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August 30, 2013

VIA HAND DELIVERY & EMAIL

Melanie Bachman, Esq.
Acting Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: NRG Energy, Inc.; Meriden Abandonment

Dear Attorney Bachman:

I am writing on behalf of NRG Energy, Inc. to provide you Meriden Gas Turbines, LLC's Post-Hearing Brief in the above-referenced docket. An original and 15 copies are enclosed for your convenience

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Andrew W. Lord

cc: Service List

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

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

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
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Intervenor	Rivers Alliance of Connecticut Farmington River Watershed Association	Eric Hammerling, President Rivers Alliance of Connecticut P.O. Box 1797 Litchfield, CT 06759 Kevin Case Farmington River Watershed Association 749 Hopmeadow Street Simsbury, CT 06070
Party	Quinnipiac River Watershed Association	Mary Mushinsky Executive Director Quinnipiac River Watershed Association P.O. Box 2825 Meriden, CT 06450 (203) 237-2237 (phone and fax) qrwa@sbcglobal.net
Party (Approved on April 18, 2013)	City of Meriden	Philip M. Small Scott A. Muska Brown Rudnick LLP CityPlace I, 185 Asylum Street Hartford, CT 06103 psmall@brownrudnick.com smuska@brownrudnick.com Deborah L. Moore

		City Attorney City of Meriden 142 East Main Street Meriden, CT 06450 dmoore@meridenct.gov

STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

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 a Decommissioning Plan	:	Docket No. 190B August 30, 2013

MERIDEN GAS TURBINES POST HEARING BRIEF

Pursuant to notice dated April 19, 2013, the Connecticut Siting Council (the "Council") opened this proceeding to review "changed conditions and a decommissioning plan" with respect to Meriden Gas Turbines, LLC's ("MGT") surrender of its Certificate of Environmental Compatibility and Public Need ("Certificate") to construct a five hundred megawatt combined-cycle facility on MGT property (the "Property") located in Meriden, Connecticut. By notice dated July 24, 2013, the Council permitted the parties to file post-hearing briefs, to include the issue of jurisdiction. In this brief MGT demonstrates that:

1. The Property is not an electric generating facility subject to Council jurisdiction;
2. The City of Meriden (the "City") failed to demonstrate changed conditions; and
3. The surrender of MGT's certificate has been effective and is consistent with existing Council precedent.

The surrender of MGT's certificate should be acknowledged, the City of Meriden's petition should be denied, and the Council should affirm its lack of jurisdiction in this matter. MGT addresses these key points in turn below.

I. THE PROPERTY IS NO LONGER AN ELECTRIC GENERATING FACILITY: IT IS BEYOND THE REACH OF COUNCIL JURISDICTION.

By memorandum dated July 24, 2013 from acting Council Executive Director Melanie Bachman, the Council clarified that the Council has yet to rule on the matter of jurisdiction, and requested the parties address whether the Council retains jurisdiction in their respective post-hearing briefs.[1] While discussed little during the hearing, MGT from the outset has questioned—and in fact challenged in Superior Court—the Council's ability to assert jurisdiction in this matter. In its April 5, 2013 response to the Council's request for comments, MGT requested that the Council both refuse to reopen Docket No. 190 and dismiss the City's petition for want of jurisdiction. MGT reiterates its position taken at the outset of this proceeding. As stated there, and as MGT reemphasizes here, MGT's surrender of its Certificate and the absence of electric generating equipment on the Property forecloses Council jurisdiction.

It is well established that an administrative agency "possesses no inherent power." Its authority is found in a legislative grant, beyond the terms and necessary implications of which it cannot lawfully function." *Adam v. Connecticut Medical Examining Board*, 137 Conn. 535, 537–38 (1951). Chapter 277a of the Connecticut General Statutes-the Council's enabling legislation-narrowly limits Council jurisdiction to "facilities." Conn. Gen. Stat. § 16-50i defines "facility" as "(3) any electric generating or storage facility using any fuel, including nuclear materials, including associated equipment for furnishing electricity" (emphasis added). The Property no longer remains

[1] Despite the Council's view that it has yet to assert jurisdiction in this matter, Conn. Gen. Stat. § 4-177(b) requires that for contested proceedings, at the outset, an administrative agency shall give notice and "[t]he notice shall be in writing and shall include: (1) A statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted.

an active "facility" falling within the foregoing statutory definition and therefore is not subject to Siting Council jurisdiction.

There is little dispute as to what currently exists at the Property. The Property consists of two main buildings, several concrete pads, two tanks, and a gated access road. See MGT Response to the City of Meriden's Interrogatory No. 4. No electricity generation occurs on the Property, nor is the Property capable of generating or-more importantly-furnishing electricity. See Pre-Filed Testimony of Judith Lagano p. 2. There is no fuel of any kind stored-or available to be brought to-the Property. MGT Response to the Council's First Set of Interrogatories No. 6. In its petition, the City takes a strained reading of the statute to conclude the buildings on the Property qualify as "associated equipment for furnishing electricity." The City argues such a reading supports its petition and the Council's jurisdiction over the Property. Nevertheless, even were the buildings correctly characterized as "associated equipment," the Property does not, and is not, capable of "furnishing electricity." The buildings do not serve such a purpose. NRG Energy, Inc., MGT's parent corporation, as the largest competitive owner and operator of electric generating facilities in the United States is familiar with the construction and operation of electric generating facilities. By nearly all common industry definitions and understandings, the Property is not capable of "furnishing electricity" and is thus not an "electric generating facility." Among other things, electric generating facilities require:

- Federal Energy Regulatory Commission approvals;
- Registration with ISO New England;
- Environmental Protection Agency construction and operating permits;
- Substantive fuel and cooling water supplies and associated infrastructure;

- Transmission line interconnections and transmission infrastructure;
- Generating and associated equipment, such as boilers, turbines, stacks, cooling towers and transformers; and
- A considerable and skilled labor force to operate the facility.

In contrast, the Property:

- Has no FERC approvals;
- Is not registered with ISO New England;
- Has no electrical transmission interconnection or associated infrastructure;
- Has no gas supply lines or other fuel supply source;
- Has no cooling water supply line or water diversion source;
- Has no generating or associated equipment, such as boilers, turbines, stacks, cooling towers and transformers; and
- Requires the staffing of only a singe security guard.

See MGT Response to Council's First Set of Interrogatories Nos. 3-7; Pre-Filed Testimony of Judith Lagano pp. 2-3.

The City's attempts to shoehorn the Property—and its two empty buildings—into the "electric generating facility" definition in an attempt to justify the jurisdictional grounds for its petition flouts the obvious: Despite MGT's wishes, several empty buildings and a security guard do not make a power plant. Without any colorable source of substantive jurisdiction under Conn. Gen. Stat. § 16-50i, the Council cannot, under the guise of a procedural statute such as Conn. Gen. Stat. § 4-181a(b), exercise its jurisdiction where it has none.

It is important to note however that the Council's ruling here extends far beyond simple statutory interpretation. Perhaps inadvertently, the City in bringing this petition has brought before the Council an existential question of its authority. As a significant

number of Connecticut's generation facilities face retirement, the Council's ruling here will inescapably set the stage for future actions. Already, multiple facilities stand ripe for re-opener proceedings if the Council chooses to impose a decommissioning plan here. Considering the gravity of such a precedent, until such time that the Legislature explicitly and affirmatively grants the Council the power to oversee the decommissioning of Connecticut's aging electric generating facilities, such a ruling will amount to an unprecedented exercise of Council jurisdiction. While the Council surely will not take such a decision lightly, it is important that the Council remain aware of the ramifications inherent in rendering its decision in this proceeding.

II. THE CITY HAS FAILED TO DEMONSTRATE CHANGED CONDITIONS.

Pursuant to Conn. Gen. Stat. § 4-181a(b), an administrative agency may "[o]n a showing of changed conditions" modify a final decision. A significant body of Council precedent establishes the evidentiary burden a petitioner must overcome to show changed conditions. This burden is not a light one, as it is well established that the Council—and courts—favor finality in judicial decisions.[2] Moreover, the petitioning party "has the burden to make the statutory showing of changed conditions..." *Sielman v. Connecticut Siting Council*, 2004 WL 203046, at 3 (Conn. Super. Ct. 2004).

In its decision on the Motion to Reopen Docket No. 141, the Council established the general standard for evidence in changed conditions cases as: (1) "new information or facts that were not available at [that] time that would compel [the Council] to reopen th[e] case;"(2) "unknown or unforeseen events or any relevant circumstances that would

[2] "Because of a legal expectation of finality of a decision, [The Council] must find a showing of changed conditions or a compelling reason to reopen..." Decision on Motion to Reopen Docket No. 141; see also *Sielman v. Connecticut Siting Council*, 2004 WL 203046, at 5 (appealing the Council decision on the Motion to Reopen Docket No. 198).

compel [the Council] to reopen th[e] case;" or (3) "scientific or technological breakthroughs that would have altered [the Council's] analysis." Decision on Motion to Reopen Docket No. 141, dated July 30, 1993, at 6; see also *Town of Fairfield v. Connecticut Siting Council, 238 Conn.* 361, 372 (1996) (quoting Council's memorandum of decision not to reopen Docket No. 141.)

In the Council's determination on the Motion to Reopen Petition No. 784, on May 28, 2008, the Friends of the Quinebaug River ("FQR") filed with the Council a Motion to Reopen, claiming changed conditions pursuant to Conn. Gen. Stat. § 4-181a(b). After the development of a full and complete record, during an eleven month long proceeding which included an extensive discovery and hearing process, held solely to address whether FQR had met its burden and adequately demonstrated "changed conditions," on October 30, 2008 the Council issued both a Finding of Fact and Decision that concluded FQR had not adequately demonstrated changed conditions in accordance with Conn. Gen. Stat. § 4-181a(b).

What's more, in the Decision on the Motion to Reopen Docket No. 198, the Council further elaborated that evidence of changed conditions does not include "issues already covered" in the underlying docket or decision. Reconsideration Opinion on Motion to Reopen Docket No. 198 (Sept. 9, 2002). In its decision on motion to reopen Docket No. 198, the Town of East Haddam filed a joint Petition for Reconsideration of the approval of a telecommunications tower at 399 West Road in Salem, Connecticut. The Town argued that the basis for changed conditions was that the Council was unaware of certain geographical features of the site. In addition, the Town argued new towers in the vicinity were similarly a changed condition. The Council, finding that the

issues raised by the petitioners were "issues already covered" in the underlying docket or decision, found no evidence of changed conditions.

In its petition, the City lists several Council decisions granting the reopening of Council dockets. City of Meriden Motion to Reopen dated March 19, 2013 pp. 5-6. Notably, none of those reopened proceedings involves dockets where the Certificate holder has either (1) surrendered its Certificate or (2) failed to construct the approved facility. Moreover, the majority of proceedings reopened by this Council involve situations where the Certificate holder itself, and not an outside party, petitions the Council for modification of a final decision. Even so, under the Council's existing precedent, the City has failed to produce the evidence necessary to overcome its burden and satisfactorily demonstrate changed conditions.

A. The City and Council Knew Far In Advance of MGT's Intentions to Surrender Its Certificate

From the outset, the City's key position in this proceeding has been that MGT's decision not to move forward with the project and surrender its Certificate is an "unforeseen event" and "new information" to both the City and the Council, and thus a changed condition. City of Meriden Motion to Reopen dated March 18, 2013 pp. 4-6. Notwithstanding the City's claims to the contrary, as a general rule, the possibility of a project not reaching completion is an inherent possibility in the approval of any Certificate. A project proponent comes before the Council seeking approval. The proponent, in good faith, seeks to ultimately construct the project for which it is seeking Council approval. There is never, however, an implicit guaranty that the proposed project, without equivocation, will come to fruition.

In addition to this general observation, here, it was equally clear to both the City and the Council that there was a very real, and indeed likely, possibility the Meriden project would not reach completion. First, it is impossible for the City to refute that it did not know of MGT's decision to surrender, at a minimum, nearly a year before the City finally filed this petition to reopen. The City received formal, written notice of MGT's decision to surrender by letter dated April 3, 2012. See MGT Response to the Council's First Set of Interrogatories No. 1. Second, despite the City's attempts to characterize otherwise, the record evidence establishes that the City—and the Council—knew far in advance of MGT's formal April 3, 2012 notice that the Meriden project would likely not go forward.

The City was cognizant of MGT's economic position. Indeed, provisions in MGT's and the City's Settlement Agreement specifically address the possibility of abandonment. July 16 Tr. p. 76. As testified by Ms. Lagano, upon delivery of MGT's formal notice to the City, the City Manager Lawrence Kendzior made clear that the City was not surprised at MGT's abandonment. As stated by Mr. Kendzior, the City "knew this day was coming." July 16 Tr. p. 211. On balance, MGT's surrender of its Certificate was a far cry from an "unforeseen event," and despite the City's attempts to characterize otherwise, it is not a "changed condition."

B. The Council's Consideration of Decommissioning and Visual Impacts in the Original Docket No. 190 Decision Foreclose Revisiting These Issues

The Council's Decision on the Motion to Reopen Docket No. 198 establishes that evidence of changed conditions does not include "issues already covered" in the underlying docket or decision. In pre-filed testimony, the City's witnesses appear to offer more in the way of conclusory legal opinions than salient facts. See July 16 Tr.

pp. 72-73. Nevertheless, the City's witnesses have misread the legal standard. In its petition, the City seeks to have the Council revisit the issue of a decommissioning plan, and reassess the visual impact study. City of Meriden Motion to Reopen dated March 18, 2013 pp. 9-11. The Council however has already addressed both the prospect of decommissioning and visual impact in granting MGT's Certificate in Docket No. 190.

1. The Council Considered, but Ultimately Declined to Require, a Decommissioning Plan

The issue and necessity of a decommissioning plan was both considered and discussed in the underlying proceeding granting MGT's Certificate. During the original hearing for Docket No. 190, the Council explicitly discussed the uncertain economic viability of the Meriden project and acknowledged the prospect the Meriden project could not materialize, or cease mid-construction. Transcript, Docket No. 190, January 26, 1999 (11:00 A.M.), pp. 59-61.

As pointed out by counsel for MGT during the July 16, 2013 hearing in this proceeding, MGT followed through exactly with the representations made by MGT's predecessor to the Council in Docket No. 190:

> MR. LORD: Do you recall what those representations were?
>
> .... [witness procures the exhibit] ....
>
> THE WITNESS (Kendzior): On -- on page 59, Mr. Reinbold specifically asked about plans for decommissioning the facility, and Mr. Roberts, who I believe was the PDC El Paso representative then went on to – -to answer that question.
>
> And on page 60 towards the bottom, he said:
>
> "If it was decided that the plant was economically unviable, the plant would be dismantled."

MR. LORD: Please continue.

THE WITNESS (Kendzior): "We would obviously obtain as much as we could in salvage costs, and then the property would be marketed and sold for another purpose."

MR. LORD: Okay.

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

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

And Mr. Roberts said:

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

MR. LORD: Okay. Are you aware that there were gas turbines installed at the plant in 2002.

THE WITNESS (Kendzior): I believe so.

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

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

MR. LORD: Can we agree that there's a fair amount of construction towards the completion of a power plant?

THE WITNESS (Kendzior): Absolutely.

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

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

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

THE WITNESS (Kendzior): I'll just quote it to you again, if it was decided that the plant was economically unviable, the plant would be dismantled.

July 16. Tr. pp. 79-82.

Despite the City's attempts to portray the above dialogue from the hearing in Docket No. 190 as a binding condition that the Certificate holder would restore the site to some undefined state, MGT's actions mirror exactly its predecessor's representations. As represented, MGT has salvaged and removed as much equipment as economically feasible. See MGT Response to the City of Meriden Interrogatory No. 5. Further, in line with the representation, MGT has now marketed the property to be sold for another purpose. See Pre-filed Testimony of Judith Lagano p. 3. In the original proceeding, the Council—if dissatisfied with MGT's predecessor's representations—could have easily imposed a decommissioning condition in its Decision and Order. But the Council ultimately chose not to include such a provision in its Final Decision. As the City correctly notes in its petition, "nothing in the Certificate, the Decision, or the Council approved Development and Management ("D&M") plan requires MGT remove the Turbine building and other remains...." City of Meriden Motion to Reopen dated March 18, 2013 p. 3. Decommissioning was most certainly an issue covered in Docket No. 190. As evidence of changed conditions does not include "issues already covered" in the underlying docket or decision, the City is foreclosed from asking the Council to address decommissioning again. The Council made its ruling in Docket No. 190. A decommission plan is not required under that ruling, and a decommissioning plan cannot be revisited here.

2. The City's Visual Impact Arguments are Counterintuitive

The City's visual impact argument is troubling. As acknowledged during the hearing, both the Council and the City approved the height, mass, location and color of the building. July 16 Tr. p. 67-69. At best, the City seeks to second-guess these

approvals and the Council's original visual impact study prepared in Docket No. 190. The City seeks to do so more than a decade later. But the Council's precedent in changed conditions cases precisely seeks to prevent such Monday-morning quarterbacking. At worst, the City appears to argue that because MGT failed to construct the full power plant—including its two, 180 foot stacks—the lessened visual impact amounts to a change condition.[3] Such logic is counterintuitive. Neither of the City's arguments presents a changed condition for which the Council can reopen.

III. MGT SURRENDERED ITS CERTIFICATE IN ACCORDANCE WITH PAST COUNCIL PRECEDENT AND THE TERMS OF MGT'S DECISION AND ORDER.

For nearly a decade, MGT, with the best intentions, endeavored to make the project work. July 16 Tr. pp. 95-96. At no fault of MGT, regional energy markets and Connecticut energy policy shifted away from a need for the facility in Meriden. After the release of a series of unfavorable decisions from the Connecticut Department of Energy and Environmental Protection, ISO New England and the Federal Energy Regulatory Commission, it became increasingly clear that the Meriden facility would not be constructed. July 16 Tr. pp. 96-97. Accordingly, MGT, in exercising its business judgment, chose to withdraw its plans to construct the facility and surrender its rights to do so with the Council.

There are no established Council rules or regulations for voluntarily surrendering a certificate. The surrender of MGT's certificate, however, was consistent with existing

[3] During the hearing, Mr. Libertine acknowledged that the visual impact would be greater with the plant and the two 180 foot stacks completed. July 16 Tr. p. 69.

Council precedent, consistent with MGT's representations to the Council, and consistent with MGT's representations to and contractual agreements with the City.

MGT management met with the Council staff on April 4, 2012 and provided verbal notice to the Council of MGT's intention to surrender its Certificate. July 16 Tr. p. 111.[4] Based on that meeting, there was no indication given by the Council that MGT was required to perform any action other than provide the notification as required under the Council's Decision and Order. MGT has no reason to question such protocol, as such procedure was consistent with the Council's past practice of having Certificate grantees surrender their authorizations simply by advising the Council of that intent.

For example by letter dated October 24, 2003 Charter Communications informed the Council that Charter was surrendering its Certificates for three fully constructed community antenna television towers in northeastern Connecticut as the towers were being transferred to new owners. In the letter, Charter requested that the Council acknowledge the letter, which was done by Council letter dated November 25, 2003. See also Council Docket Nos. 96 and 103 (wherein the Council nullified Certificates and closed Council oversight over two former wood burning facilities).

During its meeting with Council Staff, MGT explained to the Council that in accordance with the Settlement Agreement entered into with the City, MGT was required to give the City one-year notice before MGT could formally abandon its Certificate and other permits, authorizations and approvals. Pre-filed Testimony of Judith Lagano p. 4. MGT inquired with the Council if there was any concern about

[4] In attendance at that April 4, 2012 meeting were Ms. Judith Lagano, Vice President of Asset Management for NRG, Energy Inc.; Mr. Ray Long, Vice President of Government Affairs for NRG Energy, Inc.; Attorney Andrew Lord of Murtha Cullina, Connecticut counsel for NRG Energy, Inc.; and Siting Council staff including the Staff Attorney and Executive Director. Pre-Filed Testimony of Judith Lagano at 4.

keeping the Certificate in place for one year even though MGT made clear to the Council that it was cancelling and withdrawing the project in one-years time. The Council's representatives informed MGT that there was no immediate obligation because (1) the Certificate was not set to expire for several more years and (2) when one year had passed, MGT could file notice withdrawing the Certificate. Pre-Filed Testimony of Judith Lagano p. 4. Accordingly, one year later, as represented by MGT to the Council and the City, by letter dated March 20, 2013 and effective April 3, 2013, MGT formally withdrew its plans to construct the contemplated generating facility in Meriden and surrendered its Certificate to the Council.[5]

Under all past Council precedent and the terms of MGT's Certificate, such surrender is valid. Section 4 of the Council's Decision and Order, entitled Notification, provides:

> 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.

See Docket No. 190 Decision and Order Section 4(d) dated April 27, 1999. Furthermore, Section 14 of the Decision and Order in Docket No. 190A further allowed MGT to provide the Council with thirty days written notice if the facility planned to cease operations.

MGT's 2012 verbal and 2013 written notice to the Council staff more than adequately follows the requirements of Section 4 of the Decision and Order in Docket No. 190 and Section 14 of the Decision and Order in Docket No. 190A. In so doing,

[5] MGT, as it had advised the Council on April 4, 2012, formally surrendered its Certificate by letter dated March 20, 2013, as supplemented by letter dated March 25, 2013, to be effective on April 3, 2013.

MGT followed all required procedures and protocols necessary. MGT has surrendered its certificate effectively.[6]

IV. DECOMMISSIONING IS AN UNNECESSARY, INEQUITABLE, AND IMPRACTICAL REMEDY.

Requiring a post-hoc decommissioning plan, now, a decade later, is an inequitable and harsh remedy. Such a ruling would have a chilling effect on future project developments. If the Council can impose decommissioning obligations, at any time, seemingly at will, such regulatory uncertainty would stand as strong deterrent to siting and investment in new projects in Connecticut. See Pre-filed testimony of Judith Lagano p. 3.

Moreover, requiring a decommissioning plan will not only require significant time and expense in conducting the decommissioning itself, but also will severely jeopardize MGT's ongoing attempts to market and sell the property. See Pre-filed testimony of Judith Lagano p. 4. At this time, MGT is actively marketing the Property for sale. Pre-filed testimony of Judith Lagano p. 3. Many of the prospective buyers are interested uniquely in the Property, as it exists today. July 16 Tr. p. 118. To the right buyer, the buildings and other aspects of the Property may have significant economic advantage. Requiring a decommissioning of the site frustrates these market forces, and could result in significant economic waste.[7]

[6] Indeed, during the July 16, 2013 hearing, one Council member acknowledged the Council acceptance of MGT's submission to surrender its certificate as a forgone conclusion. See July 16 Tr. p. 41.

[7] Moreover, in many cases, the City insists upon completion of certain items that no longer make environmental or economic sense. For example, the City requests that MGT complete paving of certain areas of the site, increasing the amount of impervious surfaces. Simultaneously, the City cites drainage as a concern. July 16 Tr. pp. 182-184.

V. THE COUNCIL IS AN IMPROPER VEHICLE TO RESOLVE THE ISSUES BETWEEN MGT AND THE CITY.

The City had ample opportunity—indeed over ten years—to come before the Council and seek redress for the issues the City raises in its petition. Nevertheless, despite cognizance that MGT would not complete the project, for over a decade, the City neither sought party status, nor requested the Council address the issues which it now seeks the Council to enforce.[8] July 16 Tr. p. 75. Curiously, the City filed its petition just several weeks shy of the one-year wait period required form MGT's formal abandonment under the Tax Agreement.

Too often in this proceeding, the City has sought to bring before the Council and introduce into the record the entirety of its ongoing dispute with MGT. While the specific nuances of various agreements between MGT and the City may very well be of great import to the City, the proper role of the Council is to review and approve contemplated and operational generating facilities, not to unwind business deals gone sour. Such matters belong before a court of general jurisdiction and, indeed, as MGT has pointed out throughout this proceeding, ongoing Superior Court—and recent settlement—proceedings can and will resolve those issues.

Rather than working with MGT to address its issues and continue an ongoing dialogue, the City, after more than a decade of silence, launched this proceeding to seek a last-ditch resolution of issues never brought before MGT, and certainly not brought before the Council. In so doing, the City's petition confuses and frustrates the proper role of this Council's oversight. Unquestionably, the City and MGT have

[8] Curiously, the City filed its petition just several weeks shy of MGT's one-year wait period required under the Tax Agreement.