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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 |

**Findings of Fact**

**Introduction**

1. On April 27, 1999, pursuant to Connecticut General Statutes §16-50k, the Connecticut Siting Council (Council) granted a Certificate of Environmental Compatibility and Public Need (Certificate) to PDC-El Paso Meriden LLC (PDC-El Paso) for the construction, operation and maintenance of a 530-megawatt (MW) combined-cycle electric generating facility (Facility) in Meriden, Connecticut. In 2001, NRG Energy, Inc. (NRG) acquired majority stock ownership of PDC-El Paso and changed the name of the Certificate Holder to Meriden Gas Turbines, LLC (MGT), a wholly-owned subsidiary of NRG. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 25)
2. On March 18, 2013, the Council received a Petition from the City of Meriden (City) to Reopen and Modify the Decision and Order in Docket No. 190 Due to Changed Conditions and for Party Status (City Petition to Reopen). The changed condition cited by the City was MGT’s planned abandonment of the Facility. In its petition, the City requested that the Council reopen Docket 190 and modify its Decision to require MGT to remove the Turbine building and other structures, and to submit and implement a Project Decommissioning Plan. (City 1, pp. 1-2)
3. On March 22, 2013, the Council issued a memorandum to parties and intervenors to the original Docket 190 proceeding requesting comments or statements of position in writing to the Council with respect to whether the City Petition to Reopen should be granted or denied on or before the close of business on April 5, 2013. The memorandum also stated that the City Petition to Reopen would be placed on the Council meeting agenda scheduled for April 18, 2013 for Council consideration. (CSC Memorandum re Docket 190, dated March 22, 2013)
4. The City submitted comments to the Council on April 5, 2013 requesting the Council to reject MGT’s claim that its surrender of the Certificate moots the City Petition to Reopen, and to grant the City Petition to Reopen. (City of Meriden letter to Chairman Stein, dated April 5, 2013)
5. MGT submitted comments to the Council on April 5, 2013 requesting the Council to dismiss the City Petition to Reopen for lack of jurisdiction or requesting the Council to deny the City Petition to Reopen because the City has not proven that MGT’s surrender of the Certificate constitutes a changed condition. (MGT 4, p.5)
6. At a meeting held on April 18, 2013, the Council voted to reopen the Docket 190 proceeding and to grant the City party status. The reopened proceeding, which was captioned as Docket 190B, was to be limited to consideration of changed conditions and a Decommissioning Plan. (CSC Memorandum re Docket 190B, dated April 19, 2013)
7. Pursuant to C.G.S. § 16-50m, the Council, after giving due notice thereof, held a public hearing on June 4, 2013, beginning at 3:00 p.m. in the Council Chambers in the Meriden City Hall, 145 East Main Street, Meriden, Connecticut. (Council's Hearing Notice dated May 3, 2013; Transcript 06/04/13, 3:05 p.m. [Tr. 1], p. 3; Transcript 06/04/13, 7:04 p.m. [Tr. 2], p. 5)
8. The evidentiary hearing was continued on July 16, 2013 at the office of the Council, 10 Franklin Square, New Britain, Connecticut. (Transcript 07/16/13 [Tr. 3], p. 4)
9. The Council and its staff conducted a public field review. The following locations within the City of Meriden were visited: Preston Avenue overpass over I-691; Quiet Brook Court; South Mountain Road; and Broadview Terrace. (Council Field Review Notice, dated May 24, 2013)
10. For the field review, MGT did not grant access to its site, only to the access road as far as the gate of the fence enclosing the site. (Tr. 1, pp. 40, 70, 87-88 )
11. The parties to this proceeding are MGT and the City. (Tr. 1, pp. 6-7)
12. Other parties and intervenors were those who participated in the original Docket 190 proceeding. They included the Quinnipiac River Watershed Association as a party and The Connecticut Light and Power Company (CL&P) and Rivers Alliance of Connecticut/Farmington River Watershed Association as intervenors. The City was not a party to the original Docket 190 proceeding, the Docket 370B proceeding or the Docket 190A proceeding. (For a description of these latter two dockets, see the *Reopenings* section of these Findings of Fact) (Tr. 1, pp. 6-7, 89; Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 25; Council Administrative Notice Item No. 29)
13. Public notice of the hearing was published in the Meriden Record Journal. (Council Hearing Package dated May 3, 2013; Record)

**State Agency Comments**

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

**Agreements between MGT and the City of Meriden**

1. On October 29, 2001, the City and MGT entered into a Property Tax Payment Agreement (Payment Agreement). Section 14 of the Payment Agreement states, “…MGT shall have the right to terminate this Agreement at any time by giving written notice to the City in the event that for any or no reason the Generating Station is decommissioned or otherwise permanently shut down and removed from service.” (MGT 6, Response 1 – Attachment Property Tax Payment Agreement, Exhibit A; City 10, Response 8)
2. The City and MGT entered into a Property Tax Payment Settlement Agreement (Settlement Agreement) that has an Effective Date of November 20, 2008. Paragraph 6 of the Settlement Agreement states, “MGT shall provide the City with a minimum of one (1) year prior written notice (the “Notice of Abandonment”) before its relinquishment or surrender (including its non-renewal or the expiration without efforts to renew) of permits for construction and operation of the Generating Station… Upon delivery of the Notice of Abandonment, the City shall cease to regard the Site as a power generating facility property for all purposes effective beginning the next full Tax Year.” (MGT 6, Response 1 – Attachment Property Tax Payment Settlement Agreement; City 10, Response 8)
3. Paragraph 6 of the Settlement Agreement also states, “… the termination provisions set forth in Section 14 of the [Payment] Agreement shall remain in full force and effect; provided, however, prior to the commercial operation date of the Generating Station, MGT may only terminate the [Payment] Agreement pursuant to Section 14 if the conditions of this Paragraph 6 are met.” (MGT 6, Response 1 – Attachment Property Tax Payment Settlement Agreement; City 10, Response 8)
4. Paragraph 10 of the Settlement Agreement states, “Upon the Effective Date, the City and MGT shall commence good faith discussions to identify and attempt to agree upon reasonable and commercially feasible options for mitigating the visual impact of the Generating Station Project on the community. The parties shall implement any such mutual agreement on this matter upon Notice of Abandonment…” (MGT 6; Response 1 – Attachment Property Tax Settlement Agreement; City 10, Response 8)
5. As part of the original site plan and subdivision approvals issued by the City for the MGT facility in September 1998, the City required MGT to provide cash bonds that originally totaled $1,886,490. In 2003, the City Planning and Zoning Commission reduced the cash bonds at the request of MGT and in response to MGT’s completion of a substantial portion of the site work. The balance of the bonds held by the City as of May 30, 2012 was $693,620. (Council Administrative Notice Item No. 24; Tr. 1, p. 96; City 8, p.13; City 10, Response 7)
6. Paragraph 9 of the Settlement Agreement states, “… no later than thirty (30) days from the Effective Date, the City shall notify MGT in writing of any unsatisfied conditions that prevent release of the referenced bonds. If the parties are unable to agree on the remaining unfulfilled conditions within 30 days after delivery of this notice or if the parties agree that the cost of satisfaction of the remaining conditions may exceed the value of the bonds, the City may draw upon the bonds in full satisfaction of any and all MGT obligations in respect of roadway construction and subdivision improvements.” (MGT 6, Response 1 – Attachment Property Tax Payment Settlement Agreement; City 10, Response 8; Tr. 1, pp. 95-101; Tr. 3, p. 201)
7. Since 2003, the City has not released or drawn upon the balance of the bonds. (Tr. 1, pp. 81-84; City 5; City 8, pp. 13-15; Tr. 3, pp. 144-145)
8. The City’s position is that the balance of the bonds is not sufficient to cover the work the City seeks to have completed by MGT. (Tr. 1, p. 82; Tr. 3, pp. 21-24)

**Certificate Status**

***Jurisdiction, General***

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

***Jurisdiction, Certificate Surrender***

1. MGT’s April 27, 1999 Certificate for Docket 190 contains Condition 4(d), which states, “The Certificate Holder shall provide the Council notification of the following events not less than two weeks in advance of their occurrence: … permanent termination of any operation of the project.” (Council Administrative Notice Item No. 24)
2. MGT’s April 27, 1999 Certificate for Docket 190 was modified in Docket 190A on March 3, 2011 at which time additional conditions were attached to the Certificate, including Condition 14, which states, “Not less than 30 days in advance, the Certificate Holder or facility owner/operator shall provide the Council with written notice that the facility plans to cease operation.” (Council Administrative Notice Item No. 25)
3. On May 8, 1989, in Docket 96, the Council issued a Certificate to Killingly Energy Limited Partnership for the construction of a 32.2 MW wood burning electric generating facility in Killingly, Connecticut. (Council Administrative Notice Item No. 20)
4. On November 22, 1989, in Docket 103, the Council issued a Certificate to Bio-Gen Torrington Partnership for the construction of a 15 MW wood burning electric generating facility in Torrington, Connecticut. (Council Administrative Notice Item No. 21)
5. In 1992, the Certificate Holders for the two wood burning electric generating facilities approved by the Council in Docket 96 and Docket 103 notified the Council in writing that the Certificate Holders ceased efforts to develop the facilities due to the provisions of Public Act 92-13, “An Act Concerning Transportation Management Programs Required Under the Clean Air Act and Wood-Burning Facilities,” and therefore surrendered their Certificates. (Council Administrative Notice Item No. 20; Council Administrative Notice Item No. 21)
6. The Certificates for Docket 96 and Docket 103 contained a condition that stated, “The Certificate Holder shall notify the Council, and all parties and intervenors, when operations terminate.” (Council Administrative Notice Item No. 20; Council Administrative Notice Item No. 21)
7. The requests to surrender the Certificates in Docket 96 and Docket 103 were discussed and acknowledged by the Council during regular meetings held in 1992. (Council Administrative Notice Item No. 20; Council Administrative Notice Item No. 21)
8. MGT is not familiar with the Council’s discussion and acknowledgment of the surrender of the certificates in Docket 96 and Docket 103. (Tr. 3, p. 112)

***Requests for Extensions***

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

***Reopenings***

Docket 370B

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

committed to completing the MGT facility and actively pursuing off-take contracting opportunities to help secure financing for the MGT facility. (Council Administrative Notice Item No. 29, Response to CL&P Interrogatories No.17; Tr. 1, p. 93)
3. In the final decision for Docket 370B, the Council denied the NRG application, as the Council found that the MGT facility would not meet the same need as the GSRP, but also stated in the D&O for Docket 370B, “The denial of the Meriden Facility as part of Docket 370 will not affect NRG’s current Certificate for the Meriden Facility.” (Council Administrative Notice Item No. 29)

Docket 190A

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

***Surrender of Certificate***

1. On April 3, 2012, MGT notified the City of its intent to relinquish its permits to construct and operate the facility certificated by the Council. (City 1, Exhibit 1 – NRG Energy, Inc. Letter, dated April 3, 2012; MGT 6, Response 1, Attachment – Notice of Abandonment; Tr. 1, pp. 27, 91)
2. On May 29, 2012, MGT representatives met with staff members of the Council at which time the

representatives indicated MGT did not intend to continue development of the project. MGT explained that in accordance with Paragraph 6 of the Settlement Agreement, MGT was required to provide the City with a minimum of one year prior written notice before relinquishment or surrender, including non-renewal or expiration, of permits for construction and operation of the facility. (Tr. 3, pp. 111-112; MGT 5, p.4; MGT 6, Response 1, Attachment – Property Tax Settlement Agreement; City 10, Response 8)

1. On March 20, 2013, March 25, 2013 and March 26, 2013 MGT submitted correspondence to the Council indicating MGT would be surrendering its Certificate on April 3, 2013, the intent of which was to comply with Condition 14 of the Docket 190A D&O. (Tr. 3, p. 110; Council Administrative Notice Item No. 25)
2. MGT has no intention of retaining ownership of the site for future use as an electric generating facility and intends to sell the site property as is with the structures that are on site. The property has been listed with a broker. Interest in the site property has contemplated an adaptive reuse of the existing facilities. (MGT 8, Responses 9-21, 30; MGT 6, Response 1; Tr. 3, pp. 123,133, 195-197)
3. There are no FERC or ISO requirements that must be fulfilled prior to the abandonment of the facility. (Tr. 3, p. 119-120)

**Changed Conditions**

1. Construction on this site was halted in 2002. Gas turbines were installed in 2002 but removed in 2003. (Tr. 3, pp.73, 80-81, 153-154)
2. In May 2009, during the proceedings held on Docket No. 370B and in response to interrogatories from the Council, MGT identified the following changes since the facility application was approved in 1999:
	1. Plans for the cooling system;
	2. Environmental regulations;
	3. Status of required permits; and
	4. Cost data.

(Council Administrative Notice Item No. 25)

1. In November 2011, ISO-New England, Inc. (ISO) determined that MGT’s facility would not qualify as deliverable capacity in the New England market without transmission upgrades, which determination was upheld by the Federal Energy Regulatory Commission (FERC). MGT unsuccessfully appealed the determination. (MGT 5, p. 7; MGT 6, Response 1; Tr. 3, pp. 96, 120)
2. On April 3, 2012, MGT hand-delivered a Notice of Abandonment to the City in accordance with Paragraph 6 of the Settlement Agreement thereby notifying the City of MGT’s intent to relinquish, surrender and/or not renew its permits to construct the MGT facility. (City 1, Exhibit 1 – NRG Energy, Inc. Letter, dated April 3, 2012; MGT 6, Response 1, Attachment – Notice of Abandonment; Tr. 3, p. 38)
3. On June 14, 2012, DEEP issued the 2012 Integrated Resource Plan for Connecticut, which concluded adequate generating resources will likely be available in Connecticut to serve electricity loads reliably through 2022. (Council Administrative Notice Item No. 44; MGT 5, p. 7; MGT 6, Response 1; Tr. 3, pp. 97, 212)

**Docket 190 Decision and Order Conditions**

1. In its Decision and Order for Docket 190, the Council included the following conditions:
2. The facility shall be constructed and operated substantially as specified by the Certificate Holder in the application and record, except where otherwise ordered by the Council;

1. The exhaust stacks shall be no higher than necessary, consistent with air emission modeling conducted by the Department of Environmental Protection (DEP);
2. Unless incompatible with provisions ordered by the DEP, selective catalytic reduction shall be used to reduce nitrogen oxide levels, an oxidation catalyst shall be used to reduce carbon monoxide, and water injection shall be used in the combustion turbines while firing on fuel oil and dry low-nitrogen oxide combustion shall be used in the combustion turbines while firing natural gas to reduce nitrogen oxide levels;
3. The project shall operate on natural gas, except during curtailment of natural gas when the project may operate on low sulfur (0.05 percent) distillate fuel oil as permitted by the DEP;
4. Submittal of a petition, amendment, or an application pursuant to CGS section 16-50g et seq., for Council approval, for development of the electric interconnection or modifications to existing electric transmission structures with sufficient detail to determine the jurisdiction, route, type and location of all such changes, and to confirm environmental and health effects consistent with the Council’s Electric and Magnetic Field Best Management Practices; and

f) Submittal of a petition, amendment, or an application pursuant to CGS 16-50g et seq., for Council approval, for construction of any new natural gas pipeline to the facility, with sufficient detail to determine the jurisdiction, route, type, and location of all support equipment, effect on and changes necessary to existing infrastructure, health and safety effects, and possible alternative configuration and routes for the proposed new pipeline.

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

**Docket 190 Development and Management Plan Elements**

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

engineering plans for the water pipeline and intake structures; and access for public recreation along the transmission line right-of-way or, 2) dry cooling for the facility including a revised site plan to accommodate the dry cooling equipment;
3. A final site plan showing all roads, structures and other improvements on the site. The final site plan shall, to the greatest extent possible, maximize placement of facility components within the existing quarry; preserve the existing natural vegetation on the site; establish open space buffer areas; develop conservation easements over traprock ridges, vernal pools, seeps, and areas with habitat for species of special concern; and minimize impacts on inland wetlands;
4. Detailed project schedules for all work activities with weekly work plans;
5. Provisions for adequate oil storage, unloading, and pumping facilities including tanker queuing and turn-around areas sufficient to allow for the arrival of five trucks per hour, to ensure continuous burn on oil for up to 720 hours per year during natural gas curtailment;
6. Plans for landscaping, including preservation of the existing natural vegetation; configuration of earthen berms; and planting of new coniferous vegetation to provide ecological habitat, visual screening, and acoustical buffers;
7. Provisions for architectural treatment of all building components, especially, but not limited to, those components, such as the exhaust stacks, which can be seen from off-site locations, to minimize visual effects on scenic resources;
8. Detailed erosion and sedimentation control and stormwater management plans with provisions for inspection, enforcement, and revision;
9. A spill prevention and countermeasure plan;
10. A construction blasting plan; and
11. A final site plan and engineering details for the electrical interconnection with measurements of pre- and post-construction electric and magnetic field (EMF) levels, and provisions for optimum phasing and compact spacing to maximize cancellation of EMF to the greatest extent practically possible.

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

**Status of D&M Plan Elements**

1. On April 12, 2000, the Council approved portions of the D&M Plan for the possession and handling of explosives, the placement of erosion and sediment controls prior to initial clearing and grubbing, and commencement of clearing and grubbing subject to 24 hour advance notice to the Council. (Council Administrative Notice Item No. 24)
2. On September 12, 2001, the Council approved portions of the D&M Plan for construction of the access road, site excavation and grading, and the upgrade of facility components, which included a change from the construction of two turbine buildings at a height of 72 feet to the construction of one main turbine building at a height of 82 feet and a 90-degree reorientation of the single main turbine building, and a condition that a 100-foot conservation buffer to restrict development be established on each side of the Metacomet Trail. The Council also required weekly progress reports from the contractor's consultant to be provided to the Council. (Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29)
3. On December 11, 2001, the Council approved portions of the D&M Plan for site preparation and construction within the joint utility corridor and the facility design. (Council Administrative Notice Item No. 24)
4. On August 1, 2002, the Council voted to approve a redesigned fuel oil storage unloading and pumping system. (Minutes of Council Meeting of August 1, 2002)
5. On September 5, 2002, the Council approved construction of the water main. (Council Administrative Notice Item No. 24)
6. As of June 5, 2009, the following D&M plan elements have been completed in accordance with the Council’s approvals:
	1. Possession and handling of explosives;
	2. Placement of erosion and sediment controls consistent with the National Pollutant Discharge Elimination System Storm Water Pollution Prevention Plan of Stormwater Associated with Construction Activities;
	3. Subdivision roadway;
	4. Site access road;
	5. Construction of South Mountain Drive;
	6. Site excavation and grading of the facility site;
	7. Installation of equipment foundation;
	8. Construction of the building to house the turbines;
	9. Construction of the administrative, control and maintenance building;
	10. Site stabilization;
	11. Architectural treatment of the turbine building and the administrative building;
	12. Site preparation activities associated with the joint utility corridor, including erosion and sedimentation controls, clearing and grubbing;
	13. Establishment of 1-acre conservation easement ordered by the U.S. Army Corps of Engineers (USACE) and conveyance to the City of Meriden;
	14. Transfer of property to the City of Meriden and the Town of Berlin.

(Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29; MGT 7, Response 22; MGT 8, Response 4)

1. As of June 5, 2009, the following D&M Plan elements were partially completed in accordance with the Council’s approvals:
	1. Fuel oil storage, unloading and pumping facilities;
	2. Landscaping and stormwater controls;
	3. Delivery of the steam turbine generator that was subsequently sold in 2003 as a result of bankruptcy;
	4. Delivery of the gas turbine generators that were subsequently sold in 2003 as a result of bankruptcy; and
	5. Construction of the gas main associated with the joint utility corridor, including installation of the tap at the end of the corridor and the trap rock corridor for the pipe, which was later backfilled for safety.

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

1. As of June 5, 2009, the following D&M Plan elements were not completed in accordance with the Council’s approvals:
	1. Steam and gas turbine generators were not erected;
	2. Plant equipment was not installed;
	3. Facility start-up, testing and acceptance;
	4. Landscaping Plan;
	5. Construction of electric poles associated with the joint utility corridor; and
	6. Construction of the water main associated with the joint utility corridor.

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

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

***Permits***

1. The following permits have expired:
	1. USACE Permit for Water and Electric;
	2. USACE Fill Permit; and
	3. Connecticut DEP 401 Water Quality Certification.

(MGT 7, p.1; MGT 8, Response 1; City 8, Attachment – Letter from Charles D. Ray to Philip Small, dated May 17, 2013)

1. The following permits were relinquished or surrendered:
	1. DEP Water Diversion Permit; and
	2. National Railroad Passenger Corporation License Agreement.

(MGT 8, Response 1; City 8, Attachment – Letter from Charles D. Ray to Philip Small, dated May 17, 2013)

1. The DEP Air Permit was revoked on April 5, 2013. The DEP General Permit Registration for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities and Application was not applicable due to construction inactivity. (MGT 8, Response 1; City 8, Attachment – Letter from Charles D. Ray to Philip Small, dated May 17, 2013)

**Project Status**

***Site Parcel***

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

***Access Drive***

1. Access to the facility site begins at a locked gate at the beginning of South Mountain Drive off of Route 71 and extends from there up to a second locked gate, where South Mountain Drive ends. MGT constructed South Mountain Drive in 2001 and donated the land upon which the road is constructed and immediately on either side to the City in 2006. Although the City owns South Mountain Drive, it has not accepted the road as a city road. MGT has been plowing and maintaining the road since it was constructed in 2001. (Council Administrative Notice Item No. 24; Tr. 1, pp. 52, 73-74; Tr. 3, pp. 13, 30, 124; MGT 6, Response 8; MGT 8, Response 25)
2. The access drive to the facility site begins at a second locked gate at the end of South Mountain Drive. MGT owns the land from there to the facility site. (Tr. 1, pp. 52, 73-74; Tr. 3, pp. 13, 30)
3. The City has access to improvements made to South Mountain Road up to the second locked gate, including, but not limited to, drainage structures and detention ponds. (Tr. 3, pp. 100-104)
4. The site parcel is located north of Sam’s Road, which was originally to be used for emergency access and the delivery of heavy equipment. Sam’s Road is a private road. Residential development has been constructed on Sam’s Road since the DO 190 Certificate was issued in 1999. (Council Administrative Notice Item No. 24; Tr. 1, p. 47-50)

***Electric Generating Facility Components***

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

***Buildings and Equipment***

1. The site parcel contains two unfinished buildings: a large power plant generator building and a smaller control/administration building. (MGT 6, Response 10; Tr. 3, pp. 184-186)
2. The power plant generator building was designed to house the turbines and is 82 feet in height. The Council’s original approval was for two main turbine buildings with a height of 72 feet. As part of the D&M approval dated September 12, 2001, the Council approved a change to construct one main turbine building with a 10-foot increase in height. The City Planning Commission also approved a 10-foot increase in the height of the main turbine building, which height is permitted in the PDD zoning regulations. (Tr. 3, pp.57, 68; City 10, Response 1; Council Administrative Notice Item No. 24; Council Administrative Notice Item No. 29)
3. The main turbine building consists of a concrete foundation, structural steel and a factory finish metal siding without any interior finishing. (MGT 8, Response 10)
4. The main turbine building contains a 65-ton bridge crane affixed to a track along one of the roof beams. The crane is a permanent fixture, not removable without altering the structure of the building. (MGT 8, Response 20; Tr. 3, pp. 119, 147)
5. The site parcel contains a fuel oil tank and a water tank that were constructed, but never commissioned or used. Condition 1(d) of the Docket 190 D&O required the facility to have dual fuel capability. (MGT 8, Response 9; Council Administrative Notice Item No. 24; Tr. 3, pp. 187-189)
6. All stored material and equipment has been removed from the site, including the laydown area west of the site. Small amounts of metal grating, railings, siding and miscellaneous scrap material remain on the site. (MGT 8, Response 31)

***Site Security and Public Safety***

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

# Environmental Considerations

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

***Visibility and Scenic Resources***

1. Visibility of two 180-foot exhaust stacks was analyzed as part of the original application. It was determined that the exhaust stacks would be visible from portions of Berlin and Meriden, but the exhaust stacks were not constructed. Visibility of the 82-foot power plant generator building was analyzed as part of the D&M Plan approved by the Council on September 12, 2001. (Council Administrative Notice Item No. 24; Tr. 3, pp. 56, 69-71, 83-88)
2. As part of this proceeding, the City submitted a Visibility Analysis that evaluated the visibility of the existing buildings on MGT’s site. (City 9 – Attachment - Visibility Analysis)
3. The New England Trail/Metacomet/Blue-Blazed Trail runs north-south along a ridge adjacent to Cathole Mountain west of the MGT facility site. The nearest portion of the trail lies approximately 200 feet northwest of the boundary of the facility site. The trail is not identified in the City’s Visibility Analysis. (Council Administrative Notice Item No. 24; Tr. 3, p. 31; City 9 – Attachment - Visibility Analysis)
4. The parcels that were donated by the original certificate holder to the municipalities of Berlin and Meriden surround the MGT site. These parcels were not identified in the City’s Visibility Analysis. (Council Administrative Notice Item No. 24; Tr. 1, p. 52; Tr. 3, pp. 32, 72-74; City 9 – Attachment - Visibility Analysis)

***Wetlands and Vernal Pools***

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