

August 2, 2010

VIA ELECTRONIC MAIL AND HAND DELIVERY

S. Derek Phelps
Executive Director
Connecticut Siting Council
10 Franklin Sq.
New Britain, CT 06051

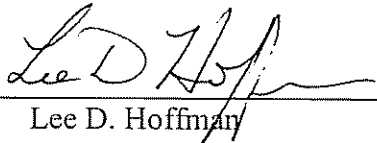
**Re: Kleen Energy Systems, LLC Application for a Certificate of Environmental
Compatibility and Public Need for an Electric Generating Facility on River Road,
Middletown, Connecticut Docket No. 225C**

Dear Mr. Phelps:

Kleen Energy Systems, LLC ("Kleen Energy") hereby submits an original and 20 copies of its Objection to Pre-Filed Exhibits in connection with its request for an Extension of its Certificate in the above-referenced Docket. If you have any questions concerning this submittal, please contact the undersigned at your convenience.

Please return a date-stamped copy of this filing in the enclosed envelope. Thank you in advance for your assistance.

Respectfully submitted
KLEEN ENERGY SYSTEMS, LLC

By: 

Lee D. Hoffman
Its Attorney

cc: Service List for Docket 225
Melanie A. Bachman (via electronic mail)
Robert Mercier (via electronic mail)

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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**APPLICATION OF KLEEN ENERGY
SYSTEMS, LLC FOR A CERTIFICATE
OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR AN ELECTRIC
GENERATING FACILITY AND
SWITCHYARD IN MIDDLETOWN**

DOCKET NO. 225C

AUGUST 2, 2010

OBJECTION TO PRE-FILED EXHIBITS

Kleen Energy Systems, LLC (“Kleen Energy”), the Certificate Holder, hereby objects to the inclusion of proposed exhibits in the record submitted by the Town of Portland. Specifically, the Town of Portland has submitted proposed evidence that consists of letters from residents. Those letters contain references to claims concerning property damage and property values. Given the limited scope of the re-opening of this Docket and given the Council’s jurisdiction, evidence concerning property damage and property values is beyond both the scope of this proceeding and the Siting Council’s jurisdiction.¹ Therefore, the proposed evidence being submitted concerning property damage and property values is improperly before the Siting Council as testimony from the Town of Portland.

Kleen Energy respectfully submits that the letters from the residents of the Town of Portland, as well as any comments that the residents of the Town of Portland wish to make regarding those letters, are more appropriately considered by the Siting Council as public comment, rather than testimony. Kleen Energy is not seeking to remove this information from the proceeding entirely, however, Kleen Energy does believe that this sort of commentary is

¹ While not relevant to the matter currently before the Siting Council, Kleen Energy notes that Kleen Energy has forwarded the contact information of appropriate insurance representatives to the Town of Portland so that residents will have the proper contact information to submit and process property damage claims.

more appropriately construed as comment from the public, rather than as evidence being proposed by a party to this Docket.

BACKGROUND

Kleen Energy received a certificate in this Docket on November 21, 2002. That certificate, having been subsequently extended by the Siting Council, is now scheduled to expire on November 30, 2010. As the Council is aware, an explosion occurred at the Kleen Energy facility on February 7, 2010. As a result of that explosion, Kleen Energy filed a request to extend its certificate until June 30, 2011. On its own motion, the Council moved to re-open the record in this Docket pursuant to Conn. Gen. Stat. § 4-181a based on changed conditions and limited that re-opening to the consideration of changed conditions and the attachment of conditions to the certificate extension consistent with the findings of the Kleen Energy Plant Investigation Review Panel, chaired by Alan H. Nevas and referred to as the Nevas Commission. A hearing is currently scheduled for August 3, 2010.

Consistent with the Council's pre-hearing memorandum dated July 26, 2010 and the limited scope of re-opening of this Docket, Kleen Energy submitted its pre-filed testimony on July 28, 2010. In addition, the Town of Portland submitted its proposed pre-filed exhibits, which includes letters from residents of the Town of Portland. Most of those letters discuss property damage, which was alleged to have resulted from the February 7, 2010 explosion and purported declines in property values, which were also claimed as a result of the February 7, 2010 explosion. Both of these topics are not only outside the scope of this limited re-opening, but also are outside the scope of the Council's jurisdiction, even if the scope of the re-opening had not been so limited. Therefore, these items should not be included in the record as part of the Town

of Portland's testimony or evidence, although it appears that such documents may be included appropriately as public comment.

LEGAL ARGUMENT

The scope of the August 3, 2010 hearing is limited based on the Council's vote to re-open the evidentiary portion of this Docket. In voting to re-open Kleen Energy's certificate based on changed conditions, the Council limited that re-opening to consideration of changed conditions and possible attachment of conditions to the certificate extension consistent with the findings of Nevas Commission. Therefore, any evidence submitted by any party or intervenor that is not germane to those limited bases for re-opening exceeds the scope of the re-opener and should not be admitted. Here, the proposed evidence submitted by the Town of Portland—the letters containing opinions concerning property damage and property values—are outside the limited scope of re-opening and therefore should not be included in the record.

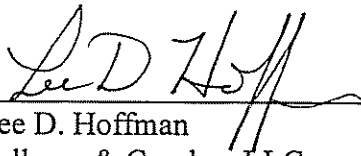
Furthermore, even if the entire record for this Docket had been re-opened, which it has not, evidence concerning property damage and property values is outside the scope of the Council's jurisdiction. Specifically, pursuant to Conn. Gen. Stat. § 16-50p, when rendering a decision on a certificate application, the Council is permitted to weigh the public need for the facility against the probable environmental impact of the facility. The environmental impacts the Council is permitted to consider include: impacts of electromagnetic fields and conflicts with state policies concerning: 1) the natural environment; 2) ecological balance; 3) public health and safety; 4) scenic, historic and recreational values; 5) forests and parks; 6) air and water purity; 7) fish, aquaculture and wildlife. *Id.*

Economic impacts, such as alleged impacts to property values and claims of property damage, are not included in those items the Council can consider when rendering a decision on a

certificate application. The Council has recognized the fact that economic impacts, such as property values, are outside the scope of its jurisdiction in previous Dockets and properly excluded such information from the record. *See, e.g.*, Connecticut Siting Council Docket 366 and Docket 396. Therefore, even if the entire record had been re-opened on this Docket, information pertaining to economic impacts would be irrelevant.

For these reasons, Kleen objects to the inclusion of the portion of the Town of Portland's pre-filed submission pertaining to property damage or property values as irrelevant to the limited scope of this re-opening. Therefore, these items should not be included as proposed evidence in the Town of Portland's submittal to the Siting Council. Should the Siting Council so wish, Kleen Energy has no objection to these items being considered as public comment.

Respectfully Submitted,
KLEEN ENERGY SYSTEMS, LLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was delivered by U.S. Mail, first class postage prepaid, to all parties and intervenors of record as follows:

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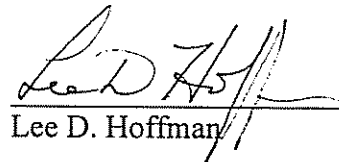
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