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

**CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

In 2010, MGT requested the Council grant a third extension of the Certificate to April 27, 2016 stating again that it would not be in a position to finance or construct the electric generating facility without a long-term power supply contract. During a regular meeting of the Council held on July 15, 2010, the Council, on its own motion, voted to reopen the docket in accordance with C.G.S. §4-181a(b) and to hold a public hearing limited to Council consideration of changed conditions and of the attachment of conditions to the certificate consistent with the findings and recommendations contained in the Final Report issued by the Kleen Energy Plant Investigation Review Panel (Nevas Panel).[[7]](#footnote-7) The Council designated this reopened proceeding as Docket 190A and held a hearing for this matter on August 24, 2010. Subsequently, the Thomas Commission, the panel charged with providing recommendations for regulatory changes consistent with the findings of the Nevas Panel, issued a Report on September 21, 2010. As a result, the Council reopened the evidentiary record for Docket 190A and held an additional public hearing on December 7, 2010.[[8]](#footnote-8) As part of the D&O for Docket 190A, on March 3, 2011, the Council attached conditions to the Certificate consistent with the Nevas and Thomas Commission Reports, and granted the request to extend the Certificate to April 27, 2016.

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

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

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

In November 2011, ISO-New England, Inc. determined that MGT’s facility would not qualify as deliverable capacity in the New England market without transmission upgrades.[[11]](#footnote-11) This determination was an unforeseen event that was upheld by the Federal Energy Regulatory Commission and was unsuccessfully appealed by MGT. Furthermore, new information and facts relative to Connecticut’s resource adequacy are contained in the Department of Energy and Environmental Protection (DEEP) 2012 Integrated Resource Plan (IRP), which indicates that there is likely not a need for additional generating capacity in Connecticut until 2022.[[12]](#footnote-12) These relevant market circumstances were unknown and unforeseen by the Certificate Holder, the Council or any of the parties or intervenors to the original Docket 190 proceeding when the Certificate was issued in 1999. In the past, on its own motion or upon the motion of another person, the Council has reopened final decisions pursuant to C.G.S. §4-181a(b) on the basis of similar unknown, unforeseen and relevant market circumstances, such as an increase in the natural gas supply and improvements to pipeline infrastructure in New England.[[13]](#footnote-13) With more than adequate electric generation supply projected, this may further complicate MGT’s position to finance or construct the electric generating facility without a long-term power supply contract. MGT’s parent company, NRG, commented on the draft IRP in March 2012 indicating that “NRG is prepared to proceed with… projects as soon as suitable off-take contracts can be secured…”[[14]](#footnote-14) At that time, the MGT project was listed in NRG’s comments on the IRP as one of the projects that is prepared to proceed.

Despite representations to the DEEP in March 2012 that NRG was prepared to proceed with the MGT project, pursuant to Paragraph 6 of the Property Tax Settlement Agreement between MGT and the City dated November 20, 2008, MGT provided the City with a Notice of Abandonment of its intent to relinquish, surrender and/or not renew its permits to construct and operate the electric generating facility on April 3, 2012.[[15]](#footnote-15) Approximately one year later, in its request to reopen the final decision for Docket 190 under C.G.S. §4-181a(b), the City of Meriden presents this Notice of Abandonment as a changed condition. The Certificate Holder argues that it was clearly contemplated at the time of the final decision that MGT might abandon the project and cites to Condition No. 4 of the Council’s 1999 Decision and Order, which states, “The Certificate Holder shall provide the Council notification of the following events not less than two weeks in advance of their occurrence… d) permanent termination of any operation of the project.” However, this condition does not preclude the Council from reviewing and reopening the final decision upon notification of permanent termination of any operation of the project, which MGT provided on March 20, 2013, March 25, 2013 and March 26, 2013.

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

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

On March 18, 2013, the City filed a Request to Reopen and Modify the Decision and Order in Docket 190 due to changed conditions and a request for Party Status. On March 20, 2013, MGT submitted a letter to the Council indicating MGT “terminates the project and surrenders” the Certificate thereby rendering the City’s petition moot.[[16]](#footnote-16) On March 22, 2013, the Council issued a memo requesting parties and intervenors to the Docket 190 proceeding to submit comments or statements of opinion in writing to the Council with respect to whether the City’s Petition to Reopen should be granted or denied on or before the close of business on April 5, 2013.[[17]](#footnote-17) On March 25, 2013, MGT submitted a second letter to the Council indicating the March 20, 2013 letter was intended to have an effective date for the termination of the project and surrender of the Certificate on April 3, 2013.[[18]](#footnote-18) On March 26, 2013 MGT submitted a third letter to the Council indicating in accordance with a stipulation filed in court, that the effective date for the termination of the project and surrender of the Certificate is April 3, 2013.[[19]](#footnote-19) On April 5, 2013, MGT submitted comments to the Council in response to the March 22, 2013 memo indicating the Council lacks jurisdiction and MGT’s abandonment of the project does not constitute a changed condition.[[20]](#footnote-20) During a meeting held by the Council on April 18, 2013, the Council voted to grant the City’s Petition to Reopen, the City’s request for party status and to hold a public hearing specifically limited to consideration of changed conditions and a decommissioning plan.[[21]](#footnote-21)

The surrender of a valid Certificate for a partially built electric generating facility is a case of first impression for the Council. In rendering the decision to reopen the matter in response to the City’s petition, the Council was guided by a decision rendered by the Department of Public Utility Control (DPUC, now known as the Public Utilities Regulatory Authority or PURA) in Docket No. 97-03-25, entitled, “Application of Teleglobe USA, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Telecommunications Services - Reopening.”[[22]](#footnote-22) As part of the original decision in Docket No. 97-03-25, on August 20, 1997, the DPUC granted Teleglobe America, Inc. (Teleglobe) a Certificate of Public Convenience and Necessity (CPCN) to provide resold intrastate long distance telecommunications services in Connecticut. By letter dated August 23, 2005, Teleglobe informed DPUC that it surrenders its CPCN to provide resold intrastate long distance services, it does not provide any telecommunications services in the state, and therefore, no customers would be affected. On September 14, 2005, the DPUC rendered a decision as follows: “Pursuant to Sections 16-247g(g) and 4-181a of the General Statutes of Connecticut, the Department hereby reopens the Decision in the instant docket to consider Teleglobe's request to surrender its CPCN. Since Teleglobe has requested that its CPCN be surrendered, the Department has determined that a hearing is not necessary. Therefore, the CPCN for Teleglobe is hereby revoked, effective the date of this Decision.”

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

Had the City not filed a petition to reopen Docket 190 and had MGT submitted a letter to the Council seeking to surrender its Certificate, the Council, consistent with past practice, would have provided parties and intervenors to the original proceeding notice of the request and an opportunity to be heard on the request, and thereafter, placed the request to surrender the Certificate for the Docket 190 matter on a regular meeting agenda for Council discussion. Although rare and infrequent, this has been past Council practice. For example, Council Docket 96- Certificate of Environmental Compatibility and Public Need for Killingly Energy Limited Partnership for construction of a 32.2 MW Wood-Burning Electric Generating Facility, and Council Docket 103- Certificate of Environmental Compatibility and Public Need for Bio-Gen Torrington Partnership for construction of a 15 MW Wood-Burning Electric Generating Facility. Each of these projects were approved and granted Certificates by the Council in 1989; however, in 1992, pursuant to the provisions of Public Act 92-13, “An Act Concerning Transportation Management Programs Required under the Clean Air Act, and Wood-Burning Facilities,” both project developers submitted to the DPUC offers to rescind their electricity purchase agreements, received payments from CL&P and submitted notification to the Council of their intent to surrender their Certificates in accordance with notification conditions contained in the Certificates.[[23]](#footnote-23) The dockets were placed on a Council regular meeting agenda at which time the surrender of the Certificates was discussed and acknowledged by the Council.[[24]](#footnote-24) The submission of the City’s Request to Reopen Docket 190 preceded MGT’s requests to surrender its Certificate. Once the Council voted to reopen Docket 190, the surrender of the Certificate became an issue to be decided as part of the Docket 190B proceeding.

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

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

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

The City did not avail itself of party status nor did the City avail itself of the opportunity to issue a “regulate and restrict” order under C.G.S. §16-50x(d) at the time the MGT facility was proposed.[[26]](#footnote-26) In fact, the City issued its own site plan and subdivision approvals for which the City required MGT to provide cash bonds in the original amount of $1,886,490.[[27]](#footnote-27) Both parties subsequently entered into two settlement agreements related to tax payments that contain several provisions for resolution of disagreements over unsatisfied conditions and the release of the bonds.[[28]](#footnote-28) Furthermore, although the City was formally notified of MGT’s intent to abandon the project in the Notice of Abandonment that was provided April 3, 2012, the City did not request the matter to be reopened by the Council until March 18, 2013.

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

Compliance with the conditions of the D&O and the D&M plan, to the extent practicable at this time, represents the scope of the Council’s enforcement authority in this matter. It is through the certification process that the Council evaluates and minimizes activities at the site of a jurisdictional facility that may have a significant adverse environmental effect.[[31]](#footnote-31) According to the Connecticut Supreme Court, certification requirements imposed by regulation or statute are a valid administrative device reasonably designed to enable administrative bodies to perform the duties delegated to them by the legislature.[[32]](#footnote-32) The Council’s certification requirements were imposed on the Certificate Holder on April 27, 1999 when the final decision was rendered and the Certificate was issued. Additional certification requirements were imposed on the Certificate Holder on March 3, 2011 when the final decision was rendered in Docket 190A. Pursuant to the legislative intent under the PUESA, it is incumbent upon the Council to ensure the conditions of the Docket 190 D&O and D&M plan are fulfilled to the satisfaction of the Council. This is a condition precedent to the Council’s acknowledgment of the surrender of the Certificate.

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

1. Conn. Gen. Stat. §4-166(1) (2013). [↑](#footnote-ref-1)
2. Conn. Gen. Stat. §4-166(2) (2013). [↑](#footnote-ref-2)
3. Conn. Gen. Stat. §4-166(3) (2013). [↑](#footnote-ref-3)
4. Conn. Gen. Stat. §4-166(7) (2013). [↑](#footnote-ref-4)
5. See *Town of Preston, et al v. Connecticut Siting Council*, 20 Conn. App. 474, 487 (Conn. App. 1990) (“An agency’s factual and discretionary determinations are to be accorded considerable weight by the courts.”); *Town of Killingly, et al v. Connecticut Siting Council*, 220 Conn. 516, 526 (1991) (“…the decision of the siting council granting KELP a certificate of environmental compatibility and public need was a final decision…”) [↑](#footnote-ref-5)
6. Council Administrative Notice Item No. 29 (Docket No. 370B Record). [↑](#footnote-ref-6)
7. Council Administrative Notice Item No. 25 (Docket No. 190A Record); Council Administrative Notice Item No. 30 (Docket No. NT-2010 Record). [↑](#footnote-ref-7)
8. *Id.* (The Council reopened all of the final decisions of jurisdictional, natural gas-fired electric generating facilities to attach conditions to the certificates and declaratory rulings consistent with findings and recommendations of the Nevas Panel and Thomas Commission). [↑](#footnote-ref-8)
9. Council Administrative Notice Item No. 34 (*Town of Fairfield, et al v. Connecticut Siting Council*, 238 Conn. 361 (1996)). [↑](#footnote-ref-9)
10. *Id.;* See also Council Administrative Notice Item No. 35 (*Sielman v. Connecticut Siting Council,* 2004 Conn. Super. LEXIS 119 (Conn. Super. Ct. 2004)). [↑](#footnote-ref-10)
11. MGT Exhibit 5 (Pre-filed Testimony of Judith Lagano). [↑](#footnote-ref-11)
12. Council Administrative Notice Item No. 44 (DEEP 2012 Integrated Resource Plan for Connecticut). [↑](#footnote-ref-12)
13. See Council Administrative Notice Item No. 22 (Docket No. 187A Record) and Council Administrative Notice Item No. 23 (Docket No. 189A Record) (The Council, on motions from the Certificate Holders, reopened these dockets pursuant to C.G.S. §4-181a(b) to modify the decision and orders to allow suspension of the backup fuel systems based on changed conditions that “natural gas supply has increased considerably and improvements have been made to the pipeline infrastructure in New England; there have been improvements to the Connecticut electric transmission grid; and new power generation facilities have been constructed. As a result, the reliability of Connecticut’s natural gas and electric energy supply has increased and the ability to immediately operate on fuel oil is no longer desirable for reliability or economic reasons.”) [↑](#footnote-ref-13)
14. Council Administrative Notice Item No. 44, *supra* note 12. [↑](#footnote-ref-14)
15. City Exhibit 10, Response 8; MGT Exhibit 6, Response 1 (The Council was not provided a copy of this Notice of Abandonment at the time it was submitted to the City, but representatives from NRG met with Council staff on May 29, 2012 indicating NRG had no intent to continue development of the project, but was required under the Property Tax Settlement Agreement to provide a written Notice of Abandonment to the City of Meriden a minimum of one year prior to relinquishment or surrender of permits for construction and operation. Council staff instructed the NRG representatives to submit a letter of notification to the Council when the time was appropriate.) [↑](#footnote-ref-15)
16. MGT Exhibit 1 (Letter from Jane K. Warren to Robert Stein, dated March 20, 2013). [↑](#footnote-ref-16)
17. Council Memorandum re Docket 190, dated March 22, 2013. [↑](#footnote-ref-17)
18. MGT Exhibit 2 (Letter from Jane K. Warren to Robert Stein, dated March 25, 2013). [↑](#footnote-ref-18)
19. MGT Exhibit 3 (Letter from Jane K. Warren to Robert Stein, dated March 26, 2013, with attached stipulation, dated March 25, 2013). [↑](#footnote-ref-19)
20. MGT Exhibit 4 (NRG comments regarding the City of Meriden’s Request to Reopen Docket No. 190, dated April 5, 2013). [↑](#footnote-ref-20)
21. Council Memorandum Re Docket 190B, dated April 19, 2013. [↑](#footnote-ref-21)
22. Council Administrative Notice Item No. 55. *See also* Department of Public Utility Control, Docket No. 97-09-42, “Petition of Teleglobe, USA, Inc. for Expansion of Its Certificate of Public Convenience and Necessity.” (On November 5, 1997, the DPUC granted Teleglobe the authority to expand its service authority to provide local exchange service throughout the state. On June 2, 2005, Teleglobe notified DPUC that it wished to surrender any service authority that it currently had to provide local exchange telecommunications services. Pursuant to C.G.S. §§ 16-247g(g) and 4-181a, the DPUC reopened the decision in the docket to consider Teleglobe’s request to withdraw its local authority.) [↑](#footnote-ref-22)
23. Council Administrative Notice Item No. 19 and Council Administrative Notice Item No. 20 (Copies of the notification letters indicating intent to surrender certificates were mailed to the parties and intervenors for the respective docket at the same time as the Council. Each docket decision and order contained a notice provision similar to the notice provision in Docket 190 discussed in Paragraph 1(b) *infra*, which stated, “The Certificate Holder shall notify the Council, and all parties and intervenors when operations terminate.”). [↑](#footnote-ref-23)
24. *Id.*; The Council also follows a similar procedure for withdrawal of declaratory rulings. *See* Petition 794 and Petition 893. [↑](#footnote-ref-24)
25. Council Administrative Notice Item No. 24 (Docket 190, Record, Public Hearing Transcript, January 26, 1999, 11:00 a.m., pages 59-61) [↑](#footnote-ref-25)
26. Council Administrative Notice Item No. 24 (Docket 190 Record); Finding of Fact No. 11, Docket 190B Record (The City also did not avail itself of party status during the proceedings for Docket 370B or for Docket 190A). [↑](#footnote-ref-26)
27. *Id.*; City Exhibit 8 (Pre-Filed Testimony of Lawrence Kendzior); City Exhibit 10, Response 7. [↑](#footnote-ref-27)
28. MGT Exhibit 6, Response 1; City Exhibit 10, Response 7 (Property Tax Payment Settlement Agreement). [↑](#footnote-ref-28)
29. Council Administrative Notice Item No. 24 (Docket 190 Record) [↑](#footnote-ref-29)
30. Council Administrative Notice Item No. 29 (Docket 370B Record); Findings of Fact Nos. 61-64, Docket 190B Record. [↑](#footnote-ref-30)
31. *Mario v. Town of Fairfield*, 217 Conn. 164 (1991)(A non-wetland property owner challenged a regulation of the Conservation Commission requiring an owner of a parcel of land partially within a designated wetlands area to apply to the commission before erecting any structure on the non-wetlands portion of the parcel. The Court upheld the regulation as a valid exercise of the Commission’s statutorily delegated police power to regulate the use of property within its borders to carry out legislative objectives and to protect and preserve the natural resources located within the town.) [↑](#footnote-ref-31)
32. *Id.*; See also *City of New Haven v. Stanley J. Pac*, 1991 Conn. Super. LEXIS 3037 (Conn. Super. Ct. 1991)(DEP determined that a proposed system to treat stormwater and sewage into the Quinnipiac River in connection with a plan to construct a mall in North Haven would protect the river from pollution. DEP denied a request by the City to reconsider based on a major storm that flooded the mall site and that one of the anchor tenants for the mall had withdrawn from the project. The court upheld the DEP decision to deny the request for reconsideration on the basis that there is no requirement that DEP consider economic values in reaching its decision.); *Turgeon v. Town of East Lyme,* 2007 Conn. Super. LEXIS 690 (Conn Super. Ct. 2007)(Plaintiff landowner filed an appeal against the East Lyme Conservation Commission and the DEP relating to denial of an application to conduct regulated activities on a residential lot containing wetlands. The court remanded the application to the Commission to approve the application with conditions as it found reasonably necessary to protect the wetlands on and adjacent to the site based on the landowner’s reasonable investment-backed expectation of development and that the public benefit was not strong enough to outweigh the harm to plaintiff that would result from the denial of the application.) [↑](#footnote-ref-32)