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February 3, 2011

**VIA ELECTRONIC MAIL AND HAND DELIVERY**

Linda Roberts  
Executive Director  
Connecticut Siting Council  
10 Franklin Square  
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. 225D**

Dear Ms. Roberts:

Kleen Energy Systems, LLC ("Kleen Energy") hereby submits an original and 20 copies of its Post Hearing Reply Brief in connection with the above-referenced Docket. Please note that we have amended the Service List to include Representative Christie M. Carpino based on her recent election as the Representative of District 32. 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 225D  
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 : DOCKET NO. 225 D  
SYSTEMS, LLC FOR A CERTIFICATE OF :  
ENVIRONMENTAL COMPATIBILITY AND :  
PUBLIC NEED FOR AN ELECTRIC :  
GENERATING FACILITY AND :  
SWITCHYARD IN MIDDLETOWN : February 3, 2011

**KLEEN ENERGY SYSTEMS, LLC'S POST HEARING REPLY BRIEF**

Kleen Energy Systems, LLC ("Kleen Energy") submits this Post-Hearing Reply Brief to respond to the post-hearing comments submitted by the Connecticut River Watershed Council ("CRWC") dated January 5, 2011. The CRWC's comments and recommendations are outside the limited scope of the Council's re-opening of this docket and go well beyond the scope of any particular docket currently before the Council. In addition, the substance of the CRWC's comments and the recommendations contained therein are unnecessary and redundant. The existing regulations and approval processes used by the Siting Council are more than adequate to address the concerns raised by the CRWC.

**I. BACKGROUND**

As the Council is aware, the re-opening of this docket was specifically limited to the consideration of the attachment of conditions consistent with the Thomas Commission Report's findings and recommendations. The Re-Opening did not involve a re-opening of the entire docket and Certificate.

After the December 7, 2010 public hearing, the CRWC submitted post-hearing comments and recommendations, dated January 5, 2011. This submittal included the suggestion that the Council require, as a condition in ALL of its decision and orders, that any certificate holder be required to have an independent environmental inspector present during construction unless there is an affirmative determination that an inspector is not necessary for construction purposes. The CRWC then goes on to describe its nebulous ideas of the credentials and duties such inspector should have, even though no such information was put on the record before the Council.

## **II. ARGUMENT**

### **A. The CRWC's Recommendations Go Well Beyond the Limited Scope of this Proceeding and Therefore Should Not Be Considered**

The re-opening of this docket is specifically limited to consideration of changed conditions based on the findings and recommendations of the Thomas Commission. See Council Administrative Notice Item #40. As the Council is aware, the Thomas Commission, in its executive report, issued seven recommendations. As has been thoroughly discussed in this proceeding, Kleen is already in compliance with or is willing to comply with virtually all of the recommendations of the Thomas Commission.

More importantly, the Thomas Commission did not discuss purported environmental violations at the Kleen Facility—because no such violations exist—and did not discuss or recommend the implementation of environmental inspectors. See Thomas Commission Executive Report. Therefore, the

recommendations of the CRWC are beyond the scope of this proceeding and therefore are not properly before the Council.

Furthermore, as can be seen in the CRWC's comments, the recommendations contained therein go well beyond the scope of this single docket and suggest wholesale changes to the Siting Council's Regulations, procedures and approvals. Therefore, these recommendations are more akin to proposed regulatory changes to existing Siting Council process and should not be considered in this single docket that is re-opened for a very limited purpose.

**B. The CRWC's Recommendations Are Unnecessary and Redundant**

Turning to the substance of the CRWC's comments, the requirement of hiring a special environmental inspector is redundant and unnecessary. The CRWC's comments demonstrate that the CRWC has an incomplete understanding of the complex regulatory framework that Kleen is subject to on a federal, state and local level. By making these suggestions it appears that the CRWC is implying that the Council, along with other state agencies such as the DEP, is not equipped to perform their jobs. Kleen strongly disagrees with this premise.

The CRWC comments and recommendations indicate that the CRWC limited working knowledge of the Council and its process. Despite CRWC's comments to the contrary, the Council possesses the necessary expertise and experience to review the types of facilities it has jurisdiction over including power plants such as Kleen Energy, transmission lines, telecommunications facilities and other types of power generation facilities.

In addition, the CRWC's recommendations seem to ignore the fact that a facility such as Kleen Energy is subject to inspections and monitoring from the various federal, state and local agencies that have jurisdiction over the facility. For example, as discussed at length during this docket, Kleen Energy has worked closely with the Middletown building inspector and fire marshal, zoning and wetlands enforcement officers. In addition, the Kleen Energy facility has been subject to inspection by local officials, the Connecticut DEP, the Council, and OSHA among others.

A review of the Council's pending proceedings establishes that the majority of facilities this Council reviews and approves are telecommunications towers. As the Council is aware from those proceedings, such facilities typically involve impacts of 10,000 square feet or less in total—sometimes less than the impact of construction of a single family residence. Therefore, more often than not, given the limited impact of the facilities reviewed, the imposition of a special environmental inspector is simply unnecessary.

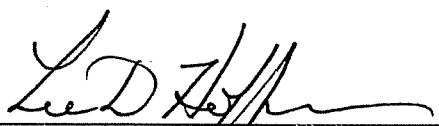
Furthermore, the Council already has the ability to impose additional requirements concerning environmental impacts if necessary. When warranted, the Council has imposed requirements for special inspectors for environmental concerns. See, e.g., Docket 387. In fact, in this very docket, the Council imposed the requirement for a special inspector relating to the horizontal directional drilling proposed in the oil pipeline re-routing and for review of the area in which such drilling was used to ensure no impacts to the eastern box turtle. See Decision and Order dated July 22, 2009 for Docket 225b.

The foundation of CRWC's recommendations appears to be that, with projects this large in scope, there will inevitably be "environmental degradation and abuse." However, there is absolutely no evidence in the record of this docket and certainly none in this limited re-opening to support this conclusion. In fact, to the contrary, the record is unrefuted that Kleen Energy has been environmentally responsible and actually spent millions of dollars in order to cure a siltation problem that existed at the site long before Kleen Energy owned the site and had resulted in 60,000 cubic yards of siltation running into the Connecticut River every single year. See December 7, 2010 TR at 215-219.

### III. CONCLUSION

Kleen Energy is in compliance with all applicable recommendations of the Thomas Commission Executive Report and has agreed to comply with virtually all recommendations of the Thomas Commission Executive Report. Kleen Energy respectfully requests that the Council approve its draft findings of fact as is and ignore the recommendations made by the CRWC.

Respectfully Submitted,  
KLEEN ENERGY SYSTEMS, LLC

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## CERTIFICATE OF SERVICE

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

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