

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE: :
: :
APPLICATION OF NTE CONNECTICUT, LLC : DOCKET NO. 470
FOR A CERTIFICATE OF ENVIRONMENTAL :
COMPATIBILITY AND PUBLIC NEED FOR :
THE CONSTRUCTION, MAINTENANCE AND :
OPERATION OF AN ELECTRIC POWER :
GENERATING FACILITY OFF LAKE ROAD, :
KILLINGLY, CONNECTICUT : JULY 8, 2019

**COMMENTS OF NTE CONNECTICUT, LLC IN RESPONSE TO THE
JOINT PETITION FOR RECONSIDERATION AND CLARIFICATION**

I. Introduction

NTE Connecticut, LLC (“NTE”) hereby submits to the Connecticut Siting Council (“Council”) its comments and statement of position in response to the Council’s June 21, 2019 Request for Comments on a Joint Petition for Reconsideration and Clarification (“Council Request”) in the above-referenced proceeding.¹

II. Procedural Background

On June 6, 2019, the Council issued its Decision and Order granting NTE a Certificate of Environmental Compatibility and Public Need (“Certificate”) for the construction, maintenance, and operation of a 650-megawatt dual-fuel combined cycle electric generating facility and associated electrical interconnection switchyard at 180 and 189 Lake Road, Killingly, Connecticut (“Decision”).² On June 21, 2019, Connecticut Fund for the Environment (“CFE”), Not Another Power Plant, and Sierra Club (together the “Joint Petitioners”) filed a Joint Petition

¹ Council’s Request for Comments on Joint Petition for Reconsideration and Clarification (Jun. 21, 2019).

² Council’s Decision Package (Jun. 7, 2019) (“Decision”).

for Reconsideration and Clarification of the Decision (“Joint Petition”).³ On the same day the Council issued the Council Request.

III. The Council Properly Considered NTE’s Voluntary Greenhouse Gas Reduction Program

The Joint Petitioners request that the Council reconsider its Decision and incorporate NTE’s Greenhouse Gas Reduction Program (“GHG Reduction Program”) as an enforceable condition in the Decision.⁴ The Joint Petitioners argue that the Council’s decision not to include the GHG Reduction Program as an enforceable condition in the Decision was an error of fact and/or of law.⁵ The Decision does not, however, suffer from either an error of fact or of law with respect to the GHG Reduction Program, and thus the Joint Petition should be denied.

The Joint Petitioners argue that an error of fact may have occurred “[t]o the extent the Council believed the GHG Reduction Program was already embodied in an enforceable agreement”⁶ The Joint Petition does not cite to, nor is there, anything in the record indicating the Council believed that the GHG Reduction Program was part of an enforceable agreement with any other party. To the contrary, in the Findings of Fact, the Council explicitly refers to the NTE’s GHG Reduction Program as “voluntary.”⁷ The Findings of Fact also cite to NTE’s testimony that it developed the GHG Reduction Program, that the GHG Reduction Program is voluntary, that the Air Bureau of the Department of Energy and Environmental Protection declined to include the GHG Reduction Program in NTE’s air permits, and that the

³ Joint Petition for Reconsideration and Clarification (Jun. 21, 2019) (“Joint Petition”).

⁴ See Joint Petition, at 2.

⁵ See Joint Petition, at 2.

⁶ See Joint Petition, at 4.

⁷ Findings of Fact #464.

GHG Reduction Program remains a “commitment” by NTE.⁸ The record is clear that the Council understood that the GHG Reduction Program was not part of an enforceable agreement, but rather a strong commitment by NTE. There is no error in fact.

As the Joint Petitioners are aware, NTE went to great efforts to make the GHG Reduction Program part of an enforceable agreement. During the course of the Docket No. 470 proceeding, NTE negotiated in good faith with the Sierra Club to develop the terms and conditions of the GHG Reduction Program and incorporate them into a binding agreement between the two parties. However, once NTE and the Sierra Club finalized the terms of the GHG Reduction Program, the Sierra Club declined to execute the agreement.⁹ Prior to the filing of the Joint Petition, NTE renewed its offer to make the GHG Reduction Program a part of a binding agreement with the Sierra Club, but to no avail.

More recently, NTE reached out to CFE regarding its interest in entering into a private agreement to formalize the GHG Reduction Program. On July 1, 2019, CFE responded to NTE’s counsel expressing an interest in negotiating such an agreement.

The Joint Petitioners also argue that an error of law may have occurred “[t]o the extent the Council believed that it lacked that authority to require compliance with the GHG Reduction Program as a condition of the [Certificate] or subsequent Development and Management (D&M) Plan”¹⁰ The Joint Petitioners fail to cite to any evidence that the Council had such a belief, nor do they cite to any legal requirement compelling the Council to include the GHG Reduction

⁸ See Findings of Fact #464 (*citing* Transcript 4/18/19, pp. 114-115).

⁹ See, e.g., Transcript 4/4/19, pp. 48-49; Tr. 4/18/19, p. 114.

¹⁰ Joint Petition, at 5.

Program as a condition of the Certificate or the D&M Plan.¹¹

The Council is under no obligation to include requirements such as the GHG Reduction Program as a condition of the Certificate. The Decision evidences the Council's awareness of, familiarity with, and consideration of the GHG Reduction Program.¹² Nevertheless, the Council made the conscious decision not to include the GHG Reduction Program as a condition of Certificate approval. Such a decision is within the Council's discretion and does not constitute an error of law.¹³

IV. The Council Duly Considered NTE's Capacity Supply Obligation and the FERC Review Process

The Joint Petitioners request the Council reconsider the Decision and clarify that the Certificate is contingent on NTE retaining the Capacity Supply Obligation ("CSO") that it obtained from ISO-New England ("ISO-NE") in Forward Capacity Auction ("FCA") 13.¹⁴ They state such reconsideration is appropriate based on new evidence and for other good cause.¹⁵ The Joint Petitioners, however, fail to provide any new evidence or present other good cause for the Council to reconsider the Decision.

The Joint Petitioners claim that FERC's June 6, 2019 letter to ISO-NE requesting

¹¹ See, generally, Joint Petition. Note: The Joint Petition cites several court decisions to support its position. However, none of these decisions are from courts of relevant jurisdiction and these decisions involve the application and interpretation of different statutes, regulations, and requirements that have no relevance to the Council's authority, precedent, or obligations.

¹² See, e.g., Findings of Fact #464 and #465; Opinion, at 12.

¹³ See, e.g., *Bridgeport Hosp. v. Comm'n on Human Rights & Opportunities*, 232 Conn. 91, 109 (1995) ("As we have stated many times, the factual and discretionary determinations of administrative agencies are to be given considerable weight by the courts". (internal quotes and citations omitted)).

¹⁴ See Joint Petition, at 7.

¹⁵ See Joint Petition, at 7.

additional information about the FCA 13 results is new evidence.¹⁶ NTE respectfully disagrees. As the Joint Petition and the Council record acknowledge, the Council was aware of the FCA 13 results, and, more recently, the FERC process for reviewing those results.¹⁷ The Council issued the Decision knowing that the FERC review process was not finalized. The Council even acknowledged in the Findings of Fact that “FERC’s review of the FCA#13 results filing is ongoing”.¹⁸

The June 6, 2019 FERC letter attached to the Joint Petition is simply part of the FERC review process and is not sufficient new information to warrant the Council reconsidering the Decision. If the Council felt it appropriate or necessary to condition the Certificate on final FERC approval of the FCA 13 results, it would have done so.

The Joint Petition also does not present other good cause for the Council to reconsider the Decision. The Joint Petition states that if NTE “subsequently loses its CSO, the Council’s basis for establishing a need for the facility—and hence the rationale for granting a [Certificate]—would also be gone.”¹⁹ However, this over simplifies the Council’s basis for establishing need for the facility.²⁰ Moreover, NTE’s witnesses testified during the last Docket No. 470B hearing that if, after receiving the Certificate, its CSO was terminated by ISO-NE, NTE would not construct the Killingly Energy Center (“KEC”) facility.²¹ NTE has acknowledged, and continues

¹⁶ See Joint Petition, at 9.

¹⁷ See Joint Petition, at 7-9.

¹⁸ Findings of Fact #93.

¹⁹ See Joint Petition, at 9.

²⁰ See, generally, Decision.

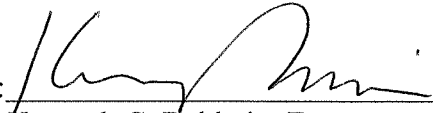
²¹ Tr. 5/2/19, p. 110 (MR. PERRONE: . . . Hypothetically, if your project is approved by the Council but for whatever reason the CSO is subsequently terminated by ISO, would you still construct the facility? THE WITNESS (Eves): The answer would be no.).

to acknowledge, that it needs the CSO, and will not proceed with construction of KEC if FERC terminates NTE's CSO. As a result, there exists no good cause, and, therefore, no need for the Decision to be reconsidered.

V. Conclusion

For all of the reasons discussed above, NTE respectfully requests that the Council deny the Joint Petition.

Respectfully submitted,
NTE CONNECTICUT, LLC

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CERTIFICATION OF SERVICE

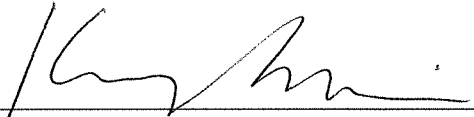
I hereby certify that on this 8th day of July 2019, a copy of the foregoing was sent via electronic mail, to the following:

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