

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

CPV TOWANTIC, LLC MOTION TO REOPEN AND	:	DOCKET NO. 192B
MODIFY THE JUNE 23, 1999 CERTIFICATE OF	:	
ENVIRONMENTAL COMPATABILITY AND PUBLIC	:	
NEED BASED ON CHANGED CONDITIONS PURSUANT	:	
TO CONNECTICUT GENERAL STATUTES § 4-181A(B)	:	
FOR THE CONSTRUCTION, MAINTENANCE AND	:	MAY 7, 2015
OPERATION OF A 785 MW DUAL –FUEL COMBINED	:	
CYCLE ELECTRIC GENERATING FACILITY LOCATED	:	
NORTH OF THE PROKOP ROAD AND TOWANTIC HILL	:	
ROAD INTERSECTION IN THE TOWN OF OXFORD,	:	
CONNECTICUT	:	

**COMMENTS ON DRAFT I FINDINGS OF FACT DATED APRIL 30, 2015
BY THE TOWN OF MIDDLEBURY**

The Town of Middlebury, an intervenor in the above-referenced proceedings, respectfully submits the following comments to the second DRAFT I issued on April 30, 2015.

On April 16, 2015, in an open meeting the Council’s issued and discussed the initial draft Findings of Fact dated April 10, 2015 (“Draft I”) prepared by Council staff in the above-referenced contested proceeding. Comments to said first draft were to have been submitted by April 26, 2015 but the parties and intervenors were also entitled to file Proposed Findings of Fact by April 27, 2015. Comments and proposed findings of fact were submitted. The changes between the first DRAFT I dated April 10, 2015 and second DRAFT I dated April 30, 2105 were identified by highlighted text – yellow for changes inserted into existing Findings and blue for new Findings; grammatical and punctuation changes were not highlighted. The updated Draft I dated April 30, 2105 is forty-nine (49) pages, single spaced type, excluding fourteen (14) pages of plans and photographs appended at the end.

The critique of the Introduction and its Subheadings, “A. Proceeding” (changed from Procedure), “B. Sate Agency Comments” and “C. Certificate Status” - with further undesignated sub-sub heading: “Jursidiction, General”, “Development and Management Plan”, “Requests for

Extensions”, “Reopenings” and “Operating Reports” and “D. Changed Conditions” set forth in PROPOSED FINDINGS OF FACT PROFFERED BY THE TOWN OF MIDDLEBURY dated April 27, 2015 as to the mishmash of dates moving across sixteen years, including the past six month regarding the subject application, instead of the recommended chronological history of prior related matters leading to the discussion of the current application and its proceedings is incorporated by reference and again restated using the updated DRAFT I numbering.

Accordingly, the Town of Middlebury proffers the following ordering of the findings of fact with each paragraph prefaced as MIDD#:

1. The Introduction should be reordered to commence with “Jurisdiction, General” (DRAFT I #20-21) thus # 20 becomes MIDD# 1; #21 should be eliminated as repetitive of DRAFT I #1 which becomes MIDD# 2. Thereafter, setting forth the history of the project chronologically better prefaces the background the subject Motion to Reopen and Modify and thus move the present Council’s response to the Petition (DRAFT I #4- 12) once the 16 year prior history is itemized.
2. The first history subsequent to the grant of 1999 Certificate is the Development and Management Plan (DRAFT I #22-26) adopted as MIDD#3- 10.
3. The next phase in the history is the “Requests for Extension of Time” (DRAFT I #27-37) culminating in the current operative deadline (DRAFT I #36) adopted as MIDD#11- 19. The current request for an additional extension is a part of the current application and so should be set forth immediately following the filing date of the Petition (DRAFT I #37) reordered and moved to MIDD#30
4. The next phase in the history is the Prior “Reopenings” as the current matter is listed separately (DRAFT I #38-43) adopted as MIDD#20-26.
5. Finally, the Introduction setting forth the history to date includes the Operating Reports (DRAFT I #44-46) adopted as MIDD#27-29.
6. By reordering the Introduction, particularly removing the detail of the Docket 192B (DRAFT I #4-12) proceedings until after the recitation of the chronological history of the project to date it better frames this unprecedented third Reopening and proposed modification of all the core elements of the electric generating facility at Oxford. Thus, following the Petition (DRAFT I#3), the inclusion of a further extension of time(DRAFT I#37), and Applicant’s proffered “Changed Circumstances” (DRAFT I#47-48), the Docket 192B proceedings – under the descriptive heading “Hearing Schedule”, together are better clustered and so adopted as MIDD#29, 30, 31-32 and 33-41, respectively.

7. Again, it is disjointed to set forth the “State Agencies Comments” on the current application before the full history of the project is introduced and the relation of the comments to the proposed modifications. Thus, the “State Agencies Comments” (DRAFT I #13-19) are in their usual placement following Procedure/now Proceedings (but for this Motion to Reopen and Modify the suggested renaming as “Hearing Schedule”) adopted as MIDD#42-48.
8. The next substantive section, at the core of the Council’s mandate, is the assessment of “Public Benefit” typically placed first after the Introduction/Procedure (now Proceedings) recitation. Accordingly, “Public Benefit”, with added sub-heading “Evolving Benefits” (DRAFT I #49-66) is next adopted as MIDD#49-66. However, four findings of “Public Benefit” under the added sub-heading “CPV Benefit” (DRAFT I #80, 81, 83& 84) are projections of the Applicant with no independent corroboration not appropriate for the Council to adopt as a Fact – unless the Council intends to expand its forecast and delve into projected pollutant levels in New England, wholesale energy cost per consumer, projected household electricity bills in 2024 and jobs produced by individual projects. Accordingly, “Public Benefit – CPV Benfit” (DRAFT I #67-79, 82) would be MIDD#67-80) of proffered Town of Middlebury Finding of Facts.
9. The balance of DRAFT I (#85 – 309) is adopted as part of proffered Town of Middlebury Finding of Facts with the exception of the final “Air Quality Issue” DRAFT I #274 as a substantive conclusion debated throughout the proceedings and not independently supported by any governmental agency. According, “Air Quality Issue” DRAFT I #274 should be deleted.
10. Added in the findings proffered as Town of Middlebury Finding of Facts are two new sections placed in the relevant order and clarified by subheadings “Surrounding Area” following “Proposed Site” under “B. Site” and following “G. Wetlands” sub-heading clarity as “Wetlands- at site” and “Wetlands – adjacent to site” to follow. These sections were added to reflect the Council’s usual prevue and mention of the off-site conditions that were lacking in the Applicant’s presentation but developed in the Record by other parties and intervenors. These off-site facts are critical to the determination of environmental impact.
11. The added findings under the proposed headings including “Surrounding Area” following “Proposed Site” and “Wetlands – adjacent to site” to follow “Wetlands” (renamed for clarity as “Wetlands- at site”) are self-explanatory and need no discussion here.

Surrounding Area

87. The cluster of residences, previously identified as Triangle Park, located in Middlebury north of the Waterbury –Oxford Airport in [Docket 192 FOF 57] were relocated as part of a noise and safety abatement project funded by the Federal Aviation Administration.
88. Included in the operation at the Waterbury-Oxford Airport is new pilot training that include flights operation with light sport model planes

- 89. The Middlebury Land Trust maintains more than 1219 Acres in open space and trails in the Town of Middlebury including Larkin Pond east of the site project
- 90. Additional residences have been build to the Southeast of the site identified as oxford Greens – 360 units build to date but approved for an additional 540 units by the Town of Oxford land use authorities.
- 91. Westover Hills Subdivision is another cluster of residences east of the project site.

Etc. – additional references to the Surrounding Area to the Project Site

Wetlands- adjacent to the site

- 265. The wetland system to the west of the project site associated with the Jack’s Brook is considered valuable because they support a number of important functions and values.
- 266. The area westerly of the project site is suitable for mitigation of the disturbance that occurred to the wetlands on the project site.

Etc. – additional references to the off-site wetlands, watercourses and ecology

12. In order to track the proposed changes of this second DRAFT I, the following chart is submitted.

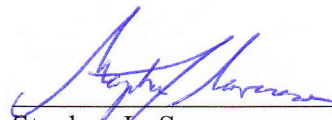
Proposed Reordering, Additions and Deletions of DRAFT I
proffered as Town of Middlebury Finding of Facts

Section Heading	DRAFT I Numbering	Middlebury Numbering	Changes
INTRODUCTION	20	1	Moved
Jurisdiction, General	21	-	deleted
Proceedings	1	2	moved
Certificate Status D and M Plan	22 – 26	3-7	moved
Requests for Extensions	27-37	8-17	moved
<u>Prior</u> Reopenings	38-43	18-24	moved
Operative Reports	44-46	26-28	moved
PETITION	3	29	moved

	36	30	moved
Changed Circumstances	47-48	31-32	moved
<u>Hearing Schedule</u>	4 – 12	33-41	moved
State Agency Comments	13-19	42-48	moved
Public Benefit Evolving Benefits	49-66	49-66	moved
CPV Benefit	67-79, 82	67-79, 80	moved
	80,81, 83 & 84	-	deleted
Proposed Site	85-92	80-87	moved
<u>Surrounding Area</u>	-	87 -97	added
Proposed Project	93-116	98- 121	moved
Permits and Approvals	117-130	122-135	moved
Fuel	131-155	136-160	moved
Electrical Interconnection	147-155	161-169	moved
Project Construction	156-159	170-173	moved
Facility Operation	160-169	174-182	moved
Fire Protection And Safety	170-176	175-181	moved
ENVIRONMENT EFFECTS			
Visibility	177-184	182-189	moved
Exhaust Plumes	185-192	190-197	moved
Noise	193-204	198-209	moved
Traffic	205-211	210-216	moved
Historic and Archaeological Effects	212-216	217-231	moved
Geology of the Proposed Site	217-223	232-238	moved
Wetlands – <u>on site</u>	224-239	239-254	moved
<u>Wetlands – adjacent to site</u>	--	255- 265	added
Wildlife	240-258	265-283	moved

Air Quality Issues	259-273 274	284-298 --	moved deleted
Water Use	275-303	299-327	moved
Water Discharge	304-308	328-332	moved
Solid and Hazardous Waste	309	333	moved

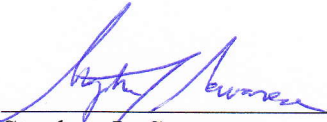
TOWN OF MIDDLEBURY



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CERTIFICATION

This is to certify that an original and twenty (15) copies of the foregoing were hand delivered by to The Connecticut Siting council, 10 Franklin Square, new Britain, CT 06051 and one copy of the above was mailed or electronically delivered on this 7th day of May 2015, on the applicant, parties and intervenors on the attached service list.



Stephen L. Savarese
Commissioner of the Superior Court

**LIST OF PARTIES AND INTERVENORS
SERVICE LIST**

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	CPV Towantic, L.L.C.	Franca L. DeRosa, Esq. Philip M. Small, Esq. Brown Rudnick LLP 185 Asylum Street Hartford, CT 06103 (860) 509-6500 (860) 509-6501 – fax fderosa@brownrudnick.com psmall@brownrudnick.com
Party	Jay Halpern 58 Jackson Cove Road Oxford, CT 06478 h: 203-888-4976 zoarmonster@sbcglobal.net Peter Thomas 72 Towantic Hill Rd. Oxford, CT 06478 203-720-1536	
Intervenor	Town of Middlebury	Attorney Dana A. D'Angelo Law Offices of Dana D'Angelo, LLC 20 Woodside Avenue Middlebury, CT 06762 (203) 598-3336 (203) 598-7283 – fax Dangelo.middlebury@snet.net Stephen L. Savarese, Esq. 103 South Main Street Newtown, CT 06470 203-270-0077 attystephensavarese@gmail.com
Intervenor	The Connecticut Light and Power Company (CL&P)	Stephen Gibelli, Esq. Associate General Counsel The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5513 (860) 665-5504 –fax gibels@nu.com

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
	CL&P continued...	<p>John R. Morissette Manager-Transmission Siting and Permitting The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2036 morisjr@nu.com</p> <p>Christopher R. Bernard Manager, Regulatory Policy (Transmission) The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5967 (860) 665-3314 – fax bernacr@nu.com</p> <p>Stella Pace, Senior Engineer The Connecticut Light and Power Company Transmission and Interconnection Dept. P.O. Box 270 Hartford, CT 06141-0270 (860) 665-3569 paccess@nu.com</p> <p>Jeffery D. Cochran Northeast Utilities Service Company 107 Selden Street Berlin, CT 06037 860-665-3548 cochrjd@nu.com</p>
Party	Town of Oxford	<p>Kevin W. Condon, Esq. Condon & Savitt PC P.O. Box 570 Ansonia, CT 06401 203-734-2511 condonsavitt@comcast.net</p>
Party	Naugatuck Valley Chapter Trout Unlimited	<p>Robert M. Perrella, Vice President TU Naugatuck/Pomperaug Valley Chapter 278 W. Purchase Road Southbury, CT 06488-1004 johnnytroutseed@charter.net</p>

Intervenor	Town of Southbury	Ed Edelson First Selectman Town of Southbury 501 Main Street Southbury, CT 06488 selectman@southbury-ct.gov (203) 262-0647 (203) 264-9762 – fax
Party	The Pomperaug River Watershed Coalition	Len DeJong, Executive Director Pomperaug River Watershed Coalition 39 Sherman Hill Road, C103 Woodbury, CT 06798 203-263-0076 LDeJong@pomperaug.org
Intervenor (approved 06/07/06)	Raymond Pietrorazio 764 Charcoal Avenue Middlebury, CT 06762-1311 (203) 758-2413 (203) 758-9519 – fax ray@ctcombustion.com	
Intervenor (approved 10/10/06)	GE Energy Financial Services, Inc.	Jay F. Malcynsky The Law Offices of Jay F. Malcynsky, P.C. One Liberty Square New Britain, CT 06051 (860) 229-0301 (860) 225-4627 – fax jmalcynsky@gaffneybennett.com
Intervenor (Approved on November 13, 2014)	Borough of Naugatuck and Borough of Naugatuck Water Pollution Control Authority	Edward G. Fitzpatrick, Esq. Alicia K. Perillo, Esq. Fitzpatrick, Mariano, Santos, Sousa, PC 203 Church Street Naugatuck, CT 06770 203-729-4555 Fitz@fmslaw.org alicia@fmslaw.org Ronald Merancy, Chairman Water Pollution Control Authority 229 Church Street Naugatuck, CT 06770 203-720-7000 Rjm62156@aol.com

Intervenor (Approved on January 8, 2015)	Wayne McCormack 593 Putting Green Lane Oxford, CT 06478 wayne@waynemccormack.com	
Intervenor (Approved on January 8, 2015)	Naugatuck River Revival Group, Inc.	Kevin R. Zak, President Naugatuck River Revival Group, Inc. 132 Radnor Avenue Naugatuck, CT 06770 kznrrg@sbcglobal.net 203-530-7850
Intervenor (Approved on January 8, 2015)	Westover Hills Subdivision Homeowners	Chester Cornacchia Westover Hills Subdivision Homeowners 53 Graham Ridge Road Naugatuck, CT 06770 203-206-9927 cc@necsonline.com
Intervenor (Approved on January 8, 2015)	Westover School	Kate J. Truini Alice Hallaran Westover School 1237 Whittemore Road Middlebury, CT 06762 203-758-2423 ktruini@westoverschool.org ahallaran@westoverschool.org
Intervenor (Approved on January 8, 2015)	Greenfields, LLC and Marian Larkin	Edward S. Hill, Esq. Cappalli & Hill, LLC 325 Highland Avenue Cheshire, CT 06410 203-272-2607 ehill@cappalihill.com
Intervenor (Approved on January 8, 2015)	Lake Quassapaug Association, LLC	Ingrid Manning, Vice President Lake Quassapaug Association, LLC P.O. Box 285 Middlebury, CT 06762 203-758-1692 Ingridmanning2@gmail.com

Intervenor (Approved on January 8, 2015)	Middlebury Land Trust, Inc.	W. Scott Peterson, M.D., President Middlebury Land Trust, Inc. 317 Tranquility Road Middlebury, CT 06762 203-574-2020 wsp@aya.yale.edu
Intervenor (Approved on January 15, 2015)	Quassy Amusement Park	George Frantzis Quassy Amusement Park P.O. Box 1107 Middlebury, CT 06762 203-758-2913 ext 108 george@quassy.com
Intervenor (Approved on January 15, 2015)	Middlebury Bridle Land Association	Nancy Vaughan Middlebury Bridle Land Association 61 Sandy Hill Road Middlebury, CT 06762 203-598-0697 ndzijavaughan@gmail.com
Intervenor (Approved on January 15, 2015)	Dennis Kocyla 28 Benz Street Ansonia, CT 06401 203-736-7182 Dennis3141@yahoo.com	
Intervenor (Approved on January 15, 2015)	Naugatuck Valley Audubon Society	Sophie Zyla Jeff Ruhloff Carl Almonte Naugatuck Valley Audubon Society 17 Stoddard Place Beacon Falls, CT 06403 203-888-7945 NVASeditor@mail.com
Intervenor (Approved on January 15, 2015)	Oxford Flying Club	Burton L. Stevens Oxford Flying Club, Inc. P.O. Box 371 Woodbury, CT 06798 203-236-5158 bstevens@snet.net