

1 STATE OF CONNECTICUT

2 SITING COUNCIL

3
4 Docket No. 190B

5 Meriden Gas Turbines, LLC

6
7 Motion to Reopen the Final Decision on the
8 Certificate of Environmental Compatibility
9 and Public Need Held by Meriden Gas Turbines,
10 LLC, for a 530 MW Combined Cycle Generating
11 Plant in Meriden, Connecticut12
13 Public Hearing held at the Department of
14 Energy and Environmental Protection, 10
15 Franklin Square, New Britain, Connecticut, on
16 July 16, 2013, beginning at 11:03 a.m.17
18 H e l d B e f o r e:

19 ROBIN STEIN, Chairperson

1 A p p e a r a n c e s :

2 Council Members :

3 EDWARD S WILENSKY

4 LARRY P. LEVESQUE

5 ROBERT HANNON

6 DANIEL P. LYNCH, JR.

7 JAMES J. MURPHY, JR.

8 DR. BARBARA BELL

9

10 Staff Members :

11 DAVID MARTIN, Siting Analyst

12 MELANIE BACHMAN, Staff Attorney

13

14 For the Certificate Holder Meriden

15 Gas Turbines, LLC:

16 MURTHA CULLINA, LLP

17 CityPlace I

18 185 Asylum Street

19 Hartford, Connecticut 06103-3469

20 By: ANDREW W. LORD, ESQ.

21 BURTON B. COHEN, ESQ.

22

23

24

25

1 A p p e a r a n c e s (Cont'd.):

2 For the City of Meriden:

3 BROWN, RUDNICK, LLP

4 CityPlace I

5 185 Asylum Street

6 Hartford, Connecticut 06103

7 By: PHILIP M. SMALL, ESQ.

8

9 For the Connecticut Light and Power

10 Company:

11 NORTHEAST UTILITIES

12 107 Selden Street

13 Berlin, Connecticut 06037

14 By: ELIZABETH MALDONADO, ESQ.

15

16

17

18

19

20

21

22

23

24

25

1 THE CHAIRPERSON: Good
2 morning, Ladies and Gentlemen.

3 I'd like to call to order
4 today's meeting of the Siting Council.
5 Docket Number 190B. The hearing is called to
6 order today, Tuesday, July 16, 2013, roughly
7 at 11:05. My name is Robert Stein. I'm
8 Chairman of the Siting Council.

9 This hearing is a continuation
10 of a hearing that was held on June 4, 2013,
11 in the Meriden City Hall, Council Chambers,
12 in Meriden, Connecticut. It was held
13 pursuant to provisions of Title XVI of the
14 Connecticut General Statutes and the Uniform
15 Administrative Procedure Act upon a motion to
16 reopen the final decision under Certificate
17 of Environmental Compatibility and Public
18 Need held by Meriden Gas Turbines, LLC, for a
19 530 megawatt combined-cycle generating plant
20 in Meriden, Connecticut.

21 On April 18, 2013, the
22 Council, pursuant to a request filed by the
23 City of Meriden and the provisions of
24 Connecticut General Statute 4-181a subsection
25 b, reopened the final decision rendered in

1 this docket and specifically limited this
2 hearing to Council consideration of changed
3 conditions in the decommissioning plan.

4 A verbatim transcript will be
5 made of this hearing and deposited with the
6 town clerk's office at Meriden City Hall or
7 Meriden Town Hall for the convenience of the
8 public.

9 We will proceed in accordance
10 with the prepared agendas copies of which are
11 available.

12 Are there any public officials
13 that wish to comment at this time who haven't
14 already done so?

15 (No response.)

16 THE CHAIRPERSON: Seeing none,
17 hearing none, we go to administrative notice
18 by the Council. I wish to call your
19 attention to those items shown the hearing
20 program marked as Roman numeral I-D, Item 6,
21 32 and 33. Does the certificate holder or
22 any party or Intervenor have any objection to
23 the items that the Council has
24 administratively noticed?

25 MR. SMALL: No objection by

1 the certificate holder -- I'm sorry. No
2 objection by MG -- by the City of the
3 Meriden.

4 THE CHAIRPERSON: Would you --
5 MR. LORD: Attorney Small has
6 it covered.

7 (Laughter.)

8 THE CHAIRPERSON: Let's see if
9 we can maintain that sense of humor
10 throughout this.

11 Okay. Accordingly, the
12 Council hereby administratively notices these
13 existing documents, statements and comments.

14 We'll now proceed to the
15 appearance by the City of Meriden. I
16 understand you have a new witness, the
17 Assistant City Planner. If that's correct --

18 MR. SMALL: We --
19 Mr. Chairman, we actually have two new
20 witnesses. We have Mr. Skoglund, and we also
21 have Mr. Lemp, who is the -- the appraiser.
22 He would be sponsoring an exhibit.

23 THE CHAIRPERSON: Okay. We'll
24 proceed with the swearing in. Would the two
25 individuals rise, so we can swear you in.

1 M I C H A E L L I B E R T I N E,
2 L A W R E N C E K E N D Z I O R,
3 D O M I N I C K C A R U S O,
4 R O B E R T B A S S,
5 T H O M A S S K O G L U N D,
6 P A T R I C K A. L E M P,

7 called as witnesses, being first duly
8 sworn by Ms. Bachman, were examined and
9 testified on their oaths as follows:

10 MS. BACHMAN: Thank you.

11 THE CHAIRPERSON: Thank you.

12 Attorney Small, will you now
13 verify any new exhibits you have filed in
14 this matter, and verify the exhibits by the
15 appropriate sworn witnesses.

16 MR. SMALL: I will do that,
17 Mr. Chairman.

18 The new exhibits are the ones
19 that are listed as Exhibits for
20 identification, 8, 9 and 10. Exhibit 8 is
21 the Prefiled testimony of Lawrence Kendzior.

22 Mr. Kendzior, was that
23 document prepared by you or under your
24 direction?

25 THE WITNESS (Kendzior): Yes.

1 MR. SMALL: And is it -- is it
2 true and correct to the best of your
3 knowledge and belief?

4 THE WITNESS (Kendzior): Yes,
5 it is.

6 MR. SMALL: And there are a
7 number of attachments to that. Are those --
8 does your testimony correctly describe those
9 attachments?

10 THE WITNESS (Kendzior): It
11 does.

12 MR. SMALL: Thank you.

13 Let me turn to Mr. Libertine.
14 This would be Proposed Exhibit 9, which is
15 entitled, "Prefiled Testimony of Michael
16 Libertine." Was that document prepared by
17 you or under your direction?

18 THE WITNESS (Libertine): Yes,
19 it was.

20 MR. SMALL: Is it true and
21 correct to the best of your knowledge and
22 belief?

23 THE WITNESS (Libertine): Yes.

24 MR. SMALL: And are the
25 exhibits to that document correctly described

1 in your testimony?

2 THE WITNESS (Libertine): Yes.

3 MR. SMALL: Okay.

4 THE CHAIRPERSON: Excuse me.

5 Does that also include this piece of -- piece
6 of paper that was put on our page 4-82?

7 MS. BACHMAN: Mr. Chairman,
8 that particular page is from the original
9 application. It was attached to
10 Mr. Libertine's prefiled testimony, although
11 page 4-82 was missing and we provided it to
12 the Council members.

13 THE CHAIRPERSON: Oh, okay.

14 THE WITNESS (Libertine): Yes,
15 that includes 4-82.

16 THE CHAIRPERSON: Okay.

17 Continue please.

18 MR. SMALL: And then,
19 Mr. Kendzior, there is a number of
20 interrogatory responses that were filed with
21 the Council by the City. It's delineated,
22 and is Exhibit 10. Excepting Exhibit 6, are
23 you familiar with those documents?

24 THE WITNESS (Kendzior): Yes,
25 I am.

1 MR. SMALL: And are they as --
2 are they as described in the particular
3 interrogatory responses?

4 THE WITNESS (Kendzior): They
5 are.

6 MR. SMALL: Okay. And do you
7 adopt those interrogatory responses, which
8 would be Interrogatory -- all of them
9 except 6 as true and correct?

10 THE WITNESS (Kendzior): I do.

11 MR. SMALL: Okay. Mr. Lemp,
12 Interrogatory Response 6 by the City attaches
13 a copy of a document, a Summary Appraisal
14 Report dated October 2, 2012. Are you
15 familiar with that document?

16 THE WITNESS (Lemp): I am.

17 MR. SMALL: Was it prepared by
18 you or under your direction?

19 THE WITNESS (Lemp): It was.

20 MR. SMALL: And is it true and
21 correct to the best of your knowledge and
22 belief?

23 THE WITNESS (Lemp): Yes.

24 MR. SMALL: Thank you.

25 With that, Mr. Chairman, I

1 request that Exhibits 8, 9 and 10 be admitted
2 as full exhibits.

3 THE CHAIRPERSON: Does any
4 party or Intervenor object to the admission
5 of the City of Meriden's new exhibits?

6 MR. LORD: No objection.

7 THE CHAIRPERSON: Thank you.
8 The Exhibits are admitted.

9 (City Exhibits 8, 9 and 10:
10 Admitted in evidence - described in index.)

11 THE CHAIRPERSON: We'll now
12 begin with cross-examination of the City of
13 Meriden's staff witnesses. We'll start with
14 Mr. Martin.

15 MR. MARTIN: Thank you,
16 Mr. Chairman.

17 Could you tell us what is
18 located to the southwest of the MGT, MGT/NRG
19 parcel? On some aerial photographs it looks
20 like storage of some kind, perhaps,
21 construction materials, and on a number of
22 other aerials it just looks like a large
23 paved area?

24 THE WITNESS (Kendzior): MGT
25 had a construction easement, and for a long

1 period of time, in fact, it was exactly as
2 you describing it. It was storage materials
3 of various kinds.

4 MR. MARTIN: But it is City
5 property now?

6 THE WITNESS (Kendzior): It is
7 City property but MGT did have an easement to
8 store those materials there.

9 MR. MARTIN: Okay. And all of
10 the materials have been removed at this
11 point?

12 THE WITNESS (Kendzior): I
13 believe that's correct. I haven't actually
14 looked at that particular area for a couple
15 years now.

16 MR. MARTIN: Okay. And this
17 whole area, I guess looking at a map from the
18 original application, came out of a larger
19 parcel owned by the Thomas Cadden Estate. Is
20 there any property in this area that still
21 belongs to that landowner?

22 THE WITNESS (Kendzior):
23 Thomas Cadden actually was the trustee who
24 held title to the property, I believe during
25 the period of time when the original

1 application for Siting Council approval was
2 pending, and subsequently transferred the
3 property. The owner, the actual owner prior
4 to that was the Carabetta family.

5 MR. MARTIN: Okay.

6 THE WITNESS (Kendzior): It
7 was a limited liability corporation called
8 NIPMUC, which was Mr. Joseph Carabetta's
9 son-in-law and the Carabetta family owned
10 some other property in the area. That
11 family, and their various businesses owns the
12 apartments and condominiums that are on Sams
13 Road, which is the road that runs off of
14 Kensington up towards the actual site of the
15 plant. And the remainder of the property on
16 South Mountain Road in the Meriden section is
17 owned by the City except for a few parcels
18 along Kensington Avenue. There's -- there's
19 an assisted living facility.

20 MR. MARTIN: Kensington Avenue
21 is Route 71 also?

22 THE WITNESS (Kendzior):
23 That's the route. It comes off of Route 71.
24 So along Route 71, Carabettas may still own
25 some property that actually borders the road.

1 The Westfield Shopping Center owns the parcel
2 that's on the corner of Kensington and
3 Route 71, and then there is that assisted
4 living facility, some private homes along
5 Kensington Avenue.

6 MR. MARTIN: So between the
7 MGT property and the property that the town
8 owns, between that and Chamberlain Highway,
9 Route 71, you're saying Carabetta still does
10 own the land?

11 THE WITNESS (Kendzior): There
12 are -- there are strips of land there that
13 the Carabetta family still owns.

14 MR. MARTIN: All right. Thank
15 you.

16 And does the City make any
17 effort to restrict access of all-terrain
18 vehicles to its parcel up in the area of the
19 NRG parcel?

20 THE WITNESS (Kendzior): When
21 we get reports of people up there with ATVs
22 or dirt bikes, that sort of thing, the police
23 department does respond. And as you can
24 imagine, it's a little difficult to actually
25 catch these people.

1 Our Department does have its
2 own ATVs and so forth, and sometimes those
3 are deployed. So we do respond when we know
4 that people are out there that shouldn't be
5 out there on those vehicles because we do
6 want the property preserved.

7 MR. MARTIN: Okay. Thank you.

8 And I guess these are for
9 Mr. Libertine. Among the environmental
10 issues that you described in your prefiled
11 testimony, you include lack of plantings for
12 bank stabilization and the slope restoration
13 and also the erosion of steep banks. Can you
14 tell us where these areas are approximately
15 located?

16 THE WITNESS (Libertine): That
17 information primarily is interrelated with
18 the landscaping plan that was originally
19 conceived for the power plant property proper
20 which I have not had a chance to get up
21 there. I know there has been some planting
22 up there, but my feeling is that if the
23 entire landscaping plan had been done as it
24 was originally proposed then you would have
25 had the combination effect of not only

1 providing additional stability to the soils,
2 but also for the visibility aspects that I
3 think it was primarily the intent to.

4 I have not had a chance to be
5 up on that property, so I have seen some
6 reports, inspection reports that were
7 provided by MGT and it does appear as though
8 some of the stabilization plantings were done,
9 some of the lower-growing vegetation but I
10 just haven't been up there to be able to
11 confirm that.

12 MR. MARTIN: Okay. So based
13 on your lack of access to the property, you
14 couldn't really say what kind of
15 stabilization measures would be necessary to
16 stabilize the property, given the
17 understanding that it won't be going forward
18 as a power-generating facility?

19 THE WITNESS (Libertine):
20 Right. Not on the actual power plant. There
21 are some other areas along the road and the
22 detention basins that were not completed per
23 the D&M plans that also have some issues
24 of -- primarily there's a detention basin
25 that was not seeded with some of the

1 appropriate mix that had been planned for for
2 reestablishing some wetland areas.

3 But, yeah, to answer your
4 question, yeah, I'd say that I really can't
5 make -- really make much more of a statement,
6 other than you really can't see too much from
7 the actual gate that restricts access to that
8 portion of the property.

9 MR. MARTIN: How about along
10 the access road, the South Mountain Road
11 there, are there any conditions that you
12 observed either dressing and if so, how would
13 you address them to stabilize them?

14 THE WITNESS (Libertine):
15 Well, certainly there is some drainage issues
16 going on along the steeper portions of that
17 road. I think from a maintenance perspective
18 some of the catch basins and pipes that are
19 associated with that probably need to be
20 cleaned. I don't think that's ever been done
21 at least from what I saw. I mentioned there
22 is the large wetland detention basin that had
23 been created, it's now just been left in
24 riprap. There was plans for two different
25 type of seeding mixes to be incorporated to

1 reestablish some wetland and upland plant
2 habitat around there which has been done.
3 And I think that over time we're starting to
4 see some weed trees and other incompatible
5 species starting to locate in there and I
6 think that that's something that needs to be
7 addressed sooner rather than later so that
8 that will continue to function. And
9 obviously the rock slopes in that area are
10 degrading fairly quickly. That needs to be
11 stabilized.

12 I'm not sure what engineering
13 control is going to work best in some of
14 those areas, but it's something that does
15 need to be addressed.

16 MR. MARTIN: Would you say
17 that they're conditions that you observe,
18 agree with the conditions cited by the City?
19 And I forget it.

20 THE WITNESS (Libertine): I
21 would say they're consistent. And it
22 probably deteriorated a bit more since I
23 believe that was a year ago or so, that
24 inspection. I believe it was 2012.

25 MR. MARTIN: All right. Thank

1 you.

2 Those are my questions,
3 Mr. Chairman.

4 THE CHAIRPERSON: Thank you.

5 We'll now go to questions from
6 Attorney Bachman.

7 MS. BACHMAN: Thank you,
8 Mr. Chairman.

9 Referring to the property tax
10 settlement agreement, specifically Paragraph
11 9 states that no later than 30 days from the
12 effective date the city shall notify MGT in
13 writing of any unsatisfied conditions that
14 prevent the release of the referenced bonds.

15 Under Paragraph 11, the
16 effective date is defined as the date of
17 approval by the Superior Court of a
18 stipulated judgment. What is the date of the
19 approval by the Superior Court of the
20 stipulated judgment?

21 (Pause.)

22 THE WITNESS (Kendzior):
23 Apparently it's going to take us a few
24 minutes to find that document to get that
25 date.

1 MS. BACHMAN: Would
2 November 20th of 2008 seem to be the
3 date of that stipulated judgment?

4 THE WITNESS (Kendzior): I
5 know it was in 2008.

6 Counsel believes that the date
7 that you mentioned is the correct one.

8 MS. BACHMAN: Thank you.

9 Did the City notify MGT of any
10 unsatisfied conditions that prevent release
11 of the referenced bonds within 30 days of the
12 effective date?

13 THE WITNESS (Kendzior): Yes.
14 We had a memo that was prepared. It's
15 Exhibit 5, I think, which is a memo dated
16 September 4, 2008, it's from Brian Ennis
17 who's an Associate City Engineer who works
18 for Mr. Bass. And that document was shared
19 with MGT very near to the time of the date of
20 the memorandum. And it -- it details all of
21 the items that haven't been completed.

22 Back in 2008, the bond and
23 getting those issues resolved was important
24 not only to the city, but at the time it
25 appeared to be important to MGT, so we

1 prepared the memo. We sent them the memo.
2 We had a meeting with them regarding that,
3 and that's really as far as it went during
4 that period of time. They didn't actually do
5 any of the things that they were supposed to
6 do.

7 MS. BACHMAN: Does September
8 4th of 2008, actually predate the effective
9 date?

10 THE WITNESS (Kendzior):
11 Predates it, yes.

12 MS. BACHMAN: And at that
13 time, were the parties able to agree on the
14 remaining unfulfilled conditions within 30
15 days after delivery of that notice to MGT?

16 THE WITNESS (Kendzior): We
17 were not able to agree then, and we have not
18 been able to agree since.

19 MGT takes the position that
20 they're not required to do all of the items
21 that were supposed to be done in accordance
22 with the bond. They -- I'm sure they can
23 give you more information than I can, but
24 they have talked about a doctrine of economic
25 waste claiming that if the items aren't

1 necessary now that the site is not going to
2 be a power plant, they don't need to do them.
3 And those -- those are our recent discussions
4 on that because we, you know, did have
5 several meetings with them after they gave us
6 the April 3rd, 2012, notice of abandonment on
7 various issues the taxes, the bonds, the
8 items left undone, the visual mitigation. We
9 weren't able to successfully settle any of
10 our differences over on any of those issues.

11 In the intervening period of
12 time, their position essentially was that
13 the -- in order to make sure that the project
14 had the best chance to go forward, it was
15 important that they not incur additional
16 expenses and not do additional work until the
17 time that the project was going to go
18 forward. So they simply wouldn't or didn't
19 do those things.

20 MS. BACHMAN: And if the
21 parties weren't able to agree on the
22 remaining unfulfilled conditions, did the
23 parties agree at that time that the cost of
24 satisfaction of the remaining conditions
25 would exceed the value of the bond?

1 THE WITNESS (Kendzior):

2 That's been the City's position. I don't
3 believe it's MGT's position. Excuse me for
4 this phone still being on. It shortly won't
5 be.

6 MS. BACHMAN: So despite the
7 disagreement, why did the City not draw upon
8 the bonds in satisfaction of any of MGT's
9 obligations in accordance with Paragraph 9?

10 THE WITNESS (Kendzior): In
11 that whole period of time from '08 until --
12 really, until 2013, we were repeatedly
13 assured by them that this project was going
14 to go forward at some point. As I said in my
15 prior testimony, it was a question of when
16 not if. They applied, as you know, to extend
17 the Siting Council permit in 2006. They
18 applied again in 2010. I know that actually
19 Attorney Lord's letter to the Siting Council
20 in 2010 speaks of when market conditions are
21 correct or right for the project to go
22 forward, not if. That's actually in his
23 letter to the Siting Council asking for the
24 extension. And again, there were
25 representations made in 2011 and 2012.

1 And -- and as I said, the
2 project -- the project was important to the
3 City for a number of reasons. It was
4 obviously important to us in terms of the tax
5 revenue that it generated. Meriden is not a
6 wealthy community. But it was also important
7 because they had begun the project. They had
8 built that building. They had built the
9 other structures. They had done, you know,
10 what they had done up on top of the mountain,
11 and it appeared that the only way that we
12 were going to be able to have them do what
13 they told the Siting Council they were going
14 to do and do what they were required to do
15 under our -- our -- the City's approvals, was
16 to do our best to foster the completion of
17 the project, and so we didn't take action
18 during that period of time. We relied on
19 their representations that this project would
20 go forward at some point in time.

21 MR. LYNCH: The tax obligation
22 thing I have to admit, as I'm going through
23 here, totally confused me. But not being an
24 attorney, I just want to find out if what
25 you're saying is that if the project had been

1 completed these tax obligations would have
2 been fulfilled to the city? Is that correct?
3 Did I hear that right?

4 THE WITNESS (Kendzior): We --
5 there were -- there were actually two
6 different points that culminated in this
7 modification agreement.

8 The city originally had a
9 30-plus year agreement that called for
10 certain amounts to be paid. Those were, per
11 statute, sort of equalized amounts of the
12 taxes that otherwise would be paid over the
13 length of the project, but because of the
14 nature of assessment and depreciation, those
15 payments would have been very uneven and both
16 parties the city and actually MGT's
17 predecessor at the time, wanted a tax
18 agreement so that the payments would be more
19 level. That was to the advantage of both
20 sides.

21 At a certain point in time,
22 MGT alleged that they were no longer liable
23 for making the payments because the project
24 had not been completed. They came to us and
25 talked about working something out in terms

1 of lowering the payments. We actually made
2 an offer to them. Then they had a fairly
3 large change in personnel. And, again,
4 that -- there were periods of time where they
5 just sort of faded away from this project and
6 it was hard to have any contact with them.

7 Subsequently, they actually
8 sued the City claiming that the payments were
9 no longer required. And we had a lengthy
10 round of litigation. And eventually that
11 litigation was settled and became the
12 modified tax agreement. What that did and
13 the reason that it was structured the way
14 that it was was that MGT said to us, in order
15 to give this project the best chance to
16 proceed, from their point of view, they
17 wanted to lower their, essentially, their
18 carrying costs during the period of time
19 prior to recommencing construction. And we
20 agreed to do that. So we took a five-year
21 period where we actually took the payments
22 and divided them up into two classes, what
23 they would pay during that period and what
24 were called "deferred amounts". And at the
25 end of that five-year period, they were

1 either to recommence construction we would go
2 back to the old schedule, with the full
3 payments, rather than the lower payments, or
4 they would abandon the project, which, in
5 fact, is what it turned out has happened.

6 So the payments were lowered
7 in order to lower their carrying costs in
8 order to better the chances that the project
9 would go forward, that they, in fact,
10 wouldn't abandon it.

11 MR. LYNCH: Thank you. I was
12 totally confused by the whole tax issue, and
13 I hope Attorney Bachman revisits this when
14 the Applicant comes up.

15 MS. BACHMAN: Mr. Kendzior and
16 also Mr. Libertine's prefiled testimony
17 identify the site as having an address of 500
18 South Mountain Drive. The City appraisal,
19 the MGT appraisal, memos from City officials,
20 and the tax bill identify the site as having
21 an address of 600 South Mountain Drive.
22 Which is the correct address?

23 THE WITNESS (Kendzior): I
24 don't know the answer to your question, I
25 have to admit. But we can certainly find out

1 sometime during the course of today.

2 MS. BACHMAN: Thank you.

3 And referring to Council
4 Interrogatory Number 7, the City responded
5 that bond funds were released in response to
6 MGT's request in 2003. According to MGT's
7 bond reduction request that is attached, the
8 storm drainage work was reported by MGT to be
9 100 percent complete.

10 Prefiled testimony submitted
11 by the City indicates the work is incomplete
12 and/or improperly constructed. Does this
13 refer to the same storm drainage work for
14 which the bonds were reduced in 2003?

15 THE WITNESS (Kendzior): I'm
16 going to defer to Mr. Skoglund to see if he
17 can give you an answer to that. I know that
18 the -- I think I'm recalling this correctly,
19 and I'm sure somebody will correct me if I'm
20 not. I think in Ms. Lagano's prefiled
21 testimony, there is a statement regarding the
22 storm drainage and it's, in my opinion, at
23 least sort of awkwardly stated indicated that
24 they have not, in fact, completed the storm
25 drainage work.

1 So it may well be, and I'll
2 look to Mr. Skoglund to see if he can verify
3 this, that the amounts that were released
4 were released for the work that was
5 completed. And there still may be work that
6 was incomplete.

7 THE WITNESS (Skoglund): Yes,
8 I would agree with that. The Planning
9 Commission did not find that it was a hundred
10 percent complete and that's they retained a
11 significant amount of the bond.

12 MS. BACHMAN: Who owns the
13 property encompassing the slopes of the
14 access drive?

15 THE WITNESS (Skoglund): Along
16 the road, there's a right-of-way for the road
17 and then most of the land beyond that is now
18 in City ownership. But there's some rock
19 outcropping, an erosion, that's right around
20 the boundary, I would say, where the road is
21 showing it and the land beyond it.

22 THE WITNESS (Kendzior): There
23 is a -- an Appendix C to the DMN plan which
24 has a map which shows the MGT property,
25 future slope and landscape plan dated 2001.

1 That would indicate to me -- you asked
2 specifically about the road to the site, the
3 access road, not South Mountain Road itself,
4 I think.

5 MS. BACHMAN: I'm asking about
6 the South Mountain Drive.

7 THE WITNESS (Kendzior): South
8 Mountain Road at this point, the -- the land
9 on either side of the road is owned by the
10 City. When you get to the point where the
11 MGT property is located, where they have
12 their -- their second gate, on this map these
13 are access drives shown going in. I thought
14 you were referring to those very steep slopes
15 that are on either side of that, that's MGT
16 property.

17 MS. BACHMAN: So just to make
18 sure I'm clear on this, South Mountain Drive
19 is owned by the City, up to the point, would
20 it be the first gate where we were able to
21 conduct the field review? And then from
22 thereafter the access road to the site is the
23 property of MGT?

24 THE WITNESS (Kendzior): It
25 would be the gate where we were not admitted

1 on the field review.

2 MS. BACHMAN: Thank you.

3 THE WITNESS (Kendzior): And
4 that -- that would be the portion of the
5 property that shown on that, that landscaping
6 plan from 2001.

7 MS. BACHMAN: Mr. Libertine,
8 on your visibility analysis map attached to
9 your prefiled testimony, where,
10 approximately, is the New England Trail, also
11 known as the Metacomet-Monadnock Blue Trail
12 located?

13 THE WITNESS (Libertine): I
14 apologize. I don't have a color copy with
15 me, and so, I'm having a hard time picking
16 the trail out.

17 THE WITNESS (Kendzior):
18 Mr. Skoglund may be able to give you some
19 information on that.

20 THE WITNESS (Skoglund): It's
21 close to -- it's west of the plant towards
22 the west of the whole site. I travels north,
23 in a north/south direction, west of the
24 plant.

25 MS. BACHMAN: Thank you.

1 THE WITNESS (Libertine): It
2 does scale the same ridgeline, I just wasn't
3 sure which side of the plant it came on.

4 Thank you.

5 MS. BACHMAN: And in your
6 opinion, Mr. Libertine, is there any
7 potential visibility from the trail?

8 THE WITNESS (Libertine):
9 There are areas along the trail where the
10 plant can be seen. It kind of comes in and
11 out depending upon where you are just because
12 of the -- the nature of how the plant is
13 situated kind of below the ridgeline but,
14 yeah, there are several areas where you can
15 see portions of the building.

16 MS. BACHMAN: And also on your
17 visibility map where would the Meriden and
18 Berlin parcels that were donated by the
19 certificate holder predecessor in interest
20 located?

21 THE WITNESS (Libertine): They
22 essentially surround that property.

23 MS. BACHMAN: And in your
24 opinion, what would be the potential
25 visibility from those parcels?

1 THE WITNESS (Libertine):
2 There is -- there's significant visibility
3 depending upon where you're standing.

4 MS. BACHMAN: And when you
5 observe the detention bond during your
6 inspections of the accessible portions of the
7 property in April and May of this year, was
8 water collected and detained in the pond at
9 that time?

10 THE WITNESS (Libertine): No.
11 During the inspections I saw it was a fairly
12 dry part of the season before we started to
13 experience all the rains we've had, so it was
14 essentially bare and dry as a bone at that
15 time.

16 MS. BACHMAN: And on page 5 of
17 your prefiled testimony, you indicate that
18 white pine can grow approximately three feet
19 per year. Do you know what soil types
20 support this kind of growth?

21 THE WITNESS (Libertine):
22 White pines do fairly well in disturbed
23 soils. So that's kind of an average across
24 the board. If you had -- I would -- I would
25 -- I try to be a little bit on the

1 conservative side knowing that we have fairly
2 steep slopes and bony soils up there, but I
3 think that's still a fairly accurate
4 testament for being able to survive in that
5 environment where they're proposed.

6 MS. BACHMAN: So how would you
7 characterize the soil type at the site
8 property?

9 THE WITNESS (Libertine): It's
10 -- it's fairly thin, it's talus slopes, so
11 it's, I call it kind of bony. There is
12 certainly some substructure there but it
13 would have -- any plantings would need --
14 would require some amending prior to getting
15 trees in there especially if you're going to
16 plant anything of any substantive size. So
17 yeah, they're thin soils with trap rock
18 underlayment. Some areas probably have as
19 little as no cover and you may get up to
20 several inches just depending upon where you
21 are on those slopes.

22 MS. BACHMAN: Okay. Thank
23 you.

24 That's all I have,
25 Mr. Chairman.

1 THE CHAIRPERSON: Thank you.

2 Although, just to follow up,
3 you're saying there that the trees could,
4 forget about how fast they're growing, they'd
5 actually survive with that kind of -- in some
6 cases, no soil at all?

7 THE WITNESS (Libertine): No,
8 they could certainly survive. There would
9 have to be some amendment to establishing
10 them, no question about it. Buy they're
11 pretty hearty and they grow on these types of
12 slopes, so it's not uncommon. But it would
13 require, in this case, I believe, creating a
14 adequate planting medium, for lack of a
15 better term. And that would require, in some
16 places, probably digging holes and amending
17 that with soil so that they could get
18 established.

19 Once they get established they
20 can grow on rock fairly well.

21 THE CHAIRPERSON: Okay. I'll
22 go to Council, cross-examination, Senator
23 Murphy.

24 SENATOR MURPHY: Thank you,
25 Mr. Chairman.

1 This is really to anyone on
2 the panel. Did anyone, at any time prior to
3 the initiation of the matter before us here
4 today, have any discussion with MGT about
5 decommissioning?

6 THE WITNESS (Kendzior): We
7 had extensive discussions with MGT about --
8 and I don't know that we, you know, when we
9 were discussing it, we used the word
10 "decommissioning". But we had extensive
11 discussions with them about fulfilling the
12 conditions that were in the -- the site plan
13 and subdivision approvals about what steps
14 they were going to take to do the visual
15 mitigation of the plant, which was an
16 obligation that they had under the
17 modification agreement.

18 So in the sense of discussing
19 the items of substance that you would discuss
20 when --

21 SENATOR MURPHY: Okay. What
22 modification agreement are you talking about?

23 THE WITNESS (Kendzior): The
24 tax modification agreement that is one of the
25 exhibits here. Give me a few seconds.

1 SENATOR MURPHY: Does the --
2 does the agreement include taking down the
3 buildings?

4 THE WITNESS (Kendzior): The
5 agreement calls for the parties to discuss
6 what steps should be taken in order to
7 visually mitigate the impact of all the
8 structures on the site. So it wasn't an
9 agreement with regard to specific steps. It
10 was an agreement to discuss and negotiate
11 those steps and agree upon them, with the
12 stipulation that those steps would not be
13 taken until either the plant was de -- was --
14 construction was recommenced or they, in
15 fact, abandoned.

16 It's Paragraph 10 I believe of
17 that tax modification agreement.

18 SENATOR MURPHY: Right. As I
19 guess I kind of indicated at the last hearing
20 in Meriden, I'm really kind of really, nine
21 plus as to frankly why the City was so slow
22 in moving on them. And I read is in your
23 prefiled testimony about the notice from the
24 town and to the town about the abandonment.
25 It was apparently interpreted by the town,

1 and maybe we're going to shut this down,
2 whereas I interpret this to be telling you
3 that they're going to shut it down.

4 I'd like to ask you about the
5 April 3rd, 2012 letter which is the letter,
6 and you discuss it in your prefiled
7 testimony, which I've read and you interpret
8 it to be an intent on their part to someday
9 turn it down, close it down.

10 The letter itself indicates it
11 was hand delivered. Was it hand delivered or
12 it came by regular mail or some other form?

13 THE WITNESS (Kendzior): My
14 recollection, it was hand delivered.

15 SENATOR MURPHY: Okay.

16 In reading Judith Lagano's
17 prefiled testimony which MGT has put in, it
18 doesn't quite say it, but I gather from it
19 that there may have been a meeting that day
20 when the letter was delivered?

21 THE WITNESS (Kendzior):
22 That's correct.

23 SENATOR MURPHY: And tell me
24 your version of what was discussed that day,
25 event?

1 THE WITNESS (Kendzior): They
2 indicated that they were giving us the notice
3 of abandonment, the one-year notice, minimum
4 one-year notice that's required under the tax
5 modification agreement. They indicated what
6 some of their reasons were for making a
7 decision, at that point, to not proceed with
8 the project. And we discussed our respective
9 obligations under the tax modification
10 agreement in terms of what we needed to
11 negotiate with each other with regard to what
12 taxes were due, with regard to the
13 subdivision and site plan bonds, and with
14 regard to the visual mitigation.

15 The -- the reason, what the
16 notice of abandonment does not say is when
17 they were going to abandon. They're required
18 to give us a minimum of one-year notice. If
19 you read that notice, it does not say we are
20 abandoning the project as of April 3, 2013,
21 which would have been the earliest date that
22 they could have done that.

23 SENATOR MURPHY: But doesn't
24 it say they're giving you the one-year notice
25 in compliance with the --

1 THE WITNESS (Kendzior): But
2 it's a minimum of one-year notice. In other
3 words, it's a notice that you would give to
4 us, you could give it to us on April 30,
5 2012, you would be entitled to abandon your
6 permits on April 3rd, 2013, but you're not
7 required under that notice to abandon your
8 permits on April 3rd, 2013 or any other date.

9 There are a number of exhibits
10 attached to my testimony, two specifically,
11 where we're basically saying to them, okay,
12 you're going to abandon. When are you going
13 to do it? Because the actual date of
14 abandonment as opposed to the date of the
15 notice is important in interpreting the
16 effects of the provision of the tax
17 modification agreement. And they just
18 wouldn't tell us when they were going to
19 abandon, when they were going to hand in
20 those permits.

21 SENATOR MURPHY: Well, you
22 knew for certain in February though that they
23 were -- they were serious because they filed
24 a -- they filed in the Superior Court to
25 enforce the tax provisions, whereas the

1 assessment should have changed the previous
2 October based upon that notice. So at least
3 as of February the 14th, you had to know that
4 the game was over.

5 THE WITNESS (Kendzior): Yes,
6 sir. We did. And we filed this proceeding
7 in March. So we filed very -- probably as
8 quickly as Attorney Small could get the
9 paperwork done, we followed -- filed here
10 very quickly thereafter.

11 SENATOR MURPHY: I'm not sure.
12 They didn't file here in March, did they?
13 Was it? Okay.

14 Let me see what else I have
15 here.

16 (Pause.)

17 THE CHAIRPERSON: I guess I
18 have nothing further at this time,
19 Mr. Chairman.

20 Oh, yes. I had -- I had one
21 other -- one other thing, just to satisfy my
22 own quirky interpretation of things, I read
23 the recitation of changed conditions. Are
24 there any changed conditions since the Siting
25 Council accepted their submission to abandon

1 their certificate?

2 THE WITNESS (Kendzior):

3 They're -- we haven't been allowed on the
4 site. We do not believe anything has changed
5 on the site since that time. So with that
6 caveat, my answer would be, not to my
7 knowledge.

8 SENATOR MURPHY: Thank you.

9 I have no further questions,
10 Mr. Chairman.

11 THE CHAIRPERSON: Thank you.

12 Mr. Levesque.

13 MR. LEVESQUE: There were
14 statements made that the physical
15 improvements had little value for reuse. The
16 large water tank that's on the site, what's
17 the source of supply for that water, or what
18 would have it have been?

19 THE WITNESS (Kendzior): The
20 original plan that the Council approved,
21 although they didn't have required easements
22 at the time, called for that water to come
23 from the Connecticut River.

24 MR. LEVESQUE: Okay. So --

25 MR. LYNCH: But that diversion

1 was never followed through on, was it? That
2 diversion plan from the Connecticut?

3 THE WITNESS (Kendzior): My
4 understanding, and it's based on, you know,
5 things that I've heard, and I'm sure MGT
6 could you inform you more specifically, was
7 that they did negotiate agreements with all
8 or at least most all of the towns that they
9 needed to pass through but I don't believe
10 they ever constructed anything.

11 MR. LYNCH: I remember that.
12 Thank you.

13 MR. LEVESQUE: You may not
14 know, but could that tank possibly be any use
15 for public water supply and storage?

16 THE WITNESS (Kendzior):
17 You're right, I don't know.

18 MR. LEVESQUE: Okay. Just
19 maybe a suggestion for the water department
20 to look into it for development or storage,
21 if there's any need.

22 THE WITNESS (Kendzior): Well,
23 one of the issues with -- with that is that
24 although the -- my understanding is the water
25 lines, and I'm looking to some of my fellow

1 employees here, the water lines have been
2 brought up to the end of Sams Road. I don't
3 believe they've been brought through to the
4 site yet.

5 MR. LEVESQUE: Sure.
6 Obviously, even if it was up to drinking
7 water standards there'd be significant
8 expense.

9 Thank you, Mr. Chairman.

10 THE CHAIRPERSON: Mr. Hannon.

11 MR. HANNON: Thank you.

12 I do need a clarification of
13 something that you had mentioned earlier and
14 the reason I have a question is looking at
15 the prefiled testimony of Judith Lagano, and
16 it has to do with the road itself. I'm
17 trying to find out, what is the status of the
18 road? I'm a little confused on that.
19 Because based on the testimony from Judith
20 Lagano, said that the road was, I guess, set
21 up to give to the town, but the town has not
22 acted on it. So what is the actual status on
23 the road. And if it has not been accepted a
24 as a town road, what are the issues that are
25 associated with the town not accepting the

1 orad.

2 THE WITNESS (Kendzior): I
3 would refer you, for specific answers, to
4 Exhibit 5, which again, is that September 4,
5 2008, memo that counsel asked about before i
6 in terms of our giving notification to MGT of
7 the things they had not done with regard to
8 the roadway and the subdivision approvals.
9 And there's a list of items there, that are
10 things that haven't been completed and it's
11 followed with some other items. And the next
12 attachment to it is an e-mail from Brian
13 Ennis who is the an Associate City Engineer,
14 with the City, to the Mr. Skoglund where he
15 essentially out in 2012 to a look at what had
16 changed since 2008. And there's that short
17 e-mail there.

18 So -- so those are the
19 specific items that haven't been done with
20 regard to the road.

21 MR. HANNON: Okay. So if I'm
22 understanding then, the town has not accepted
23 this as a town road?

24 THE WITNESS (Kendzior): Oh,
25 no. We have not. The work hasn't been

1 completed to City standards.

2 MR. HANNON: Okay. Then that
3 being respect, my understanding would be that
4 it would be owner of that road, which would
5 still be MGT, would be responsible for
6 maintenance until such time that the road is
7 accepted by the town, assuming it is.

8 THE WITNESS (Kendzior): Your
9 understanding is perfectly correct.

10 MR. HANNON: Thank you.

11 Mr. Libertine, I have a
12 question for your regarding your submittal,
13 On page 3 of the photos, lower right-hand
14 corner, you have "photo of detention pond
15 with no vegetation established.

16 THE WITNESS (Libertine): Yes.

17 MR. HANNON: Is it your
18 interpretation that that was supposed to have
19 been the wetland mitigation area?

20 THE WITNESS (Libertine): I'm
21 not sure if it was strictly a mitigation
22 area, but I know that the -- the plans were
23 for establishing a wetland mix component for
24 it, but I'm not sure if it was specific to
25 mitigation.

1 MR. HANNON: Well, because
2 based on I'm reading on the finding of facts,
3 originally on this is there was supposed to
4 be like a 33,000 square foot wetland
5 mitigation area, and that's why I'm asking if
6 this is part of that area?

7 THE WITNESS (Libertine): I've
8 been assuming it that was part of that, but I
9 can't answer that for sure.

10 MR. HANNON: Okay.

11 THE WITNESS (Kendzior): If I
12 may?

13 I think a review of --
14 I'm not sure which one, maybe both -- of
15 their applications for extension of the
16 permits, they state there that that -- the
17 work you're specifically asking about was
18 never done.

19 MR. HANNON: Okay. I think
20 that's basically --

21 MR. SMALL: And just -- just
22 for the record, that was included as an
23 attachment to the Siting Council's Second Set
24 of Interrogatories to MGT. So that's where
25 you'll find that document.

1 MR. HANNON: Okay. Thank you.

2 THE CHAIRPERSON: Thank you.

3 Mr. Lynch.

4 MR. LYNCH: Mr. Chairman, I --
5 I still have questions on the -- the tax
6 issues, but I don't think I'm qualified to
7 ask them, so I'm going to let the attorneys
8 follow up on more of the tax issue, because
9 I'm totally confused.

10 Mr. Libertine, I should know
11 the answer to this, but you can help me out.
12 Is the Metacomet trail a strictly hiking
13 trail or is it a multi-level use?

14 THE WITNESS (Libertine): It's
15 part of the Blue-Blazed Trail, so in theory
16 it is a foot trail only.

17 MR. LYNCH: Okay. Thank you.

18 No more questions,
19 Mr. Chairman.

20 THE CHAIRPERSON: I'd just
21 like to add, I'm not sure the tax issues, if
22 that's how you define them, are even germane
23 to, even though they've been submitted to the
24 Council.

25 MR. LYNCH: Well, there's a

1 lot in here about taxes.

2 THE CHAIRPERSON: Well, I'm
3 not -- there's a lot of -- a lot in here,
4 period, which we'll have to, I guess,
5 ultimately decide what is germane and not.

6 Thank you.

7 Dr. Bell.

8 DR. BELL: Thank you,
9 Mr. Chair.

10 I just have one question. I
11 guess to Mr. Libertine, but maybe somebody
12 else on the panel knows more than he does
13 about the outfit EarthTech that apparently
14 did the first visual, the original analysis
15 of the visual impacts for the project. I'm
16 just curious whether, since visibility is an
17 ongoing issue, whether this outfit still
18 exists in the State of Connecticut, if it
19 originally came from the State of
20 Connecticut, or whether anybody has any
21 interchange in making the assessments now
22 with any of those personnel?

23 THE WITNESS (Libertine): I
24 can't speak to the latter. I know EarthTech
25 is certainly still a viable firm. Whether

1 that work originated out of their Connecticut
2 office, I know they have had a presence in
3 the state. I can't say for sure. I only
4 found an excerpt of the larger document that
5 was in the Siting Council files that happen
6 to have the visibility portion that was
7 attached to my prefiled testimony. But I
8 don't know if anyone has evaluated
9 postconstruction conditions and kind of
10 referred back to what was done originally.

11 THE CHAIRPERSON: Mr. Martin,
12 I think, had a follow-up.

13 MR. MARTIN: Are you finished.

14 DR. BELL: I'm finished.

15 Than you, Mr. Chairman.

16 MR. MARTIN: The City owns 300
17 acres surrounding the MGT property, 200 of
18 which are still, have -- or I guess 200 of
19 which have not been dedicated to open space.
20 So has the City given any thought to acquire
21 the MGT property with an eye toward having
22 more control over what's developed on that
23 sensitive area in town?

24 THE WITNESS (Kendzior): That
25 was one of the items that was discussed with

1 MGT following the April 3, 2012 notice. It
2 was also one of the items that we didn't
3 reach any agreement on.

4 MR. MARTIN: Okay. I was
5 going to say, but I -- I take it no
6 resolution was reached.

7 All right. Thank you.

8 THE CHAIRPERSON: Dr. Bell,
9 did you have any --

10 DR. BELL: No. No. I'm
11 finished. Thank you, Mr. Chairman.

12 THE CHAIRPERSON: Okay.
13 And Mr. Hannon.

14 MR. HANNON: Just one more
15 question, and part of this may be the
16 dialogue between you and Meriden Gas Turbine
17 as to whether or not it was July 1st, I
18 think, maybe, 2012 or July 1st, 2013, I think
19 whatever date you look at, as far as the
20 effective date of that notice for the tax
21 issue, where if -- I'm looking at it, and it
22 is July 1, 2013 or 2012 in retrospect. If
23 you were no long -- if the Town was no longer
24 supposed to be looking at this site as a
25 power-generating facility, didn't you then

1 have the authority to have Town staff go out
2 and actually inspect the site? And have you?

3 THE WITNESS (Kendzior): Well,
4 I guess I'd give you a couple of responses to
5 that.

6 Whether it was a
7 power-generation facility or something else,
8 at any point time it remained privately owned
9 and Meriden Gas Turbine since refused to let
10 us on the property. The other area, it is --
11 and again, frankly, I -- not up to me to say
12 this I guess, but I agree with the Chair that
13 the tax part of the agreement probably isn't
14 very relevant to this proceeding.

15 The agreement called for us to
16 negotiate concerning the value of the
17 property if it were not a fully-permitted
18 generating site. What it -- but that doesn't
19 mean that simply because we get to July 1,
20 2013, that that value is effective for that
21 date. The effective date of the value
22 follows in a series of steps from whatever
23 the actual date of abandonment is, not the
24 notice of abandonment, but the actual date of
25 abandonment.

1 In Connecticut, value of
2 property and the taxes that you subsequently
3 pay when you have to make your tax payments
4 is based on the value of the property on
5 October 1st of the preceding year. And it's
6 the City's position that on October 1st of
7 2012, the property remained a fully-permitted
8 generating site for the, you know, obvious
9 reason that MGT had not, in fact, surrendered
10 any of its permits, and that there are
11 payments that become due under the tax
12 agreement subsequent to that.

13 MGT had two different
14 interpretations. Originally, their position
15 was that they were no longer obligated to
16 make the payments due on July 1, 2012, which
17 is, as you can see, a matter of like four
18 months from the date of notice of intent to
19 abandon, and it's within -- you know, it's
20 less than the one-year minimum period that
21 they had to give us in order to actually
22 abandon. But they took that position anyhow.

23 They did subsequently make a
24 tax payment. They made it under protest.
25 They can sum up what their position is now.

1 They haven't argued that with us lately. So
2 there is a dispute about an additional tax
3 payment, but to your question, and probably
4 more simply than -- I probably could have
5 said this more simply, it reminded their
6 property. We -- other than those regulatory
7 powers that we might have for any piece of
8 property, we didn't have the right to go on
9 that site, and they didn't permit us to go on
10 that site after a certain point in time.

11 MR. HANNON: Okay. So nothing
12 under any of the applications that they had
13 submitted to the Town, gave the Town the
14 authorization to go out and check on the site
15 and the status, things of that nature. Is
16 that correct, then?

17 THE WITNESS (Kendzior):
18 There's -- there were no such authorizations.

19 MR. HANON: Okay. Thank you.

20 THE CHAIRPERSON: Okay. Thank
21 you.

22 Just a couple questions.

23 Mr. Libertine, in I guess your
24 prefiled testimony, you state that the nature
25 and extent of the visual impact of the

1 project appears greater than what was
2 represented to the City and the Council.

3 Is that statement based on the
4 fact that the improvements that they've
5 constructed, in and of themselves, are larger
6 or somehow sited differently than what the
7 Council approved or is it based on the fact
8 that the -- that the D&O, and particularly
9 the D&M plan, had not been implemented
10 relating to the plan. The planned things
11 that I -- apparently the color is a big item.

12 But I want to know is there --
13 did the buildings get bigger after they were
14 approved or is it, does the various
15 mitigating measures?

16 THE WITNESS (Libertine): It's
17 probably, at the end of the day, a
18 combination of both, but I think it's a
19 little bit weighted more towards the fact
20 that as part of the application and the
21 materials that were reviewed by the Council,
22 it is clear that, at that time, the building
23 was proposed at 72-feet in height. And
24 that's what the visual report had essentially
25 represented and had evaluated.

1 The building did go up another
2 10 feet so there was certainly an increase,
3 but I think more so, from my perspective when
4 I reviewed all the materials, it was clear
5 that the visual analysis from my standpoint
6 was probably not as representative as it
7 could be in terms of the overall visibility.
8 I think it was fairly selective in terms of
9 where some of the photos were taken. I think
10 the focus was more on the stacks at that
11 time, which were proposed, you know, to be
12 well over a hundred and -- I believe it was
13 like 180 feet in height. And so the building
14 seemed to be less of a focal point in terms
15 of what had been presented to the Council.
16 And that's really the primary, I guess, point
17 of -- of that comment.

18 I think certainly to a lesser
19 degree the fact that the visual mitigation
20 that was proposed has not been fully
21 implemented has helped to, you know, make it
22 much more visible than what's, I think,
23 anticipated.

24 THE CHAIRPERSON: A follow-up
25 question. I guess this is for the Zoning.

1 Is an 82-foot -- since apparently it's now 82
2 feet -- is that permitted or is that in
3 violation?

4 THE WITNESS (Skoglund): It
5 was approved by the Planning Commission. So
6 I would have to believe it is -- it is
7 permitted in that, as electric-generating
8 facility is -- is allowed. I believe they,
9 know, it is allowed at that height. It was
10 seven -- as it was mentioned, it was
11 originally approved at 72 feet and then an
12 amendment was approved to allow an 82-foot
13 height.

14 THE CHAIRPERSON: Okay. So it
15 was amended to allow the 82 feet. Okay.

16 I don't want to go into a long
17 discussion about the performance bonds, I'm
18 still mystified. It's a -- I assume there's
19 a surety company that -- that holds that is
20 responsible for the bond. Is that correct or
21 is --

22 THE WITNESS (Kendzior): No,
23 that's not correct.

24 THE CHAIRPERSON: What is?

25 THE WITNESS (Kendzior): MG

1 post -- MGT posted a cash bond which is
2 something that's allowable under our
3 regulations. So there actually is money in a
4 bank account representing the -- the bond
5 amounts that you can see in some of the
6 information that's been supplied.

7 There is a specific -- and I
8 think your counsel pointed this out,
9 Paragraph 9 or Item Number 9, in the tax
10 modification agreement deals with the
11 obligations of both parties and the sequence
12 of them with regard to those bonds. We,
13 following the April 3rd, 2012 letter that was
14 one of the items that was discussed with MGT.
15 From our point, we wanted those things
16 completed. From their point they wanted to
17 get their money back. We weren't able to
18 reach agreement on that. They argued under a
19 doctrine that they termed "economic waste".
20 In other words, they were saying that because
21 the property was no longer going to be a
22 generating plant, that it wasn't necessary to
23 complete the items that were on or secured
24 the bond funds.

25 From our point of view, a bond

1 is a bond, is a bond, is a bond. Once you
2 deposit it, you either do the things that you
3 have to do under the bond or not, and we take
4 whatever action.

5 We had those discussions, and
6 subsequently to our counsel, their counsel,
7 basically said to us -- and that was at the
8 point where the discussions were breaking
9 down and both sides were getting ready to
10 file with whatever administrative or judicial
11 body.

12 They basically said if we took
13 the money out of the bank or did anything
14 with it, they would sue us. As you may or
15 may not recall, I used to be the City
16 attorney. I have always cautioned the City
17 against taking sort of self-help actions,
18 just doing something, you know, because you
19 are a government and maybe you can. It was
20 always my opinion that it was a much better
21 course of action -- well, first of all, to
22 settle it if you could. I learned that
23 shortly in my legal career. Even after
24 winning a few cases, I learned that settling
25 was better than litigating. But I never

1 approved of the city just simply taking
2 somebody's property or taking somebody's
3 money or something else without either an
4 administrative body or a judicial body. I
5 mean in that circumstance, where they're
6 threatening to sue us without some sort of
7 outside third-party approval.

8 THE CHAIRPERSON: I guess I
9 remain somewhat mystified, but I want to -- I
10 want to move this. Who's the third party? I
11 mean you're -- in other words, for a court to
12 say that you can call -- I mean, you can call
13 the bond? Is that what you mean?

14 THE WITNESS (Kendzior):
15 .Correct.

16 THE CHAIRPERSON: Okay. It is.
17 Okay.

18 All right. Well, now -- so
19 we'll now ask the certificate holder, and
20 your counsel to cross -- do your cross any
21 cross-examination.

22 Attorney Lord, and I don't
23 know else you're -- and Attorney Lord, if you
24 want to introduce your team at some point, it
25 would be appreciated.

1 MR. LORD: Sure thing.

2 Are we good to go?

3 THE CHAIRPERSON: Yes, sure.

4 MR. LORD: Good afternoon,
5 Council Members. Thank you for having us
6 here. My name is Andrew Lord, from Murtha
7 Cullina here on behalf of Meriden Gas
8 Turbines. To my left -- actually, I should
9 start with Judith Lagano from Meriden --
10 actually NRG Energy, Inc., which is the
11 parent corporation of Meriden Gas Turbines.
12 Burt Cohen, a partner of mine at Murtha
13 Cullina.

14 MR. COHEN: Good afternoon.

15 MR. LORD: And Heinrich Herman
16 also from NRG.

17 Our sole witness will be
18 Ms. Lagano.

19 A VOICE: Are we
20 cross-examining or what?

21 MR. LORD: Yeah, we're just
22 going to cross yesterday and produce. Right?

23 THE CHAIRPERSON: Yes.

24 MR. LORD: I, just as a matter
25 of courtesy for you, Attorney Small, I will

1 have no questions of your appraiser.

2 I'd like to start,
3 Mr. Kendzior, with a couple of questions
4 regarding the 2008 memorandum that you
5 referenced. That was the punch list for the
6 items to be completed. Are you familiar with
7 the document I'm referring to?

8 THE WITNESS (Kendzior): I am.

9 MR. LORD: And was that a --
10 was that simply an internal memo on its face?

11 THE WITNESS (Kendzior): On
12 its face, it's an internal memo, yes.

13 MR. LORD: Okay. It was from
14 a city employee to another employee -- I'm
15 sorry. I apologize. I don't have it right in
16 front of me.

17 THE WITNESS (Kendzior): It
18 was from one of the Associate City Engineers
19 to the City Planner.

20 MR. LORD: Okay. And earlier
21 I had heard you say that that was provided to
22 NRG within 30 days of the effective date of
23 the modified tax settlement agreement?

24 THE WITNESS (Kendzior): I
25 think it was provided to NRG earlier than

1 that, but I'm not absolutely sure that
2 they --

3 MR. LORD: That must be a
4 fairly important document. Do you recall if
5 you set it up personally.

6 THE WITNESS (Kendzior): I am
7 fairly certain I didn't send it out
8 personally.

9 MR. LORD: Do you know who did
10 send it out?

11 THE WITNESS (Kendzior): No, I
12 don't.

13 MR. LORD: Do you -- so you
14 don't know if it was sent out under a cover
15 letter or whether it was sent by certified
16 mail?

17 THE WITNESS (Kendzior): I
18 know that it was discussing specifically with
19 Mrs Lagano.

20 MR. LORD: Do you know if it
21 was sent electronically where there might be
22 an email covering to an internal memo?

23 THE WITNESS (Kendzior): I
24 don't know whether it was sent electronically
25 or not.

1 MR. LORD: Okay. So there's
2 no -- you had -- you're not aware of any
3 record to indicate that it was actually sent
4 or received to Meriden Gas Turbines.

5 THE WITNESS (Kendzior): I'm
6 not aware of any record today. I haven't
7 looked for any records though.

8 MR. LORD: Okay. With regard
9 to site access, we've heard it repeated that
10 we have been denied access to the site.

11 On how many occasions did you
12 ask MGT for access to the site?

13 THE WITNESS (Kendzior): Am I
14 allowed to talk to you?

15 MR. SMALL: Yes, sure.

16 (Off-the-record discussion.)

17 THE WITNESS (Kendzior): It
18 was requested during this proceeding, and in
19 the -- I believe it was also a matter that
20 was discussed with regard to the tax
21 litigation that's pending.

22 MR. LORD: And with regard to
23 this proceeding, did we deny access to the
24 site?

25 THE WITNESS (Kendzior): You

1 denied access to the site, I believe, as part
2 of what your position was in the tax
3 litigation proceeding and in this litigation.

4 MR. LORD: Did we -- do you
5 recall the letter or the correspondence, I
6 believe it's in the -- in the record,
7 regarding our willingness to allow the City
8 to the site for a site visit on the day of
9 the site visit, as is the normal procedure?

10 THE WITNESS (Kendzior):
11 Again, I believe that subsequent to whenever
12 that was in your court proceeding regarding
13 the tax litigation, you took the position
14 that we were not allowed on the property.

15 MR. LORD: Okay. So on -- on
16 one occasion you've asked for permission
17 and -- and it was denied due to a court
18 ruling that that was a proper restriction?

19 THE WITNESS (Kendzior): Yes.
20 And again, you know, my answers with regard
21 to being denied access are in response to
22 questions about whether or not conditions on
23 the site have changed since the last time
24 that we were permitted on the site.

25 MR. LORD: When was the last

1 time that you were permitted on the site?

2 THE WITNESS (Kendzior): We
3 went up there on the site, 2012, June
4 apparently.

5 MR. LORD: 2012 June.

6 And prior to that?

7 THE WITNESS (Kendzior):
8 Prior to that, when had we been there last?

9 MR. LORD: Yes. Well, prior
10 to that. Since, let's say, 2003, have you
11 had any problems getting to the site whenever
12 you wanted to?

13 THE WITNESS (Kendzior): No.

14 MR. LORD: So --

15 THE WITNESS (Kendzior): We
16 haven't been denied access during that period
17 of time.

18 MR. LORD: Okay. So any of
19 the concerns that you had with the progress
20 -- the progress of the property or the
21 condition of the property, if you had asked
22 MGT for permission, in all likelihood, they
23 would have granted it based on your history?

24 THE WITNESS (Kendzior): I
25 would never predict what MGT would do.

1 MR. LORD: Okay. But suffice
2 it to say when you've asked, direct access,
3 except for one occasion, you received it?

4 THE WITNESS (Kendzior): When
5 we asked for access or actually when the
6 Council made an earlier site visit, access
7 was granted. When this litigation, this tax
8 litigation began, access has not been
9 granted.

10 MR. LORD: Moving on.
11 Mr. Libertine, I refer you to your prefiled
12 testimony, specifically, your comments
13 regarding the visibility analysis.

14 You say:

15 "The degree of visual impact
16 resulting from the Power Plant-Generator
17 Building is attributable to its height, mass
18 and color; its location near the top of a
19 prominent trap rock ridge..."

20 THE WITNESS (Libertine):
21 Correct.

22 MR. LORD: Did the Siting
23 Council approve the height of the building?

24 THE WITNESS (Libertine): To
25 the best of my knowledge, yes.

1 MR. LORD: Did the City of
2 Meriden approve the -- Meriden approve the
3 height of the building?

4 THE WITNESS (Libertine): Yes.

5 MR. LORD: Did the Siting
6 Council approve the mass of the building?

7 THE WITNESS (Libertine): It
8 did, yes.

9 MR. LORD: And did the City of
10 Meriden approve the mass of the building?

11 THE WITNESS (Libertine): Yes.

12 MR. LORD: And did the Siting
13 Council approve the color of the building?

14 THE WITNESS (Libertine):
15 That, I'm not sure exactly how that
16 transpired, but my assumption is that, yes,
17 there must have been consensus.

18 MR. LORD: And, as far as the
19 location of the building, I assume that the
20 answer is the same, except as to the end, the
21 Siting Council approved --

22 THE WITNESS (Libertine): To
23 the best of my knowledge --

24 MR. LORD: -- the location?

25 THE WITNESS (Libertine): Yes.

1 MR. LORD: So has anything
2 changed to your knowledge with the way that
3 the facility is constructed versus how it was
4 approved?

5 THE WITNESS (Libertine): In
6 terms of its construction, I don't believe so
7 other than some of the amendment or
8 amendments that should have been made as part
9 of the D&M plan.

10 MR. LORD: And, in fact, when
11 the Siting Council approved it, it had other
12 features that would have had other greater
13 visual impact. I think you testified earlier
14 that the stacks were 180 feet. Certainly
15 that would increase visibility?

16 THE WITNESS (Libertine):
17 Correct. And that -- that was the focus of
18 the -- the work by EarthTech.

19 MR. LORD: Are the stacks
20 there now?

21 THE WITNESS (Libertine): No,
22 they're not.

23 MR. LORD: Are there heat
24 recovery steam generators there now that were
25 included in the original application?

1 THE WITNESS (Libertine): I
2 don't believe so, no.

3 MR. LORD: How about a cooling
4 tower?

5 THE WITNESS (Libertine): Not
6 to my knowledge, no.

7 MR. LORD: So we have a
8 smaller less obtrusive facility that's got a
9 greater visual impact?

10 THE WITNESS (Libertine):
11 That's --

12 MR. LORD: It seems
13 counter-intuitive.

14 THE WITNESS (Limbertaine): It
15 may be. But if you look through the
16 application and the material that was
17 presented to the Council, the building was
18 really not a focal point, and -- excuse me --
19 the photos that were selected or the
20 locations that were selected to demonstrate
21 the overall visibility were in locations, for
22 the most part, where the building cannot be
23 seen.

24 But the fact remains that the
25 structure that's there today, in my opinion,

1 was just not represented appropriately in
2 terms of the visibility from both locations
3 where it would be visible, and I guess the
4 character of that visibility.

5 MR. LORD: Thank you.

6 Mr. Kendzior, do you recall
7 the first hearing in this proceeding?

8 THE WITNESS (Kendzior): The
9 one in Meriden?

10 MR. LORD: Yes.

11 THE WITNESS (Libertine): As
12 well as I can at age 63.

13 MR. LORD: Do you remember I
14 asked you a question about Meriden's purpose
15 in this proceeding and whether it was to have
16 a modification of a decision in order to
17 incorporate a decommissioning plan?

18 THE WITNESS (Libertine): I
19 don't recall you asking that question in that
20 manner but you may well have.

21 MR. LORD: I'd refer you to
22 page 90 of the transcript in that hearing,
23 lines 22 to 24. I'll just hand it.

24 No, Attorney Small, I can just
25 hand it to him for convenience if you want.

1 MR. SMALL: What page is that?

2 THE WITNESS (Libertine):

3 Page 90.

4 I see the question and my
5 answer, yes.

6 MR. LORD: And, just for the
7 record, could you state what it says?

8 THE WITNESS (Kendzior): .

9 "MR. LORD: In the original
10 docket there was a consideration of a
11 requirement for a decommissioning plan.
12 And they didn't incorporate it as a
13 condition. And that's why you're here
14 today is seeking -- that the certificate
15 be modified to incorporate a
16 decommissioning plan --"

17 And my answer was:

18 "Counsel, I -- you know, I
19 would suggest to you that you're --
20 you're making a legal argument and
21 asking for a legal conclusion. And I'm
22 here as a fact witness."

23 MR. LORD: Thank you. So in
24 your prefiled testimony you have a heading
25 called "CHANGED CONDITIONS" and you have

1 several assertions as to what "CHANGED
2 CONDITIONS" are.

3 Are you making a legal
4 conclusion with regard to "CHANGED
5 CONDITIONS"?

6 THE WITNESS (Kendzior): It
7 looks to me like a recitation of facts that
8 would support that kind of conclusion.

9 MR. LORD: And is the CHANGED
10 CONDITION based simply on fact, or is it
11 based on interpretation of case law and
12 Siting Council precedent?

13 THE WITNESS (Kendzior): In
14 any sort of administrative proceeding like
15 this, the administrative body considers facts
16 and they apply the law.

17 MR. LORD: Thanks. So, do you
18 agree construction was in progress or halted
19 somewhere around 2002?

20 THE WITNESS (Kendzior): I
21 believe that's correct.

22 MR. LORD: Okay. And then
23 after 2002, probably site activity such as
24 removing equipment was probably done by 2003?

25 THE WITNESS (Kendzior): I'm

1 not sure of the date when the equipment was
2 removed.

3 MR. LORD: Are you aware of
4 any significant activity since 2003 at the --
5 at the site?

6 THE WITNESS (Kendzior):
7 Again, I'm not sure 2003, 2004 --

8 MR. LORD: Thereabouts.

9 THE WITNESS (Kendzior): --
10 but certainly not in the last half dozen
11 years.

12 MR. LORD: Okay. And so
13 you've -- you've known about the punch-list
14 items since at least 2008?

15 THE WITNESS (Kendzior):
16 Correct.

17 MR. LORD: Did you ever call
18 the Siting Council about those conditions?

19 THE WITNESS (Kendzior): No.

20 MR. LORD: Did you ever notify
21 the -- your zoning enforcement officer about
22 any of the issues there?

23 THE WITNESS (Kendzior): The
24 memo was sent to the Zoning Enforcement
25 Officer.

1 MR. LORD: Did you ever talk
2 to the DEP about any concerns that you had
3 there?

4 THE WITNESS (Kendzior): No.

5 MR. LORD: How about the Army
6 Corps of Engineers?

7 THE WITNESS (Kendzior): Not
8 to my knowledge.

9 MR. LORD: But based on your
10 recent testimony, these were pretty -- these
11 are pretty serious issues for you today?

12 THE WITNESS (Kendzior): They
13 are. And as I've consistently said during
14 the course of my testimony during that entire
15 period of time, MGT continuously told us that
16 they intended to make this project go
17 forward; that they wanted the project to go
18 forward; that they were taking steps to keep
19 the permits and other items in place so that
20 the project could go forward. And that when
21 they got to the point where it did go forward
22 they would remedy all of those deficiencies.

23 MR. LORD: But there's always
24 been a possibility that it might not move
25 forward. Is that true?

1 THE WITNESS (Kendzior): I
2 feel like one of those witnesses on a TV show
3 where you go anything is possible. The fact
4 is that MGT came twice to the Siting Council
5 to get their permits extended, asked us to
6 support them in those applications. And even
7 more recently, repeatedly either to the
8 Council itself or in public, said that they
9 were going forward with the project when the
10 conditions were right to do that.

11 MR. LORD: But it was
12 anticipated to the point where it's included
13 in the original tax agreement, isn't there, a
14 provision for the -- the contingency that the
15 plant might not might be completed?

16 THE WITNESS (Kendzior): There
17 is some language in the tax agreement, which,
18 in fact, was the focus of the -- I'm not sure
19 whether it's the first or second time that we
20 were involved in litigation with MGT. I
21 don't know whether MGT's failure to transfer
22 the land as they were required to do was the
23 first litigation or whether or items
24 surrounding the -- what you're referring to
25 was the first litigation, but it was one of

1 those.

2 MR. LORD: Did I say
3 "litigation". I'm sorry. I meant the -- the
4 original tax agreement, wasn't there --

5 THE WITNESS (Kendzior): And
6 in my answer I'm saying to you that there is
7 language in the tax agreement around the
8 subject that you're raising. There was the
9 issue of some of the litigation that we had
10 with MGT.

11 MR. LORD: And in the -- in
12 the settlement agreement. it's called the
13 "Second Tax Agreement", the settlement
14 agreement has provisions in it that were to
15 be followed in the event that an abandonment
16 occurred?

17 THE WITNESS (Kendzior): There
18 are, thankfully, more specific than what was
19 in the original agreement, but apparently,
20 not specific enough.

21 MR. LYNCH: Could you keep
22 your voice up, please. You're facing away.
23 I have a hard time hearing you.

24 THE WITNESS (Kendzior): Yes,
25 I'm sorry. I'll move the microphone over

1 here. My voice does tend to fade away.

2 MR. LORD: And, in fact, when
3 the -- are -- are you familiar with the
4 transcripts from the Docket 190, the original
5 hearing?

6 THE WITNESS (Kendzior): I've
7 never -- no.

8 MR. LORD: I actually believe
9 it's one of your exhibits is an excerpt from
10 the Siting Council hearing.

11 THE WITNESS (Kendzior): I
12 haven't read all of the transcripts of the
13 original approval process.

14 MR. LORD: Okay. There's one
15 section. The question is a simple one is,
16 did the Council, when they were considering
17 this first project, take into account the
18 possibility that the plant might not get
19 built?

20 THE WITNESS (Kendzior): There
21 -- one of our exhibits is some of the
22 testimony that was, I believe, given by the
23 PDC El Paso representative with regard to
24 that, where he spoke of what would happen if
25 the plant were decommissioned. I think he

1 was speaking in the context of the plant
2 actually having been completed and
3 operational but there certainly was
4 discussion there. And the decision and
5 order, again, as I understand, and a lot of
6 attorneys here are more expert than I am on
7 Siting Council proceedings, but as I
8 understand it the decision and order
9 incorporates whatever, for want of a better
10 legal word, representations were made by the
11 Applicant during the hearing process.

12 MR. LORD: Do you recall what
13 those representations were?

14 THE WITNESS (Kendzior): Just
15 if I can find the right exhibit, I could
16 answer your questions, I guess.

17 The Exhibit 3 -- oh, excuse
18 me. Some backup that I have here and I have
19 read that portion of it where --

20 MR. SMALL: I think it was
21 Exhibit 5 for identification. It was not
22 made a full exhibit.

23 THE WITNESS (Kendzior): On --
24 on page 59, Mr. Reinbold specifically asked
25 about plans for decommissioning the facility,

1 and Mr. Roberts, who I believe was the PDC
2 El Paso representative then went on to -- to
3 answer that question.

4 And on page 60 towards the
5 bottom, he said:

6 "If it was decided that the
7 plant was economically unviable, the
8 plant would be dismantled."

9 MR. LORD: Please continue.

10 THE WITNESS (Kendzior):

11 "We would obviously obtain as
12 much as we could in salvage costs, and
13 then the property would be marketed and
14 sold for another purpose."

15 MR. LORD: Okay.

16 THE WITNESS (Kendzior): And
17 then Mr. Reinbold asked:

18 "Would there be any efforts to
19 restore the site?"

20 And Mr. Roberts said:

21 "If that's what it would take
22 to get the most value out of the
23 property, that's what we would do."

24 MR. LORD: Okay. Are you
25 aware that there were gas turbines installed

1 at the plant in 2002.

2 THE WITNESS (Kendzior): I
3 believe so.

4 MR. LORD: There were --
5 there's a cooling tower constructed in 2002?

6 THE WITNESS (Kendzior): I
7 personally don't know whether the cooling
8 tower was ever built or not.

9 MR LORRD: Can we agree that
10 there's a fair amount of construction towards
11 the completion of a power plant?

12 THE WITNESS (Kendzior):
13 Absolutely.

14 MR. LORD: And that has all
15 been removed as of today and probably as long
16 ago as 2003?

17 THE WITNESS (Kendzior): All
18 the things that were built are, obviously,
19 have not been removed, no.

20 MR. LORD: Correct. Is there
21 anything in that testimony that says that the
22 buildings would be removed?

23 THE WITNESS (Kendzior): I'll
24 just quote it to you again, if it was decided
25 that the plant was economically unviable, the

1 plant would be dismantled.

2 MR. SMALL: Could I just make
3 one correction, it was our Exhibit for
4 identification 3 not 5 that contains that
5 transcript.

6 (Pause.)

7 MR. LORD: Could I just have
8 one minute?

9 (Pause.)

10 THE WITNESS (Kendzior):
11 Mr. Chairman, if I might, Attorney Bachman
12 had asked a question before about the actual
13 correct address for the power plant site
14 itself, that's at 600 South Mountain Road.

15 MS. BACHMAN: Thank you.

16 MR. LORD: I have no further
17 questions, Mr. Chairman. Thank you.

18 THE CHAIRPERSON: I just want
19 to see if any of the other parties or
20 intervenors have any cross-examination.

21 CL&P?

22 MS. MALDONADO: No. No, cross
23 by CL&P.

24 THE CHAIRPERSON: Thank you.

25 Rivers Alliance of

1 Connecticut.

2 (No response.)

3 THE CHAIRPERSON: Quinnipiac
4 River Watershed Association?

5 (No response.)

6 THE CHAIRPERSON: Okay. So
7 we're going to break a little bit later, but
8 why don't we start now with the certificate
9 holder and we'll start the --

10 MR. SMALL: Could I -- could I
11 have one moment, Mr. Chairman.

12 I just -- I have -- you want
13 us to do our redirect now, or at the end of
14 the -- we have some very -- I have one, one
15 or two questions, I think. Is that --

16 MR. LORD: That's fine.

17 THE CHAIRPERSON: Okay. Yes.

18 MR. SMALL: Mr. Libertine, you
19 were in discussion with Mr. Lord, I believe,
20 over the -- and with members of the Council
21 as well, over the visibility and over the
22 change in visibility that might be due to the
23 increase in height.

24 Have you now reviewed MGT's
25 September 4, 2001 filing with the Council

1 regarding changes of the height of the
2 project?

3 THE WITNESS (Libertine): I
4 have.

5 MR. SMALL: And is that -- and
6 did MGT make any conclusion or make any
7 representation of the Council with respect to
8 the effect of the increase in height on
9 the -- on visibility of the project?

10 THE WITNESS (Libertine): They
11 did. On page 6 there was a -- a -- a brief
12 paragraph on the plant view shed which
13 discusses the updated site arrangement plan
14 shown in Appendix A, basically going on to
15 say that it doesn't change the view shed as
16 previously presented in the original
17 application. And I believe that was based on
18 an increased height of potentially up to 90
19 feet for the building height. And I guess,
20 my comment on that, really, this goes back to
21 what I said all along is that they -- they
22 reference the six view sheds which are really
23 the photo locations that were presented
24 originally, which had indicated a limited
25 visual impact and they go on to say here that

1 the same six view sheds would have a similar
2 visual impact with the updated site
3 configuration, that there's no increase in
4 height discernable from any vantage location,
5 however, there's a slight lateral movement.

6 Again, I guess, it just goes
7 back to the fact that those locations don't
8 really represent areas where the physical
9 proper or building is visible.

10 I'd also say that I haven't
11 had a chance to see color photos or photos of
12 any real clarity. I've been told I may be
13 able to get some photocopies of photocopies
14 that were in the file here at the Siting
15 Council, but I can say that there's at least
16 one location that is comparable to a location
17 that I've depicted on Reynolds Drive that
18 clearly doesn't -- from my perspective,
19 clearly does not represent what has been
20 built versus what was presented originally.

21 MR. SMALL: May I have one
22 moment, please.

23 THE CHAIRPERSON: Yes, I just
24 want to follow up on that, though.

25 MR. SMALL: Sure. Go right

1 ahead. Please.

2 THE CHAIRPERSON: The original
3 visibility analysis, did it include the, what
4 was it, 180-foot stacks?

5 THE WITNESS (Libertine): Yes,
6 it did. And again, that was a -- that was
7 really the focal point of the study. And
8 understandably so, those were the tallest
9 structures on there.

10 THE CHAIRPERSON: Right.

11 Dr. Bell.

12 DR. BELL: Just trying to
13 follow up again on this, I'm trying to
14 understand this difference between the
15 building with the stacks and the building by
16 itself. Are -- are you saying that, in your
17 general testimony, are you saying that the
18 vantage points taken where photographs or
19 statements were made about the visibility,
20 those were designed to capture the visual
21 impact of the stacks, and thus, didn't
22 properly represent the -- or didn't represent
23 the visibility of the building, because
24 nobody, at that time, was particularly paying
25 attention to the building or that's too

1 strict? That they -- the stacks were more
2 important in everybody's mind, whereas if
3 they had been considering the impact of the
4 whole facility the building and the stacks
5 they maybe would have chosen more vantage
6 points and slightly different ones to more
7 fully represent the impact of the building if
8 they -- if they had been paying attention,
9 closer attention to the whole facility?

10 I'm just trying to paraphrase
11 your -- what I'm -- I'm trying to understand
12 your point about the selectivity --

13 THE WITNESS (Libertine): Sure

14 .
15 DR. BELL: -- of the original
16 visual analysis.

17 THE WITNESS (Libertine):

18 Yeah, let me -- I can't say with any kind of
19 certainly -- certainty or even speculation
20 what might have been going through the minds
21 of the folks who developed their partiluar
22 locations.

23 From my perspective, the
24 entire facility, including the stacks, which
25 obviously, should have been a focal point,

1 they're 180 or proposed at 180 feet, so
2 that -- that makes a lot sense. But the
3 sheer mass of that building, I think, has to
4 be taken into consideration as does the water
5 tank and any of the other appendages that
6 went along with the facility.

7 My only point is that, and
8 it's easy looking at it 13 years later, if I
9 had been asked to do this work personally, I
10 would taken a lot more locations so that, to
11 your point, the entire facility would have
12 been better represented. It's just my
13 opinion that in this case, it seems that the
14 stacks, and really, only the stacks are what
15 are really being evaluated here. And there
16 seems to be somewhat of an omission as to
17 what the overall power plant building and its
18 visibility on the landscape might have been.

19 Does that -- does that answer
20 the question?

21 DR. BELL: Yes. Thank --
22 thank you.

23 Thank you, Mr. Chair.

24 THE CHAIRPERSON: Senator
25 Murphy has a follow up.

1 SENATOR MURPHY: Yes,
2 Mr. Libertine, kind of a different subject.
3 Mr. Lord had asked you questions about access
4 to the property being withheld, and it's my
5 recollection, your testimony earlier today,
6 you indicated you were not permitted on the
7 property. What type of an effort did you
8 make to get on this property before you
9 testified today?

10 THE WITNESS (Libertine): My
11 efforts were through the City and legal
12 Counsel as part of this proceeding --

13 SENATOR MURPHY: Okay.

14 THE WITNESS (Libertine): --
15 to try to get access to do an inspection.

16 MR. SMALL: Just to be --
17 be --

18 SENATOR MURPHY: Well, on
19 that --

20 MR. SMALL: Okay.

21 SENATOR MURPHY: -- fine. I
22 want the question answered. It's not --

23 MR. SMALL: Okay. I mean,
24 there's the correspondence between Attorney
25 Lord and me are in -- in the record. We

1 requested access for our expert witnesses.
2 The original answer was they didn't have
3 access at the site visit, and MGT's view
4 changed as -- yeah, as was demonstrated
5 through their --

6 SENATOR MURPHY: Okay.

7 MR. SMALL: -- their court
8 filing across the street --

9 SENATOR MURPHY: All right.
10 Okay.

11 MR. SMALL: -- and that's all
12 in the record.

13 SENATOR MURPHY: Okay. Thank
14 you.

15 THE CHAIRPERSON: Did you have
16 additional redirect?

17 MR. SMALL: No further
18 redirect, Mr. Chairman.

19 MR. LORD: Would you like
20 our -- would you like Ms. Lagano to be sworn
21 or -- I have no further questions.

22 THE CHAIRPERSON: Yes,
23 let's -- we want to keep this moving, so --

24 MS. BACHMAN: If you're -- if
25 you're comfortable there, or --

1 THE CHAIRPERSON: Are you
2 comfortable staying there?

3 MR. LORD: Yeah, there's no
4 need to move.

5 THE CHAIRPERSON: Okay.

6 MR. LORD: Just for the
7 record, Bob Spooner from NRG is -- is not
8 going to be a witness, but he is here for
9 technical support as he is the person that is
10 very familiar with site conditions at the --
11 at the Meriden facility, as Ms. Lagano might
12 need support from time to time.

13 THE CHAIRPERSON: Okay. Why
14 don't we start by swearing in Ms. Lagano.
15 No, no. You swear into here.

16 J U D I T H L A G A N O,
17 called as a witness, being first duly
18 sworn by Ms. Bachman, was examined and
19 testified on her oath as follows:

20 MS. BACHMAN: Thank you.

21 THE CHAIRPERSON: And do you
22 have any additional exhibits to be verified
23 or no?

24 MR. LORD: No, we have to
25 verify all of our exhibits. At this time, we

1 have nothing that's been admitted as yet.

2 THE CHAIRPERSON: Oh, okay.

3 MR. LORD: Ms. Lagano, I refer
4 you to the exhibits that are listed on the
5 program as Roman numeral III, D.1 through 8,
6 which includes three letters from Jane Warren
7 to the Chairman; NRG comments regarding the
8 City of Meriden's request to reopen; your
9 prefiled testimony; and three sets of
10 responses to Council Interrogatories.

11 Are you familiar with these
12 documents?

13 THE WITNESS (Lagano): Yes.
14 Yes, I am.

15 MR. LORD: And were they
16 prepared under your supervision and control?

17 THE WITNESS (Lagano): Yes,
18 they were.

19 THE CHAIRPERSON: I didn't
20 hear it.

21 THE WITNESS (Lagano): Yes,
22 they were.

23 MR. LORD: Are they true and
24 accurate to the best of your knowledge and
25 belief?

1 THE WITNESS (Lagano): Yes,
2 they are.

3 MR. LORD: Are there any
4 changes, additions, or corrections that need
5 to be made at this time?

6 THE WITNESS (Lagano): Not at
7 this time.

8 MR. LORD: Do you accept this
9 as your testimony here today?

10 THE WITNESS (Lagano): Yes, I
11 do.

12 MR. LORD: I would offer these
13 exhibits to be admitted as full exhibits.

14 THE CHAIRPERSON: Does any
15 party, intervenor, object to the admission of
16 these exhibits?

17 (No response.)

18 THE CHAIRPERSON: The Exhibits
19 are admitted.

20 (MGT Exhibits 1 through 8:
21 Admitted in evidence - described in index.)

22 MR. LORD: Mr. Chairman,
23 Ms. Lagano is prepared for your
24 cross-examination.

25 THE CHAIRPERSON: Okay. Well,

1 we'll start it right now.

2 Mr. Martin.

3 MR. MARTIN: Thank you,
4 Mr. Chairman.

5 From Attorney Lord's
6 cross-examination, I guess we can deduce that
7 construction on the site stopped sometime in
8 2002. Is that correct?

9 THE WITNESS (Lagano): That's
10 correct.

11 MR. MARTIN: And at that time
12 there was power equipment installed on the
13 site?

14 THE WITNESS (Lagano): There
15 was power equipment on the site, yes.

16 MR. MARTIN: And then that
17 equipment was removed sometime during 2003?

18 THE WITNESS (Lagano): Yeah,
19 after construction had stopped, and whatever
20 equipment had been delivered on the site was
21 ultimately taken off-site.

22 MR. MARTIN: Okay. So when
23 did NRG make the decision that this project
24 was not going forward?

25 THE WITNESS (Lagano): When

1 you say "not going forward", do you mean at
2 that time when we stopped construction or
3 could you -- could you clarify?

4 MR. MARTIN: Well, in 2012 you
5 informed the City that you were going to
6 surrender the certificate or stop, but so you
7 have about a ten-year period there which --
8 through which time you came to the Council,
9 asked for extensions?

10 THE WITNESS (Lagano): Yes.

11 MR. MARTIN: But I'm thinking
12 it must have been apparent to you as a
13 money-making corporation that this project
14 was -- I mean, it was not going to be in your
15 best interest to go forward with it?

16 THE WITNESS (Lagano): Yeah,
17 we had -- we had tried for a number of years,
18 very hard, to see if we could make this work.
19 We had -- you know, we needed a long-term
20 power contract in order to get the financing,
21 in order to restart construction and complete
22 the power plant. So we had tried really
23 valiantly, I have to give a lot of my
24 colleagues on the development side a lot of
25 credit in trying to make this happen over the

1 years. But -- but by 2012, by that notice,
2 when we submitted that notice of abandonment,
3 we had suffered some -- from some pretty
4 significant blows, and after almost a decade
5 of -- of valiantly trying, we ultimately had
6 to -- had to make the decision to abandon the
7 power plant development.

8 MR. MARTIN: But, I don't
9 know, to me it seemed like a long time, 10
10 years, to keep banging your head against the
11 wall on a project that's not going to go
12 anywhere?

13 THE WITNESS (Lagano): Well, I
14 think we have quite a few bruises from that
15 period of time. And I think, you know, in --
16 in the latter -- at the very end of 2011, we
17 had received determination from ISO New
18 England, who's the system operator, that in
19 the process of trying to qualify for annual
20 capacity auctions, the ISO had determined
21 that the capacity would not be deliverable
22 into the market.

23 So not being able to deliver
24 your product to market is a -- is a pretty
25 significant, you know, setback. So at that

1 point in time, between that and the
2 Integrated Resource Plan that had come out by
3 Connecticut DEEP, stating that no new
4 generation was needed until 2023, I mean
5 another 10 years of banging your head up
6 against the wall, so to speak. Between those
7 two factors, I mean that was really just too
8 much for us to continue to -- to try to
9 develop the -- the property, and so,
10 therefore, we came to the conclusion we
11 needed to file the notice of abandonment. We
12 hand delivered the letter to the City of
13 Meriden. And we explained our reasoning in
14 that meeting.

15 MR. MARTIN: Okay. Thank you.

16 And from the materials
17 submitted by MGT, it appears that the last
18 monthly environmental inspection was
19 conducted on June 28th of this year. Will
20 these monthly inspections continue now that
21 you have surrendered the certificate?

22 THE WITNESS (Lagano): Well,
23 we have been -- we have been performing those
24 inspections.

25 MR. MARTIN: Will they

1 continue from this point forward?

2 THE WITNESS (Lagano): May I
3 have just one moment?

4 Yeah, I mean, I haven't --
5 we're -- we're kind of trying to get through
6 this process and see what we need to do. So
7 we've been continuing to -- to do those
8 inspections.

9 MR. MARTIN: Okay. Thank you.
10 And will MGT continue to
11 restrict access to the site now that the --
12 you've surrendered your certificate?

13 THE WITNESS (Lagano): You
14 know, I -- in terms of restricting access, I
15 mean, we have made several occasions to -- to
16 meet with the City of Meriden to try to
17 resolve our issues. I think Mr. Kendzior had
18 referenced a few of those himself. And
19 that's something that, to the extent that
20 there can be something done, I think, and it
21 involves a site visit, then we would have a
22 site visit.

23 MR. MARTIN: Okay.

24 THE WITNESS (Lagano): So I
25 think --

1 MR. MARTIN: Okay. Now
2 there's, one of the conditions of this was
3 that a conservation easement was to be
4 established for vernal pool protection, but I
5 guess the vernal pools were not on MGT's
6 property?

7 THE WITNESS (Lagano): That's
8 correct.

9 MR. MARTIN: Was any portion
10 of the easement established on MGT's
11 property?

12 THE WITNESS (Lagano): For?

13 MR. MARTIN: The vernal pool
14 protection.

15 THE WITNESS (Lagano): I think
16 the vernal pools are off-site.

17 MR. MARTIN: Okay.

18 THE WITNESS (Lagano): So
19 they're not on MGT's --

20 MR. MARTIN: But I mean,
21 there's an area around the vernal pools.

22 THE WITNESS (Lagano): And
23 those were not disturbed as far as I know.

24 MR. MARTIN: There's a --
25 there was an area around the vernal pools

1 that were to be conserved, so I don't know if
2 any of that spilled over onto your property
3 or not.

4 THE WITNESS (Lagano): Just
5 could I have one minute?

6 No, that's all off-site.

7 MR. MARTIN: Okay. Thank you.

8 And would MGT be amenable to
9 producing an existing conditions map of the
10 conditions that exist, sort of at the point
11 you surrendered your certificate?

12 THE WITNESS (Lagano): An
13 existing conditions map?

14 MR. MARTIN: Right.

15 THE WITNESS (Lagano): What
16 would be contemplated in an existing
17 conditions map or is there something specific
18 in terms of are you talking about the vernal
19 pools or?

20 MR. MARTIN: Well, there's a
21 lot of, it seemed to be, disputation over
22 what's existing, and what the drainage
23 structures and are they completed, and where
24 are they located, and the condition of the
25 slopes.

1 So I'm just wondering, for
2 everybody's benefit, if we were to make a map
3 which kind of shows how things are at the
4 present time.

5 THE WITNESS (Lagano): I'm not
6 aware of a dispute as to whether or not
7 drainage structures -- I mean, all of -- all
8 of the drainage structures were constructed.
9 So I'm actually not -- not aware of -- of a
10 dispute about what -- what was constructed
11 and not about, let's say, the detention ponds
12 and the drainage structure. So I'm not aware
13 of that being an element of dispute. I think
14 there was some questions about seeding, we
15 heard today, within these structures, but I'm
16 not aware of a dispute as to whether or not
17 these structures exist.

18 MR. MARTIN: Okay. Well, I
19 must -- I must have been at a different
20 meeting.

21 THE CHAIRPERSON: Dr. Bell.

22 DR. BELL: Mr. Chairman, may I
23 just ask one question for clarification?

24 THE CHAIRPERSON: Yes.

25 DR. BELL: Since we're --

1 we're now discussing detention ponds,
2 drainage structures, and so forth, it leads
3 me back to a question that's been running
4 through my mind having to do with restricting
5 or not restricting access. The question is
6 when -- when the matter has come up about
7 restricting or not restricting access,
8 your -- the subject matter simply regards the
9 access road beyond the second gate where the
10 Siting Council did not go, and the property
11 where the plant is on a kind of plateaued
12 area. Is that correct? Because then the
13 other portions, the lower portions, where
14 going from the -- the --

15 THE WITNESS (Lagano): Yeah,
16 that lower road --

17 DR. BELL: -- town road --

18 THE WITNESS (Lagano): Yeah.

19 DR. BELL: -- up a good part
20 of the mountain, South Mountain Road, that's
21 never been an issue.

22 THE WITNESS (Lagano): Yeah,
23 that's all City-owned property that it has
24 access to --

25 DR. BELL: That's all

1 City-owned property.

2 THE WITNESS (Lagano): -- so I
3 think a lot of these areas are actually on
4 City-owned property that they certainly have
5 access to.

6 DR. BELL: And so, there's
7 a -- there's a controversy regarding that the
8 road, in the sense the City has not accepted
9 the road as a town road, as we've heard, and
10 because they say, certain improvements were
11 not made or certain drainage was not done
12 properly or whatever.

13 So anything having to do with
14 drainage structures that were, or not,
15 completed, or not there, all of that is
16 simply open to inspection any day. Is
17 that --

18 THE WITNESS (Lagano): Yeah.
19 Just one --

20 DR. BELL: Am I understanding
21 that correctly?

22 THE WITNESS (Lagano): -- one
23 moment.

24 Yes, that's correct, Dr. Bell.
25 That's accessible.

1 DR. BELL: Okay. I'm just
2 trying to get straight what we're talking
3 about. Thank you very much.

4 THE WITNESS (Lagano): Yes, I
5 --

6 DR. BELL: Thank you,
7 Mr. Chair.

8 THE WITNESS (Lagano): -- I
9 appreciate that. That's city-owned land that
10 they have access to.

11 THE CHAIRPERSON: And just to
12 clarify it, since you raise that, have you
13 offered the road for acceptance? Have you
14 made formal request to the City to accept the
15 road? That's usually the way it works.

16 THE WITNESS (Lagano): I think
17 the --

18 THE CHAIRPERSON: And then you
19 provide the as-builts or whatever to document
20 it, but have you done that yet?

21 THE WITNESS (Lagano): Well,
22 the road is in the same condition that it was
23 when we established those construction bonds
24 or when that last -- or when those -- the
25 bond --

1 THE CHAIRPERSON: Right. But
2 in order for the --

3 THE WITNESS (Lagano): --
4 amount was reduced in -- in '08, so and that
5 -- that that is how it remains.

6 THE CHAIRPERSON: So you have
7 not formally asked the City to accept the
8 road?

9 THE WITNESS (Lagano): I don't
10 know a formal process where we have asked the
11 City to accept the road.

12 THE CHAIRPERSON: Well,
13 it's -- it usually begins the process, so
14 it's a pretty informed step. And some of
15 these questions about conditions would relate
16 to whether or not you've done that. If you
17 haven't done that, that will explain why some
18 of these detailed as-builts, et cetera, are
19 not. So --

20 THE WITNESS (Lagano): Yeah, I
21 --

22 THE CHAIRPERSON: -- I guess,
23 I sort of can answer the question based on
24 your -- your not quite answering it, but --

25 THE WITNESS (Lagano): Yeah,

1 and I just -- I don't know if back in 2006 or
2 whenever it was, we actually made that formal
3 request to the City, and there were -- there
4 were components of the road construction in
5 the bond itself, so I just don't know dating
6 back to that, that far back whether or not we
7 made a formal request for -- for City
8 acceptance.

9 THE CHAIRPERSON: I'm sorry.
10 Mr. Martin, why don't you continue.

11 MR. MARTIN: Thank you.
12 How would you describe the
13 interest in the property you've received
14 since you put it on the market?

15 THE WITNESS (Lagano): There
16 -- there was some interest in the property.
17 I'm trying to think about when we -- when
18 that date was, but there was interest in the
19 property. There's been less interest in
20 this, in the property frankly, since this
21 proceeding has -- has begun.

22 MR. MARTIN: Okay. Thank you.
23 And the interest, how would
24 you characterize that, kind of serious or
25 just exploratory or?

1 THE WITNESS (Lagano): We have
2 gotten some -- some written offers.

3 MR. MARTIN: Okay. Thank you.

4 And let's see if we can -- you
5 seem to be a little hazy status about whether
6 a wetland was created to mitigate the loss of
7 another wetland. In your response to
8 Interrogatory 13 of the Siting Council's
9 seven interrogatories, you state that the
10 nine -- the .9 acre wetland was created to
11 mitigate for the loss of a .098 acre wetland.

12 THE WITNESS (Lagano): Yeah.
13 That's correct.

14 MR. MARTIN: Both -- however,
15 in the Docket 370B proceeding it was stated
16 that no wetlands were created following the
17 approval of the project. So could you
18 clarify this apparent distinction?

19 THE WITNESS (Lagano): Yeah,
20 there -- there was, where the building sits
21 today, there was a wetland. That's the .09
22 acres.

23 MR. MARTIN: Yeah.

24 THE WITNESS (Lagano): And
25 obviously when that was filled to build the

1 foundation of the building and the building
2 structure --

3 MR. MARTIN: Right.

4 THE WITNESS (Lagano): --
5 there was another wetland created, kind of
6 down the hill from the Admin building at .9
7 acres, so 10 times the amount of wetlands
8 that was filled was created.

9 MR. MARTIN: Okay. Is
10 there -- are -- is there any documentation
11 for your records, in your records of showing
12 the results of the creation or is that part
13 of the monitoring, ongoing monitoring reports
14 that you do?

15 THE WITNESS (Lagano): I would
16 have to go back and look to see what we have
17 in terms of documentation on the -- on the
18 creation. But it's certainly identifiable.

19 MR. MARTIN: All right. Thank
20 you.

21 Those are my questions,
22 Mr. Chairman.

23 THE CHAIRPERSON: Okay. We'll
24 take a 45-minute lunch break now, so we'll
25 come back here at quarter of two, and we can

1 resume.

2 (Whereupon, the witness was
3 excused, and a recess for lunch was taken at
4 12:54 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 1:48 P.M.

3
4 THE CHAIRPERSON: Good
5 afternoon. We'll resume our
6 cross-examination. Attorney Bachman has some
7 questions.

8 MS. BACHMAN: Thank you,
9 Mr. Chairman.

10 J U D I T H L A G A N O ,

11 having been previously duly sworn, was
12 examined and testified further on her
13 oath as follows:

14 MS. BACHMAN: Ms. Lagano,
15 Condition Number 14 of the Decision and Order
16 from Docket 190A required MGT to provide the
17 Council with 30-days written notice if the
18 facility plans to cease operations. For the
19 March 20th, 25th, and 26th, 2013 letters
20 indicating MGT's surrender of its Certificate
21 indicated to be submitted pursuant to this
22 written notice. Is that the intent?

23 THE WITNESS (Lagano): Yes, I
24 believe it was the notice as per the 30-day
25 requirement.

1 MS. BACHMAN: Thank you.

2 When you met with Council
3 staff on May 29th of 2012 to inform us that
4 you did not plan to pursue the project any
5 further, did you believe that the Council
6 staff had the authority to accept the
7 surrender without discussion and
8 acknowledgment by the Council members?

9 THE WITNESS (Lagano): Yeah,
10 there was nothing raised during the meeting,
11 so there was no concerns raised about having
12 to do anything in order to meet some
13 conditions or anything of the kind. So there
14 was no -- there was no feedback or any kind
15 of, you know, guidance as to you need to do
16 this or that. It was send us a letter and
17 that was about it. That was really it was
18 kind of a non -- a nonevent.

19 MS. BACHMAN: All right. Were
20 you under the impression that the staff could
21 accept the letter or were you aware of the
22 fact that only the Council can make decisions
23 binding on the Council?

24 THE WITNESS (Lagano): I don't
25 think we -- we went into that kind of detail

1 or anything.

2 MS. BACHMAN: And are you
3 familiar with the Council's acknowledgment of
4 the surrender of the certificates for
5 Docket 96 and Docket 103 for Wood-Burning
6 Electric Generating Facility matters?

7 THE WITNESS (Lagano): I -- I
8 don't believe so.

9 MS. BACHMAN: What remaining
10 components on this site are considered
11 permanent, as defined under Paragraph 1 of
12 the property tax payment agreement as not
13 economically practicable, physically removed
14 from the site to reinstall it at another site
15 or use for a similar purpose? Does this
16 include the 65-ton bridge crane inside the
17 generator building?

18 THE WITNESS (Lagano): Just
19 some -- some clarifications. Are you asking
20 about the original early tax -- tax, property
21 tax?

22 MS. BACHMAN: That's correct,
23 yes.

24 THE WITNESS (Lagano): Okay.
25 Could I just have one moment to look at that

1 document.

2 MS. BACHMAN: Certainly.

3 (Pause.)

4 MS. BACHMAN: For
5 clarification Attorney Cohen, it's Exhibit A
6 to that agreement.

7 THE WITNESS (Lagano): So the
8 October 2001?

9 MS. BACHMAN: Yes.

10 THE WITNESS (Lagano): And,
11 I'm sorry. Could you just repeat your
12 question?

13 MS. BACHMAN: What remaining
14 components on the site today are considered
15 permanent as defined in that exhibit?

16 THE WITNESS (Lagano): There
17 is a -- an Exhibit A that is the description
18 of a the main components. Is that what
19 you're referring to?

20 MS. BACHMAN: Yes. In the
21 body of that subdivision there is discussion
22 as to what's considered to be permanent.

23 THE WITNESS (Lagano): In --
24 in Exhibit A?

25 MS. BACHMAN: Uh-huh.

1 THE WITNESS (Lagano): There
2 are several sections in this exhibit,
3 Excavation/Civil; Buildings; Mechanical;
4 Electrical Wiring; Piping and Real Estate.

5 MS. BACHMAN: Under
6 paragraph 1 of the agreement --

7 THE WITNESS (Lagano): Which
8 is written reference to Excavation/Civil?

9 MS. BACHMAN: It's on
10 paragraph 1 of the agreement itself, has a
11 definition for what's considered permanent.
12 And it defines permanent as not economically
13 practicable to physically remove from the
14 site, to reinstall at another site, or to use
15 for a similar purpose.

16 THE WITNESS (Lagano): Oh,
17 description of the generating station
18 project. Okay. Just one. Give me a minute
19 so I can read it.

20 MS. BACHMAN: Sure.

21 (Pause.)

22 THE WITNESS (Lagano): Okay.
23 So just, Paragraph 1 is a description of the
24 generating station project and it references
25 Exhibit A, which has six sections, which is

1 the various scopes of work.

2 MS. BACHMAN: To rephrase the
3 question, what on the site today is
4 considered permanent as defined as
5 economically practicable to physically remove
6 from the site, to reinstall at another
7 site --

8 THE WITNESS (Lagano): I'm not
9 finding that in that Paragraph 1.

10 MS. BACHMAN: In the October
11 2001 agreement?

12 THE WITNESS (Lagano): Yeah.
13 Yes.

14 (Pause.)

15 MR. LORD: What Exhibit is it?

16 MS. BACHMAN: It's the
17 property -- the payment agreement, not the
18 settlement agreement, but the payment
19 agreement has it.

20 THE WITNESS (Lagano): Yeah,
21 the 2001. So I have a property tax payment
22 agreement dated October 29, 2001 between
23 Meriden Gas Turbines and The City of Meriden.
24 Paragraph 1 on page 2 is a description of the
25 generating station project consisting of

1 structures, equipment fixtures, machinery
2 appurtenances to -- relevant to a --

3 MR. COHEN: May I ask what
4 page of the agreement we're looking at so we
5 can help you out with more specificity?

6 MS. BACHMAN: It is -- I'm
7 just asking what components that are on -- on
8 the site today would be considered permanent?
9 And I --

10 THE WITNESS (Lagano): As
11 per --

12 MS. BACHMAN: -- I just used
13 Exhibit A as a reference.

14 MR. LORD: So the building.

15 THE WITNESS (Lagano): Okay.
16 So that -- okay. I think I found where you
17 are.

18 In -- in Paragraph 1 of
19 Exhibit A, as opposed to Paragraph 1 on
20 page 2 of the agreement.

21 (Pause.)

22 THE WITNESS (Lagano): Okay.
23 Yeah. So site excavation/civil improvements
24 are considered permanent if not economically
25 practical or physically -- or practical to

1 physically remove from the site. And
2 there's -- a listing here, so I think what's
3 included in this Excavation/Civil which is
4 this Paragraph 1 that you're referencing,
5 there's clearing and grubbing, I mean I don't
6 know how you would remove clearing and
7 grubbing. Backfill, I mean, this is all site
8 work. So foundation, so I mean, the
9 foundations of the building we would not
10 remove. I mean, I don't find that it would
11 be economically practical to remove
12 foundations of buildings at this point. I
13 mean, we're -- we're attempting to market the
14 -- the site for sale inclusive of the
15 building and those foundations so for us, it
16 would not be economically practicable to
17 physically remove the foundations of the
18 building when the site is being marketed with
19 the building.

20 So yeah, obviously, we'd not
21 remove the foundations that -- that are
22 supporting the building that's being marketed
23 for sale at the site.

24 So, cooling tower -- so the
25 concrete work and the foundations and the

1 containment areas that -- that we would
2 consider to be economically impracticable to
3 physically remove at this point.

4 Sorry, it took such a long
5 time to find.

6 MS. BACHMAN: That's fine.
7 It's very confusing. There's a lot of
8 agreements.

9 THE WITNESS (Lagano): There's
10 a -- there's a Paragraph 1 in the -- in the
11 agreement and a Paragraph 1 in the Exhibit,
12 so --

13 MS. BACHMAN: And under
14 Paragraph 2 in Exhibit A of that agreement?

15 THE WITNESS (Lagano): Yes.
16 So the buildings -- now Paragraph 2,
17 addresses the buildings. And also at this
18 point in time, like I just indicated that we
19 are marketing the site for sale with the
20 buildings. The interest that we have
21 received has been interest in the site
22 inclusive of the buildings. So at this point
23 in time we would consider it to be
24 economically harmful to remove the -- the
25 buildings if the interest that we have

1 received has included the buildings.

2 MS. BACHMAN: And is the
3 65-ton crane inside the of generator building
4 a permanent fixture?

5 THE WITNESS (Lagano): Yeah,
6 there's -- there's a -- there's a crane that
7 rides along one of the roof beams, so I think
8 it's my understanding that to actually get
9 that out you'd have to remove part of the
10 roof structure to remove that. So, I mean,
11 at this point in time it would be -- it would
12 be -- I mean, we'd consider it to be a
13 fixture of the building.

14 MS. BACHMAN: And in which
15 building is that crane located in?

16 THE WITNESS (Lagano): That's
17 the power plant structure. The larger one of
18 the two buildings on site.

19 MS. BACHMAN: Are there any
20 FERC requirements that must be fulfilled
21 prior to abandonment of the site?

22 THE WITNESS (Lagano): There
23 was no -- from a FERC standpoint, we would
24 have gotten a -- what's called an exempt
25 wholesale generator status which exempts,

1 it's really the exemption is -- is a
2 reporting requirement as per what utilities
3 usually how utilities report. That was never
4 ascertained because the facility never
5 reached that level of completion. So there
6 was nothing to do along those lines. The
7 other kind of FERC-jurisdictional issue is
8 the interconnection agreement, which, as I
9 was referencing earlier, once in 2011 we got
10 the determination from ISO that the capacity
11 wasn't deliverable, so we -- we removed the
12 facility from the -- what's called the
13 interconnection queue in ISO New England and
14 we terminated our interconnection agreement.

15 So those are the only two
16 aspects of the project that I would say has a
17 FERC element to it.

18 MS. BACHMAN: Thank you.

19 That's all I have,

20 Mr. Chairman. Thank you.

21 THE CHAIRPERSON: All right.

22 Thank you.

23 Senator Murphy.

24 SENATOR MURPHY: You indicate

25 that -- well, your prefiled testimony

1 indicated that you had the property listed
2 and that there was some interest shown but
3 it's decreased because of this pending
4 action.

5 THE WITNESS (Lagano): Yes,
6 unfortunately, yes.

7 SENATOR MURPHY: Your
8 appraisal indicated that highest and best use
9 would be if the buildings withdrawn from
10 Mr. Silverstein, but apparently that's not --
11 that's not so with your potential buyer so
12 far?

13 THE WITNESS (Lagano): I just
14 need a minute to take a look at that document
15 to make sure I understand.

16 SENATOR MURPHY: You'll find
17 it way towards the end.

18 THE WITNESS (Lagano): I'm
19 sorry. Could you repeat that? I didn't hear
20 it.

21 SENATOR MURPHY: You'll find
22 it way towards the end.

23 THE WITNESS (Lagano): Okay.

24 SENATOR MURPHY: I sort of
25 assumed that's why the town put it into

1 evidence was because it indicated it should
2 be taken down.

3 THE WITNESS (Lagano): You
4 said towards the end?

5 SENATOR MURPHY: Towards the
6 end. Well, if I can find it, then maybe I
7 can --

8 MR. COHEN: Towards the end of
9 the appraisal, sir?

10 SENATOR MURPHY: Yeah. Yeah.
11 Maybe next to the last page. I haven't
12 looked at it in some time.

13 THE WITNESS (Lagano): Let me
14 just make sure this is correct appraisal.

15 SENATOR MURPHY: He goes on at
16 some length but it probably would be best if
17 it just had the roads and the electric
18 facilities available, in essence.

19 THE WITNESS (Lagano): Yeah,
20 actually I don't think I read it that way.
21 It talks about as if --

22 SENATOR MURPHY: How about
23 page 55?

24 THE WITNESS (Lagano): Yeah,
25 that's actually where I am. And I'm only

1 mid -- at mid-page so...

2 SENATOR MURPHY: This person,
3 he talks about removing the present
4 speciality building. The best use of the
5 site, the only existing improvements were the
6 access road and utilities to the site.

7 Well, basically, to move on
8 and save a lot of time, because it's probably
9 more curiosity for me than important in the
10 long run, if someone were interested in
11 purchasing the property with the buildings,
12 is that something you'd take into
13 consideration?

14 THE WITNESS (Lagano): As I
15 said, we are marketing the site as-is with
16 the structures that are on site, and the
17 interest that we have received so far has
18 contemplated an adaptive reuse of the
19 existing facilities.

20 SENATOR MURPHY: Okay. I'll
21 let it go with that. I have no other
22 questions.

23 THE CHAIRPERSON: And
24 Mr. Levesque.

25 MR. LEVESQUE: How can anybody

1 use that existing building?

2 THE WITNESS (Lagano): I'm
3 not -- you know, I'm a power plant
4 operator/owner, so when I look at buildings I
5 look at them for their ability to crank out
6 megawatt hours. So it's hard for me to say.
7 You know, I've not speculated in other kinds
8 of real estate, but apparently there is
9 interest in adaptive reuse of those
10 structures.

11 MR. LEVESQUE: When you
12 brought the subject up, there's two locked
13 gates to get to the site, how can they use
14 the building if you've got two locked gates
15 on a road that's not accepted?

16 THE WITNESS (Lagano): The --
17 the -- there's -- my understanding is there
18 -- there's a lock at the lower end of the
19 road which is not -- and I just want to make
20 clear that Meriden does not own that --
21 Meriden Gas Turbines does not own that road,
22 so there's -- there's a lock at the bottom.

23 MR. LEVESQUE: Correct.

24 THE WITNESS (Lagano): And
25 then there's a lock up at the top of the --

1 the access road, which is where we -- where
2 our site begins, so I would contemplate that
3 if we were to sell the property that the key
4 to the locks would go with the -- with the
5 property owner, so I -- I wouldn't imagine
6 there would be restrictive access at that
7 point in time.

8 MR. LEVESQUE: Why is it
9 locked at the -- at the gate closest to the
10 state highway?

11 THE WITNESS (Lagano): Could
12 you just give me one moment?

13 (Pause.)

14 THE WITNESS (Lagano): Yeah, I
15 think at this point, we just want to make
16 sure that there is -- because there's no
17 other use for that road, so the only -- you
18 know, if you travel the road, you come up to
19 the top of site, the only thing there are the
20 structure that MGT owns. So there should be
21 no purpose for anybody actually to go up that
22 way. So by restricting access now to that
23 road, it keeps unwar -- unwanted folks out.
24 We have people that have unfortunately come
25 by and dumped trash and things like that, so

1 it's a way for us to keep that site, you
2 know, free of debris until such time there is
3 active use. When there's active use of that
4 property, then there will be thoroughfare on
5 that road, and -- and therefore, you know,
6 that it will be, you know, more thoroughly
7 traveled, and you wouldn't -- you wouldn't
8 have the -- the opportunity for people to for
9 a largely unaccessed site, or unoccupied site
10 dumping trash and other things like that.

11 MR. LEVESQUE: Who are the
12 parties to your tax agreement?

13 THE WITNESS (Lagano): The
14 City of Meriden and Meriden Gas Turbines.

15 MR. LEVESQUE: Is the Siting
16 Council a party to that agreement?

17 THE WITNESS (Lagano):
18 Absolutely not.

19 MR. LEVESQUE: Okay. Thank
20 you.

21 THE WITNESS (Lagano): You're
22 welcome.

23 THE CHAIRPERSON:
24 Mr. Wilensky.

25 MR. WILENSKY: I'm sorry I was

1 not here this morning. I missed the part of
2 that session, but -- and if I repeat myself,
3 the questions that were asked, I apologize.

4 You say you're marketing this
5 site, how are you -- are you marketing it
6 with a realtor or you're marketing it
7 yourself, marketing this yourself or just how
8 are you marketing this site?

9 THE WITNESS (Lagano): No, we
10 have a broker.

11 MR. WILENSKY: Pardon?

12 THE WITNESS (Lagano): We have
13 a broker.

14 MR. WILENSKY: Have you
15 advertised it? I mean, you have a broker --

16 THE WITNESS (Lagano): I think
17 the broker --

18 MR. WILENSKY: -- has the
19 broker advertised that as a site, as a
20 potential site?

21 THE WITNESS (Lagano): I think
22 the broker -- actually, I'm not -- because
23 I'm not the real estate director, but I know
24 that the broker has gone out through kind of
25 a -- I don't know if it's the equivalent of

1 like a multiple listing and has --

2 MR. WILENSKY: Do you allow
3 people to come up and look at the site?

4 THE WITNESS (Lagano): If
5 there are potential buyers, and they have to
6 meet -- you know, they have sign a
7 confidentiality agreements, and if they've
8 met those requirements and they -- they are a
9 credible buyer, then we arrange to have a
10 site visit with them to see if they're
11 interested in the site.

12 MR. WILENSKY: Would you allow
13 the City of Meriden or their representatives
14 to visit the site?

15 THE WITNESS (Lagano): As a
16 potential buyer?

17 MR. WILENSKY: Pardon?

18 THE WITNESS (Lagano): As a
19 potential buyer?

20 MR. WILENSKY: Would you allow
21 us to visit the site?

22 THE WITNESS (Lagano): Just
23 one moment.

24 (Pause.)

25 THE WITNESS (Lagano): Yeah.

1 My understanding is that what's in place now
2 is that with our permission that the Siting
3 Council can come on the site.

4 MR. WILENSKY: How would a
5 buyer or has there been any valuation? Could
6 there be some contamination of that site?

7 THE WITNESS (Lagano): Not --

8 MR. WILENSKY: Or is there any
9 contamination? And how would --

10 THE WITNESS (Lagano): No, not
11 that we're aware of, no.

12 MR. WILENSKY: With all that
13 excavation and everything there's been no
14 contamination at all on the site?

15 THE WITNESS (Lagano): Could
16 you just give me one minute?

17 (Pause.)

18 THE WITNESS (Lagano): Yeah,
19 so one of the benefits of us actually
20 occupying the site initially is that there
21 was preexisting contamination on the site,
22 once MGT took ownership of the site, that's
23 one of the first things they did was
24 remediated the contamination and that's been
25 closed out.

1 MR. WILENSKY: And if I
2 remember right, going back when this was
3 approved initially, going back several years
4 ago, and I was on the Council at that time,
5 you were going to bring water from the
6 Connecticut River, and there had to be some
7 agreements with several towns, 10 towns,
8 whatever it was. Are those agreements still
9 in place or has it been withdrawn or just
10 what -- what is the status? Is there
11 something that has to be done as far as all
12 those agreements went?

13 THE WITNESS (Lagano): No, you
14 know, at -- you're absolutely correct.
15 Initially it was contemplated that the
16 cooling water for the -- for the power plant
17 would come from the Connecticut River.

18 MR. WILENSKY: Yes.

19 THE WITNESS (Lagano): And
20 there were a number of arrangements
21 contemplated. I don't know that they were
22 all consummated. But then as time, you know,
23 kind of wore on, it was clear from DEP's
24 direction that they would rather we used gray
25 water than -- than divert water from the

1 Connecticut River. So the initial plan
2 was -- was -- was not advanced and had, you
3 know, who knows if we had actually built the
4 building and the power plant, what the
5 cooling water source would be, but definitely
6 the direction had changed course from
7 diverting water from the Connecticut River to
8 a gray water option.

9 MR. WILENSKY: What I'm really
10 getting at are some of those agreements still
11 in place in some of the towns or they've all
12 -- there's no more agreements with any of
13 those towns anymore?

14 THE WITNESS (Lagano): No,
15 they were either not finalized and I think
16 that's probably the case with most of them,
17 is that they -- they were either no finalized
18 because we were going to take a different
19 direction or if there was anything that was,
20 yeah, that -- that was to a point where we
21 had an agreement in place, we have since sent
22 letters withdrawing all of that and
23 terminating -- terminating all those.

24 MR. WILENSKY: My last
25 question is, and I'm just curious about this,

1 you'd like to walk away from that site as the
2 site exists today. Is that right?

3 THE WITNESS (Lagano): Well,
4 we are marketing the site for sale. That's
5 our objective.

6 MR. WILENSKY: I mean, you
7 want to market that site, and walk away from
8 that site and leave the site exactly as it
9 exists today, without doing any remediation
10 on the site at all?

11 THE WITNESS (Lagano): Well, I
12 think remediation, I just testified that we
13 had remediated any pre-existing contamination
14 that we were required to do and that's been
15 done. In terms of what our objective is now
16 is that we are selling or attempting to
17 market the site for sale as is.

18 MR. WILENSKY: As is. And
19 what happens if this sale is not -- sales are
20 not consummated, the site stays as it is. Is
21 that correct?

22 THE WITNESS (Lagano): I
23 suppose any property that's put up for sale
24 has the opportunity never to -- to sell.
25 It -- it may take a long time, I just don't

1 know. I would like to think that we could
2 sell this property as is. As I said, there's
3 been some indication from interest in the
4 market to adaptively reuse -- reuse the
5 facilities that are on site. So that's the
6 best information that we have today.

7 MR. WILENSKY: Thank you.

8 Mr. Chairman, thank you.

9 THE CHAIRPERSON: Okay.

10 Mr. Levesque, you have a
11 question?

12 MR. LEVESQUE: Did you have
13 prepared an updated enviromental site report
14 for that property?

15 THE WITNESS (Lagano): When
16 you say "updated"?

17 MR. LEVESQUE: Current. This
18 year?

19 THE WITNESS (Lagano): No.
20 Thee would have been no reason to do that.

21 MR. LEVESQUE: Well, how about
22 if some excavating contactor or somebody
23 dumped some materials or spilled some diesel
24 fuel or anything there --

25 THE WITNESS (Lagano): I think

1 --

2 MR. LEVESQUE: -- do you have
3 a current report for it?

4 THE WITNESS (Lagano): Well,
5 we do monthly environmental inspections.

6 MR. LEVESQUE: From out --

7 THE WITNESS (Lagano): And
8 we've been doing that since the construction
9 pretty much since when construction ceased.

10 MR. LEVESQUE: Okay.

11 THE WITNESS (Lagano): When we
12 were in active construction, we had
13 specialists on site, monitoring for exactly
14 that thing -- you know, that kind of thing.
15 Was there an excavator on site that had an
16 oil spill? Anything of the kind would have
17 been recorded and reported to the DEP and
18 addressed.

19 So I think the combination of
20 the due dili -- of the diligence that we
21 exercised during construction and all of the
22 inspections that we have continued to do and
23 are continuing to do from an environmental
24 monitoring standpoint are still going on.

25 MR. LEVESQUE: Okay. You're

1 pointing to the gentleman, is he a licensed
2 environmental scientist that is licensed to
3 produce such reports?

4 THE WITNESS (Lagano): There
5 is no such requirement to have an LSP prepare
6 reports, but he is on our environmental
7 staff.

8 MR. LEVESQUE: This gentleman
9 (indicating)?

10 THE WITNESS (Lagano): This
11 gentleman behind me right here.

12 MR. LEVESQUE: Okay. But you
13 don't -- you don't have any report to support
14 it?

15 THE WITNESS (Lagano): To
16 support what?

17 MR. LEVESQUE: To support your
18 general statements.

19 THE WITNESS (Lagano): About
20 what?

21 MR. LEVESQUE: About the
22 conditions at the site.

23 THE WITNESS (Lagano): As I
24 said, we -- we had there were initial
25 environmental site assessments. They

1 required remediation. That was done. And
2 there have been reporting and inspection
3 requirements since then.

4 MR. LEVESQUE: Okay. Thank
5 you.

6 THE CHAIRPERSON: Okay. Thank
7 you.

8 Mr. Hannon.

9 MR. HANNON: Thank you,
10 Mr. Chairman.

11 I do have some questions. The
12 first one, I just want to get an idea of what
13 the status is for the open space that was
14 associated with, I guess, like, the 800-acre
15 parcel because looking at the finding of
16 fact, it looks like they were 700 acres of
17 land to be deeded to Berlin and Meriden. Has
18 that been done?

19 THE WITNESS (Lagano): Yeah,
20 so all of the land has now been transferred
21 to Meriden and Berlin.

22 MR. HANNON: Okay.

23 THE WITNESS (Lagano): And I
24 believe any open space is associated with the
25 land that has been transferred, and I'm not

1 aware of -- because we're not the property
2 owner of those -- of those lots anymore.

3 MR. HANNON: Okay. Then it
4 also said some thirty acres at Trap Rock
5 Ridges would be under conservation
6 restriction. Is that something that you were
7 responsible for doing or the municipalities?

8 THE WITNESS (Lagano): Again,
9 that is on real estate that we don't own.

10 MR. HANNON: Okay. And is the
11 same thing true about the 60 acres around
12 Beaver Pond in Meriden?

13 THE WITNESS (Lagano): Could
14 you just give me one minute?

15 MR. HANNON: Uh-huh.

16 (Pause.)

17 THE WITNESS (Lagano): We --
18 we don't know anything about Beaver Pond in
19 Meriden. I'm sorry.

20 MR. HANNON: Okay. And then
21 there was supposed to be an additional 14.6
22 acres of land placed under conservation
23 restriction for a vernal pool west of the 38
24 -- of the 36-acre site. So again, that's
25 something that's outside --

1 THE WITNESS (Lagano): That's
2 correct.

3 MR. HANNON: -- your
4 jurisdiction on that?

5 THE WITNESS (Lagano): That's
6 correct. That is not on our property.

7 MR. HANNON: Okay. All right.
8 Now, I'm just trying to find
9 out where that status is.

10 THE WITNESS (Lagano): Yeah,
11 that's fine.

12 MR. HANNON: I'm confused on
13 the wetland.

14 THE WITNESS (Lagano): Okay.

15 MR. HANNON: You have comments
16 that you made in your presentation and in the
17 documentation we have saying that the .9 acre
18 wetland area was created. There is
19 conflicting information in terms of what the
20 town is saying that it hasn't been completed.
21 What is it?

22 THE WITNESS (Lagano): Yes.

23 MR. HANNON: And is there some
24 type of documentation that somebody can show
25 me, showing what the status is of that

1 wetland mitigation area?

2 THE WITNESS (Lagano): Yeah,
3 as I -- I testified earlier, there were
4 approximately .09-acres on-site that were
5 wetlands that were filled in order to build
6 the foundation and the building itself.
7 In -- in exchange for filling in .09 acres
8 that sits under the structure now, we created
9 .9 acres, so a 10-to-1 ratio, of new wetlands
10 just down the slope from the administration
11 building. So that -- that has been done.

12 MR. HANNON: Okay. Well, not
13 having had access to the site to see that, I
14 still have a question as to what the status
15 is because, again, I'm getting conflicting
16 information.

17 THE WITNESS (Lagano): Yes.
18 That -- that is --

19 MR. HANNON: And I'm -- I'm
20 trying to figure how we get some
21 documentation that that has, in fact, been
22 done and it is working like it's supposed to.

23 THE WITNESS (Lagano): Can you
24 just give me one minute, please?

25 MR. HANNON: Sure.

1 (Pause.)

2 THE CHAIRPERSON: Okay. We're
3 anxiously awaiting the response.

4 THE WITNESS (Lagano): Yeah,
5 so I just confirmed with my colleague so
6 the -- the work was done. The reference to
7 the earlier, I guess it was earlier testimony
8 is not something that we can explain, but
9 we -- we absolutely know that we did do the
10 wetlands restoration and we -- in the
11 location that I described down from the hill
12 in a ratio of 10-to-1.

13 MR. HANNON: I guess, again,
14 knowing that sometimes it can take up to
15 about three years to really fully establish
16 that type of an area, and I don't know when
17 it was done. I don't know if it's been
18 maintained.

19 THE WITNESS (Lagano): Oh, it
20 -- it --

21 MR. HANNON: I don't know what
22 the status is. And that -- again, this is
23 one of the big issues that I have with this
24 site.

25 THE WITNESS (Lagano): Yeah.

1 Yeah, so that was done before construction
2 ceased in 2002. So it's been over a decade
3 that that wetlands was created.

4 MR. HANNON: And I guess part
5 of the reason that I have a bit of a question
6 about the establishment of it is, again,
7 going to number -- I guess it's Question
8 Number 23 and your response. I mean this has
9 to do with storm-water features. You're
10 saying all storm-water features have been
11 installed in accordance with the approved
12 plans with the exception of seeding the
13 retention area with wetland plant species.
14 So it's like you didn't do one area, but you
15 did do another area? I would think that all
16 of that was sort of been done at about the
17 same time, so....

18 THE WITNESS (Lagano): I
19 think, and what I -- I wrote there is that in
20 the -- there is a retention pond --

21 MR. HANNON: Uh-huh.

22 THE WITNESS (Lagano): I'm
23 sorry. There's a detention pond -- pond, not
24 retention.

25 MR. HANNON: Right.

1 THE WITNESS (Lagano): And
2 that, which for -- for everyone's benefit, a
3 detention pond, the purpose of that is to
4 slow down the rate of discharge from storm
5 water, and as per our monthly inspections
6 that detention pond is working as planned.
7 It is not seeded as we had indicated here,
8 and I think you heard the City mention
9 earlier today, but it is functioning fine as
10 a detention basin.

11 So there's no obvious areas of
12 erosion around it, and it's -- there's no
13 retention of water. So over that decade
14 the -- the construction of that detention
15 area seems to be working as planned. The --
16 the seeding of it is contemplated in the
17 construction bond, so in that memo that was
18 being discussed earlier today, that is one of
19 the things that is completed in the bonds.

20 MR. HANNON: Well, the reason
21 I'm raising the question is because here you
22 specifically state has been planted with the
23 wetland plant species. So that's why I've
24 got a concern where if you're going to do
25 something like that, typically I think you

1 would have somebody come in and do basically
2 all the work at one time, rather than having
3 people coming back and forth to do it.

4 THE WITNESS (Lagano): Yeah,
5 I -- I can't say since it was so long ago why
6 it's -- it was done in kind of stages or, you
7 know, everything was done with the exception
8 of the seeding, I -- you know, I really can't
9 say from ten years ago.

10 MR. HANNON: And then so, but
11 I'm also getting from your comments that you
12 don't have any plans on finalizing that
13 detention basin?

14 THE WITNESS (Lagano): There
15 --

16 MR. HANNON: The reason I'm
17 asking that is because there is a memo on
18 file here of July 20th, I believe, 2012,
19 where the City was notified or it was
20 supposed to be notified that you would
21 strongly protest any expenditure of those
22 funds or drawing of those funds during the
23 course of negotiation. I'm just trying to
24 figure out, you know, in one thing -- one
25 part of the document you're saying that

1 that's something that can be taken care of
2 through the bonding, but then in another
3 document there are issues about whether or
4 not the City can even go ahead and call
5 bonding without some type of confrontation.

6 THE WITNESS (Lagano): Yeah,
7 I -- I think there's a couple points here.
8 And -- and the first is that April 2008 memo
9 came to us through counsel in the middle of
10 2012. So the first thing that we were trying
11 to do is get our hands around what actually
12 was done, what needed to be done, what was
13 reasonable -- what was should be reasonably
14 done considering the state of affairs since,
15 you know, it was, let's say, ten years ago
16 since this -- let's say, an area was created.

17 So, you know, through the
18 process of understanding -- trying to
19 understand what was done and what still
20 needed to be done and what the city was
21 wanting to be done, at that point in time, we
22 did not want the bonds to be called as we
23 were trying to resolve and work through and
24 understand what exactly needed to be done and
25 what they were asking to be done.

1 So we felt that was
2 inappropriate for them to call the bonds as
3 we were trying to understand what exactly
4 needed to be done.

5 MR. HANNON: So then I guess
6 the final question I have then is: Is it
7 Meriden Gas Turbines intent to go in and
8 finalize some of these things or is this work
9 that you would expect to be done through the
10 calling of the bond?

11 THE WITNESS (Lagano): You
12 know, the -- the interesting thing is that we
13 actually had a -- you know, a representatives
14 from Meriden Gas Turbines in February 2003
15 meet with the City representatives to go over
16 these kinds of things. And then shortly
17 after that, I guess, as we heard earlier --
18 oh, I'm sorry, 2013. I've got my decades
19 mixed up. So in 2000 -- in February of 2013
20 we -- we met with the -- with our
21 representatives, our engineers and the City
22 to go through these issues and say, okay.
23 You know, here's the -- here's the pond.
24 Here's what's been done. Here's what's in
25 the memo. And try to -- to try to resolve

1 that. And then very, you know, shortly after
2 that, we find ourselves in this proceeding.

3 So I think you know there
4 is -- when you asked me, do we intend to try
5 to finalize and resolve this, it's -- this is
6 a very interesting forum to try to resolve
7 whether or not there should be seeding in --
8 in a detention pond, so....

9 MR. HANNON: I'm just trying
10 to get an idea if you had any intention of
11 doing it or not.

12 THE WITNESS (Lagano): It's
13 something that there are funds established
14 for the purposes of completing certain work.
15 That work is, as we -- as I just explained,
16 we were discussing with the City of Meriden
17 and then we found ourselves here.

18 MR. HANNON: Okay. I have
19 nothing else.

20 THE CHAIRPERSON: Mr. Lynch.

21 MR. LYNCH: Did I hear you
22 correctly in stating that inside the building
23 there is a crane attached to the roof?

24 THE WITNESS (Lagano): There
25 is a -- what -- it's kind of a -- it's like a

1 -- a -- it's like a trolley that rides on a
2 -- on a roof beam.

3 MR. LYNCH: That's -- that's
4 where -- that's where I'm going to, so --

5 THE WITNESS (Lagano): So, I
6 mean that's really -- yeah.

7 MR. LYNCH: One, is it
8 operable? And two, it goes the whole length
9 of the building?

10 THE WITNESS (Lagano): I don't
11 know if it's operable. I don't know that we
12 attempted to use it even -- you know, I just
13 don't know.

14 MR. LYNCH: The only reason I
15 ask is having dealt with manufacturers over
16 the years, that's a very marketable feature
17 to have.

18 But my question is about costs
19 and having gotten my unabridged copy of War
20 and Peace over the -- over the weekend, you
21 know, I've read through it as best I could,
22 and I saw a lot of different costs in there,
23 capital costs, tax, tax numbers and so on,
24 but I didn't see anything, and I may have
25 missed it, if I did let me know, anything on

1 salvage cost or decommissioning costs. Were
2 they ever discussed?

3 THE WITNESS (Lagano): I first
4 have to ask what were you looking at?
5 Because I -- I didn't see War and Peace in
6 the record, but --

7 MR. LYNCH: Your testimony and
8 the City's testimony, and the
9 Interrogatories, and I got through it as best
10 I could, also I would have been --

11 THE WITNESS (Lagano): Yeah,
12 not that I -- I believe there's anything.

13 MR. LYNCH: Then my question
14 would be why weren't salvage costs or
15 decommissioning costs discussed?

16 THE WITNESS (Lagano): As part
17 of the?

18 MR. LYNCH: As part of the --
19 as part as, you know, in case the ruling was
20 for the City, do you have to incorporate your
21 -- you need to -- I'm just looking for some
22 costs here.

23 MR. HANNON: Back on 99.

24 MR. LYNCH: Okay. Forget
25 that. Mr. Hannon just showed me what I

1 missed.

2 THE WITNESS (Lagano): Okay.
3 Good.

4 MR. LYNCH: Thank you very
5 much. No questions, Mr. Chairman.

6 THE WITNESS (Lagano): You're
7 welcome.

8 THE CHAIRPERSON: Thank you.
9 Dr. Bell.

10 DR. BELL: Thank you,
11 Mr. Chair.

12 Ms. Lagano, going to back to
13 Attorney Bachman's question about the
14 permanent features at this site. Are there
15 any buried tracks of pipe or conduit for some
16 purpose that's at the site, infrastructure of
17 any kind that's buried that -- that's being
18 kept there?

19 THE WITNESS (Lagano): Yeah,
20 it would be hard for me to say that there's
21 nothing buried because I can't see what's
22 buried, but I tend to think that there is
23 because there might have been some step-ups,
24 yeah, so there are step-ups. So it's a pipe
25 that kind of comes up and is cut off, a step

1 up. So but to the extent of how much is
2 under the site, I mean, obviously it's
3 under -- underground from whatever we -- we
4 know.

5 DR. BELL: But, so are you
6 referring to stuff that was there before you
7 ever got to the site or stuff that you put in
8 but --

9 THE WITNESS (Lagano): No, I
10 imagine it was put in as part of the
11 construction.

12 DR. BELL: Yeah, okay. So
13 that would be to -- where would that be
14 located right around the foundation area
15 perhaps under the foundation or?

16 THE WITNESS (Lagano): I just
17 don't know.

18 DR. BELL: And you wouldn't
19 have any blueprints of it even to use for
20 marketing purposes to --

21 THE WITNESS (Lagano): You
22 know, I -- I don't know that a blueprint
23 would show what's un -- you know, below grade
24 versus what's above grade. I just don't
25 know.

1 DR. BELL: When you say "you
2 don't know," do you mean you wouldn't -- you
3 just don't personally know what -- what
4 records are in company headquarters
5 somewhere, or you know -- or you're -- you
6 don't think there are any records --

7 THE WITNESS (Lagano): I don't
8 know what records exist to show what is
9 underground.

10 DR. BELL: Okay. I'm
11 having -- obviously, I'm having a hard time
12 with this question because it's knowing the
13 extent to which engineers draft plans for
14 sites, I'm thinking --

15 THE WITNESS (Lagano): Yeah, I
16 just, I think -- I don't know to what degree
17 from the plans, how much was constructed and
18 how much as not. And if it were a -- you
19 know, so I have about -- I guess I'm at
20 disadvantage because if it's underground I
21 can't see it, and I don't know to what extent
22 it was constructed fully or partially, so...

23 DR. BELL: Okay. Well, I
24 guess that will -- that will have to be the
25 answer.

1 Thank you very much.

2 THE WITNESS (Lagano): You're
3 welcome.

4 DR. BELL: Thank you,
5 Mr. Chair.

6 THE CHAIRPERSON: In
7 discussion of, I guess, certain things, I
8 don't know whether it's seeding, and I'll
9 say, plantings of white pines or whatever the
10 plantings were supposed to be, and you said
11 that in discussion with -- with the City
12 until we ended up where we are today, and
13 that they're, you know, related to the bond.
14 They're related. I got the impression that
15 these were related to the City requirements,
16 but I just want to -- and probably if it's
17 possible to get a simple yes-or-no answer.

18 Some of these items that have
19 still not been completed, are they also in
20 the D&M plan of the Siting Council? I guess
21 a third option is I don't know.

22 THE WITNESS (Lagano): Yeah, I
23 just -- I'm not sure I know the answer to
24 that.

25 THE CHAIRPERSON: Are you

1 familiar with the D&M plan?

2 THE WITNESS (Lagano): Yes,
3 the -- well there were -- there was the
4 original D&O and then there were several D&M
5 submittals made after the Original D&O. So
6 there were -- there were multiple.

7 THE CHAIRPERSON: Well, unlike
8 some of the others, I'll accept and I don't
9 know.

10 THE WITNESS (Lagano): Yeah, I
11 mean, it's -- it's very reasonable that
12 landscaping and the storm water would have
13 been contemplated in the original D&M -- D&M
14 plans.

15 THE CHAIRPERSON: Okay. All
16 right. We'll now go to cross-examination by
17 the City of Meriden.

18 MR. SMALL: Thank you,
19 Mr. Chairman.

20 Good afternoon, Ms. Lagano.

21 Let me start with something I
22 believe you stated in your testimony which
23 was essentially after 2002 no activity has
24 occurred on this site other than removal of
25 equipment and I think some -- you did various

1 inspections. Is that correct? No -- no
2 substantive -- no substantial work occurred
3 on this site other than the removal since
4 2002?

5 THE WITNESS (Lagano): That's
6 my understanding.

7 MR. SMALL: Okay. So none. So
8 if a particular mitigation measures or D&M
9 plan measures or measures required by
10 Decision and Order had not been accomplished
11 by that time they would still be unaccomp --
12 they still would not be accomplished. Is
13 that correct?

14 THE WITNESS (Lagano): I think
15 the D&M plans, again, like I said before,
16 what may have been contemplated in the D&M
17 plans, landscaping, drainage, I mean the
18 drainage work was done as part of the
19 construction.

20 MR. SMALL: Right. Now were
21 you -- were you --

22 THE WITNESS (Lagano): And we
23 know the --

24 MR. SMALL: I'm sorry. I'm
25 sorry.

1 Were you involved at all in
2 Docket 370B?

3 THE WITNESS (Lagano): And
4 which docket was that? That was the --

5 MR. SMALL: That was the
6 competitive application of NRG with respect
7 to a transmission line. Do you recall that
8 docket?

9 THE WITNESS (Lagano): Yes, I
10 recall it.

11 MR. SMALL: Okay. In the
12 Siting Council's Interrogatories they
13 attached -- to you, they attached some
14 interrogatories that -- some responses that
15 you had provided in 2009. Do you have a copy
16 of those? It's dated June 5, 2009 and it's
17 an Exhibit to -- I think it's attached at the
18 end of the actual Questions 1 through 25.
19 The document itself is a multipage document,
20 it's entitled "Table 1. NRG, Inc., D&M Plan
21 Submittals Approval and Status."

22 THE WITNESS (Lagano): Okay.
23 I have the Exhibit.

24 MR. SMALL: Okay. Would you
25 turn to page 6 of that, please. And the last

1 line of the first box says the landscaping
2 plan has not been implemented. Is that
3 correct?

4 THE WITNESS (Lagano): I see
5 on the top of page 6, in the top right-hand
6 box, a sentence that says, "Landscaping plan
7 has not been implemented."

8 MR. SMALL: And when we're
9 talking about the landscaping plan, we're
10 talking about things such as the white pines
11 that were to be -- and other overgreens that
12 were being constructed to the east of the
13 power plant both for erosion control and
14 visual mitigation. Am I correct?

15 THE WITNESS (Lagano): I -- I
16 don't know. It just says the landscaping
17 plan. It doesn't have any of those details
18 that you just referenced, Mr. Small.

19 MR. SMALL: Well -- well, let
20 me ask you, have the -- are you familiar with
21 the requirement of one of the D&M plan
22 approvals that approximately 90, and that is
23 an approximate number, white pines or other
24 evergreens were to be planted primarily to
25 the east of the plant?

1 THE WITNESS (Lagano): Are
2 your referring to a particular D&M plan?

3 MR. SMALL: I'm going to show
4 you a document which is entitled "Future
5 Slope and Landscape Plan Proposed Electric
6 Generating Facility Prepared for Meriden Gas
7 Turbines, LLC," dated November 16, 2001.

8 Do you know whether this plan
9 was approved by the Council?

10 THE WITNESS (Lagano): You
11 know, there's no submittal on this it's a
12 drawing. So I'm not -- I'm not certain what
13 this belongs to.

14 MR. SMALL: Mr. Lord, that was
15 submitted by you, I believe. Can you verify
16 whether that was part of a submittal made by
17 Murtha Cullina on behalf of MGT?

18 MR. LORD: I don't know that.

19 MR. SMALL: Okay. Can we have
20 a -- I'm not sure whether you want to do
21 Read-Ins, a Late-Filed Exhibit, but I'd
22 like --

23 THE CHAIRPERSON: We don't
24 want Late-Filed Exhibits, no.

25 MR. SMALL: No, on Late-Filed

1 Exhibits. Okay.

2 Well, it's in -- it's in the
3 record. The, you know, the --

4 THE CHAIRPERSON: If you want
5 to read it. If you want to read it into the
6 record, sure.

7 MR. SMALL: Okay. Sure.
8 Okay. Oh, this -- let's make -- you know, a
9 hypothet -- let's assume this was the
10 submitted and approved planting plan, am I --

11 THE WITNESS (Lagano): You're
12 asking me to assume a hypothetical?

13 MR. SMALL: Okay. Let me ask
14 it a different way.

15 THE WITNESS (Lagano): Okay.

16 MR. SMALL: Have plantings,
17 the plantings required by the Connecticut
18 Siting Council, in D&M plans, and also by the
19 way, required by the City in its -- in its
20 approvals to the east of the plant been done
21 or not done?

22 THE WITNESS (Lagano): There
23 have been no plantings to my knowledge.

24 MR. SMALL: Okay. And I'm
25 assuming that in line with your answer to

1 Mr. Wilensky about we -- we don't intend to
2 do any remediation. We're selling the site
3 as-is --

4 THE WITNESS (Lagano): I don't
5 think that's what I said, Mr. Small.

6 MR. SMALL: Okay. Please --
7 please correct me.

8 THE WITNESS (Lagano): I will.
9 What is the question?

10 MR. SMALL: Well, let me start
11 off, am I correct that you responded to a
12 question from Mr. Wilensky that MGT was going
13 to sell the site as-is and did not intend to
14 do any remediation?

15 THE WITNESS (Lagano): What I
16 said was that we are marketing the plant for
17 sale as-is.

18 MR. SMALL: Let me then follow
19 up on that. Does that mean that MGT does not
20 intend to plant those trees?

21 THE WITNESS (Lagano): There
22 is a bond, as I described before, that is a
23 cash bond that contemplates plantings.

24 MR. SMALL: And there's also
25 Siting Council order that contemplates

1 plantings. Is that correct?

2 THE WITNESS (Lagano): There
3 is a landscaping plan I imagine. So there
4 is -- there are plantings contemplated.
5 There is a bond. And in the bond it
6 references landscaping.

7 MR. SMALL: And just to follow
8 up on a question, I believe it was Mr. Hannon
9 asked, the -- your attorney in prior -- as
10 testified to by Mr. Kendzior and as shown in
11 some of the documents, correspondence from
12 your attorney indicated that MGT would oppose
13 the City's use of that bond. Is that --
14 first of all, am I correctly characterizing
15 that correspondence?

16 THE WITNESS (Lagano): I --
17 could -- I need to see what correspondence
18 you're talking to. Can I take a minute?

19 MR. COHEN: Can you give us a
20 reference, Attorney Small?

21 MR. SMALL: I'll be glad to.
22 (Pause.)

23 MR. SMALL: It is an
24 attachment to Mr. Kendzior's testimony. Our
25 proposed exhibit number was 12-C if that

1 helps at all, but it was attached to the -- I
2 can -- I'm directing you to a -- an August
3 5th, 2012, e-mail from Timothy Fisher to me.
4 I'm sorry. Let me check.

5 It was a -- a Friday,
6 July 20th, 2012, e-mail from Attorney Fisher
7 to me. And I would direct you to the third
8 paragraph. First, could you read the first
9 two sentences of that third paragraph?

10 THE WITNESS (Lagano): I need
11 to look at another document. Can you give me
12 a moment?

13 MR. SMALL: Sure.

14 (Pause.)

15 THE WITNESS (Lagano): I'm
16 sorry, Mr. Small. What would you like me to
17 read?

18 MR. SMALL: The third
19 paragraph, just the first sentence. And you
20 can read the whole paragraph, but the first
21 sentence and the last sentence of that
22 paragraph are all I think we need for this
23 question.

24 THE WITNESS (Lagano):

25 "Also, please notify the City

1 fund?

2 THE WITNESS (Lagano): Well,
3 as I mentioned earlier, Mr. Small, that we --
4 that the 2008 memo NRG did not receive until
5 June of 2012. So we were still getting our
6 hands around what -- what was contemplated in
7 this bond. So, and this is a very short time
8 afterwards, a month later, as we were trying
9 to understand and trying to have discussions
10 with the City of Meriden, our concern was
11 that those funds -- those funds be drawn
12 while we were trying to get our hands around
13 this.

14 MR. SMALL: Right. Well, now
15 you've had a year to get your hands around it
16 is that still your position?

17 MR. LORD: Objection,
18 Mr. Chairman. This is a negotiation. It's
19 not appropriate to have before the Siting
20 Council at this point. It doesn't seem to
21 have any probative value with regard to
22 changed conditions or a decommissioning plan.

23 THE CHAIRPERSON: Attorney
24 Small, why don't you explain the purpose of
25 this line of questioning because I'm not sure

1 exactly the relevancy here.

2 MR. SMALL: Certainly.

3 Several members of the Council have raised
4 the question of why the city didn't exercise
5 its authority and use the bond. And
6 Mr. Kendzior has testified on that as well.
7 There were questions today on that same
8 subject. Just -- we're just trying to
9 understand whether MGT has changed its
10 position on whether or not the bond could be
11 called as to remediate the -- the open issues
12 on the site. And I don't see -- that's the
13 only reason we're asking.

14 THE CHAIRPERSON: Okay. I
15 mean, I guess my only question is the bond is
16 between the City and --

17 THE WITNESS (Lagano): MGT.

18 THE CHAIRPERSON: -- the
19 certificate holder. The Siting Council is
20 not a party to the bond, so I'm not sure -- I
21 mean we've, I think we've sort of exhausted
22 from the Siting Council our view on the bond,
23 and we're not even -- don't even understand
24 the City's point of view. So I don't -- I'm
25 not sure this line of questioning is going to

1 enlighten any of us other than confuse us
2 even more.

3 MR. SMALL: Well, the City --
4 a couple of things, Mr. Chairman. And one is
5 the City has explained its point of view why
6 it did not attempt to exercise the bond, and
7 in great detail in our prefiled testimony.
8 Several members of the Council today asked
9 questions either of us or of Ms. Lagano
10 relating to the bonds. And we're just trying
11 to make sure we understand. We know the
12 situation a year ago, based on those e-mails.
13 We just are trying to establish is that still
14 their position today, because we think that
15 might affect the Council's view on many -- on
16 some of the issues that are before you.

17 MR. LORD: That's an -- if I
18 can just add, Mr. Chairman. That's a
19 negotiation between the parties after a
20 significant thought, consultation with other
21 business people in their organization. It's
22 not a decision or statement that can be made
23 on the record, in a proceeding, with
24 outstanding litigation in other venues. I'd
25 have no choice but to direct her not to

1 answer the question absent further
2 intervention on your part.

3 MR. SMALL: And just one last
4 thing, Mr. Chairman, I'd also point out that
5 in several of Ms. Lagano's responses to
6 interrogatories, she said, essentially, that
7 the -- this is a matter that can be covered
8 by the bond on several of the questions that
9 were asked by staff and -- and by the City.
10 She said that -- I can get the exact words
11 for you but --

12 THE CHAIRPERSON: No, I agree.
13 I mean, there was something you stated
14 although I attempted, perhaps not
15 successfully to clarify that as far as, at
16 least I was concerned, I'm interested in what
17 the requirements of the Siting Council and
18 the D&M plan. We don't have a bond. The
19 City has. For reasons that I'm not totally
20 clear on the City -- well, I think the reason
21 that, and I assume they apply to both
22 parties, and maybe I -- is that you're --
23 you're in litigation, and it seems to be
24 affecting the City's view of -- because you
25 talked about a having a third party, which I

1 thought was a little bizarre, but I guess if
2 you're in litigation there is a third party,
3 and that's, we know who the third party is.

4 So I guess the best I can do
5 is we've heard from your attorney, do you
6 want to either rephrase what your attorney
7 has suggested you say or answer the question
8 so we can move on?

9 I mean, it can be a very
10 simple --

11 THE WITNESS (Lagano): Yeah, I
12 -- I find it difficult since, as I explained
13 where we left off we were attempting and we
14 had met with the City of Meriden to try to go
15 over these -- these issues, and then found
16 ourselves in this proceeding. So I find it
17 difficult to say what our position would be
18 because we -- frankly, our negotiations were
19 interrupted through this proceeding at the
20 City's hand. So I -- I don't think I'm in a
21 position to say what we would do now, as
22 we've spent the better part of half a year in
23 this particular proceeding, which is time
24 that could have been spent trying to work
25 things out.

1 MR. SMALL: So just to follow
2 on a bit. For example, your response to the
3 City's Interrogatory 7, the last sentence
4 states:

5 "A cash construction bond was
6 posted for the benefit of the City of
7 Meriden accounting for such work as yet
8 to be completed."

9 The "such work" here was the
10 things like landscaping, plantings,
11 vegetative cover. But that doesn't remove
12 the objection you had a year ago. Is that
13 correct?

14 THE WITNESS (Lagano): The
15 objection?

16 MR. SMALL: The objection in
17 Mr. Fisher's e-mail to the City's use of the
18 bond? That -- I should not be reading that
19 sentence as removing your objection. Is that
20 correct?

21 THE WITNESS (Lagano): I -- we
22 are -- we were where we were in February,
23 Mr. Small.

24 MR. SMALL: Let me go back to
25 the exhibit, the supplemental response to

1 Interrogatory Q-CSC-3. So we established
2 that --

3 MR. LORD: That's the D&M
4 table?

5 MR. SMALL: The D&M time
6 table, yes, thank you.

7 So we established that the
8 landscaping plan described on five about six
9 are not done, on the bottom of page 6 or
10 actually the top of page 7, it indicates that
11 wetlands, watercourse, restoration were not
12 done and upland area restoration following
13 construction activity was not completed. Is
14 that correct?

15 THE WITNESS (Lagano): I -- I
16 am not aware of anything that was not done
17 with respect to wetlands restoration.

18 MR. SMALL: But your exhibit
19 says it was not done. Correct?

20 THE WITNESS (Lagano): I did
21 not prepare this exhibit from 2009.

22 MR. SMALL: And then on -- and
23 we may have the same answer on this one, but
24 then on page 8, the second box it talks --
25 this is on the -- it's dated 10/4/02. It

1 says that, quote, landscaping and storm-water
2 controls not adversely affected by the
3 unbuilt portions of the facility where
4 completed, end quote.

5 Can you explain what that
6 means or you can't?

7 THE WITNESS (Lagano): No, I
8 can't explain what that means.

9 MR. SMALL: Okay. And do you
10 know, has the -- has MGT done any work since
11 the -- with respect to implementing D&M
12 planning conditions or decision order
13 conditions since the date of that chart we
14 were just looking at?

15 THE WITNESS (Lagano): What is
16 the date of the June 5, 2009?

17 MR. SMALL: June 5, 2009.
18 Correct.

19 THE WITNESS (Lagano): I think
20 there was -- I'm sorry. Could you ask that
21 question again?

22 MR. SMALL: Has MGT completed
23 any additional work required by either
24 approved D&M plans or the Decision and Order
25 since June 5, 2009, the date of that

1 interrogatory response?

2 THE WITNESS (Lagano): I think
3 that's a very broad question. But as we -- I
4 had stated earlier, that we have done no
5 material work in that timeframe other than
6 removal.

7 MR. SMALL: Thank you.

8 Would you turn now to City's
9 Exhibit 5 which is the September 4th, 2008
10 City memo that you've -- that you've
11 mentioned.

12 THE WITNESS (Lagano): I just
13 need one moment, please.

14 (Pause.)

15 MR. LORD: You're talking an
16 '08 memo?

17 MR. SMALL: Right. The
18 September 4th, 2008. It's City's Exhibit 5.

19 THE WITNESS (Lagano): The
20 September 4, 2008 memo from the Department of
21 Public Works of the City of Meriden to the
22 Director of Planning and Development of the
23 City of Meriden? This one?

24 MR. SMALL: From Mr. Ennis,
25 the Associate City Engineer to Mr. Caruso,

1 the director of planning. Is that the one
2 you have in front of you?

3 THE WITNESS (Lagano): Yes.

4 MR. SMALL: Okay. And this is
5 a memo -- this is the memo that you mentioned
6 before that you believe you did not see until
7 2012. Is that correct?

8 THE WITNESS (Lagano): That's
9 correct.

10 MR. SMALL: And that's just
11 you personally don't know that you received
12 it. Right? You can't speak for the whole
13 company or can you?

14 THE WITNESS (Lagano): We have
15 8,000 employees in our company, Mr. Small, so
16 I can't speak for 8,000 people.

17 MR. SMALL: Okay. Are you
18 familiar with the request that generated
19 result in that e-mail?

20 THE WITNESS (Lagano): I'm
21 sorry. Say that again?

22 MR. SMALL: Are you familiar
23 with the genesis of that e-mail?

24 THE WITNESS (Lagano): What
25 e-mail?

1 MR. SMALL: Of that memo, I
2 should say. Sorry. Of the September 4,
3 2008, memo, what led to that?

4 THE WITNESS (Lagano): I'm
5 not -- I'm not certain.

6 MR. SMALL: Okay.

7 THE WITNESS (Lagano): This is
8 an internal memo within the City of Meriden.

9 MR. SMALL: Right. Right.
10 Okay.

11 THE WITNESS (Lagano): I don't
12 know why the City of Meriden generates
13 internal memos.

14 MR. SMALL: So you're not --
15 as a result, you're not familiar with a
16 request from Mr. Furness, who at that point
17 was the secretary of NRG to the City
18 requesting release of the bond?

19 THE WITNESS (Lagano): Again,
20 I -- I -- he's no longer with NRG.

21 MR. SMALL: You are familiar
22 with Mr. Furness. Correct?

23 THE WITNESS (Lagano): He left
24 the company a number of years ago.

25 MR. SMALL: Okay. Is it --

1 would you just read it yourself and then I
2 have a couple questions on it.

3 (Pause.)

4 THE WITNESS (Lagano): Okay.
5 It's fine.

6 MR. SMALL: Is it fair to say
7 that that's a request by NRG for a release of
8 the full bond and it claims that all of the
9 required work with respect to the bond has
10 been done?

11 THE WITNESS (Lagano): This
12 looks like -- one minute.

13 (Pause.)

14 THE WITNESS (Lagano): It
15 looks like it is a letter seeking a release
16 of the bonds or the funds from the bond.

17 MR. SMALL: And how much does
18 it say the funds that are -- that are
19 requested to be released?

20 THE WITNESS (Lagano): It's
21 approximately -- well, it says, that a bond
22 was posted and we're requesting of the funds.

23 MR. SMALL: Does it say the
24 amount?

25 THE WITNESS (Lagano): It

1 references \$600,000 balance approximately.

2 It says "approximately".

3 MR. SMALL: So -- and does it
4 -- am I correct that that's a combination of
5 the site plan bond and the subdivision bond?

6 THE WITNESS (Lagano): It says
7 "bond".

8 MR. SMALL: Right. But I'm
9 asking for your knowledge.

10 THE WITNESS (Lagano): I don't
11 know. I haven't seen this.

12 MR. SMALL: Okay. Okay.
13 Could we -- we only have one copy, can we
14 offer this as an exhibit though?

15 MS. BACHMAN: Is there any
16 objection from the certificate holder?

17 MR. LORD: Yes, we do object.

18 THE CHAIRPERSON: Again, where
19 is it going? Because this, again, refers to
20 this bond which I'm --

21 MR. SMALL: Well -- well,
22 first, it indicates that MGT was requested a
23 release of this bond. There is -- and it
24 also establishes who the MGT contact person
25 was which would indicate why Ms. Lagano might

1 not be aware of any response the City made to
2 it, and can make the claim that she is not
3 aware that they ever received a 2008 memo
4 until much later.

5 MR. LORD: I looked at the
6 exhibit and it says nothing about the memo,
7 the internal memorandum or that it was been
8 sent. There's no reference in there to that.

9 So, this is just sort of a
10 last-minute exhibit. It's -- it's unfair. I
11 don't know that we have any -- I forget who
12 it was addressed to, but certainly nobody
13 from the NRG side has the knowledge of, you
14 know, cross-examining on that or verifying
15 that it's true or untrue.

16 MR. SMALL: It's a document
17 from an NRG employee, a secretary of NRG.

18 THE CHAIRPERSON: I'll tell
19 you, we can just -- we're going to accept it
20 for what it's worth.

21 MR. LORD: That was my guess.

22 THE CHAIRPERSON: I would have
23 just referred to it as the Hague Rule but not
24 everybody knows.

25 MR. SMALL: Let me now turn,

1 Ms. Lagano, to that September 4th, 2008,
2 memorandum we were talking about from Mr.
3 Ennis to Mr. Caruso.

4 I assume you've -- you've
5 read that document?

6 THE WITNESS (Lagano): You
7 just handed it to me.

8 MR. SMALL: Have you read it?

9 THE WITNESS (Lagano):
10 Mr. Small, it's three pages.

11 MR. SMALL: You've read it
12 before though. Right?

13 THE WITNESS (Lagano): I have
14 seen this before.

15 MR. SMALL: I have a very
16 simple question, which is of the items listed
17 there as, quote, that need to be addressed by
18 the developer, end quote. Which of them do
19 you believe have, in fact, been done and,
20 therefore, don't need --

21 THE WITNESS (Lagano): I'm
22 sorry. What are you -- which ones?

23 MR. SMALL: There's -- there's
24 a list of -- there's a -- the third paragraph
25 states:

1 "The following issues need to
2 be addressed by the developer in order
3 to be in compliance with the approved
4 site drawings:"

5 And there's a list of 13
6 items. And then there's an additional list
7 of three other items that are not shown on --
8 on the design drawings but should be
9 addressed.

10 THE WITNESS (Lagano): Yeah.

11 MR. SMALL: And I'm asking, as
12 a factual matter, which of those do you
13 believe have, in fact, been addressed?

14 THE WITNESS (Lagano): As I
15 testified earlier, there was a meeting on
16 site with representatives of the City of
17 Meriden to go over these -- to go over these
18 open items and there was discussion about to
19 what degree they should still be done
20 considering that the power plant project has
21 been abandoned.

22 MR. SMALL: I didn't ask you
23 whether they should be done. I asked you
24 which of them have, in fact, been done, if
25 any?

1 THE WITNESS (Lagano): I'm
2 going to take a -- I'm going to -- I need to
3 take a few minutes to read through this.

4 (Pause.)

5 THE CHAIRPERSON: While we're
6 waiting for Ms. Lagano to finish reading it,
7 just a question to the City, since this work
8 presumably some of it was required by the
9 D&M, did you send a similar memo, information
10 to the Siting Council?

11 MR. KENDZIOR: No, sir, we did
12 not. As I indicated in my earlier testimony,
13 we were relying on the representations that
14 MGT made that they, in fact, were going to do
15 this work.

16 SENATOR MURPHY: How many --
17 how many of these items that she's looking at
18 now are on the D&M plan as needing to be done
19 in your version?

20 MR. SMALL: Let me just -- we
21 have the Siting Council's files on this
22 matter unfortunately are not -- there's
23 difficulties with them. We did ask in a
24 response for the approved D&M plans and site
25 plans from MGT and were told go look in the

1 Siting Council files. So part of the
2 problem, we do not have a copy of the
3 approved Siting Council site plan. We're the
4 -- I think the City's assumption is that
5 they're very, very similar. And obviously
6 the Siting Council thinks that there's any
7 inconsistency the Siting Council's would --
8 would preempt the City's. But we don't -- we
9 don't -- I think -- we don't know.

10 I mean there are some plans
11 where there's cross-references, the
12 approved -- what we believe is the approved
13 landscaping plan, which we do have, does
14 reference the City and the City's issues.

15 THE WITNESS (Lagano): I can
16 answer now.

17 The memo references removal of
18 brush that needs to be removed. There is
19 periodic removal of brush. Obviously, that's
20 something that with time passage of time,
21 it's kind of a recurring thing. So we have
22 been removing brush. So that has been done.

23 On Number 13, there's
24 reference to "Site Lighting." That is not in
25 any D&M plan. And then there's a number of

1 items here that were not even on the design
2 drawings that is referenced in this internal
3 memo.

4 MR. SMALL: Just to focus on
5 one item that's been a subject of discussion
6 today Item 6, in the first list. The wetland
7 plant seedings. That -- that has not been
8 done. Correct?

9 THE WITNESS (Lagano): Seeding
10 the detention pond has not been done.

11 MR. SMALL: Okay. Thank you.
12 Would you next turn to, the
13 City's Exhibit 4 which is the other memo.
14 This is from Mr. Skoglund to Mr. Caruso dated
15 July 14, 2012. Do you have that available?

16 THE WITNESS (Lagano): I have
17 to get it. Just one moment.

18 MR. LORD: July 5?

19 MR. SMALL: July 14, 2012.
20 And I would ask you the same question about
21 that memo.

22 (Pause.)

23 THE WITNESS (Lagano): How --
24 how many pages is this memo? This a two-page
25 memo?

1 MR. SMALL: Two-page memo.

2 Correct.

3 THE WITNESS (Lagano): And
4 you're asking me what, Mr. Small?

5 MR. SMALL: Have any of the
6 items listed here as not being satisfied been
7 satisfied since the date of this memo? That
8 was in the last year and a couple of days?

9 (Pause.)

10 THE WITNESS (Lagano): But,
11 Mr. Small, this talks about work and as well
12 as conditions, like the conditions of certain
13 -- certain structures which I -- such as
14 catch basin tops are damaged, that we would
15 disagree with. So I'm not so sure that I
16 agree with the premise of this memo.

17 MR. SMALL: So which -- I
18 don't want to go through this item by item,
19 so please point out those that you believe
20 may have either A -- well, excuse me. That
21 may have been accomplished.

22 THE WITNESS (Lagano): Well,
23 for example, paved areas. And as the City is
24 aware that there is -- for example, the --
25 when you follow the access road into the

1 site, the site -- let's say, the drive and
2 the areas where you would go from, let's say,
3 the gate to the -- to the plant, that has not
4 been paved. Right? There is no -- there is
5 no occupancy. So this is an example of where
6 we frankly don't understand why the City
7 would be insisting on paving and increasing
8 the -- the amount of impervious areas on the
9 site when you've obviously mentioned drainage
10 as a concern. So I agree, this paving has
11 not been done. And this is an area wherein
12 which considering the state of the site, why
13 would you pave areas when there is no
14 occupancy on the site decreasing the amount
15 of pervious areas on site.

16 So -- so yes, I agree. Paved
17 areas have not been done. And this is a
18 prime example of something you would not want
19 to do considering where -- what -- what is
20 the current status of the -- on the site.

21 Storm drainage, catch basins
22 are not damaged and don't need to be
23 replaced.

24 Landscaping, we've addressed
25 already.

1 Erosion control, plantings, we
2 have discussed and again, that's a condition
3 not a -- not a particular task that it
4 references. So I'm not sure even how to
5 comment on that. And lighting, as I mentioned
6 before the -- the -- well, the site lights.
7 I'm not -- I'm not sure what the -- is that
8 the roadway lights? I'm not sure what that
9 is, Mr. Small.

10 MR. SMALL: Thank you.

11 Let me -- let me turn to some
12 other topics. In your response to Siting
13 Council Interrogatory 10, you state in your
14 response to Siting Council Interrogatory 10
15 you state there are two unfinished buildings
16 on the property. Those would be the
17 generator, so-called generator-turbine
18 building and the control building. Is that
19 correct?

20 THE WITNESS (Lagano): I think
21 there's a larger structure and a smaller
22 structure.

23 MR. SMALL: Right. Well, let
24 me -- is it correct that your appraiser
25 called one of the buildings a larger

1 structure, the power plant generator building
2 -- or power plant turbine building?

3 THE WITNESS (Lagano): I'm not
4 sure what he -- what he called it.

5 MR. SMALL: What do you call
6 it?

7 THE WITNESS (Lagano): The big
8 building.

9 MR. SMALL: Okay. Let's start
10 with the big building then.

11 THE WITNESS (Lagano): Okay.

12 MR. SMALL: What was the
13 purpose? When the big building was
14 constructed what was its purpose?

15 THE WITNESS (Lagano): It was
16 to house the -- the turbine generators.

17 MR. SMALL: Okay. And just
18 the turbine generators or other equipment
19 too?

20 THE WITNESS (Lagano): I
21 imagine other equipment.

22 MR. SMALL: Such as steam
23 turbine -- was steam turbines in there?

24 THE WITNESS (Lagano): I would
25 imagine.

1 MR. SMALL: And the heat steam
2 recovery boiler was in the building or
3 adjacent to it?

4 THE WITNESS (Lagano): I think
5 it's adjacent.

6 MR. SMALL: Okay. So the
7 purpose of that building when built was to
8 house what we could call power plant
9 equipment, is that -- whatever you want to
10 call the building, is that fair?

11 THE WITNESS (Lagano): That --
12 I --

13 MR. SMALL: Okay.

14 THE WITNESS (Lagano): That
15 would have been its purpose, yes.

16 MR. SMALL: And the other
17 building, the smaller building which your
18 appraiser calls the control building, but
19 which you don't want to call it that. What
20 was the purpose of that building?

21 THE WITNESS (Lagano): I don't
22 know what the purpose of that smaller
23 building is.

24 MR. SMALL: And there's
25 conditions of those two buildings there as I

1 think you would agree, there are other piece
2 -- we'll call either facilities pieces of
3 equipment on the site. Is that correct?

4 THE WITNESS (Lagano): What --
5 could you be more specific?L.

6 MR. SMALL: Okay. We'll go
7 specific, sure.

8 There's an 800,000 gallon tank
9 on the site. Is that correct?

10 THE WITNESS (Lagano): I don't
11 know that it's 800,000 gallons. Thee's --
12 there's two tanks.

13 MR. SMALL: Will you agree
14 that according to your appraiser is an
15 800,000 gallon tank?

16 THE WITNESS (Lagano): I -- I
17 don't know.

18 MR. SMALL: Let's call it the
19 larger tank then?

20 THE WITNESS (Lagano): Okay.

21 MR. SMALL: Okay. For
22 convention that's the larger tank versus --
23 you agree there's two tanks on the site.
24 Correct?

25 THE WITNESS (Lagano): Yes,

1 there are two tanks on the site.

2 MR. SMALL: The larger and the
3 smaller. Right? Although both of them are --

4 THE WITNESS (Lagano): They're
5 roughly --

6 MR. SMALL: -- you agree are
7 relatively large tanks? And they were
8 visible on our site -- on our -- the official
9 site visit around the City when we had our
10 first hearing. Do you recall being able to
11 see -- see either of those tanks?

12 THE WITNESS (Lagano): What
13 was the first hearing? What are you
14 referring to?

15 MR. SMALL: Maybe you we're
16 not -- you might not have been there.
17 June 8th I want to say. Did you attend the
18 first hearing?

19 THE WITNESS (Lagano): In the
20 City of Meriden?

21 MR. SMALL: In the City of
22 Meriden.

23 THE WITNESS (Lagano): Yes.
24 But I was not on the tour.

25 MR. SMALL: Okay. Then that

1 question is withdrawn.

2 THE WITNESS (Lagano): Okay.

3 MR. SMALL: Let's take the
4 larger tank. What was the purpose of it?

5 THE WITNESS (Lagano): My
6 understanding is one was supposed to be a
7 water tank and one was supposed to be a fuel
8 oil, fuel, fuel tank.

9 MR. SMALL: Okay. And what
10 was -- in connection with the electric
11 generating facility that was going to be --
12 that was constructed and obviously not
13 operated, what was the purpose of the water
14 in the water tank?

15 THE WITNESS (Lagano): I don't
16 know what the purpose was of the water tank.

17 MR. SMALL: Okay. About the
18 fuel tank. What was the purpose of that?

19 THE WITNESS (Lagano): I
20 imagine it was back up fuel of some sort or
21 fuel for --

22 MR. SMALL: For those things
23 in the -- for the electric equipment in the
24 big building. Right?

25 THE WITNESS (Lagano): Yeah.

1 I suppose, yes.

2 MR. SMALL: Okay. And there's
3 also a structure up there which I think the
4 appraiser called a cooling tower foundation.
5 Are you familiar with that structure?

6 THE WITNESS (Lagano): There's
7 a concrete foundation.

8 MR. SMALL: Okay. And that was
9 for the cooling towers?

10 THE WITNESS (Lagano): Yes.

11 MR. SMALL: Okay. And what
12 was the purpose of the cooling towers?

13 THE WITNESS (Lagano): For
14 cooling for the power plant.

15 MR. SMALL: Now, am I correct
16 they were installed and then were removed?

17 THE WITNESS (Lagano): I
18 believe so, yes. I don't know to what degree
19 it was complete. It may not have been at
20 that point in time.

21 MR. SMALL: Okay. And you
22 answered Question 10 that there are no -- the
23 question was what buildings and associated
24 equipment as defined in -- well, to
25 paraphrase, defined in Siting Council

1 regulations are currently on the site.

2 Now, when you answered that
3 did you look at the Siting Council's
4 definition?

5 THE WITNESS (Lagano): Can you
6 just direct me to which question you're
7 referring to?

8 MR. SMALL: Question 10. Your
9 response to Question 10 to the Siting
10 Council.

11 THE WITNESS (Lagano): There
12 is -- there is a reference to this
13 R.C.S.A. 16-50-2a(1).

14 MR. SMALL: Correct.

15 THE WITNESS (Lagano): Yes.

16 MR. SMALL: So did you review
17 that in answering this question?

18 THE WITNESS (Lagano): Could
19 you just give me a minute, please?

20 (Pause.)

21 THE WITNESS (Lagano): Yes, I
22 did consult with counsel on --

23 MR. SMALL: Okay.

24 THE WITNESS (Lagano): -- on
25 that, because I was not familiar with that --

1 that particular regulation.

2 MR. SMALL: Okay. Thank you.

3 Is it -- I know you don't like
4 the labels your appraiser used. You also, in
5 your -- in your interrogatory responses
6 distance yourself from the appraiser, but
7 is -- is it fair to say that his physical
8 description of the -- of what's on the
9 property is accurate?

10 THE WITNESS (Lagano): It's a
11 very long appraisal. I didn't need to. Can
12 you be specific? Are you referring to
13 anything in particular that we haven't
14 already discussed?

15 MR. SMALL: Well, there's a
16 series of pictures there that depict what's
17 on the property. Have you looked at those
18 pictures?

19 THE WITNESS (Lagano): I have
20 not looked at that in a little bit, so I
21 would need to review it.

22 MR. SMALL: Okay. Now, and
23 before you look at that, have you -- when's
24 the most -- when have you most recently been
25 on the site?

1 THE WITNESS (Lagano): That's
2 a good question.

3 I believe it was the day that
4 we hand delivered the letter to the City of
5 Meriden, the Notice of Abandonment. It was
6 that morning.

7 MR. SMALL: So that would be
8 April 3, 2012?

9 THE WITNESS (Lagano): Yes.
10 That's correct. I think so.

11 MR. SMALL: And from looking
12 at the pictures, and your copy of your
13 appraisal, does it accurately depict the site
14 from your last visit?

15 THE WITNESS (Lagano): Yeah,
16 I -- I think that some of the aerial --
17 there's quite -- there's quite a few pages in
18 this.

19 (Pause.)

20 THE WITNESS (Lagano): Some of
21 these photos are kind of dark in this copy,
22 so it's a little bit hard to see. And
23 they --

24 MR. SMALL: We can offer you
25 color ones from --

1 THE WITNESS (Lagano): Yeah,
2 and they contain areas of the site that I
3 can't say I've been to.

4 MR. SMALL: These are color
5 excerpts from the -- that should be -- that
6 should be helpful.

7 THE WITNESS (Lagano): Yeah, I
8 have not been to all the areas on the site,
9 Mr. Small. So, for example, behind the
10 building, I've never -- I don't think I've
11 walked behind that side of the building. I
12 haven't been to all these particular areas
13 so, but I do believe these have been removed.

14 MR. SMALL: What are -- what
15 are those?

16 THE WITNESS (Lagano): I think
17 they're a part of the HRSG.

18 MR. SMALL: Just so the record
19 is clear, those are the accordion-like
20 structures attached to the big building.

21 THE WITNESS (Lagano): But
22 they don't look -- they don't look to be --
23 I'm not sure about -- again, I don't know if
24 that was the completed.

25 MR. SMALL: Okay.

1 THE WITNESS (Lagano): I don't
2 know if that's a partial completion. I hope
3 it was.

4 MR. LORD: Those are undated
5 pictures.

6 THE WITNESS (Lagano): Yeah.
7 And I did notice that in the -- I was looking
8 at the -- the City's appraisal as well on
9 that.

10 MR. SMALL: Okay. Thank you.
11 I guess just one more
12 question. Do you have any reason to believe
13 that your appraiser's physical description of
14 the property is incorrect?

15 THE WITNESS (Lagano): Again,
16 it's a very long appraisal. I just don't
17 have an opinion. It's an independent
18 appraisal.

19 MR. SMALL: Okay. You mention
20 in the third -- on the third page towards the
21 bottom of your testimony that there have been
22 interest -- there's been interest in the
23 property. There have been several offers to
24 buy the property. And in response to
25 questions from members of the Council, you

1 mentioned, I believe, that the property has
2 been listed. Is that correct?

3 THE WITNESS (Lagano): You
4 asked a few things.

5 MR. SMALL: Okay. Let me do
6 one at a time.

7 THE WITNESS (Lagano): Okay.

8 MR. SMALL: There have been
9 several offers. Correct?

10 THE WITNESS (Lagano): There
11 have been a few offers.

12 MR. SMALL: Well, so several
13 usually means at least three. Is it fair to
14 assume there have been at least three?

15 THE WITNESS (Lagano): I would
16 have to check.

17 MR. SMALL: Okay. And you
18 also said that you believed this property is
19 listed with a broker. Correct?

20 THE WITNESS (Lagano): Yes,
21 this property is listed with a broker.

22 MR. SMALL: And you believe --
23 sorry.

24 THE WITNESS (Lagano): Uh-huh.

25 MR. SMALL: And you believe

1 it's on some sort of multi-listing service.

2 Is that correct?

3 THE WITNESS (Lagano): I don't
4 know if it's the -- you know, I'm generally
5 familiar with house MLSSs so, but I -- I think
6 it might be something because this is a
7 commercial/industrial facility, so I don't
8 know what the equivalent is --

9 MR. SMALL: Right.

10 THE WITNESS (Lagano): -- of
11 that.

12 MR. SMALL: Is the listing
13 public?

14 THE WITNESS (Lagano): I don't
15 know.

16 MR. SMALL: Has an -- has an
17 official offering price been established?
18 I'm sorry not offering price, selling price
19 been established.

20 THE WITNESS (Lagano): Has a
21 -- has a selling -- what do you mean by that?

22 MR. SMALL: Wait. Let me
23 rephrase that.

24 Has an asking price been --
25 been set?

1 THE WITNESS (Lagano): No.

2 MR. SMALL: And would you, on
3 page 5 of your testimony the second
4 paragraph, and I'm going to be very brief
5 here because this is -- we're back in the tax
6 agreement, but you state that in summary the
7 settlement required a one-year advanced
8 written notice to relinquish or surrender
9 permits. Do you see that sentence?

10 THE WITNESS (Lagano): I see
11 the sentence.

12 MR. SMALL: Okay. Is it
13 correct that the property tax settlement
14 agreement had the word "minimum" in that, in
15 its description. It was a minimum one year?

16 THE WITNESS (Lagano): I need
17 to look. Can you give me a minute?

18 MR. SMALL: Sure.

19 (Pause.)

20 THE WITNESS (Lagano): Is
21 there a particular paragraph, Mr. Small, that
22 you can refer me to?

23 MR. SMALL: Paragraph 6.

24 THE WITNESS (Lagano): It
25 references a minimum of one year prior

1 written notice before relinquishment of or
2 surrender of permits.

3 MR. SMALL: Thank you.

4 MS. BACHMAN: Excuse me.

5 Attorney Small, may I just ask for a
6 clarification as to the date in the fourth
7 paragraph on page 5. It says, "February 19th
8 of 2012." Was that supposed to be
9 February 19th of 2013?

10 MR. SMALL: I guess that would
11 be directed to either Attorney --

12 MR. LORD: Us.

13 MR. SMALL: -- Lord or
14 Ms. Lagano.

15 MR. LORD: Yeah.

16 THE WITNESS (Lagano): Yes.
17 I'm sorry. That's a mistake.

18 MS. BACHMAN: Thank you.

19 THE WITNESS (Lagano): Would
20 you like me to correct that?

21 MS. BACHMAN: You just
22 corrected it.

23 THE WITNESS (Lagano): Yes, so
24 on page 5 of my testimony, on question -- oh,
25 it's not numbered. I can reference it.

1 There's a question on the
2 bottom of page 4: Can you please describe
3 the process and timeline MGT has followed to
4 abandoned the Meriden Project. Then there's
5 an answer that goes on to page 5, and the
6 last paragraph of the answer there's a
7 reference to a date February 19, 2012 should
8 be 2013.

9 MS. BACHMAN: Thank you.

10 THE WITNESS (Lagano): You're
11 welcome.

12 MR. SMALL: Okay. Would you
13 -- would you turn to paragraph 9 of the --
14 I'm sorry. You're -- the next question on
15 page 5.

16 THE WITNESS (Lagano): On
17 page 5, yes. Uh-huh.

18 MR. SMALL: You talk about
19 Paragraph 9 of the settlement of the
20 agreement.

21 THE WITNESS (Lagano):
22 Construction bonds, yes. Uh-huh.

23 MR. SMALL: And you indicate
24 that, turning to page 6, you state that the
25 agreement -- Paragraph 9 in the settlement

1 agreement states that the construction bonds
2 are the City's -- and this is bolded -- sole
3 remedy and satisfaction of any and all MGT
4 obligations.

5 Do you see that language in
6 your testimony?

7 THE WITNESS (Lagano): That
8 -- that is -- that is a reference out of the
9 settlement agreement that is by which comes
10 from the settlement agreement.

11 MR. SMALL: Now, please turn
12 to the -- would you -- now would you look at
13 Paragraph 9 of the property tax settlement
14 agreement.

15 Is it correct that in the last
16 two lines it says: The City may draw upon
17 the bonds in full satisfaction of any and all
18 MGT obligations. Is that correct?

19 THE WITNESS (Lagano): It
20 says: It may draw upon the bonds.

21 MR. SMALL: Right. So the
22 word "may" is in there. Correct?

23 THE WITNESS (Lagano): It
24 appears to be in there.

25 MR. SMALL: Okay. Thank you.

1 MR. LYNCH: Attorney Small,
2 could I follow up on something?

3 MR. SMALL: Oh, certainly.

4 MR. LYNCH: Ms. Lagano, you
5 said that you have not established an
6 offering price?

7 THE WITNESS (Lagano): That's
8 right.

9 MR. LYNCH: But then in your
10 testimony, you said you have some potential
11 buyers.

12 THE WITNESS (Lagano): Yes.

13 MR. SMALL: Wouldn't a
14 potential buyer want to know what the price
15 would be for the property?

16 THE WITNESS (Lagano): I'm
17 sure they would. But we have not listed it
18 with a -- with a price. So we are accepting
19 all -- you know, we are taking offers.

20 MR. LYNCH: I'll let it go.
21 I'm still confused. But go ahead.

22 THE WITNESS (Lagano): Yeah,
23 we -- we don't have a list price. We don't
24 have a list price.

25 Thank you, Mr. Small.

1 MR. SMALL: Would you now
2 please while you're on page 6 third question
3 down from the one we were just discussing the
4 question about are MGT and City in agreement
5 in agreement on all of these items? Do you
6 see that question?

7 THE WITNESS (Lagano): Yes, I
8 do.

9 MR. SMALL: You -- and you
10 indicate, as you discussed before, that
11 certain items that the City is requesting no
12 longer make environmental or economic sense.

13 THE WITNESS (Lagano): Yes.

14 MR. SMALL: You sere that
15 language?

16 THE WITNESS (Lagano): Yes, I
17 do.

18 MR. SMALL: Will you put the
19 -- the plantings of white pines and other
20 evergreens to be primarily to the east of the
21 site as something in that category?

22 THE WITNESS (Lagano): You
23 know, I'd have to understand there were some
24 plantings that my understanding were
25 ornamental to fit in with the -- you know,

1 the particular drive into the site and -- and
2 to the extent that the -- and the property is
3 marketed for sale, with adaptive -- adaptive
4 reuse, ornamental plantings, I would think
5 wold be part of a architectural landscape
6 design of a new owner.

7 MR. SMALL: What about the
8 plantings that were designed or intended by
9 both the Council and the City to stabilize
10 the steep slope on the east side and to
11 provide visual mitigation?

12 THE WITNESS (Lagano): I don't
13 know that those plantings were for
14 stabilization as -- as much as they were for,
15 perhaps, as the City was testifying earlier
16 about screening. So I don't know that I,
17 again, agree with the premise of the
18 question, Mr. Small.

19 MR. SMALL: Well, let's just
20 -- let's just leave it for visual mitigation.
21 Do you believe if, assuming for the purpose
22 of this question that was the only reason for
23 those plantings, is that something that you
24 now believe no longer makes economic --
25 environmental or economic sense?

1 THE WITNESS (Lagano): I -- I
2 don't know to what degree a new owner would
3 again, reconfigure the site and perhaps some
4 of the plantings would make more sense
5 reoriented. I just don't know.

6 MR. LORD: Mr. Chairman, I
7 have to object to this line of questioning.
8 Again, he's attempting to negotiate a
9 settlement agreement on the record with a
10 witness that's sworn. And there's so many
11 more factors that go into a settlement
12 negotiation than one item at a time taken out
13 of context, and I think that -- well, I
14 object to it.

15 MR. SMALL: Let me just
16 respond, Mr. Chairman.

17 Ms. Lagano's testimony says
18 that certain items no longer make -- that are
19 required by both the Siting Council and/or
20 the City, no longer make environmental or
21 economic sense. So all I did was ask her
22 about one particular item. I'd be glad to
23 have her give us -- list the specifics of
24 items that the Council requires and the City
25 requires, most of which are the same, that no

1 make environmental and economic sense.

2 But in any event, that was my
3 last question on this topic anyways.

4 THE CHAIRPERSON: Well, with
5 that said, let's move on.

6 MR. SMALL: Could we have a
7 brief recess. I may have very little if
8 anything left. Can we have like a
9 five-minute recess.

10 THE CHAIRPERSON: Five-minute
11 recess, sure.

12 MR. SMALL: Thank you.

13 THE CHAIRPERSON: But I'm
14 going to take you at your word.

15 MR. SMALL: Yes. We'll set
16 the stopwatch.

17 (Whereupon, a recess was taken
18 from 3:31 p.m. until 3:35 p.m.)

19 THE CHAIRPERSON: Let's get
20 back to our hearing.

21 MR. SMALL: Mr. Chair, I
22 just --

23 Ms. Lagano, just one more very
24 brief series of questions. I promise it'll
25 be brief.

1 I believe you testified
2 that -- that MGT's inclination is not to do
3 any work, any additional work on the site
4 until it's sold. Is that a fair synopsis?

5 THE WITNESS (Lagano): Again,
6 Mr. -- Mr. Small, we met with the City of
7 Meriden representatives in February of 2013
8 to review what's on this memo, and then we
9 found ourselves in a proceeding which has
10 unfortunately brought things, progress,
11 marketing, and any other progress that would
12 have been made to a halt.

13 MR. SMALL: Well, I know
14 you're blaming the City, but isn't it correct
15 that you sued the City with respect to the
16 tax agreement before the City brought this
17 action. Correct?

18 THE WITNESS (Lagano): I -- I
19 frankly don't understand why you're
20 referencing a tax dispute in the context of
21 this proceeding here.

22 MR. SMALL: Well, just try to
23 answer the question which is if I didn't
24 state your position correctly, would you
25 please state your position correctly with

1 respect to doing the work that appears to be
2 required by the D&M plan and by the City's
3 site plan and subdivision approvals that have
4 not yet been done.

5 MR. LORD: Actually, we're
6 trying to find an answer to his first
7 question, so hold that please.

8 (Pause.)

9 THE WITNESS (Lagano): Yeah,
10 on page 5 where I just made, read in the
11 correction, it contains the dates of the
12 motion to enforce that MGT filed with respect
13 to the -- to the settlement agreement, that
14 had a settlement agreement.

15 MR. SMALL: Okay. So the
16 answer is yes, it predates the City's action
17 of the Council. Correct?

18 THE WITNESS (Lagano):
19 Apparently.

20 MR. SMALL: Okay. And then
21 let me rephrase my other question. Did I
22 understand you correctly that MGT's position
23 is that the work that's described in --
24 that's required, I should say, by the Siting
25 Council's D&M plan, and by the City's

1 approvals that with respect to that work
2 MGT's position is you don't want to do any of
3 it, you want to await for a new buyer. Is
4 that the --

5 THE WITNESS (Lagano):

6 Mr. Small, you've asked me the same question,
7 I don't know how many times now. And I'm
8 going to answer it the same way, that we --
9 we met with the City of Meriden in February
10 to review these open items, and then we found
11 ourselves in proceeding that has stopped
12 progression of anything for the last six
13 months.

14 MR. SMALL: And in that
15 meeting, did you take the position that there
16 many of those items that you would, in fact,
17 accomplish?

18 THE WITNESS (Lagano): We
19 were -- my understanding, I was not in the
20 site meeting, is that we were there, we
21 under -- we were asking the City what is --
22 what is this particular line item, what do
23 you view it as? And we did not take any
24 opinion or make any opinions at that meeting.
25 This was to understand what the city believed

1 needed to be done. And that's how we left
2 it.

3 MR. SMALL: Okay. No further
4 questions. Thank you.

5 THE CHAIRPERSON: Thank you.

6 THE WITNESS (Lagano): Thank
7 you.

8 THE CHAIRPERSON: Attorney
9 Lord, do you have any -- anything on
10 redirect?

11 MR. LORD: Very briefly.

12 Ms. Lagano, do you remember
13 the day that you hand-delivered the letter to
14 the city of Meriden in 2012 regarding the --
15 the intent to surrender the certificate?

16 THE WITNESS (Lagano): Yes.
17 April of 2012, yes.

18 MR. LORD: And did you meet
19 with any representatives of the City of
20 Meriden on that day?

21 THE WITNESS (Lagano): Yes.
22 We -- I met with the city manager,
23 Mr. Kendzior, and the city attorney,
24 Ms. Moore.

25 MR. LORD: And was there any

1 doubt in the city's mind at that -- at that
2 meeting that you had the intent to abandon
3 the property --

4 MR. SMALL: Objection.

5 MR. LORD: -- in a year?

6 MR. SMALL: They can't -- she
7 can't speak for the intent of the City
8 representatives. She can -- she can indicate
9 what she told them, but she certainly can't
10 testify as to what their --

11 THE CHAIRPERSON: Well, you
12 want to rephrase your question.

13 MR. LORD: What did the
14 representatives of the City of Meriden tell
15 you?

16 THE WITNESS (Lagano):
17 Mr. Kendzior said, we knew this day was
18 coming.

19 MR. LORD: And was there any
20 doubt in your mind that you had delivered a
21 message that you intended to abandon this
22 project in accordance with the agreements,
23 and that you had initiated the -- the
24 one-year minimum time for doing so?

25 THE WITNESS (Lagano): No

1 doubt. As I as explaining earlier today, we
2 explained that the Connecticut DEEP IRP said
3 that no new resources, generation resources
4 were needed until 2023 and that we explained
5 that ISO had made the determination that our
6 capacity was deliverable into the market.
7 Those were two very critical and negative
8 developments for the possibility that we
9 would be able to get a contract that is
10 required in order to get financing to
11 complete the site.

12 MR. LORD: I have no further
13 questions.

14 MR. WILENSKY: Mr. Chairman,
15 could I ask a follow up just to --

16 THE CHAIRPERSON: If it's
17 short.

18 MR. WILENSKY: Is there
19 anything in writing concerning that -- that
20 meeting that, whatever that agreement might
21 have been that you were referring to. You're
22 referring to a meeting that took place
23 between you and the City of Meriden. And
24 sometime in 2012?

25 THE WITNESS (Lagano): That --

1 that was the meeting that we hand delivered
2 the notice that we were abandoning the power
3 plant project. So the -- the purpose of the
4 meeting was to deliver in writing the notice.

5 MR. WILENSKY: And your
6 comments, you said they had not problem with
7 what you were doing. I think that's what you
8 said?

9 MR. LORD: That was for the
10 Siting Council.

11 THE WITNESS (Lagano): I'm
12 sorry. Would you repeat your question,
13 please?

14 MR. WILENSKY: In other words,
15 your comment about that letter or that
16 meeting, is there any kind -- is there any
17 correspondence concerning that meeting that
18 took place?

19 THE WITNESS (Lagano): There
20 were subsequent correspondence about what
21 would be the next steps required because we
22 had to come up with a -- an appraisal so that
23 the property tax agreement, once you submit
24 that notice, had some subsequent, you know,
25 consequences.

1 MR. WILENSKY: Okay. Thank
2 you, Mr. Chairman.

3 THE WITNESS (Lagano): So
4 there were letters following that that took
5 various positons on -- on the consequences of
6 delivering that notice.

7 MR. WILENSKY: Okay. Thank
8 you, Mr. Chairman.

9 MR. SMALL: Very brief follow
10 up if I may.

11 I want to ask you about
12 subsequent correspondence. You delivered
13 your notice in person on April 3, 2012.
14 Correct?

15 THE WITNESS (Lagano): That's
16 correct.

17 MR. SMALL: And you received
18 the letter dated April 24, 2012, from
19 Mr. Kendzior. Is that correct?

20 THE WITNESS (Lagano): I'm
21 sorry. Could you give me the date again?

22 MR. SMALL: Did you receive a
23 letter from Mr. Kendzior dated April 24,
24 2012, responding to your April 3rd letter.
25 It's an -- it's an attachment to

1 Mr. Kendzior's prefiled testimony.

2 MR. LORD: Mr. Chairman, just
3 on a point of order, he concluded his
4 cross-examination and in my experience at the
5 Siting Council, we haven't had recross. I
6 think that we've exhausted --

7 THE CHAIRPERSON: Okay. Let's
8 just answer this question, and then you're
9 done.

10 MR. SMALL: Right. Okay. Can
11 you --

12 THE CHAIRPERSON: I mean, it's
13 just a question about a document.

14 MR. LORD: Okay.

15 MR. SMALL: Do you have that
16 document?

17 THE WITNESS (Lagano): I have
18 to look for it.

19 MR. LORD: I'm sorry. Which
20 document?

21 MR. SMALL: It's -- it's
22 Mr. Kendzior's April 24th letter to
23 Ms. Lagano. It's part of the subsequent
24 correspondence that Ms. Lagano referenced.

25 THE WITNESS (Lagano): And I'd

1 have to look through the --

2 MR. SMALL: Would you turn to
3 page 2 of that. In the first full paragraph,
4 in the sixth line would you just read that
5 sentence, starts with your letter.

6 THE WITNESS (Lagano): Your
7 letter doesn't state if MGT will actually
8 abandoned the generating station.

9 MR. SMALL: Could you read
10 that again. I think you miss -- misread
11 that. Please do that again.

12 THE WITNESS (Lagano): Your
13 letter does not state when or even if MGT
14 will actually abandon the generating station.

15 MR. SMALL: Yeah. Okay.
16 Thank you. No further questions.

17 THE CHAIRPERSON: Do you have
18 any follow up?

19 MR. LORD: No. Thank you,
20 Mr. Chairman.

21 THE CHAIRPERSON: Thank you.

22 MR. SMALL: Thank you,
23 Mr. Chairman.

24 THE CHAIRPERSON: The Council
25 will now close the evidentiary hearing. Any

1 person who has not become a party or
2 intervenor but desires to submit comments may
3 do so within 30 days of today. The Council
4 announces that briefs and proposed findings
5 of fact may be filed by the parties on or
6 before August 16, 2013. The filing of briefs
7 and proposed findings of fact are not
8 required to be filed, however, no new
9 evidence, no new argument and no reply brief
10 will be allowed without permission of the
11 Council.

12 A copy of the transcript of
13 this hearing will be filed at the Meriden
14 City Clerk's office and the Berlin Town
15 Clerk's office.

16 I hereby declare this hearing
17 adjourned. Thank you all for your
18 participation. Drive home safely.

19 MR. SMALL: Thank you, Mr.
20 Chairman.

21 (Whereupon, the witness was
22 excused and the above proceedings were
23 adjourned at 3:45 p.m.)

24
25

CERTIFICATE

1 I hereby certify that the foregoing 217
2 pages are a complete and accurate
3 transcription of a digital sound recording
4 taken of the Public Hearing in Re: DOCKET
5 NO. 190B, MERIDEN GAS TURBINES, LLC, MOTION
6 TO REOPEN THE FINAL DECISION ON THE
7 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
8 AND PUBLIC NEED HELD BY MERIDEN GAS TURBINES,
9 LLC, FOR A 530 MW COMBINED CYCLE GENERATING
10 PLANT IN MERIDEN, CONNECTICUT, which was held
11 before ROBIN STEIN, Chairperson, at the
12 Department of Energy and Environmental
13 Protection, 10 Franklin Square, New Britain,
14 Connecticut, on July 16, 2013.

15 I further certify that the digital sound
16 recording was transcribed by the Word
17 Processing Department of United Reporters,
18 Inc., under my direction.
19
20
21
22
23
24
25

Guy B. Raboin, President

Notary Public

UNITED REPORTERS, INC.

90 Brainard Road, Suite 103

Hartford, Connecticut 06114

UNITED REPORTERS, INC.

www.unitedreporters.com

Nationwide - 866-534-3383 - Toll Free

1 I N D E X

2	WITNESSES	MICHAEL LIBERTINE	
3		LAWRENCE KENDZIOR	
4		DOMINICK CARUSO	
5		ROBERT BASS	
6		THOMAS SKOGLUND	
7		PATRICK A. LEMP	Page 7
8	EXAMINERS:		
9		Mr. Small	Page 7, 83
10		Mr. Lord	Page 62
11			
12	WITNESS	JUDITH LAGANO	Page 91
13		Mr. Lord	Page 91, 210
14		Mr. Small	Page 144, 153
15			214

17 CITY EXHIBITS

18 (Admitted in Evidence.)

19	EXHIBIT	DESCRIPTION	PAGE
20	8	Pre-Filed Testimony of	11
21		Lawrence Kendzior dated	
22		July 9, 2013	

23

24

25

1 I N D E X (Cont'd.)

2	EXHIBIT	DESCRIPTION	PAGE
3	9	Pre-Filed Testimony of	11
4		Michael Libertine, dated	
5		July 9, 2013	
6			
7	10	Response to Council	11
8		Interrogatories, dated	
9		July 8, 2013	
10			
11		CERTIFICATE HOLDER EXHIBITS	
12		(Admitted in evidence.)	
13	EXHIBIT	DESCRIPTION	PAGE
14	1	Letter from Jane K. Warren	93
15		to Robert Stein, dated	
16		March 20, 2013	
17			
18	2	Letter from Jane K. Warren	93
19		to Robert Stein, dated	
20		March 25, 2013	
21			
22	3	Letter from Jane K. Warren	93
23		to Robert Stein dated	
24		March 26, 2013, with attached	
25		Stipulation, dated March 25, 2013	

	I N D E X (Cont'd.)		
	EXHIBIT	DESCRIPTION	PAGE
1			
2			
3	4	NRG comments regarding the	93
4		City of Meriden's Request to	
5		Reopen Docket No. 190, dated	
6		April 5, 2013	
7			
8	5	Pre-Filed testimony of Judith	93
9		Lagano, dated July 9, 2013	
10			
11	6	Responses to Council	93
12		Interrogatories, Set I, Dated	
13		July 9, 2013	
14			
15	7	Responses to Council	93
16		Interrogatories, Set II, dated	
17		July 9, 2013	
18			
19	8	Responses to City of	93
20		Meriden's Interrogatories,	
21		dated July 9, 2013	
22			
23			
24			
25			