

May 30, 2019

HAND DELIVER and ELECTRONIC MAIL

Melanie A. Bachman, Esq.
Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

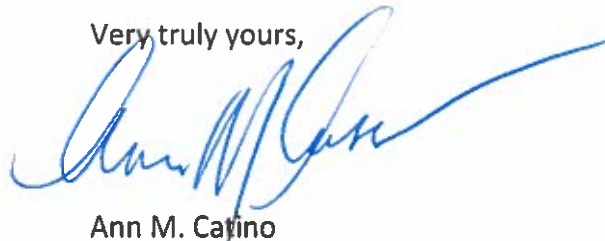
RE: **Docket No. 470B – NTE Connecticut, LLC Application for a Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance and Operation of a 550 Megawatt Dual-Fuel Combined Cycle Electric Generating Facility and Associated Electrical Interconnection Switchyard Located at 180 and 189 Lake Road, Killingly, CT**

Dear Attorney Bachman:

Enclosed please find an original and fifteen (15) copies of the Town of Killingly's Brief and Response to Connecticut Siting Council's Draft Findings of Facts in the above-referenced matter.

Please feel free to contact me if you should have any questions.

Very truly yours,



Ann M. Catino

AMC/ses

Enclosure

CERTIFICATION OF SERVICE

I hereby certify that on this 30th day of May, 2019, a copy of the foregoing, together with the Town of Killingly's Brief and Response to Connecticut Siting Council's Draft Findings of Facts, was sent via electronic mail, to the following:

Mary Intel Miller, Esq.
Reid and Riege, P.C.
One Financial Plaza, 21st Floor
Hartford, CT 06103
mmiller@rrlawpc.com

Kenneth C. Baldwin, Esq.
Robinson & Cole
280 Trumbull Street
Hartford, CT 06103
kbaldwin@rc.com

Joshua Berman, Staff Attorney
Sierra Club
50 F Street NW., 8th Floor
Washington, DC 20001
Josh.berman@sierraclub.org

Katherine Fiedler, Esq.
Connecticut Fund for the Environment
900 Chapel Street
Upper Mezzanine
New Haven, CT 06510
kfiedler@ctenvironment.org



Ann M. Catino

Docket No. 470B - 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

Connecticut Siting Council

May 30, 2019

Town of Killingly's Brief and Response to Connecticut Siting Council's Draft Findings of Facts

The Town of Killingly ("Town") will rely upon the Connecticut Siting Council's ("Council") analysis of whether or not NTE Connecticut, LLC ("NTE") should be issued a Certificate of Environmental Compatibility and Public Need for the proposed 550 MW dual fuel combined cycle electric generating facility and associated electrical interconnection switchyard located at 180 and 189 Lake Road in Killingly, Connecticut. Accordingly, the Town takes no position as to the merits of the application and whether or not it meets the statutory requirements that guide the Council's decision-making. Should the Council find, however, that NTE's application satisfies the statutory prerequisites, the Town has participated in these proceedings as a party. The Town's participation is to ensure that issues as to location and various land-use type regulations and restrictions as determined by the Town pursuant to Conn. Gen. Stat. Sec. 16-50x(d) are appropriately considered and included as conditions in the Council's findings, approvals and Certificate.

Town Exhibit 1 sets forth the various Municipal Orders of Regulation and Restriction (Council Draft Finding of Fact 191) and read together with the testimony of the NTE representative Mr. Eves at the public hearing on May 2, 2019 (Tr. 4, pp. 63-64, 91-107), all outstanding appeals have been resolved. Council Draft Finding of Fact 192. And, based upon the testimony elicited by the Town of the NTE witnesses, NTE is committed to performing the work as agreed to as to each set of orders. Id.

NTE in its proposed findings of fact filed on or about May 17, 2019 also affirms the agreements reached, at various times, with the Town. In NTE's Proposed Finding of Fact #240, NTE states that "complete agreement on all of the Municipal Regulate and Restrict Orders as described" has been reached. The Town does not disagree with this assessment and finding, and requests the Council to include all the Town Orders as conditions enforceable by not only the Town, but by the Council.

1. Wetland Commission Orders.

At the time Exhibit 1 was filed, several Municipal Orders from the Town's Inland Wetland and Watercourses Commission were resolved to the satisfaction of the Town (IWWC 1, 2, 3, 4, 5, 6, & 8). Council Draft Findings of Fact #s 193, 194, 195, 196, 197, 198 & 200 reviews these understandings and reflects the agreement between the Town and NTE as to these Orders. It is important to note, however, that NTE confirmed its commitment to these conditions as well as future work that may be required by the Town on May 2, 2019 (Tr. 4, p. 92) and compliance should be part of the Certificate and approvals issues by the Council.

One wetland order remained the subject of an appeal to the Council by NTE (IWWC 7), however, that order has been resolved based upon NTE's agreement to work with the Town on permits, a construction schedule and the posting of a decommissioning bond that the Town can draw upon to remove any installation constructed in the event future permits are not obtained or NTE otherwise walks away. Tr. 4, p. 94-97. Council Draft Finding of Fact #199 covers the contingency regarding permits but does not also acknowledge the contingency of NTE abandoning the project, which is also to be incorporated into the bond as the testimony indicated. Tr. 4, p. 96.

2. Planning and Zoning Commission Orders.

Several Municipal Orders from the Town's Planning & Zoning Commission were also resolved to the satisfaction of the Town at the time Exhibit 1 was filed. (PZC Orders 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24 (2 entries), 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61). Council Draft Findings of Fact #s 201-206, 208-209, 212-217, 221-227, 229-242, 244- 261 reviews these understandings and reflects the agreement between the Town and NTE as to these Orders. Similar to the Wetlands Orders, NTE confirmed its commitment to these conditions as well as future work that may be required by the Town on May 2, 2019 (Tr. 4, p. 92) and such continued compliance should be part of the Certificate and approvals issues by the Council.

Outstanding appeal issues remained at the time of the hearings as reflected in Town Exhibit 1. Appeal issues existed as to PZC Orders 7, 10, 11, 18, 19, 20, 27, and 43. In addition,

an additional order relating to noise and noise control was also set forth in Town Exhibit 1. These issues were ultimately resolved to the Town's satisfaction upon the confirmation of NTE at the May 2, 2019 hearing (Tr. 4, pp. 63-71, 94-107). The Town agrees with the Draft Findings of Fact relating to such Orders set forth as Council Draft Findings of Fact #s 207, 210, 211, 218, 219, 220, 228, 244 and 263, and requests that compliance with such findings (including but not limited to obtaining Town approvals as may be set forth and appropriate) be enforceable conditions by the Council and the Town. For example, but not by way of limitation, the Town believes that road widening and traffic safety on Lake Road is of exceptional importance (#s 219 & 220). While NTE agrees that a third-party engineering/environmental professional be hired, this concession (as well as other concessions) should be clearly articulated and enforceable. In addition, in Council Draft Finding of Fact #228, an unequivocal condition should be included that the Town has the right to shut down any deficient or unsafe portion of the project and that NTE shall pay for the cost of Town inspections. As to Council Draft Finding #263, the Town requests that the Council require NTE to go over such noise control design alternatives with the Town before filing with the D&M Plan and that both the Council and the Town be permitted to enforce the EPC contractor guarantees that the proposed project meets the state and local noise control standards. As to #236, the Council should mandate that no discrete tones should be permitted.

In brief, the Town respectfully requests that all agreements reached between the Town and NTE be enforceable conditions of the Council Certificate and that the Council specifically state that the Town is permitted to enforce such conditions and require compliance by NTE. The Town does acknowledge that the agreements with NTE have been reached in good faith,

and also does not object to the findings proposed by NTE in its May 17, 2019 Proposed Findings of Fact #s 240, 245, 246, 248, 250, 254, 261, 262, 265, 266, 268, 273, 274, 275, 283, 291-295, 299-302, 308-310, 312, 315-317 provided clear reference is also made to the Town's bonding requirements, rights of review and inspection and enforcement and the agreements reached with NTE as reflected in the record.

Respectfully submitted,

THE TOWN OF KILLINGLY

By 

Ann M. Catino

Richard P. Roberts

Halloran & Sage LLP

225 Asylum Street

Hartford, CT 06103

Tel: (860) 522-6103

Fax: (860) 548-0006

catino@halloransage.com

roberts@halloransage.com