relinquishes its right to construct the Project by surrendering its Certificate.

D. THE DISMANTLING AND ABANDONMENT OF THE FACILITY IS A MODIFICATION OF THE FACILITY OVER WHICH THE COUNCIL EXPRESSLY HAS JURISDICTION.

Under the plain language of the Act, the Council continues to have jurisdiction over the Project because MGT (i) was and continues to be required to obtain the Council's approval for the removal of the electric generating equipment and (ii) must still obtain the Council's approval for the termination of the Project which will result in further modification of the facility. As discussed above, the Council has jurisdiction over the development and modification of electric generating facilities and associated equipment. *See* Conn. Gen. Stat. §§ 16-50k(a), 16-50i(a)(3). A modification is defined as "a significant change or alteration in the general physical characteristics of a facility." Conn. Gen. Stat. § 16-50i(d). The Council has exerted its jurisdiction under this provision to approve the removal of equipment and structures from facilities. (*See, e.g.*, Petition No. 433, Decision, Nov. 15, 1999 (removal of substation); Petition

No. 1033, Decision, Sept. 20, 2012 (removal of transmission line lattice structure)).

Consequently, any significant changes to or the removal of the equipment, structures, or fixtures of a facility constitute a “modification” and require an amendment to the certificate.

Here, MGT’s dismantling and abandonment of the Project is, without doubt, a modification. MGT did not simply abandon a proposed or hypothetical project. Rather, MGT completed substantial portions of its 530-megawatt electric generating facility before suspending the Project in 2003. Notably, MGT had completed the sitework, the access drive, the main turbine building, water and fuel tanks, cooling tower, and other accessory buildings. Ex. 1, Pg. 53. In addition, MGT delivered to the Site and installed much of the electric generating equipment. *Id.* As a result, the “general physical characteristics” of the Project were that of a substantially completed electric generating facility. *See* Conn. Gen. Stat. § 16-50i(d).

Since then, MGT modified the Project by dismantling and removing some of the electric generating equipment it had installed. Ex. 1, Pg. 53. The gas combustion turbines, heat recovery steam generators, cooling towers, a steam turbine, and high-voltage transformers were all removed. Despite these dramatic changes and alterations to the facility, MGT has not yet obtained Council approval as required by the Act. *See* Conn. Gen. Stat. § 16-50k(a) (“no person shall . . . commence any modification of a facility . . . without having first obtained a certificate” from the Council). However, MGT cannot cure this non-compliance by surrendering the Certificate and claiming the City’s Petition is, thereafter, moot. *See In re Jeremy M.*, 100 Conn.App. 436, 441-42, *cert. denied*, 282 Conn. 927 (2007) (“The test [for determining mootness] is whether there is a practical relief this court can grant . . .”). Here, the Council has the authority to grant relief by modifying the Decision to address MGT’s abandonment of the Project and to seek enforcement “to secure compliance with [the Act]” under Conn. Gen. Stat. § 16-50u.

Further, MGT's termination of the Project will result in additional modifications to the Project, which will also require Council approval. According to the MGT Appraisal, the remaining buildings, structures and equipment on the Site have little or no value for purposes other than electric generation. Ex. 1, Pg. 54. Consequently, MGT will need to dismantle and remove these remnants of its Project in order to reuse the Site for an alternate use. *Id.*, Pg. 55. Even if MGT does nothing other than allow the remnants of its Project to remain and inevitably deteriorate, that deterioration would also be "a significant change . . . in the general physical characteristics of a facility" and, likewise, constitute a modification subject to Council approval.

In short, by dismantling, abandoning, and terminating the Project, MGT has modified and will continue to modify the Project; therefore, MGT and its Project continue to be subject to the Council's jurisdiction.

E. ALLOWING MGT TO REVOKE OR SURRENDER THE CERTIFICATE WITHOUT COUNCIL APPROVAL WILL IMPAIR THE COUNCIL'S AUTHORITY TO REGULATE FACILITIES UNDER ITS JURISDICTION.

By surrendering its Certificate, MGT is attempting to avoid Council jurisdiction over the Project and MGT's obligation to properly decommission the facility and mitigate the associated adverse impacts. If permitted to do so, MGT's strategy will eviscerate the Council's ability now and in the future to enforce the conditions it imposes on certificate-holders, including those related to the orderly decommissioning or abandonment of facilities.

As it did in this docket, through its decisions and orders, the Council almost always imposes environmental, public safety, visual and other mitigation conditions to be implemented through a D&M plan, including erosion, sediment and stormwater control, and planting requirements. Additionally, the Council often imposes conditions requiring the dismantling and removal of structures and other mitigation measures. *See* Petition, Pgs. 8-9 (citing Council

conditions requiring the dismantling and removal of abandoned telecommunications towers and wind turbine facilities). These conditions, however, would be meaningless and unenforceable if the certificate holder could simply surrender its certificate and thereby negate Council jurisdiction when the facility is abandoned or no longer functional. As a result, the careful balance struck by the Council in issuing a certificate could be eviscerated at the sole discretion of the certificate-holder at any time. Such a result would be inconsistent with the Act.

MGT's effort to surrender its Certificate exemplifies the rationale for requiring Council approval before a certificate can be surrendered. By claiming that "MGT's property is outside of the jurisdiction of the Connecticut Siting Council" (MGT Letter, March 20, 2013), MGT intends (i) to avoid its obligations to complete the environmental and visual mitigation measures required by the Council's Decision and (ii) to avoid decommissioning the Project under the Council's oversight in a way that minimizes the adverse effects of the Project. Allowing MGT to circumvent its obligations by unilaterally surrendering its Certificate would set a dangerous precedent and would make Council conditions unenforceable at the option of the certificate holder.

V. CONCLUSION

The City, therefore, respectfully requests that the Council (i) reject MGT's claim that its unilateral surrender of the Certificate moots the City's Petition, and (ii) grant the City's Petition to reopen Docket No. 190 and modify the Decision to mitigate the adverse environmental, scenic, and public safety effects of the abandoned Project.

Respectfully submitted,

CITY OF MERIDEN

By: 

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Exhibit List

- | | |
|-----------|--|
| Exhibit 1 | MGT's Appraisal dated September 7, 2012 (excerpts) |
| Exhibit 2 | MGT's Form DEEP-AIR-REQ-004 |

Exhibit 1

MGT's Appraisal dated September 7, 2012 (excerpts)

Miner & Silverstein, LLP

322 State Street
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Phone ◊ 860-443-8405
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<http://www.msac.com>

Prospective Real Estate Appraisal

Of Property Located At

Meriden Gas Turbines, LLC
600 South Mountain Drive
Meriden, CT

Client– NRG Energy, Inc.

Date of Inspection – August 16, 2012

Effective Date of Valuation – October 1, 2012

Report Type- Self-Contained

Publication Date – September 7, 2012

Miner & Silverstein, LLP

September 7, 2012

Judith Lagano, VP Asset Management
NRG Energy, Inc.
Northeast Region
211 Carnegie Center
Princeton, NJ 08540

Re: 600 South Mountain Road, Meriden, CT
Meriden Gas Turbines, LLC

Dear Ms. Lagano:

At your request, the above captioned property has been examined to form an opinion of its prospective market value as of October 1, 2012. The attached self-contained report contains a description of the property and the rights appraised, the data and reasoning leading to our conclusions, and the underlying assumptions and limiting conditions upon which this appraisal is based.

The appraised property consists of a 36.689 acre site which was approved in 1999 for development with a 544 megawatt gas fired electric generating plant. Construction of the plant began in late 2001, and was halted in late 2002 as a result of the deteriorating market for electric generation. South Mountain Road, leading from Route 71 to the site, was built; as was an access road from the end of South Mountain Road to the buildable area of the site, the shells of two buildings, a foundation for a third building, and water tanks and cooling towers. The buildable area of the site was graded and leveled to support this construction. Since 2002, the turbines, cooling fans and other equipment have been removed, and the buildings have remained in unfinished condition. The access road requires a final topcoat of paving, and the building site has no paved areas and numerous exposed pipes, footings, foundations and other structures related to the planned power plant that will need to be removed for any alternate use.

The main power plant building contains 43,776 sq. ft. About 56% of the building has a height of 82 ft., while 12% has a height of 62 ft. and 32% has a height of 39 ft. The building was designed for the specific use of electric power generation, and its unique and special design features are unsuited for alternate uses and will be costly to remove. The control-engineering building contains 15,000 sq. ft. Both buildings consist of concrete slabs, steel frames with steel walls and roofs, and no interior finish. Temporary electric power is provided, but no water, sewer or gas service is connected.

The property is appraised subject to the extraordinary assumption that completion of the partially completed electric generation plant is not feasible, per terms of a Property Tax Payment Agreement dated November 18, 2008 between MGT and the City of Meriden. This appraiser is not expert in the valuation of operating electric power plants, and cannot

Real Property
Appraisal
And Consulting

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Robert H. Silverstein
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Judith Lagano, VP Asset Management
NRG Energy, Inc
September 7, 2012
Page 2

determine the feasibility of completing the plant. A full statement of the underlying assumptions and limiting conditions is included in the attached report.

The property was inspected on August 16, 2012. The effective date of valuation is October 1, 2012. Our opinion of the prospective value assumes that there will be no significant changes to the property, its environment, or to the economic and financial markets that would impact the use, marketability or value of the property prior to the effective valuation date.

It is our opinion that the prospective market value of the fee simple estate in the subject property, subject to the extraordinary assumption that completion of the power plant is not feasible, as of October 1, 2012, is:

One Million Nine Hundred Thousand Dollars
\$1,900,000

Our opinion of value may not be properly understood and would therefore be invalid if this letter is not attached to the report with accompanying exhibits.

Respectfully submitted,



Robert H. Silverstein, MAI, SRA
Certified General Appraiser RCG.0000565
Expires 4/30/2013

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AERIAL PHOTOS



Looking North

Source: Bingmaps.com

AERIAL PHOTOS



Looking Northeast

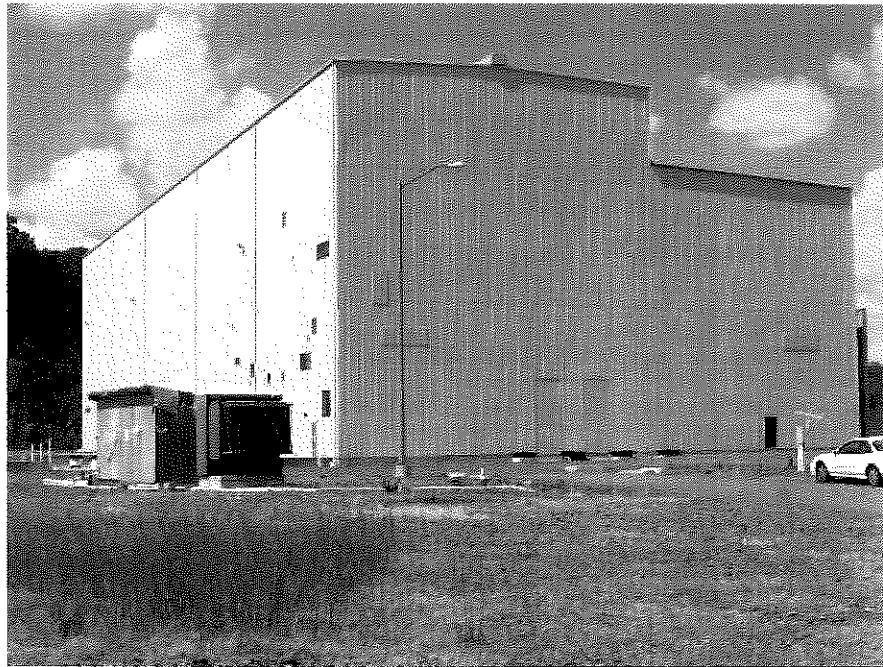


Looking northwest

PHOTOGRAPHS OF SUBJECT PROPERTY

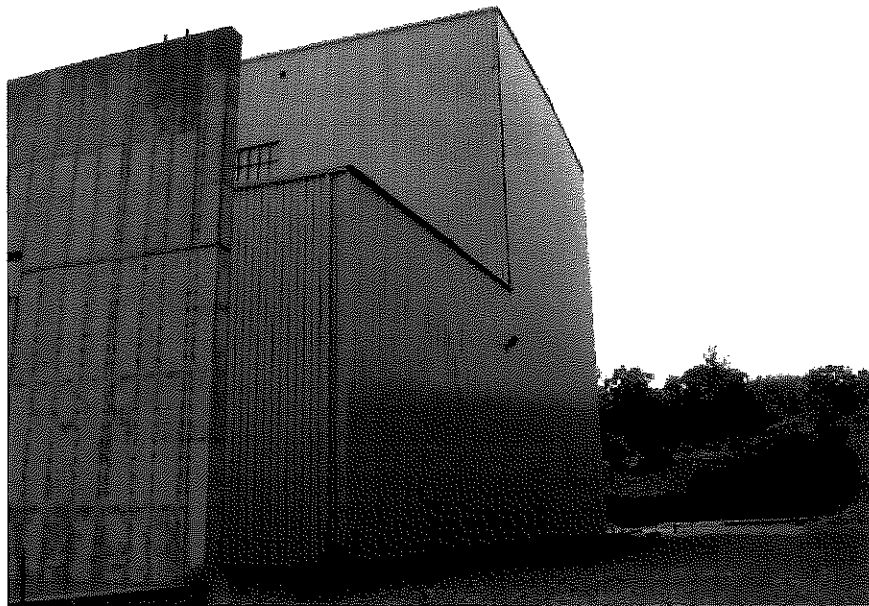
*Power Plant
Building*

*View of front
(south) and
west side
looking
northeast*



Power Plant

*Rear (north
side) view
Looking West*



PHOTOGRAPHS OF SUBJECT PROPERTY

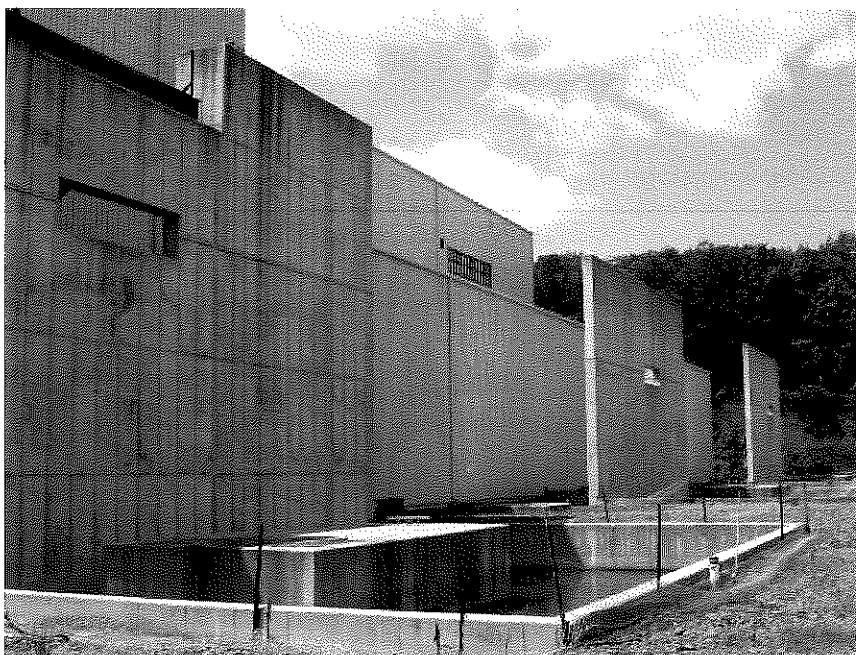
Power Plant

*East Side
looking west*



Power Plant

*East side
looking north*

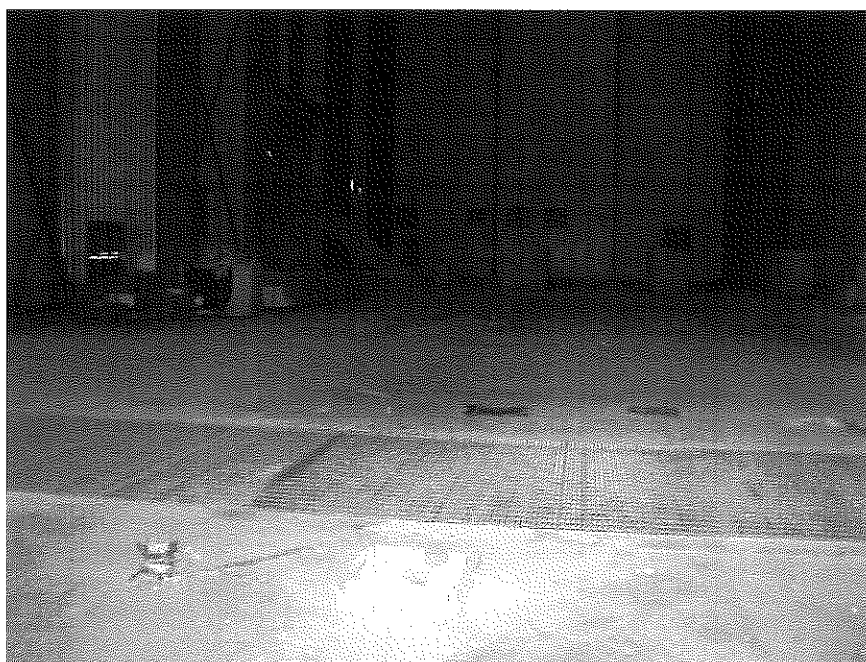


PHOTOGRAPHS OF SUBJECT PROPERTY

*Power Plant
Interior view*

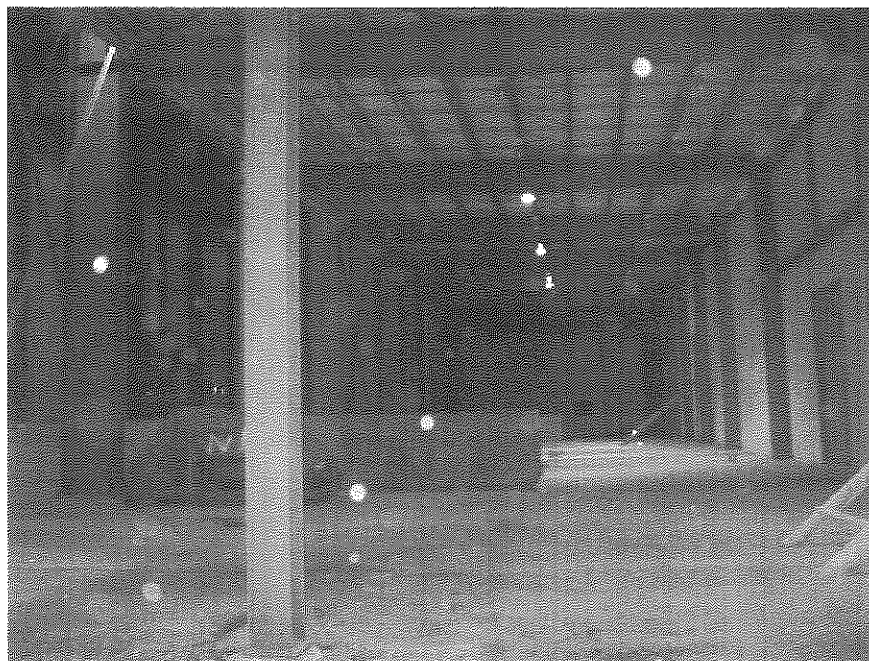


*Power Plant
Interior view*

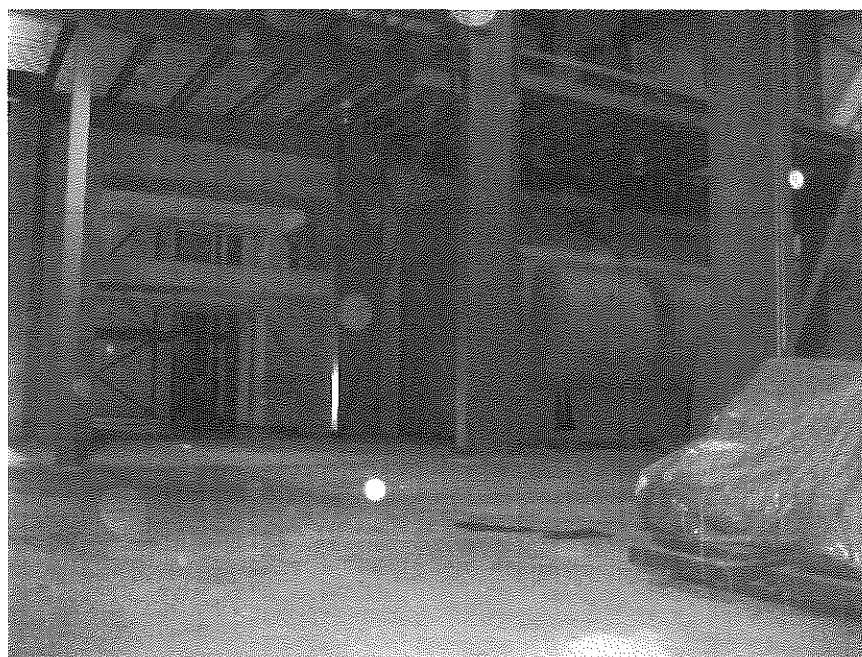


PHOTOGRAPHS OF SUBJECT PROPERTY

*Power Plant
Interior view
looking to
north end*



*Power Plant
Interior View
Looking to
south end of
building*



PHOTOGRAPHS OF SUBJECT PROPERTY

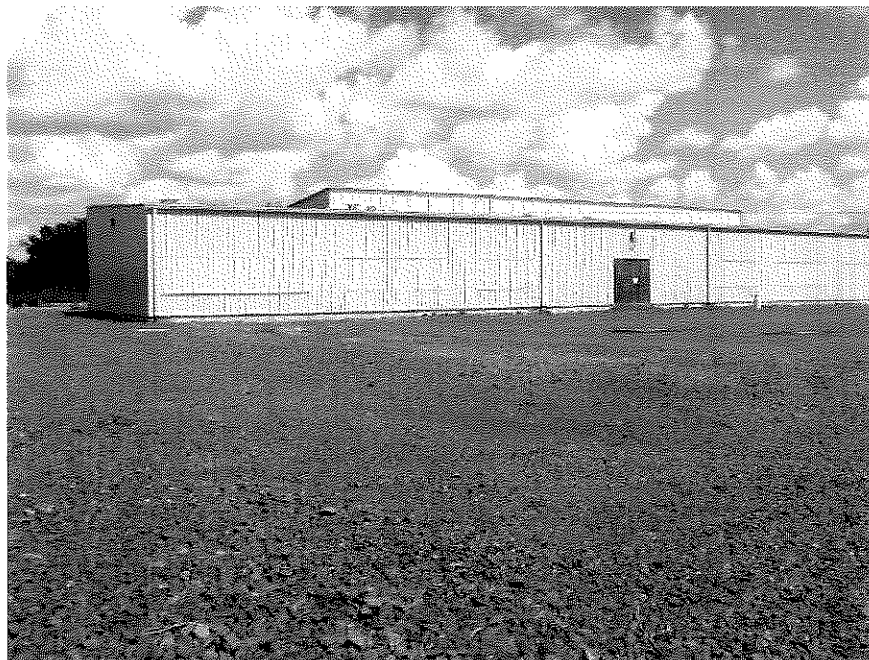
*Control-
Administration
Building*

*East and south
sides looking
southwest*



*Control-
Administration
Building*

*West and north
sides looking
southeast*

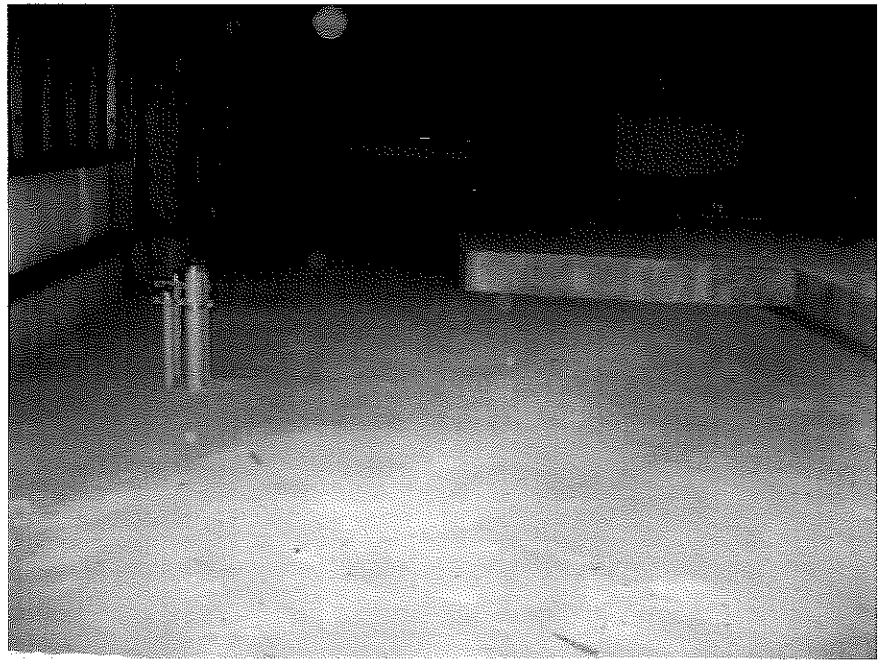


PHOTOGRAPHS OF SUBJECT PROPERTY

*Control-
Administration
Building
Interior view*

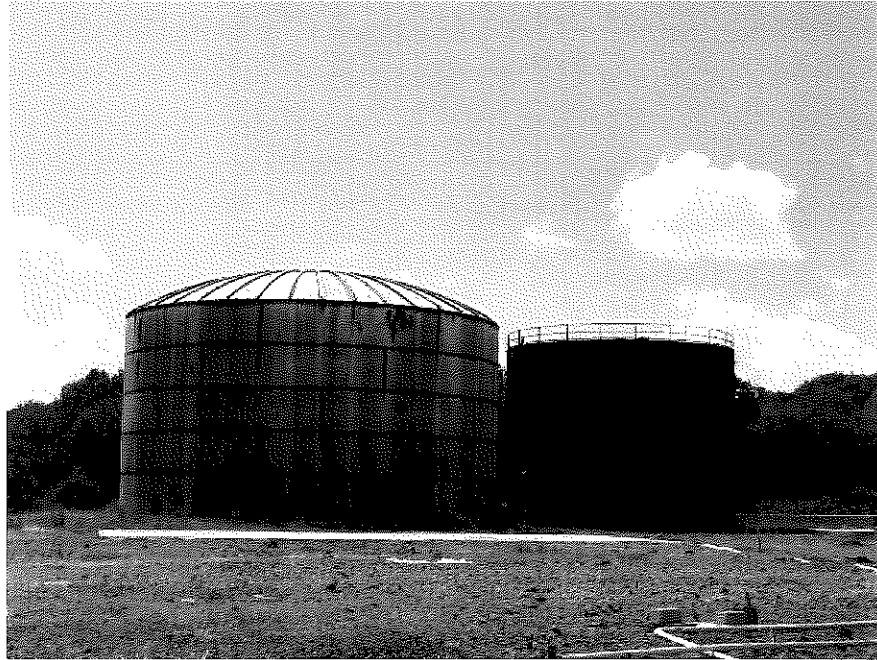


*Control-
Administration
Building
Interior
showing
lowered floor
section with
exposed pipes*



PHOTOGRAPHS OF SUBJECT PROPERTY

*Above ground
Water and
Fuel Tanks*



*Foundation for
Cooling Tower*



PHOTOGRAPHS OF SUBJECT PROPERTY

*Foundation
east of control-
administration
building*



*Piping and
support for
equipment that
was removed
on west side of
main building*



PHOTOGRAPHS OF SUBJECT PROPERTY

Site, East Side

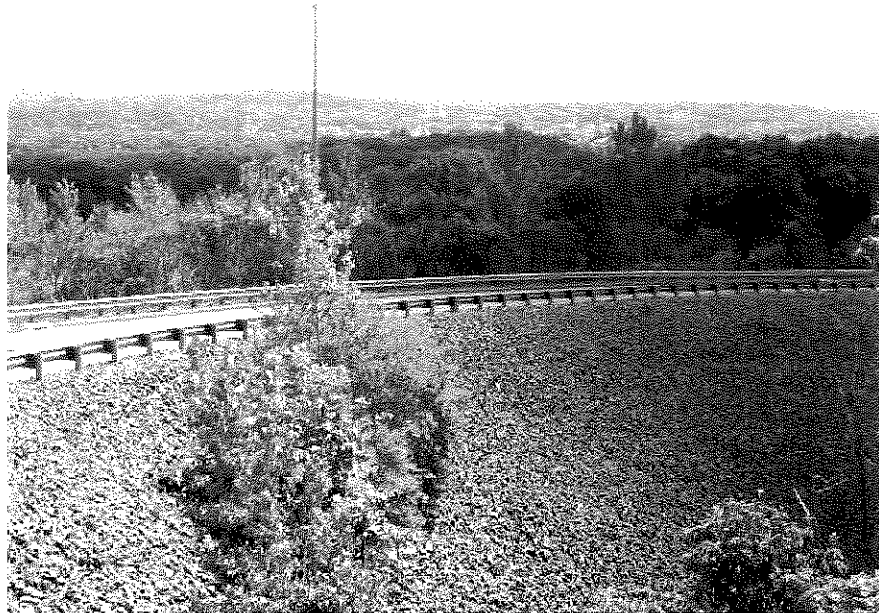


*Site north of
power plant
looking west at
rear of power
plant building*



PHOTOGRAPHS OF SUBJECT PROPERTY

*Slope on side
of access road
and view to
south*



*Slope on east
side of site*



PHOTOGRAPHS OF SUBJECT PROPERTY

*Access Road
Looking to
Power Plant*



*Access Road
Looking away
from Buildings*



PHOTOGRAPHS OF SUBJECT PROPERTY

*View of Access
Road Entry
from end of
South
Mountain
Road
Note sharp
turn to left*



*Entry to South
Mountain
Road from
Route 71*



PHOTOGRAPHS OF SUBJECT PROPERTY

*Route 71
Looking North*



*Route 71
Looking South*



SITE DESCRIPTION

Size:	36.689 acres (1,598,205 sq. ft.)
Shape:	Somewhat rectangular with average dimensions of 1,000 x 1,350+/- feet.
Frontage:	118.23 feet on the north and northeast end of the cul-de-sac of South Mountain Drive.
Topography:	The usable portion of the site is a high plateau that has been leveled and cleared, but the surface consists almost entirely of crushed trap rock. The land around the east, northwest and southwest property lines drops off very steeply, as much as 70 ft. feet in elevation, while the northwest property line consists of a steep rock face. There is a 100+/- ft. drop in elevation on the south end of the site from the usable area to South Mountain Road. Most of the site consists of trap rock, and development required blasting. About 50% of the total land area is unusable due to steep slopes or easement restrictions, or is used for the access road.
Soils:	See soils map and depth to bedrock map on pages 8 and 9. Most of the site consists of Soils Types 78C and E, Holyoke-Rock outcrop complex, which have a depth to bedrock of less than two inches, and slopes of 3 to 15 percent (78C) or 15 to 45 percent (78E). A small area in the northeast corner consists of Type 305, Udorthents-Pits complex, gravelly; and a small area is Type 17, Timaka and Natchaug, which is classified by the State as an inland wetland soil (Source: National Resource Conservation Service, US Dept. of Agriculture.)
Wetlands:	A small area of wetlands soil (1+/- acre) is located in an unusable portion of the site in a low area west of the access road. The site is subject to a vernal pool conservation area along the northwest property line, covering about 3.25+/- acres.
Flood Zone:	The property is within Zone X, outside the flood hazard area, per Flood Insurance Rate Map 0900810003C, dated November 20, 2000.
Access:	Access to the site is from Chamberlain Highway (CT Route 71) via a newly constructed road known as South Mountain Road, which was built to town specifications by MGT. It is a long winding road with a length of about 6,000 ft., and is improved with asphalt curbing, drainage and guard rails. Its winding design minimizes the grade in elevation but results in a length which is more than twice that of a straight line. The road ends at a cul-de-sac

SITE DESCRIPTION

at the entrance to the appraised property. The north end of Sam's Road also ends at the cul-de-sac. Water, sewer and electric are brought to the site from Sam's Road; but it is only available as an emergency access route from the subject and is currently overgrown and impassable.

The access road to the buildable area of the site begins at a cul-de-sac which forms the north end of both South Mountain Road and Sam's Road. The 1,350+/- foot long access road is on the appraised land and consists of a long straight stretch of steeply rising road with a sharp turn to the north to another shorter stretch of the steeply rising road which leads into the building site; the total rise in elevation is about 70+ ft. The access road is built to the same standards as South Mountain Road, but lacks a finish top coat of paving (see photos); it will remain a private road. The estimated cost to complete the access road is about \$125,000.

The 5.5+/- acres of land area dedicated to this access road are not usable for building construction as the land drops off steeply on both sides. The contributory value of this access road is that it provides access to an otherwise inaccessible site.

Easements:

The property is subject to, and includes the easements described previously. Most relate to the approved electric generation use of the site.

Utilities:

Water and sewer were brought into the site from Sam's Road to the end of the paved access road. This water source is inadequate for the cooling needs of the approved electric generation plant. Plans call for a new 24" water line to be run 12.5+/- miles to the site under city streets to the Connecticut River in Cromwell. Estimates of the cost of this project range from about \$20 to \$30 Million; no work was ever started.

Natural gas is available through Yankee Gas. The gas line was cleared and trenched to the former property line in Berlin about 1.1 miles north of the appraised site, but the pipes were not installed and the trench was refilled. A gas line easement provides access.

A temporary electric service is installed to the buildings.

Misc. Site Improvements:

Perimeter fencing. Scattered throughout the site are concrete footings and foundations and exposed pipes and conduits that were installed for the power plant use. These will need to be removed for any alternate use.

DESCRIPTION OF THE IMPROVEMENTS

Control Building

This is a one story pre-engineered steel building with insulated metal walls and a pitched metal insulated roof, built on a concrete slab, containing 15,000 sq. ft. The building consists of two rectangles, one setback 50 feet from the front of the other. The longer section is 50 x 175 feet; the shorter section is set back and is 50 x 125 feet. The two sections are open to each other with no common wall. A truck well leads to a truck height loading dock in front of the setback section. The pitched roof height is 15-18 feet on the longer section, and 18 to 20 feet on the shorter section. The windows and doors were not installed, and the openings are covered by plywood. A section of the concrete slab in the longer section is sunk about 2 feet below grade, and was designed to support computer systems. This floor will need to be brought up to level with the remainder for most potential users.

The interior of the building is unfinished and includes no mechanical systems except electric service, minimal lighting, and some plumbing piping. There are no fixtures or interior finishes other than minimal lighting.

On the date of valuation, the building will be 10 years old. Its effective age is estimated at 5 years, with a remaining economic life of 30 years.

Power Plant – Generator Building

This is a one story pre-engineered steel building with three sections of different wall heights, built on a concrete slab. The building is 128 x 342 ft., containing 43,776 sq. ft. of ground floor area. The northeast corner (front right) has a height of 62 feet; this section is 56.5 x 90 feet, containing 5,085 sq. ft. To its rear is a 56.5 x 252 foot section with a height of 39 feet, containing 14,238 sq. ft. The west side of the building, 71.5 x 342 feet, has a height of 82 feet, and contains 24,453 sq. ft. The average wall height is 65 feet. A 75 ft. wide second level mezzanine extends across the front of the building, and contains about 9,600 sq. ft. It has a steel deck and steel support beams. The stairway access has been removed.

The interior of the building is unfinished and includes no mechanical systems except electric service, some lighting and ductwork. Most of the windows and doors were not installed and the openings are covered by plywood.

The interior contains several reinforced concrete pads and pedestals which are designed to support the turbines and other equipment. A 65 ton bridge crane is installed. Some equipment remains.

This building was designed for a specific use which is not easily or economically convertible to an alternate use. Few if any other users would require a building with more than a 30 ft. height; and the sections of the building with heights of 62 and 82 ft. are relatively long and narrow.

DESCRIPTION OF THE IMPROVEMENTS

Several areas of standing water were observed upon inspection that appeared to be due to the skylights and possibly the boarded up openings. On the date of valuation, the building will be 10 years old. Its effective age is estimated at 8 years, with a remaining economic life of 32 years.

The Above Ground Water and Fuel Tanks

There are two above ground steel tanks with capacities of 800,000 and 500,000 gallons. To my knowledge, they have never been used.

The Cooling Tower Foundation

This structure consists of a 50 x 390 feet concrete foundation with concrete walls to a height of 2 feet. It is designed like a pool, with a sloping floor to collect the cooled water, and is not designed to support a building. The frame structure which supported eight cooling fans was made of pressure treated lumber and was covered with metal siding; it has been removed.

The Foundation

There is a 52.5 x 87 ft. concrete slab east of the control building which was to support a third building.

Fixtures

None included in this valuation.

Use History

Construction of a 544 megawatt gas fired electric generating facility was approved in 1999. Construction of the road and site work began in late 2001, followed by the start of plant construction in early 2002. Construction was halted in November 2002 due to the changes in market conditions and the filing of bankruptcy by NRG, Inc.; and the equipment which had been brought on site (turbines, etc.) has since been removed. No construction has taken place since late 2002.

HIGHEST AND BEST USE

Highest and best use is defined as

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability. "¹

The appraised property consists of a 36.689 acre site which was split off from a larger parcel of 830.91+/- acres that included an additional 342.02 acres in Meriden and a contiguous 452.2 acres in Berlin. The appraised portion was approved in 1999 for an electric power generating plant. The State Siting Council approvals required that all of the land except the 36.689 acre power plant site be transferred to the towns at no cost, and these transfers took place in 2006. Most of the transferred land will remain as open space, providing large buffer zones around the site.

Construction of the plant began in 2001, and prior to the cessation of construction in late 2002, South Mountain Road was built from Route 71 to the site, a 1,350+/- ft. long private access road was built from the end of South Mountain Road to the buildable area, water and sewer service were installed to the end of the paved access road, temporary electric service was installed, two water tanks and a cooling tower structure were built, and two buildings were partially completed. Since late 2002, the turbines, cooling fans and all equipment have been removed. The existing improvements will be about ten years old on the date of valuation and have suffered some physical depreciation due to normal weathering, and in the case of the main power plant building, from leaking skylights and some exposure to the elements.

The usable portion of the site is a high plateau that has been leveled and cleared. The land around the east, northwest and southwest property lines drops off very steeply, as much as 70 ft. feet in elevation, while the northwest property line consists of a steep rock face. There is a 100+/- ft. drop in elevation on the south end of the site from the usable area to South Mountain Road. Most of the site consists of trap rock, and development required blasting. About 40% of the total land area is unusable due to steep slopes, wetlands or easement restrictions. The site has no visibility from Route 71.

Most of the site consists of Soils Types 78C and E, Holyoke-Rock outcrop complex, which have a depth to bedrock of less than two inches, and slopes of 3 to 15 percent (78C) or 15 to 45 percent (78E). A small area in the northeast corner consists of Soil Type 305, Udorthents-Pits complex, gravelly; and a small area is Type 17, Timaka and Natchaug, which is classified by the State as an inland wetland soil (Source: National Resource Conservation Service, US Dept. of Agriculture.) The small area of wetlands soil (1+/- acre) is located in an unusable portion of the site in a low area

¹ The Dictionary of Real Estate Appraisal, Fourth Edition; The Appraisal Institute, 2002.

HIGHEST AND BEST USE

west of the access road. The site is subject to a vernal pool conservation area along the northwest property line, covering about 3.25+/- acres.

Easements which relate to the appraised property include a utility easement providing access to the CL&P power line located about one mile north of the site, a gas line easement providing access to the Yankee Gas line about one mile north, and a water and sewer line easement over Sam's Road, along with the right to use Sam's Road as an emergency access. The property also includes temporary construction site easements on portions of the land transferred to Meriden. The easements for the power and gas lines are not useful to the property unless it is to be operated as an electric generating plant.

Access to the site is from Chamberlain Highway (CT Route 71) via a newly constructed (circa 2002) road known as South Mountain Road, which was built to town specifications by MGT. It is a long winding road with a length of about 6,000 ft., and is improved with asphalt curbing, drainage and guard rails. Its winding design minimizes the grade in elevation but results in a length which is more than twice that of a straight line. The road ends at a cul-de-sac at the entrance to the appraised property. The unimproved north end of Sam's Road also ends at the cul-de-sac. While water, sewer and electric were brought to the site from Sam's Road, it is only available as an emergency access route from the subject.

The private access road from South Mountain Road to the usable, level portion of the site consists of a long straight stretch of steeply rising road with a sharp turn to the north to another shorter stretch of the steeply rising road which leads into the building site; the total rise in elevation is about 70+ ft. It is built to the same standards as South Mountain Road, but lacks a finish top coat of paving. The 5.5+/- acres of land area dedicated to this access road are not usable for building construction as the land drops off steeply on both sides of the access road.

The main power plant building contains 43,776 sq. ft. About 56% of the building has a height of 82 ft., while 12% has a height of 62 ft. and 32% has a height of 39 ft. The building was designed for the specific use of electric power generation, and its unique and special design features are unsuited for alternate uses and will be very costly to remove. The control-engineering building contains 15,000 sq. ft. Both buildings consist of concrete slabs, steel frames with steel walls and roofs, and no interior finish. Temporary electric power is provided, but no water, sewer or gas service is connected.

The property is located in the Planned Development District - PDD. Per the regulation, the purpose of the PDD is to allow for diverse but integrated uses (included, but not limited to open space, recreation, industrial, education, retail-commercial, and housing) in a large area consistent with the objectives set forth in the City's Land Use Plan.

The construction that was completed on this site would not be feasible in today's market. The cost to build the access road and the work needed to prepare the site for development was reportedly in excess of \$10 Million, exclusive of blasting and

HIGHEST AND BEST USE

grading. This cost far exceeds the value of the 36+ acre site for any allowed use, assuming the electric generation plant is not feasible.

If the site was undeveloped on the date of valuation except for the construction of South Mountain Road, the private access road, and utilities to the buildable area, and assuming completion of the approved plant is not feasible, the highest and best use of the site would be for limited industrial development. Although the site is private and has good views from its high elevation, its difficult access and steep drop offs around three sides and along both sides of the access road, and its poor soils (mostly trap rock) severely limit its appeal for residential use. Most commercial uses are also inappropriate due to the lack of visibility from Route 71 and difficult access. The prospect of maintaining the steep access road, especially during the winter months, would be daunting for many potential users, especially for residential, retail or office use. The same applies to congregate care use, but that use is not feasible regardless of the site conditions. Certain recreational uses may be appropriate for the site, but do not generate the values necessary to support the cost of completing and maintaining the infrastructure.

The only potentially viable use for the site, if the existing buildings were not in place, would be for some industrial use. In the current market, there is an over-supply of larger industrial properties, and most have superior access and visibility.

Constructing a new industrial facility may not be feasible without a combination of favorable financing and tax treatment, including property tax abatements. Although the subject area is well located in relation to major highways and population centers, the site is not suitable for most uses or users. It is therefore my opinion that the highest and best use of this site, if the only existing improvements were the access road and utilities to the site, would be to hold it for future industrial development when economic conditions improve.

As presently improved, the highest and best use of the property is to remove any remaining specialty construction and finish construction of the two existing buildings for an alternate industrial use as the market allows. The water and fuel tanks and cooling tower foundation have no use or value to any other user. The smaller control building is similar in construction to a typical light industrial pre-engineered building, and would be suitable for light industrial or R& D use. The only feature which is not suited to the typical standards is the part of the floor which cut about two feet below grade; this would require installation of a level floor system. While it may be possible to lease this building for such a use, it will require installation of utilities and mechanical systems and completion of the access road. A user of only this building would not be a buyer for the entire property.

The larger power plant building was built specifically to house the turbine systems for the power plant. Its long and narrow shape and excessive height have little adaptability for most (if not all) industrial users. The concrete pads and pedestals and the exposed piping installed to support the plant equipment would have to be removed for any alternate use, and the cost of removal will not be cheap. The cost to heat this building will be excessive as would the cost of installing a lower ceiling.

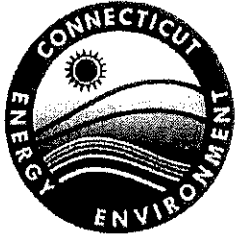
HIGHEST AND BEST USE

Most high bay industrial buildings are large (over 200,000 sq. ft.) distribution buildings; this property is not suitable for distribution use due to its difficult access and relatively small floor area. Conversion to any use other than industrial is not practical or appropriate; and there are very few, if any, industrial uses that could be suited to this building. Creating paved drives and parking areas on the building site will be costly due to the complete coverage of the current surface with crushed and broken trap rock and the presence of the misc. structures.

It is therefore our conclusion that if completion of the power plant is not feasible, the highest and best use of this property is for light industrial use. It is also our opinion that the property has very limited marketability, and that a sale will probably require a combination of seller concessions and tax benefits. The property may be best suited for a non-profit use that does not generate significant traffic, but the high cost of completing and maintaining the infrastructure also limits that potential market.

Exhibit 2

MGT's Form DEEP-AIR-REQ-004



**Connecticut Department of
Energy & Environmental Protection**
Bureau of Air Management
Engineering & Enforcement Division

License Revocation Request Form

Please complete this form in accordance with the instructions (DEEP-AIR-INST-REQ-004) in order to ensure the proper handling of your revocation request. Print or type unless otherwise noted.

There is no fee required. [#1764]

Please submit one revocation request form for each affected premises.

Submit completed form to the address noted at the end of this form.

CPPU USE ONLY	
App #:	_____
Doc #:	_____
Town #:	_____
Premises #:	_____
Program: Air Engineering	

Questions? Visit the Air Permitting web page or contact the Air Permitting Engineer of the Day at 860-424-4152.

Licenses issued by the DEEP Bureau of Air Management include New Source Review Permits, Title V Permits, Title IV Permits, GPLPE Approval of Registrations and Registrations issued under the former RCSA section 22a-174-2.

Part I: Licensee Information

Note: Only the current Licensee can request the revocation of a license.	
1. Fill in the name of the licensee(s) as indicated on the license.	
Licensee: Meriden Gas Turbine LLC	
Mailing Address: P. O. Box 1001	
City/Town: Middletown	State: CT Zip Code: 06457-1001
Contact Person: Cynthia Karlic	Title: Environmental Director
Business Phone: 860-343-6962	ext.
E-Mail: cynthia.karlic@nrgeenergy.com	
<input type="checkbox"/> Check here if there are co-licensees. If so, label and attach additional sheet(s) to this sheet with the required information.	

Part I: Licensee Information (continued)

2. List any other engineer(s), consultant(s) or attorney(s) employed or retained to assist in preparing the request form, if applicable.

Check here if additional sheets are necessary, and label and attach them to this sheet.

Company Name:

Mailing Address:

City/Town:

State:

Zip Code:

Contact Person:

Title:

Business Phone:

ext.

E-Mail:

Service Provided:

Part II: Premises Information

1. Premises Name: **Meriden Station**

Premises Address: **South Mountain Drive**

City/Town: **Meriden**

State: **CT**

Zip Code: **06450**

2. Site Manager: **Jeff Araujo**

Business Phone: **508-509-2476**

ext.

E-Mail: **jeffrey.araujo@nrgeenergy.com**

3. Will the premises be operating under a Title V permit or the GPLPE after the completion of the revocation request process? Yes No If yes, indicate license no.:

Part III: License(s) Information

For each license that is included in this revocation request, list the license type and reason for requesting the revocation, as indicated in the box below. Also provide the license number, a description of the emissions unit and its construction date that is the subject of the license. Please list each license on a separate line.

License Type: NSR – New Source Review Permit, TV – Title V Permit, TIV – Title IV Permit, GPLPE – GPLPE

Approval of Registration, R – Registration issued under former RCSA section 22a-174-2

Reason for Revocation: The Emissions Unit has been:

R – Removed, I – Rendered Physically Inoperable, S – Shut Down, D – Dismantled,

-3b – Emissions unit will operate under RCSA section 22a-174-3b, -3c – Emissions unit(s) will operate under RCSA section 22a-174-3c, N – License is no longer required since potential emissions from the emissions unit are below the permitting thresholds of RCSA section 22a-174-3a, O – Other, as specified by Attachment D on page 3 of this form.

Part III: License(s) Information (continued)

1. License Type	2. License No.	3. Emissions Unit Description	4. Construction Date	5. Reason for Revocation
NSR	100-0088	Combustion Turbine	Never built	O
NSR	100-0089	Combustion Turbine	Never built	O

Check here if additional sheets are required to identify all licenses that are included in this revocation request. If so, please reproduce this sheet, label, and attach additional sheet(s) with the required information to this sheet.

Part IV: Revocation Request Date

Indicate the requested effective date of revocation. The date indicated may be no earlier than 45 days after the submittal date of this request unless the right to request a hearing is waived in Part IV.2 below. In that case, the date may be no earlier than 15 days after the submittal date of this request. The licensee may waive the right to request a hearing in accordance with RCSA section 22a-3a-6(i).

1. Requested Date of Revocation: <u>April 5, 2013</u>
2. Waive the Right to Request a Hearing within 30 Days of Revocation: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Part V: Attachments

Attachments are required when the *Reason for Revocation* indicated in Part III.5 of this request form is **N** – License is no longer required, **-3b** – Emissions unit will operate under RCSA section 22a-174-3b, or **-3c** – Emissions unit(s) will operate under RCSA section 22a-174-3c. Please see below.

Please check the attachments being submitted as verification that all applicable attachments have been submitted with this request form. When submitting such documents, please label the documents as indicated in this Part (e.g., Attachment A, etc.) and be sure to include the licensee's name.

<input type="checkbox"/>	Attachment A:	Emissions Unit Calculations - For each NSR or R license where N is indicated in Part III.5 of this revocation request form - Calculations showing the annual potential emissions from the associated emissions unit after the revocation of such license.
<input type="checkbox"/>	Attachment B:	<i>Premises Total Annual Potential Emissions</i> (DEEP-AIR-REQ-004B) - For license(s) where N or -3b is indicated in Part III.5 of this revocation request form - Premises total annual potential emissions after the revocation of the license(s). (See attached form DEEP-AIR-REQ-004B) Note: Attachment B is NOT required for premises with a valid Title V Permit or GPLPE Approval of Registration as indicated in Part II.3 of this revocation request form.
<input type="checkbox"/>	Attachment C:	Demonstration of Compliance - For license(s) where -3b or -3c is indicated in Part III.5 of this revocation request form – Demonstration of how the emissions unit(s) will comply with RCSA section 22a-174-3b or -3c after the revocation of the license(s).
<input checked="" type="checkbox"/>	Attachment D:	Provide "Other" Reason for Revocation (provide documentation as necessary): <u>Meriden Gas Turbine LLC has decided not to proceed with the project.</u>

Part VI: Certification



The licensee **and** the individual(s) responsible for actually preparing the *License Revocation Request Form* must sign this part. This form will be considered incomplete unless all signatures asked for are provided. If the licensee is the preparer, please mark N/A in the spaces provided for the preparer.

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief.

I certify that this request is on complete and accurate forms as prescribed by the commissioner without alteration of their text.

I understand that a false statement made in the submitted information may be punishable as a criminal offense, under section 22a-175 of the Connecticut General Statutes, under section 53a-157b of the Connecticut General Statutes, and in accordance with any applicable statute.

The registrant, permittee, or duly authorized representative of the registrant or permittee certifies that their signature being submitted herein complies with section 22a-174-2a(a) of the Regulations of Connecticut State Agencies."

 _____ Signature of Licensee	<u>3/19/13</u> _____ Date
William Lee Davis _____ Name of Licensee (print or type)	President _____ Title (if applicable)
 _____ Signature of Preparer	<u>3-20-13</u> _____ Date
Cynthia L. Karlic _____ Name of Preparer (print or type)	Environmental Director _____ Title (if applicable)

Check here if additional signatures are required. If so, please reproduce this sheet, and attach signed copies to this sheet.

Note: Please submit this completed form and all required supporting documents to:

CENTRAL PERMIT PROCESSING UNIT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION
79 ELM STREET
HARTFORD, CONNECTICUT 06106-5127

**SERVICE LIST
DOCKET NO. 190**

Applicant

Meriden Gas Turbines, LLC

Its Representatives

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Intervenor

The Connecticut Light and Power Company

Its Representative

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Intervenor

Rivers Alliance of Connecticut/
Farmington River Watershed Association

Its Representative

Eric Hammerling, President
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Kevin Case
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749 Hopmeadow Street
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Party

Quinnipiac River Watershed Association

Its Representative

Mary Mushinsky
Executive Director
Quinnipiac River Watershed Association
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Meriden, CT 06450