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November 29, 2010

Ms. Linda Roberts
Executive Director
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

Re: Docket No. 187; Milford Power Company, LLC

Dear Ms. Roberts:

I write on behalf of EquiPower Resources Corp. ("EquiPower") and Milford Power Company, LLC ("Milford Power") to inform you that on November 11, 2010, EquiPower and Milford Holdings LLC entered into an agreement pursuant to which EquiPower will acquire the direct and indirect ownership interests in Milford Power from Milford Holdings LLC. After the transaction, which is expected to close in mid-January, 2011, Milford Power will become a wholly-owned subsidiary of EquiPower.

As you know, Milford Power owns and operates a nominally rated 542-megawatt electric generating facility in Milford, Connecticut. Following the closing of the transaction, Milford Power will continue to own and operate the facility and will continue to hold the permits and approvals that it held prior to the upstream transaction, including but not limited to the Certificate of Environmental Compatibility and Public Need ("Certificate"). As we discussed at our meeting with you on November 19, 2010, based on our review of the relevant statutes, case law and Siting Council precedent, we believe that there is no need to obtain an approval to transfer the Certificate for the Milford facility because the proposed transaction will occur upstream of Milford Power and Milford Power will continue to hold the Certificate and operate under the terms of the Certificate after the transaction. In other words, there is no transfer of the Certificate contemplated by the transaction and the above-captioned docket reference will remain Docket No. 187: PDC-El Paso Milford, LLC (a.k.a. Milford Power Company, LLC) following the transaction.

Section 16-50k (b) of the Connecticut General Statutes ("C.G.S.") states that a "certificate may be transferred, subject to the approval of the Council, to a person who agrees to comply with the terms, limitations and conditions contained therein. The Council shall not approve any such transfer if it finds that such transfer was contemplated at or prior to the time that the certificate was issued and such fact was not

adequately disclosed during the certification proceeding." "Person" is defined in C.G.S. § 16-50i(c) as "any individual, corporation, limited liability company...or any other entity, public or private, however organized." The statute quite simply does not apply to the proposed transaction because there will be no transfer of the Certificate to another "person" and Milford Power will continue to hold the Certificate and be responsible for complying with the terms, limitations and conditions contained in the Certificate.

This precise issue has been considered by the Council and the Connecticut Superior Court as discussed in the decision in Town of Middlebury v. The Connecticut Siting Council, No. CV010508047S, 2002 Super. Conn. LEXIS 610 (February 27, 2002). (Decision attached). The case relates to the Towantic Energy LLC ("Towantic") project in Oxford, Connecticut, the subject of Docket No. 192. In that proceeding, the Council issued a Certificate to Towantic for the construction of a 512-megawatt power plant. The Council's approval of the project was appealed by several plaintiffs, including the Town of Middlebury, environmental advocacy groups and certain individuals. The appeal was dismissed and the subsequent appeal of the dismissal was withdrawn. At some point in time after the issuance of the Certificate, Calpine Eastern Corporation ("Calpine") acquired the ownership interests in Towantic.

As required as a condition of its approval, Towantic submitted a Development and Management Plan ("D&M Plan") to the Council in October 2000. Shortly thereafter, the plaintiffs petitioned the Council for a declaratory ruling to determine whether Towantic was still effectively the Certificate holder, or whether Calpine improperly submitted the D&M Plan. The Council approved Towantic's D&M Plan and with regard to the plaintiffs' petition, rejected the claim that Towantic was not the Certificate holder. The Council determined that "Towantic was a valid business entity, its business with Calpine was not illegal and would not hinder enforcement and Calpine was forthright in documenting its purchase of Towantic with plans to operate the facility under Towantic's name." Id. at 5, 6.

The Council's declaratory ruling was then appealed to the Superior Court under the contention that the Council erred in not requiring Towantic to petition the Council for a transfer of its Certificate to Calpine. The Court rejected the plaintiffs' "attempt to hold the Council at fault for not analyzing the structure of a limited liability company after it has received a certificate through the application process. This would vary the explicit language of the statutes (C.G.S Section 16-50k) that allow a limited liability company to hold a certificate without limitation as a 'person'." Id. at 13. The court concluded its analysis of this issue by stating: "By statute, any limited liability company may become a certificate holder and is not automatically forced to apply for a transfer of the Certificate to the parent entity." Id. at 14.

Our firm has been involved in previous transactions similar to the subject transaction. Our standard practice, upon advice of the Siting Council's staff and legal

advisors, has been to provide the Siting Council with written notice of the upstream change in ownership of the Certificate holder prior to or upon the closing of the transaction. The Council has not directed or suggested any other action. Accordingly, in connection with this transaction, we plan to provide the Council with a written notice of the structure of the acquisition and any changes in the contact information for any of the affected entities. In fact, we propose that this letter serve as that notice of the structure of the transaction and we will follow up with any changes to contact information and confirmation that the closing has occurred at the time of the closing.

However, as we discussed last week, we understand that the Council has, on occasion, received and approved requests to transfer Certificates in similar transactions. The procedural variations create some uncertainty as to the procedure that the Council would like to follow in connection with the subject transaction. Accordingly, for the subject transaction, we respectfully request your written confirmation that no "transfer" approval is required. Alternatively, if you cannot confirm that a "transfer" approval is not required in this case, please consider this letter to be a request to transfer the Certificate from Milford Power to Milford Power.

We look forward to your response. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Andrew W. Lord

Enclosure

cc: Donna Poresky, Esq.
Franca DeRosa, Esq.
Melanie Bachman, Esq.
Mark R. Sussman, Esq.

Town of Middlebury et al. v. The Connecticut Siting Council et al.

CV010508047S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF NEW BRITAIN AT NEW BRITAIN

2002 Conn. Super. LEXIS 610

February 27, 2002, Decided
February 27, 2002, Filed

NOTICE: [*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, neighboring town and citizens, appealed from a declaration of defendant Connecticut Siting Council upholding the transfer by defendant holder of a certificate of environmental compatibility and public need to a related entity, and approving that entity's submission of a development and management plan for a proposed electricity generating facility.

OVERVIEW: The Connecticut Siting Council approved a plan under which a utility limited liability company would build an electricity generating facility in one town, near its border with another town. After the original issuance of a certificate of environmental compatibility and public need was upheld on appeal, and the council had approved a development and management plan for the project submitted by an entity related to the original certificate holder, the neighboring town and certain citizens challenged the propriety of the council's allowing the related entity to proceed with the project. The court held that although the challengers were classically aggrieved and could seek review, they failed to show that the agency acted beyond its powers or that its decision was unsupported by substantial evidence. *Conn. Gen. Stat. § 16-50k* permitted transfer of the certificate, and the development and management plan did not violate any conditions in the certificate.

OUTCOME: The court affirmed the declaratory ruling.

LexisNexis(R) Headnotes

Administrative Law > Judicial Review > Reviewability > Standing

[HN1] In Connecticut, the fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision. Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest has been adversely affected.

Administrative Law > Judicial Review > Reviewability > Standing
[HN2] Standing is not a technical rule intended to keep aggrieved parties out of court, nor is it a test of substantive rights.

Civil Procedure > Appeals > Briefs
Civil Procedure > Appeals > Reviewability > Preservation for Review
[HN3] Where an appellant discusses only certain issues in its brief, and does not discuss additional issues raised in earlier pleadings, the Connecticut superior court considers all issues not discussed to have been abandoned.

Administrative Law > Judicial Review > Reviewability > Standing
Governments > Local Governments > Claims By & Against
[HN4] A town may be found aggrieved for purposes of administrative appeals where it has a specific personal and legal interest as representative of the public interests of all its inhabitants.

Administrative Law > Judicial Review > Reviewability > Standing
[HN5] In Connecticut administrative appeals, if one plaintiff is aggrieved, it is unnecessary to make an extensive analysis of other plaintiffs' aggrievement.

Administrative Law > Judicial Review > General Overview
Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review
Environmental Law > Litigation & Administrative Proceedings > Judicial Review
[HN6] In Connecticut, judicial review of an administrative agency's action is governed by the Connecticut Uniform Administrative Procedure Act, *Conn. Gen. Stat. § 4-166 et seq.*, and the scope of that review is very restricted. With regard to questions of fact, it is not the function of the trial court to retry the case or to substitute its judgment for that of the administrative agency. This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review. The burden is on the plaintiff to demonstrate that the agency's factual conclusions were not supported by the weight of substantial evidence on the whole record. Even as to questions of law, the court's ultimate duty is only to decide whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion.

Energy & Utilities Law > Electric Power Industry > Siting of Facilities
Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview
Environmental Law > National Environmental Policy Act > General Overview
[HN7] *Conn. Gen. Stat. § 16-50k(a)* provides that no person may develop an electricity generating facility without a certificate of environmental compatibility and public need from the Connecticut Siting Council. Under *Conn. Gen. Stat. § 16-50k(b)*, a certificate may be transferred, subject to the approval of the siting council, to a person who agrees to comply with the terms, limitations, and conditions contained therein.

Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview
Environmental Law > Assessment & Information Access > Audits & Site Assessments
Environmental Law > National Environmental Policy Act > General Overview
[HN8] See *Conn. Gen. Stat. § 16-50k(b).*

Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview
Environmental Law > Assessment & Information Access > Audits & Site Assessments
Environmental Law > National Environmental Policy Act > General Overview
[HN9] See *Conn. Gen. Stat. § 16-50i(c).*

Business & Corporate Law > Limited Liability Companies > General Overview
Governments > Legislation > Interpretation
[HN10] The primary rule of statutory construction is that if the language of the statute is clear, it is assumed that the words themselves express the intent of the legislature; thus there is no need to construe the statute.

Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview
Environmental Law > Assessment & Information Access > Audits & Site Assessments
Environmental Law > National Environmental Policy Act > General Overview
[HN11] See *Conn. Gen. Stat. § 16-50p(d).*

Administrative Law > Judicial Review > Standards of Review > General Overview
Civil Procedure > Appeals > Records on Appeal
Environmental Law > Litigation & Administrative Proceedings > Judicial Review
[HN12] A Connecticut court reviewing an administrative decision relies only on the actual order, not what might have arisen during the hearing process.

Energy & Utilities Law > Electric Power Industry > State Regulation > General Overview
Energy & Utilities Law > Transportation & Pipelines > Electricity Transmission
Environmental Law > National Environmental Policy Act > General Overview
[HN13] A Connecticut electricity provider's development and management plan cannot provide a substitute for matters not addressed during the application process.

JUDGES: Henry S. Cohn, Judge.

OPINION BY: Henry S. Cohn

OPINION

MEMORANDUM OF DECISION

The plaintiffs [1] appeal from a March 1, 2001 declaratory ruling issued by the defendant, Connecticut Siting Council ("the siting council"), relating to a power plant proposed to be built in the town of Oxford by the defendant, Towantic Energy LLC ("Towantic"). This appeal is authorized by *General Statutes §§ 4-176(h)* and *4-183* of the Uniform Administrative Procedure Act ("UAPA"). [2]

1 The plaintiffs are the town of Middlebury ("Middlebury"), Citizens for the Defense of Oxford ("Citizens"), Trout Unlimited, Inc., Naugatuck Chapter ("Trout"), William Stowell, and Mira Schachne.

2 The plaintiff's appeal is from the siting council's declaratory ruling in Docket Number 492, and not from Docket Number 192, approving Towantic's proposed development and management plan ("D&M plan"). (Second Amended, Verified Petition For Administrative Appeal, p. 2.) Towantic contends that the Siting Council did not respond at all to the plaintiffs' request for a declaratory ruling and therefore this administrative appeal is not allowed. Towantic suggests that the plaintiffs' avenue for review is to § 4-175 only, an action for declaratory judgment. The Siting Council's March 1, 2001 response, however, sufficiently replied to the plaintiffs' requests to be considered appealable. Cf *New Milford v. Commissioner of Environmental Protection*, Superior Court, judicial district of Hartford-New Britain, Docket No. 547864 (September 19, 1995) (Maloney, J.) (15 Conn. L. Rptr. 571) (commissioner declined to rule as request for declaratory ruling was moot).

[*2] The administrative record provides the following relevant facts. On December 7, 1998, Towantic filed an application with the siting council for a certificate of environmental compatibility and public need ("certificate") for the construction, maintenance and operation of an electric generating facility primarily fueled by natural gas and to be located in Oxford, Connecticut. In the course of the proceedings, a predecessor of Citizens and Trout became parties and Middlebury became an intervenor. On June 23, 1999, the siting council issued its findings of fact, opinion, and decision and order granting a certificate to Towantic for the facility. (Return of Record ("ROR"), Item 1.)

The siting council found that the proposed project "can be developed in a manner to provide a clean and reliable source of electric generation, minimize community and environmental impacts, and provide economic benefits to the Town of Oxford and the State of Connecticut." (ROR, Item 1, Opinion, Docket No. 192, p. 5.) The opinion continued, "the Council will issue a Certificate for this facility, accompanied by orders including a detailed Development and Management Plan (D&M Plan) with elements designed [*3] to protect resources on site and mitigate impacts off site." (ROR, Item 1, Opinion, Docket No. 192, p. 5.)

The siting council in its decision and order approved, pursuant to *General Statutes § 16-50p*, Towantic's application to construct, operate, and maintain "a 512 MW natural gas-fired combined cycle facility." (ROR, Item 1, Decision and Order, Docket No 192, p. 1.) A certificate, as required by *General Statutes § 16-50k*, was issued to Towantic, subject to several conditions, including but not limited to: (1.) that the facility be constructed and operated by Towantic; (2.) that the project operate on natural gas, except during curtailment of natural gas when the project may operate on low sulfur fuel oil; and, (3) that Towantic shall develop an emergency response plan drafted in cooperation with local and state public safety officials. (ROR, Item 1, Decision and Order, Docket No. 192, p. 1.)

In addition, one of the elements of the D&M plan in the decision and order required Towantic to set forth:

A final site plan showing all roads, structures and other improvements on the site. The final site plan shall,

to the greatest [*4] extent possible, reduce the height of facility in conjunction with the shifting the proposed site, up to 500 feet south, to maximize placement of facility components within the existing field; preserve the existing natural vegetation on the site; and minimize impacts on inland wetlands.

(ROR, Item 1, Decision and Order, Docket 192, p. 1.)

Another element in the D&M plan required Towantic to make:

Provisions for adequate water supply while operating on oil and for adequate oil storage, unloading, and pumping facilities including tanker queuing and turnaround areas sufficient to allow for the arrival of four trucks per hour, to ensure continuous burn on oil for up to 720 hours per year during natural gas curtailment.

(ROR, Item 1, Decision and Order, Docket 192, p. 2.)

Citizens appealed from this decision and after a hearing, the Superior Court dismissed the plaintiff's appeal on November 14, 2000, concluding that substantial evidence supported the decision of the siting council. *Citizens for the Defense of Oxford v. Connecticut Siting Council*, Superior Court, judicial district of New Britain, Docket No. 497075 (November 14, 2000) (Satter, J.T.R.). Citizens [*5] then appealed to the Appellate Court but on May 19, 2001, the appeal was withdrawn. (ROR, Item 4.)

On or about October 20, 2000, Towantic filed its proposed D&M plan. (ROR Item 6.) On November 2, 2000, the plaintiffs petitioned for a declaratory ruling, requesting the siting council to determine, in relevant part: (1.) Whether Towantic was still effectively the certificate holder, or whether Calpine Eastern Corporation ("Calpine") improperly submitted the D&M plan; (2.) Whether the terms of the siting council's final decision were violated in the submitted D&M plan by the failure of the plant to be moved "up to 500 feet south" or whether the certificate was improperly amended; (3.) Whether the water supply plan in the D&M plan was unworkable and improperly submitted. (ROR, Item 8, pp. 1-2, 6-8.)

On March 1, 2001, the siting council approved the D&M plan and made the following relevant conclusions to the plaintiff's requests. First, the siting council rejected the claim that Towantic is not the certificate holder. The siting council determined that Towantic was a valid business entity, its business relationship with Calpine was not illegal and would not hinder enforcement, [*6] and Calpine was forthright in documenting its purchase of Towantic with plans to operate the facility under Towantic's name. Second, as to the 500 foot provision in the decision, the exact language was "to the greatest extent possible . . . shifting the proposed site, up to 500 feet south, to maximize placement of facility components within the existing field . . ." While it was claimed that in the proposed D&M plan the site was not moved to the south by 500 feet, the siting council believed the site compaction and reorientation of facility components in the D&M plan were in compliance with its decision. Third, the decision noted that accommodation had to be made for four trucks per hour delivering oil, if the natural gas supply was interrupted as well as adequate water supply. In the proposed D&M plan, Towantic added an additional four trucks per hour to bring in additional water supplies, due to the inability of the Heritage Water Company to meet Towantic's demand entirely. The additional truck traffic would not be excessive and would only occur infrequently when natural gas is not available.

The plaintiffs again have appealed to this court from the siting council's decision [*7] and order on their request for declaratory ruling. [3] The court must first address the issue of aggrievement. [4] The standard for aggrievement has been stated by our Supreme Court as follows: "[HN1] The fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision . . . Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected . . ." (Brackets omitted; citations omitted; internal quotation marks omitted.) *New England Cable Television Assn., Inc. v. DPUC, 247 Conn. 95, 103, 717 A.2d. 1276 (1998)*; see also *Bethlehem Christian Fellowship, Inc. v. Planning & Zoning Commission, 58 Conn.App. 441, 447, 755 A.2d 249 (2000)* [*8] ("[HN2] standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights . . .") (citations omitted; internal quotation marks omitted).

3 The plaintiffs raised issues other than the three fully set forth above in their request for a declaratory ruling and made allegations in their petition and amended petitions for an administrative appeal that involved issues other than these three. The plaintiffs only discussed [HN3] the three issues in their brief, however, and did not discuss any additional issues; therefore, the court considers all other issues to have been abandoned.

Merchant v. State Ethics Commission, 53 Conn.App. 808, 818, 733 A.2d 287 (1999).

4 The court only analyzes aggrievement under the classical test, and not under statutory aggrievement. Some of the plaintiffs intervened in Docket No. 192 under *General Statutes § 22a-19* (environmental intervention). This appeal is taken, however, from the declaratory ruling issued in Docket No. 492, and not from Docket No. 192. Therefore, statutory aggrievement is irrelevant.

[*9] With respect to the town of Middlebury, the ten-term First Selectman of Middlebury and Director of Public Works, Edward B. St. John, testified at the hearing before this court that his town borders on Oxford and that the proposed power plant is just over the border. Middlebury as a contiguous town has issues with the siting council's views on who is the proper certificate holder, with the procedure leading to the location of the facility and with the increased truck traffic allowed under the D&M plan.

Based on his testimony, aggrievement is found for Middlebury. [HN4] First, it has a specific personal and legal interest as "representative of the public interests of all its inhabitants . . ." *Milford v. Commissioner of Motor Vehicles, 139 Conn. 677, 681, 96 A.2d 806 (1953)*; *Guilford v. Landon, 146 Conn. 178, 179, 148 A.2d 551 (1959)*; see also *Cromwell v. Inland Wetlands & Watercourses Agency*, Superior Court, judicial district of Middlesex at Middletown, Docket No. 065192 (September 15, 1993) (Gaffney, J.) (10 Conn. L. Rptr. 92) (standing for two towns that border the regulated activities in question). As to the "injury in fact" requirement, [*10] there exists a possibility that Middlebury's interests, as stated by the First Selectman, may be affected due to the siting council's replies to the declaratory ruling, and this is sufficient injury under aggrievement law. [5]

5 Given that [HN5] one of the plaintiffs is aggrieved, it is unnecessary to make an extensive analysis of the other plaintiffs' aggrievement. *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, 220 Conn. 527, 529 n.3, 600 A.2d 757 (1991)*; *Concerned Citizens of Sterling, Inc. v. Connecticut Siting Council, 215 Conn. 474, 479 n.3, 576 A.2d 510 (1990)*. The individual plaintiff Stowell lives in Middlebury, just across the border from Oxford and the proposed plant; the court finds him aggrieved because he raises the issue of the location of the plant in the D&M plan; Stowell is a member of Citizens and this gives Citizens organizational standing; Trout's concern involves the flow of the Pomperaug River and does not have specific personal and legal interest for aggrievement; and finally Schachne has only a general interest in the environment and does not satisfy the first requirement of the aggrievement test.

[*11] Having resolved the issue of aggrievement, the court will next proceed to consider the merits of the case as raised by the plaintiffs. The court uses the following standard in evaluating the claims: "[HN6] Judicial review of [an administrative agency's] action is governed by the Uniform Administrative Procedure Act [*General Statutes § 4-166 et seq.* (UAPA)] . . . and the scope of that review is very restricted . . . With regard to questions of fact, it is [not] the function of the trial court . . . to retry the case or to substitute its judgment for that of the administrative agency . . ." (Citations omitted; internal quotation marks omitted.) *MacDermid, Inc. v. Dept. of Environmental Protection, 257 Conn. 128, 136, 778 A.2d 7 (2001)*. "This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review . . . The burden is on the [plaintiff] to demonstrate that the [agency's] factual conclusions were not supported by the weight of substantial evidence on the whole record . . ." (Citations omitted; internal quotation marks omitted.) *Id., at 136-37.* [*12] "Even as to questions of law, the court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion . . ." (Internal quotation marks omitted.) *Id., at 137*; see also *Assn. of Not-for-Profit Providers for the Aging v. Dept. of Social Services, 244 Conn. 378, 389, 709 A.2d 1116 (1998)* (stating the rule in the context of review of a declaratory ruling).

The plaintiffs' first contention is that the siting council erred in not requiring Towantic to petition the siting council for a transfer of its certificate to Calpine. This argument is based upon an interpretation of [HN7] *General Statutes § 16-50k(a)* providing that "no person" may develop a facility without a certificate from the siting council. Under *General Statutes § 16-50k(b)*, a certificate may be transferred, subject to the approval of the siting council, to "[HN8] a person who agrees to comply with the terms, limitations and conditions contained therein." The word "person" includes "[HN9] any . . . corporation, limited liability company, joint venture . . . and [*13] any other entity, public or private, however organized." *General Statutes § 16-50i(c).*

The plaintiffs argue that Calpine's name should be on the certificate and Towantic should seek the approval of the siting council to transfer the certificate to Calpine. The plaintiffs allege that Towantic is merely a shell entity for the real party in interest, Calpine, which prepared the D&M plan. The court rejects this attempt to hold the

siting council at fault for not analyzing the structure of an limited liability company after it has received a certificate through the application process. This would vary the explicit language of the statutes quoted above that allow a limited liability company to hold a certificate without limitation as a "person." It has been repeatedly held that [HN10] the primary rule of statutory construction is that "if the language of the statute is clear, it is assumed that the words themselves express the intent of the legislature; . . . and thus there is no need to construe the statute." *Anderson v. Ludgin, 175 Conn. 545, 552, 400 A.2d 712 (1978)*; *Wrinn v. State, 234 Conn. 401, 405, 661 A.2d 1034 (1995)*; *Ferrato v. Webster Bank, 67 Conn.App. 588, 592, 789 A.2d 472 (2002).* [*14] By statute, any limited liability company may become a certificate holder and is not automatically forced to apply for a transfer of the certificate to the parent entity.

The only reason given by the plaintiffs to require Towantic to transfer its certificate to Calpine, is the plaintiffs' concern that enforcement would become more difficult if the subservient entity is left as the operator, and not the ultimate owner. The law does not support this conclusion, as the state and local officials or the siting council may take any action they deem appropriate if Towantic violates its certificate. Enforcement would include seeking to revoke the certificate as well as applying remedies against Calpine. See, e.g., *Baston v. RJM & Associates*, Superior Court, judicial district of Hartford, Docket No. 593189 (June 4, 2001) (Beach, J.) (29 Conn. L. Rptr. 646) (allowing an action against an individual partner of a limited liability company).

The siting council, based on the record as it existed in Docket Numbers 192 and 492, [6] fully answered the plaintiffs in its March 1, 2001 declaratory ruling: Towantic is a valid business entity, its relationship with Calpine is not illegal, and [*15] Calpine fully disclosed its relationship with Towantic to the siting council. Therefore, the court finds that the siting council properly ruled on this issue as raised in the request for a declaratory ruling.

> 6 There is no requirement in the siting council's regulations or the UAPA that the siting council before approving the D&M plan hold further hearings on the matter of the relationship between Towantic and Calpine. See *Regs., Conn. State Agencies § 16-50j-40(b)* (discretionary to hold hearing in issuing declaratory ruling).

The second issue raised by the plaintiff is that the siting council failed to hold a hearing when approving the D&M plan to decide whether the facility should have been moved southerly from its initial location. They contend that there should have been an amended certification process pursuant to *§ 16-50i(d)*. However, under *General Statutes § 16-50p(d)*: "[HN11] If the council determines that the location of all or a part of the proposed facility should be modified, [*16] it may condition the certificate upon such modification, provided the municipalities, and persons residing or located in such municipalities, affected by the modification shall have had notice of the application as provided in subsection (b) of *section 16-50i*." This provision is a link to *§ 16-50i(d)*.

In its final decision (Decision and Order, Docket No. 192), (ROR, Item 1, pp. 1-4), the siting council did not provide such a condition. Instead, the siting council added to its order a directive that the D&M plan contain a final site plan, shifting the proposed site, to the greatest extent possible, up to 500 feet south. (ROR, Item 1, pp. 1-2.) The decision and order of the siting council was affirmed by this court and cannot now be challenged on its decision not to make the move to the south a condition of the certificate. Since the siting council did not condition its permit on relocation, or require further notice or a hearing on location in its order, there was no error in the siting council's merely reviewing the proposed D&M plan for compliance. [7] The siting council logically conclude that the D&M plan sets forth an attempt to contract the facility and to retain existing [*17] vegetation as a boundary line, and that this satisfies the requirements of the final decision regarding the D&M plan.

> 7 The plaintiffs rely on a transcript from the hearing in Docket Number 192 to argue what the siting council had in mind by its order on location. [HN12] The court must rely only on the actual order, not what might have arisen during the hearing process. On reaching this conclusion, the court does not believe it necessary to address the defendant Towantic's motion to strike the transcript excerpt from the plaintiffs' brief. (Motion to Strike Evidence Outside the Record or, in the Alternative, to Supplement the Record dated January 30, 2002.)

The plaintiffs' final issue is that the D&M plan exceeded its scope by approving Towantic's plan to increase truck traffic to the site. Clearly, the D&M plan functions to "fill up the details" in the siting council's final decision. Cf. *State v. Stoddard, 126 Conn. 623, 628, 13 A.2d 586 (1940)* (legislature may delegate to agency to fill up details). [*18] [HN13] The D&M plan cannot provide a substitute for matters not addressed during the application process. *Westport v. Connecticut Siting Council*, Superior Court, judicial district of New Britain, Docket No. 501129 (June 27, 2001) (Cohn, J.), appeal pending, S.C. Nos. 16600, 16601. Under analogous regulations of the siting council, the purpose of D&M plans for electric transmission lines and communi-

cations towers is to help "significantly in balancing the need for adequate and reliable utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state." *Regs., Conn. State Agencies §§ 16-50j-60, 16-50j-75.*

Here, the decision and order, ROR, Item 1, p. 2, requires Towantic to set forth the means of bringing an adequate water supply to the site, at such time as the power plant must use oil for fuel. Towantic explains in the D&M plan that it cannot supply all water needs by the Heritage Water Company and must use truck water to complete the siting council's requirements. (ROR, Item 6, Tab D, p. 3.) Since the final decision provided for the transmission of water to the site, the siting council did not abuse its discretion in approving [*19] in the D&M plan the use of additional trucks to accomplish this directive. The siting council appropriately gave its approval noting that the use of water trucks would not be a great environmental burden and would only occur where the supply of natural gas was suspended.

The court concludes that the siting council has not acted unreasonable, arbitrarily, illegally or in abuse of its discretion in its response to the request for a declaratory ruling.

Therefore, the plaintiffs' appeal is dismissed.

Henry S. Cohn, Judge