

BEFORE THE CONNECTICUT SITING COUNCIL

IN RE: NTE CONNECTICUT, LLC
APPLICATION FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE AND
OPERATION OF A 550-MEGAWATT
DUAL-FUEL COMBINED CYCLE
ELECTRIC GENERATING FACILITY
AND ASSOCIATED ELECTRICAL
INTERCONNECTION SWITCHYARD
LOCATED AT 180 and 189 LAKE ROAD,
KILLINGLY, CONNECTICUT

Docket No. 470B

May 30, 2019

BRIEF OF CONNECTICUT FUND FOR THE ENVIRONMENT

I. **INTRODUCTION**

This Application, Docket No. 470B, comes before the Connecticut Siting Council (the “Council”) at a critical moment, as the State of Connecticut faces how it will forestall and cope with a rapidly changing climate. NTE Connecticut LLC (NTE) seeks to construct and operate a new greenhouse gas emitting plant, the proposed Killingly Energy Center (KEC or the “Facility”). At the same time, the State is transitioning towards a green economy fueled by renewable energy – a transition that must be done rapidly and unabashedly. Siting new greenhouse gas production within Connecticut is a half-measure that is only marginally better than the facilities that the State seeks to retire and will delay the necessary and urgent transition towards renewables. The Council must consider both the lack of public need or public benefit for the Facility along with the cumulative environmental and public health impacts that will result from the Facility and its necessary operations. The Council has not yet made any formal ruling in the previous docket (Docket No. 470) on the environmental impacts of the KEC project and must take a hard look at these impacts herein. The Council should not grant a Certificate of

Environmental Compatibility and Public Need (CECPN) for KEC because: 1) NTE failed to establish public need and public benefit for the Facility; and 2) NTE's application is incomplete and, therefore, the Council is unable to conduct its required review of cumulative environmental impacts. If the Council does grant a CECPN for the Facility, the Council should condition the approval on compliance with the Greenhouse Gas Reduction Program proposed by NTE.

II. PROCEDURAL HISTORY

On August 17, 2016, NTE filed an application for a CECPN for the construction, maintenance, and operation of a 550-megawatt dual-fuel combined cycle electric generating facility and associated electrical interconnection switchyard to be located in Killingly, Connecticut.¹ On February 6, 2017, NTE participated in ISO New England, Inc.'s (ISO-NE) Forward Capacity Auction (FCA) 11, but withdrew before its conclusion.² NTE did not receive a capacity supply obligation (CSO) for KEC.³ On May 16, 2017, the Council issued a final decision denying NTE's application without prejudice.⁴ The Council determined that there was no public need for the Facility, citing NTE's failure to obtain a CSO in FCA 11 for KEC as a missing necessary component of a public need determination.⁵ Because the Council found that NTE had not demonstrated a public need for the Facility, the council did not reach any finding or conduct any analysis regarding the balance of need and environmental impacts.⁶

On January 19, 2018, NTE filed a motion to reopen and modify the Council's 2017 decision.⁷ However, KEC failed to obtain a CSO in FCA 12 and subsequently withdrew its

¹ Council Admin. Notice Item #57 (Docket No. 470), Application.

² Draft Findings of Fact #6 (May 17, 2019).

³ Council Admin. Notice Item #57 (Docket No. 470), Findings of Fact #99 and #100.

⁴ Council Admin. Notice Item #57 (Docket No. 470), Decision and Order p. 1.

⁵ *Id.*

⁶ *Id.*

⁷ Council Admin. Notice Item #57 (Docket No. 470), NTE Connecticut LLC Motion to Reopen and Modify (Jan. 19, 2018).

motion.⁸

On January 18, 2019, NTE filed a new motion to reopen and modify the Council's 2017 decision.⁹ On February 4, 2019, NTE participated in FCA 13 and obtained a CSO for KEC for the 2022-2023 Capacity Commitment Period.¹⁰ FCA 13 not only cleared 1,089 MW of surplus capacity,¹¹ but also failed to allow the Vineyard Wind project to participate.¹² On February 15, 2019, the Council granted NTE's motion to reopen.¹³

III. LEGAL STANDARD

In ruling on an application for a Certificate of Environmental Compatibility and Public Need (CECPN), the Council must determine that there exists both a public need and a public benefit for the proposed facility.¹⁴ In this context, the definitions of public need and public benefit are limited in scope. Public need "exists when a facility is necessary for the reliability of the electric power supply of the state."¹⁵ Public benefit "exists when a facility is necessary for the reliability of the electric power supply of the state or for the development of a competitive market for electricity."¹⁶ Further, the Council must determine that the probable environmental impacts and conflicts with state policy are not sufficient reason to deny the application.¹⁷

In weighing probable environmental impacts against public need and public benefit, the Council shall determine "[t]he nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities . . . that whether alone or cumulatively with other

⁸ Council Admin. Notice Item #57 (Docket No. 470), NTE Connecticut LLC Withdrawal of Motion to Reopen and Modify (Feb. 8, 2018).

⁹ Docket No. 470B, NTE Connecticut LLC Motion to Reopen and Modify (Jan. 18, 2019).

¹⁰ Applicant Exhibit #2, Eves Affidavit.

¹¹ Applicant Exhibit #2, Eves Affidavit, Attachment p.1.

¹² Grouped Parties Exhibit #1, Direct Joint Testimony of Fagan and Glick, p. 13-14.

¹³ Docket No. 470B, Council Decision on Motion to Reopen and Modify (Feb. 15, 2019).

¹⁴ Conn. Gen. Stat. §§ 16-50p(a)(3)(A), (c)(1).

¹⁵ Conn. Gen. Stat. § 16-50p(c)(3). *See also* Conn. Gen. Stat. § 16-50p(h).

¹⁶ Conn. Gen. Stat. § 16-50p(c)(3).

¹⁷ Conn. Gen. Stat. § 16-50p(a)(3)(C).

effects, impact on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife.”¹⁸ A facility is defined as “any electric generating or storage facility using any fuel, ... including associated equipment for furnishing electricity.”¹⁹ Associated equipment includes “any building, structure, fuel tank, backup generator, transformer, circuit breaker, disconnect switch, control house, cooling tower, pole, line, cable, conductor or emissions equipment that is a necessary component for the operation of an ... electric generating or storage facility.”²⁰

IV. ARGUMENT

a. The Council Should Not Grant a CECPN for KEC Because There is No Public Need for the Facility or Public Benefit

Connecticut Fund for the Environment adopts, in whole, the argument made by the Sierra Club in its Brief on this subject. Since the Council’s denial of KEC’s CECPN in Docket No. 470, the need for a new gas-fired generation facility in New England has further decreased. System peak load is not rising and is, in fact, projected to decline over the next decade. New England is dramatically adding renewable to its energy portfolio that are already having the effect of displacing older, dirty power plants. Further, Connecticut has affirmed its commitment to reducing its greenhouse gas emissions and the call to action state-wide, nation-wide, and globally has only strengthened.

b. The General Statutes and Regulations Require the Council to Consider Cumulative Environmental Impacts Beyond the Footprint of the Facility

¹⁸ Conn. Gen. Stat. § 16-50p(a)(3)(B).

¹⁹ Conn. Gen. Stat. § 16-50i(a)(3). *See also* Conn. Agencies Regs. § 16-50j-2a(11).

²⁰ Conn. Agencies Regs. § 16-50j-2a(1)(B).

The plain language of the Council's evaluating criteria require a hard look at the cumulative impacts of the Facility, all essential components, and other surrounding facilities. The failure of an agency to properly apply its own environmental criteria would violate the general statutes establishing the Siting Council, as well as the Connecticut Environmental Protection Act.²¹

The General Statutes require the consideration and weighing of a broad scope of environmental factors, including "the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife."²² These impacts may stem from "the facility alone or cumulatively with other facilities."²³ A facility includes "associated equipment" that is a "necessary component" for operation.²⁴ The operation of the proposed KEC Facility requires both natural gas and an adequate source of water.²⁵ The gas pipeline interconnection and water supply interconnection are other facilities that are essential for an operational power generation plant; without them the plant could not function.

To not consider other facilities, beyond the footprint of the KEC facility itself, would render the language "cumulatively with other facilities" meaningless. The Connecticut Supreme Court has set out one of the core canons of statutory construction: "[i]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous."²⁶ "Other facilities" must be afforded some meaning.

²¹ See, *Finley v. Inland Wetland Commission of the Town of Orange*, 289 Conn. 12, 41-42 (2008) (finding that town's failure to require compliance with soil and sedimentation regulations constituted a violation of CEPA).

²² Conn. Gen. Stat. § 16-50p(a)(3)(B).

²³ Conn. Gen. Stat. § 16-50p(a)(3)(B).

²⁴ Conn. Gen. Stat. §§ 16-50i(a)(3), 16-50j-2a(1)(B). See also Conn. Agencies Regs. § 16-50j-2a(11).

²⁵ Hearing Transcript 561:3-561:7 (Nov. 15, 2016) (Mirabito); Council Admin. Notice Item #57 (Docket No. 470), Applicant Exhibit #1, Vol. 1, p.46.

²⁶ *AvalonBay Communities, Inc. v. Zoning Comm'n of Town of Stratford*, 280 Conn. 405, 422 (Conn. 2006) (quoting *Bd. of Educ. v. State Bd. of Educ.*, 278 Conn. 326, 335 (Conn. 2006). See also *Hibbs v. Winn*, 542 U.S. 88, 89 (2004)

Therefore, these interconnections must be considered within the Council's cumulative review of other facilities. These definitions, and the review charge of the Council, do not state that these essential components or other facilities must be owned and under the full control of the Applicant. The Council's charge is not to permit all essential components or facilities within one application, but to consider cumulative impacts from all relevant facilities and essential components when permitting the lynchpin electric generating facility.

While the plain language of the Siting Council's evaluating criteria alone requires a consideration of the environmental impact of the Facility and essential interconnections, other factors require that the criteria should be broadly construed. The statement of purpose of the Siting Council describes the importance of a thorough review of environmental impacts: "To provide for the balancing of the need for adequate and reliable public utility services at the lowest reasonable cost to consumers *with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values.*"²⁷ This charge is reflected in the Council's evaluating criteria, whereby environmental impacts might require that a CECPN application be denied.²⁸

The Siting Council's evaluating criteria are not limited to the applicant obtaining necessary federal and state environmental permits. If the Siting Council were limited to this cursory checklist, the statutes and regulations would have stated this evaluation to be as such. The balance between public need and environmental impacts that the Council must assess requires a more searching inquiry of the project as a whole and beyond the required permits. The permits obtained by the Applicant are not dispositive of an acceptable or lack of impact to the

("[T]he rule against superfluities instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous.")

²⁷ Conn. Gen. Stat. § 16-50g.

²⁸ Conn. Gen. Stat. § 16-50p(a)(3)(C).

environment and human health.

NTE proposes to construct a 650 MW electric generating plant on a 63-acre parcel off of Lake Road in Killingly, Connecticut. NTE also proposes to install an electric switchyard on a 10-acre parcel adjacent to the electric generating plant. The proposed KEC Facility would be sited only a few miles away from Lake Road Generating Station, another natural gas plant and other industrial facilities, as well as residential properties. There are four required interconnections associated with the construction of the KEC Facility in order for the Facility to operate: a natural gas pipeline interconnection; an electric transmission interconnection; a water pipe interconnection; and a wastewater pipeline interconnection. The environmental impacts of the construction and operation of the KEC Facility and these interconnections all fall under the scope of the Council's review as other facilities or essential components. Without gas and water interconnections, KEC would have "no independent utility, no life of its own." Similarly, these interconnections would not be made but for the proposed KEC electric generating facility. The Council must consider the cumulative environmental and human health impacts of the interconnections along with the footprint of the Facility itself.

Although necessary "other facilities" or "essential components" for an operational power generation plant, the natural gas pipeline replacement and the water supply piping installation, and the environmental impacts associated with their construction and installation, are not part of this Application. NTE simply states that these components are associated with KEC but that they are anticipated to be permitted, constructed, owned, and operated by others. Any details that have surfaced in the Record of Docket Nos. 470 and 470B have been extracted piecemeal from the Applicant. In a brief discussion of the community and environmental considerations of these interconnections, NTE simply states that construction of these components will have no

significant impact on natural resources.²⁹ As for the 2.8 mile replacement pipeline for the gas interconnection, NTE states only that because the replacement pipeline will be installed in an established Eversource right of way, environmental impacts will be minimized and, the additional water piping extensions between the CWC's Plainfield and Brooklyn Wellfields will be installed within roads, thereby eliminating impacts to natural resources.³⁰ Details of the construction and installation of these pipelines are simply not contained in the Application and the critical examination of the environmental impacts of the construction and installation of these essential interconnections are left to a later time in permits sought by others. Thus, the application is deficient under Siting Council statutes and regulations as well as the Connecticut Environmental Protection Act.

i. Segmentation Case Law Informs the Interpretation and Application of the Council's Evaluating Criteria

The concept of segmentation informs the importance and requirement of considering the cumulative impacts of a project. Segmentation is defined as “an attempt to circumvent the [environmental protection laws] by breaking up one project into smaller projects and not studying the overall impacts of the single overall project.”³¹ “A project has been impermissibly segmented . . . if the segmented project has no independent utility, no life of its own, or is simply illogical when viewed in isolation.”³² The segmentation of an application in order to avoid comprehensive environmental review of a proposed facility is “impermissible segmentation” and is “universally criticized.”³³ By segmenting a project, the full scope of environmental impacts

²⁹ Applicant Exhibit #1(c), p.16.

³⁰ Council Admin. Notice Item #57 (Docket No. 470), Applicant Ex. #1, Vol. 1, Part 2, p. 166-72.

³¹ *Stewart Park & Reserve Coalition, Inc. v. Slater*, 352 F.3d 545, 559 (2d Cir. 2003).

³² *Conn. Coalition for Env'tl. Justice v. Development Options, Inc.*, 2005 WL 525631, at *7 (Sup. Ct. Hartford, Jan. 5, 2005) (quoting *Stewart Park & Reserve Coalition v. Slater*, 352 F.3d 545, 599 (2d Cir. 2003)).

³³ See *In the matter of Amenia Sand & Gravel, Inc.*, 2000 WL 1845906, at *2 (N.Y. Dep't of Env'tl. Cons., Nov. 22, 2000).

attributable to a project cannot be properly considered and the true impact to local communities cannot be understood.

Segmentation is a concept born out of National Environmental Policy Act (NEPA) case law, but is also applicable to the Siting Council's application requirements and review. The statement of purpose for the Siting Council's governing statutes states that the environmental standards and criteria for "the location, design, construction and operation of facilities [should be] *at least as stringent as the federal environmental quality standards and criteria.*"³⁴ NEPA is one set of federal environmental quality criteria, for example.³⁵ In many situations, including this application for the KEC Facility, the Siting Council provides the only comprehensive environmental review of a proposed project. Segmentation case law, interpreting the review requirements of NEPA, therefore applies as a floor for the Siting Council's environmental review.

Further, Connecticut courts have applied segmentation case law to the environmental review of projects outside of NEPA. In *City of Norwalk v. Connecticut Siting Council*, the Superior Court applied segmentation case law to an application before the Siting Council.³⁶ While the court concluded that the subject of the application was "logically determined," and therefore not impermissibly segmented, the court still found the segmentation case law applicable.³⁷ In *Connecticut Coalition for Environmental Justice v. Development Options*, the Superior Court applied segmentation case law to a Connecticut Environmental Protection Act claim of unreasonable impairment of a natural resource.³⁸ In *Serdechny v. Griswold Inland*

³⁴ Conn. Gen. Stat. § 16-50g.

³⁵ National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

³⁶ *City of Norwalk v. Conn. Siting Council*, 2004 WL 2361540, at *12-*13 (Sup. Ct., Aug. 18, 2004).

³⁷ *Id.*

³⁸ *Conn. Coalition for Env'tl. Justice v. Development Options, Inc.*, 2005 WL 525631, at *7 (Sup. Ct., Jan. 5, 2005).

Wetlands, Watercourses & Conservation Commission, the Superior Court applied segmentation case law to the wetlands commission review.³⁹ In *Lanius v. Hamden Planning & Zoning Commission*, the Superior Court applied segmentation case law to an application before a planning and zoning commission.⁴⁰ The concept of impermissible segmentation is not limited to NEPA review, but is rather a bulwark tenet of sound project evaluation.

NTE's Application, which seeks to defer action on essential facilities of its proposed project in applications to be filed by others or fails to provide detailed accounts of the proposed components and their environmental impacts, impermissibly segments its proposed project to lessen the potential environmental impacts of the generating facility, switchyard, natural gas pipeline modifications, and interconnections. This segmentation also restricts the Council's ability to take a hard look at the project's cumulative impacts.

The Council must deny the Application because NTE impermissibly segmented the project and therefore did not provide substantial evidence upon which the Siting Council could make a decision regarding cumulative environmental impacts as required by the General Statutes, Siting Council regulations, and CEPA.

ii. Environmental and Public Health Impacts to Be Included in the Council's Review

The construction and operation of KEC, including the essential interconnections and gas fuel source, will result in significant environmental and human health impacts that warrant the Siting Council to deny the application. These impacts outweigh the lack of public need and public benefit for the Facility. The following is a brief summary of the projected impacts, and

³⁹ *Serdechny v. Griswold Inland Wetlands, Watercourses & Conservation Comm'n*, 2014 WL 5288249, at *8, n.13 (Sup. Ct., Aug. 29, 2014).

⁴⁰ *Lanius v. Hamden Planning & Zoning Comm'n*, 2017 WL 4399568, *8 (Sup. Ct., July 12, 2017).

cannot be considered complete given the Applicant's segmentation of specific impact areas.

The proposed KEC Facility would be located on a 63-acre parcel off of Lake Road in Killingly, Connecticut. The property currently "consists of one residence and associated structures . . . and the remainder of the property consists of undeveloped woodland, a man-made pond, [seven] wetlands and bedrock outcroppings. The site was formerly agricultural land that is now covered with a mixture of hardwood and coniferous forest."⁴¹ Construction would result in the disturbance of 39-acres of this property.⁴² Approximately 12,500 square feet of one of the seven wetlands on the property will be unavoidably and directly impacted by the utility switchyard.⁴³ NTE plans to mitigate these impacts through the replication of wetland habitat.⁴⁴

The proposed KEC Facility would primarily use Mitsubishi M501JAC combustion turbine technology for the combustion of natural gas, but would rely on ultra-low sulfur distillate (ULSD) under certain circumstances, as defined in the Facility's air permit.⁴⁵ The operation of the plant will result in the emission of conventional pollutants, including particulate matter, sulfur dioxide, nitrous oxide, volatile organic compounds, carbon monoxide, lead, sulfuric acid, and ammonia.⁴⁶ Killingly, Connecticut is a community already overburdened with air pollution and corresponding health issues, in part, due to nearby Lake Road Generating Station and other industrial activities.⁴⁷ KEC would contribute additional harmful pollutants into the air of this community and the region. Compared to the Siemens Model in the Application before the

⁴¹ Council Admin. Notice Item #57 (Docket No. 470), Opinion, p.2.

⁴² *Id.*

⁴³ *Id.* at 10.

⁴⁴ *Id.*

⁴⁵ Applicant Exhibit #1(c), p.5. *See also* Applicant Exhibit #1(c), Appendix A.

⁴⁶ Applicant Exhibit #1(c), p.11.

⁴⁷ *See* Administrative Record Item #I(G)(1), Public Official Comments, State Senator Mae Flexor (Apr. 12, 2019) ("The addition of a new power plant in Killingly would make our small town by far the largest site in all of Connecticut for natural gas generation. . . . One small community should not have to bear such a disproportionately large share of the negative externalities associated with meeting the state and region's electricity needs. Killingly already bears more than its fair share of this burden through the presence of the existing natural gas generation facility within its borders.")

Council in Docket No. 470, the Mitsubishi Model will result in greater annual emission for VOC, lead, H₂SO₄, CO₂e, and ammonia.⁴⁸ Even though these greater annual emissions are attributable to a higher capacity of the Facility,⁴⁹ the burden on the Killingly community and the airshed is nonetheless greater. The Town expressed concerns about the additional strain on air quality: “The Town of Killingly is concerned with the effects upon young children and the elderly, as there are schools and elderly care facilities all located within an approximately 2.00/3.00 mile radius of the proposed site development.”⁵⁰

The only analysis of air quality and human health conducted for this application was the National Ambient Air Quality Standards (NAAQS) cumulative impact modeling conducted for the Facility’s air permits.⁵¹ However, this modeling did not take into account all polluting facilities throughout the 50 kilometer radius, or even within the immediately surrounding communities.⁵² The Town requested further analysis of human health impacts, beyond the NAAQS analysis conducted for the air permits.⁵³ NTE’s resolved this concern by referring the Town to the Community Environmental Benefit Agreement (CEBA) whereby NTE would contribute to the medical costs for those that suffer from the worsened air quality.⁵⁴ Payment of medical costs after the fact cannot be a justification for siting a facility with unreasonable or unexamined cumulative health impacts on a community.

The Facility would also be a new source of greenhouse gas emissions, at a time when

⁴⁸ *Id.*

⁴⁹ Hearing Transcript 97:8-97:10 (Apr. 18, 2019) (Gresock).

⁵⁰ Town of Killingly Exhibit #1, p.26.

⁵¹ Council Admin. Notice Item #57 (Docket No. 470), Application Volume 3, Appendix G-3, Section 3.11. This section includes a summary of the cumulative impact modeling conducted for the Siemens model from the application before the Council in Docket No. 470. Gresock testified that this analysis was also conducted for the Mitsubishi model and produced the same results. Hearing Transcript 106:19-107:4 (Apr. 18, 2019) (Gresock).

⁵² *Id.* at L-18; Hearing Transcript 106:6 (Apr. 18, 2019) (Gresock).

⁵³ *Id.*

⁵⁴ Hearing Transcript 103:22-104:9 (Apr. 18, 2019) (Eves).

these emissions must urgently be reduced or eliminated. The Facility is permitted to emit 2,232,604 tons of CO₂e emissions per year.⁵⁵ In 2016, Connecticut's annual economy-wide GHG emissions were 40.4 million metric tons of CO₂e when measured on a generation basis, and 41.4 million metric tons when measured on a consumption basis.⁵⁶ The potential emissions of KEC are equal to between 5.4 to 5.5 percent of the State's total greenhouse gas emissions depending upon whether the calculation is made on a consumption or a generating basis. This estimate does not include the methane leakage, which has a higher global warming potential, that would result from the extraction and transport of the gas necessary for plant operation.

The proposed project will require Eversource to replace a 50 year old natural gas distribution pipeline line with a new, larger pipeline capable of providing 3.9 million cubic feet of natural gas per hour at a minimum pressure of 550 pounds per square inch over the course of 2.8 miles.⁵⁷ In the replacement of the existing pipeline and in order to provide the required natural gas to the KEC facility, Eversource will need to perform the following work: (a) remove acres of vegetation; (b) excavate, remove the existing pipeline and replace it with an upgraded 14-inch natural gas pipeline (replacement pipeline) rated for 700 psi through wetlands, protected open space, including the Dunn Preserve and the Duck Marsh Preserve of the Wyndham Land Trust, woodlands, and a public multi-use trail; and (c) cross the expanse of the Quinebaug River.⁵⁸ Further details of the impacts were undisclosed or unknown by the Applicant.⁵⁹

The proposed facility is permitted to use 50,000 gallons of water per day during gas-

⁵⁵ See Applicant Exhibit #1(c), Appendix A, Permit No. 089-0107, p.6.

⁵⁶ Grouped Parties Admin. Notice Item #2, Conn. Dep't of Energy & Envtl. Protection, 2016 Connecticut Greenhouse Gas Emissions Inventory at 2.

⁵⁷ See also Hearing Transcript 58:20-58:24 (May 2, 2019) (Eves).

⁵⁸ See Hearing Transcript 61:21 (May 2, 2019) (Eves).

⁵⁹ For example, NTE could not confirm that the construction of the pipe would be limited to the existing right-of-way. Hearing Transcript 60:14-69:15 (May 2, 2019) (Eves).

powered operations, and 400,000 gallons of water per day during ULSD operations.⁶⁰ This water would be supplied through Connecticut Water Company's Crystal Division, a system that also serves as a drinking water supply source. NTE opted not to use graywater sources for KEC's water supply needs. In July 29, 2016 correspondence from Connecticut Water Company, David Radka expressed concerns with the system's long-term ability to serve the project: "Because supply availability of any system is finite, an annual review of Connecticut Water's ability to serve the project will need to be conducted on the one year anniversary date of this latter and every year thereafter until the project is complete."⁶¹ The analysis conducted by Connecticut Water Company in its water supply plan did not include the new obligation to KEC, despite the fact that this obligation would start during that 5-year supply period.⁶² In order to supply water for the facility, the Connecticut Water Company must install piping extensions from its wellfields located in Plainfield and Brooklyn so as to ensure an adequate water supply for the KEC facility and other users in the area of the proposed facility.⁶³

In sum, these environmental and human health impacts override the lack of public need and public benefit and therefore necessitate the Council to deny the Application. Further, the information available to the Council on potential impacts is incomplete given the Applicant's segmentation of essential facilities critical to the completion and operation of the project, including the gas interconnection and water supply.

c. If the Council Grant a CECPN for KEC, It Must Be Conditioned on Compliance with a GHG Reduction Program

In the State's Global Warming Solutions Act, Connecticut has committed to reducing

⁶⁰ Applicant Exhibit #7, NTE's Responses to Council Interrogatories, Set Two, Attachment 1E (Mar. 28, 2019).

⁶¹ Council Admin. Notice Item #57 (Docket No. 470), Application Volume 4, Appendix H-1, p.1.

⁶² Applicant Exhibit #11, NTE's Late-File Exhibits, LFE Response No. 2 (Apr. 11, 2019).

⁶³ Council Admin. Notice Item #57 (Docket No. 470), Applicant Ex. #1, Vol. 1, Part 2, p. 166-72.

statewide greenhouse gas (GHG) emissions 80 percent below 2001 levels by 2050.⁶⁴ Connecticut will be unable to meet this goal with the permitting and operation of new fossil fuel generating facilities, such as KEC, that lack enforceable emission reduction strategies.⁶⁵ In a document titled “NTE Proposed GHG Reduction Program for Killingly Energy Center,” NTE has purported to make a voluntary “commitment” to reduce its GHG emissions by 80 percent from the start of operation to 2050.⁶⁶ Beginning in 2050, NTE has claimed it will voluntarily achieve zero net GHG emissions.⁶⁷ NTE previously stated that this commitment would be memorialized in air permits issued by the Department of Energy and Environmental Protection (DEEP).⁶⁸ However, this program was not included in the two air permits issued for the KEC Facility and therefore remains voluntary and without oversight.⁶⁹

The Council has the authority to grant a CECPN “upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.”⁷⁰ At very least, it is critical that KEC’s GHG Reduction Program be mandatory. Even with this program, the construction and operation of this plant would lock in decades of additional GHG emissions, upstream GHG emissions, specifically methane leakage, would remain unaddressed,⁷¹ and the voluntary deadline is troublingly near the end of the Facility’s “useful life.”⁷² Should the Council grant a CECPN for KEC, Connecticut Fund for the Environment urges the Council to include compliance with the GHG Reduction Program as an

⁶⁴ Conn. Gen. Stat. § 22a-200a(a)(2).

⁶⁵ Council Admin. Notice Item #57 (Docket No. 470), Grouped Parties Exhibit #8, Attachment 17, Slides 11-30.

⁶⁶ Applicant Exhibit #4, NTE’s Responses to Council Interrogatories, Set One, Response #35 (Mar. 15, 2019).

⁶⁷ *Id.*

⁶⁸ Hearing Transcript 1129:25-1130:2 (Jan. 26, 2017) (Mirabito).

⁶⁹ See Applicant Exhibit #1(c), Appendix A. See also Hearing Transcript 114:25-115:5 (Apr. 18, 2019) (Eves) (“[DEEP] said . . . this is not the kind of program that they would include in the air permit.”).

⁷⁰ Conn. Gen. Stat. § 16-50p(a)(1).

⁷¹ KEC’s GHG reduction program is limited to stack emissions and does not address significant upstream emissions from methane leakage during extraction and transport.

⁷² Hearing Transcript 523:1-523:7 (Nov. 15, 2016) (Eves); Hearing Transcript 113:17-114:1 (Apr. 18, 2019) (Eves).

enforceable condition on the Certificate. NTE stated that it had no objection to the GHG reduction program being included as a condition to the CECPN.⁷³

V. CONCLUSION

As set forth above, there is no public need or benefit from this plant and the environmental impacts alone and cumulatively with other facilities are both substantial and not appropriately documented. Thus, the Council should deny the Application for a Certificate of Environmental Compatibility and Public Need for the proposed KEC facility. If, however, the Council, does grant a Certificate of Environmental Compatibility and Public Need, the Council should condition the CECPN on mandatory compliance with the GHG Reduction Program.

Respectfully Submitted,

CONNECTICUT FUND FOR THE
ENVIRONMENT

By Katherine Fiedler
Katherine M. Fiedler, Esq.
Connecticut Fund for the Environment, Inc.
900 Chapel Street, Suite 2202
New Haven, CT 06510

ITS ATTORNEY

⁷³ Hearing Transcript 115:25-116:1 (Apr. 18, 2019) (Eves); Hearing Transcript 160:1-160:3 (Apr. 18, 2019) (Eves).

I HEREBY CERTIFY that a copy of the foregoing document was electronically mailed to all parties set forth on the attached service list.

Dated at New Haven, Connecticut this 30th day of May, 2019.

A handwritten signature in blue ink that reads "Katherine Fiedler". The signature is written in a cursive style and is positioned above a horizontal line.

Katherine M. Fiedler, Esq.
Connecticut Fund for the Environment, Inc./
Save the Sound
900 Chapel Street, Suite 2202
New Haven, CT 06510
(203) 787-0646 ext. 108
kfiedler@ctenvironment.org

LIST OF PARTIES AND INTERVENORS
SERVICE LIST

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Applicant	<input checked="" type="checkbox"/> E-mail	NTE Connecticut LLC	<p>Kenneth C. Baldwin, Esq. Earl W. Phillips, Jr., Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 (860) 275-8200 kbaldwin@rc.com ephillips@rc.com</p> <p>Paul R. McCary Murtha Cullina, LLP CityPlace 1 185 Asylum Street Hartford, CT 06103-3469 (860) 240-6037 (860) 240-6150 – fax pmccary@murthalaw.com</p> <p>Tim Eves, Senior Vice President NTE Energy, LLC 24 Cathedral Place, Ste. 300 St. Augustine, FL 32084 teves@nteenergy.com kcc.notices@nteenergy.com</p> <p>Chris Rega, Senior Vice President Engineering & Construction NTE Energy, LLC 800 South Street, Ste. 620 Waltham, MA 02453 crega@nteenergy.com</p> <p>John W. Gulliver, Esq. Pierce Atwood LLP Merrill's Wharf 254 Commercial Street Portland, ME 04101 (207) 791-1296 (207) 415-3400 - mobile jgulliver@pierceatwood.com jwgulliver@gmail.com</p>
Party & CEPA Intervenor (Approved 9/29/16)	<input checked="" type="checkbox"/> E-mail	Not Another Power Plant	<p>John Bashaw, Esq. Mary Mintel Miller, Esq. Reid and Riege, P.C. One Financial Plaza, 21st Floor Hartford, CT 06103 jbashaw@rrlawpc.com mmiller@rrlawpc.com</p>

Status Granted	Document Service	Status Holder (name, address & phone number)	Representative (name, address & phone number)
Party (Approved 9/29/16)	<input checked="" type="checkbox"/> E-mail	Town of Killingly	Richard P. Roberts, Esq. Ann Catino, Esq. Halloran & Sage LLP 225 Asylum Street Hartford, CT 06103 (860) 522-6103 Roberts@halloransage.com
Party & CEPA Intervenor (Approved 11/3/16)	<input checked="" type="checkbox"/> E-mail	Sierra Club	Joshua Berman, Staff Attorney Diana Agnes Csank, Esq. Sierra Club 50 F Street NW., 8 th Floor Washington, DC 20001 josh.berman@sierraclub.org diana.csank@sierraclub.org
Party (Approved 11/3/16)	<input checked="" type="checkbox"/> E-mail	Connecticut Fund for the Environment	Katherine M. Fiedler, Esq. Roger Reynolds, Esq. Connecticut Fund for the Environment 900 Chapel Street, Upper Mezzanine New Haven, CT 06510 kfiedler@ctenvironment.org rreynolds@ctenvironment.org
Party & CEPA Intervenor (Approved 11/3/16)	<input checked="" type="checkbox"/> E-mail	Wyndham Land Trust, Inc.	John Bashaw, Esq. Mary Mintel Miller, Esq. Reid and Riege, P.C. One Financial Plaza, 21 st Floor Hartford, CT 06103 jbashaw@rrlawpc.com mmiller@rrlawpc.com