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March 18, 2013

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

Robert Stein, Chairman  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051



**RE: Docket No. 190—Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for the Construction, Maintenance, and Operation of a 530 MW Combined Cycle Generating Plant in Meriden, Connecticut—Petition of the City of Meriden to Reopen and Modify Decision and Order in Docket No. 190 Due to Changed Conditions, and for Party Status**

Dear Chairman Stein:

Enclosed are an original and twenty (20) copies of the Petition of the City of Meriden to Reopen and Modify Decision and Order in Docket No. 190 Due to Changed Conditions, and for Party Status (the "Petition"). In the Petition, the City of Meriden ("City") asks the Connecticut Siting Council ("Council") to reopen Docket No. 190 pursuant to Conn. Gen. Stat. § 4-181a(b), and to modify the Decision and Order.

As explained in the Petition, Meriden Gas Turbines, LLC ("MGT"), the owner of the electric generating facility certificated by the Council in Docket 190, has notified the City that MGT intends to abandon its partially-completed facility. The Petition demonstrates that MGT's abandonment is a changed circumstance justifying a reopening of Docket No. 190 to modify the Decision and Order to require MGT to mitigate the adverse scenic, environmental, safety and other adverse effects of its abandonment.

Please contact me with any questions at (860) 509-6575.

Sincerely,

**BROWN RUDNICK LLP**  
A handwritten signature in black ink, appearing to read "Pm" followed by a stylized flourish.

Philip M. Small  
Counsel for City of Meriden

PMS/sjw

Enclosures

cc: Service List, Docket No. 190  
Deborah L. Moore, Esq.

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

MERIDEN GAS TURBINES, LLC CERTIFICATE : DOCKET NO. 190  
OF ENVIRONMENTAL COMPATIBILITY AND :  
PUBLIC NEED FOR THE CONSTRUCTION, :  
MAINTENANCE, AND OPERATION OF A 530 :  
MW COMBINED CYCLE GENERATING PLANT :  
IN MERIDEN, CONNECTICUT. :  
: March 18, 2013

PETITION OF THE CITY OF MERIDEN TO REOPEN AND MODIFY DECISION AND  
ORDER IN DOCKET NO. 190 DUE TO CHANGED CONDITIONS, AND FOR PARTY  
STATUS

I. SUMMARY AND BACKGROUND

Almost fourteen years ago, the Connecticut Siting Council (the “Council”) (with two dissenting votes) issued a Decision and Order (“Decision”) granting a certificate of environmental compatibility and public need (the “Certificate”) to PDC - El Paso Meriden LLC, and the accompanying Findings of Fact, and Opinion in Docket No. 190. In the Decision, the Council approved a 530-megawatt combined cycle electric generating facility (the “Project”) on an environmentally sensitive and scenic traprock ridge located at 600 South Mountain Road, Meriden, Connecticut (the “Site”).

As the Council is aware, the current Project owner, Meriden Gas Turbines, LLC (“MGT”),<sup>1</sup> began Project construction in 2001. MGT continued construction through 2002, substantially completing Site excavation, grading and preparation, the access drive, the main building, water tanks, cooling tower, and other accessory buildings. MGT also installed gas

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<sup>1</sup> In 2001, NRG Energy, Inc. (“NRG”) acquired PDC - El Paso Meriden LLC and renamed it Meriden Gas Turbines, LLC.

combustion turbines, heat recovery steam generators, a steam turbine, transformers, and other major components of its Project.

Due to the tightening of financial markets in late 2001, MGT was unable to obtain additional project financing and ceased construction in 2003. Since halting construction, MGT removed from the Site almost all of the electric generating equipment it had installed. However, a number of structures remain, including the now empty, approximately 44,000 square feet, 82 feet tall building that once housed the steam and gas turbines and other equipment (the "Turbine Building") and a smaller Control Building. Additionally, the City of Meriden ("City") believes that MGT has failed to comply with numerous conditions required by the Council, resulting in ongoing environmental, visual, safety and other adverse effects.

Despite obtaining from the Council construction deadline extensions until April 27, 2016, MGT notified the City in writing of its intent to abandon the Project on or after April 3, 2013.<sup>2</sup> According to NRG spokesman David Gaier, "[NRG doesn't] see a path forward for the project, given that the Connecticut Integrated Resource Plan concludes that Connecticut won't need new power generation until 2022."<sup>3</sup>

Unfortunately, MGT's abandonment will burden the City and its inhabitants with the remnants and the adverse effects of MGT abandoning this partially constructed Project. This troubling scenario was not contemplated by the Council (or the participants in Docket No. 190) when the Council issued the Certificate in 1999 or when it granted MGT numerous extensions of

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<sup>2</sup> MGT's letter, dated April 3, 2012, is attached as **Exhibit 1**. As background, MGT and the City are parties to a Property Tax Settlement Agreement. Under this Agreement, MGT may abandon the Project, with a minimum of one year advance notice to the City, by relinquishing or surrendering its construction and operating permits. Based on its notice, MGT may, but is not obligated to, abandon the Project on or after April 3, 2013. To be clear, the City is not attempting through this Petition to delay the effective date of MGT's abandonment of the Project. Rather, the City seeks to have the Council require MGT to properly mitigate the adverse effects of its construction and its abandonment of the Project.

<sup>3</sup> Mary Ellen Godin, *NRG to Exit Power Plant Project in Meriden*, Record-Journal (March 5, 2013) (attached as **Exhibit 2**).

that Certificate. As a result, unlike Council approvals for telecommunications towers and wind generation facilities, nothing in the Certificate, the Decision or the Council-approved Development and Management (“D&M”) Plan requires MGT to remove the Turbine Building and other remains of its abandoned Project or to mitigate the visual, environmental, safety and other adverse effects of MGT’s construction. Consequently, absent Council action, the Project will impose substantial public harm without any offsetting public benefits.

Under Conn. Gen. Stat. § 4-181a(b), the Council may “[o]n a showing of changed conditions” modify a final decision. MGT’s planned abandonment of the Project plainly constitutes a “changed condition,” and the visual, environmental, public safety and other adverse effects of that abandonment justify modification of the Decision. Therefore, pursuant to Conn. Gen. Stat. § 4-181a(b), the City respectfully requests that the Council reopen Docket No. 190 and modify the Decision to require MGT to remove the Turbine Building and other structures, and to submit and implement a Project Decommissioning Plan that mitigates the adverse effects of MGT abandoning the Project.

## II. DISCUSSION

### A. THE COUNCIL HAS THE STATUTORY AUTHORITY UNDER CONN. GEN. STAT. § 4-181a(b) TO MODIFY THE DECISION IN THE EVENT OF CHANGED CONDITIONS.

The Council has the statutory authority to modify the Decision if the facts or circumstances under which it was issued have changed. Specifically, Conn. Gen. Stat. § 4-181a(b) provides that “[o]n a showing of changed conditions, the agency may . . . modify the final decision, at any time, at the request of any person or on the agency's own motion.” See *Town of Fairfield v. Connecticut Siting Council*, 37 Conn. App. 653, 668 (1995) (“The statute clearly allows a final decision from a contested case to be opened and modified upon a showing

of changed conditions.”), *reversed on other grounds*, 238 Conn. 361 (1996). The Council has found that Conn. Gen. Stat. § 4-181a(b) “permits an agency to consider whether changed conditions exist, and then consider whether such changes, if any, justify reversing or modifying the Council’s original decision . . . .” (Docket No. 192, *Towantic Energy, LLC Certificate of Environmental Compatibility and Public Need*, Opinion for Conn. Gen. Stat. § 4-181a(b) Proceeding, Jan. 4, 2007, Pg. 1; *see, also*, Docket NT-2010, *Reopening of Final Decisions*, Opinion, March 17, 2011; Docket No. 225B, *Kleen Energy Systems, LLC Certificate of Environmental Compatibility and Public Need*, Opinion, July 22, 2009).

The petitioning party has the burden to make the statutory showing of changed circumstances. *Sielman v. Connecticut Siting Council*, 2004 WL 203046, \*3 (Conn. Super. Ct. Jan. 14, 2004). Furthermore, Conn. Gen. Stat. § 4-181a(b) provides for only a limited re-opening of the final decision to address the specific changed conditions. *Id.* at \*5 (“an agency’s ability to reconsider any of its decisions under § 4-181a(b) is more restricted than when requested under § 4-181a(a) . . .”).

Consequently, if MGT’s abandonment of the Project constitutes a changed condition, the Council has the statutory authority to reopen Docket No. 190 and modify the Decision to mitigate the adverse effects of that abandonment.

**B. MGT’S ABANDONMENT OF THE PROJECT CONSTITUTES A CHANGED CONDITION UNDER CONN. GEN. STAT. § 4-181a(b).**

Without overstating the obvious, MGT’s unforeseen decision to abandon the construction of a partially-completed 530-megawatt electric generating facility in an environmentally sensitive area constitutes a changed condition under Conn. Gen. Stat. § 4-181a(b). There is no statutory or judicial guidance as to what constitutes a “changed condition” under the statute; therefore, the term is assigned its ordinary meaning. *See* Conn. Gen. Stat. § 1-1(a) (“In the

construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . . .”); *Rivers v. City of New Britain*, 288 Conn. 1, 17 (2008) (finding that when a word is not defined in the relevant statutory provisions, the commonly understood meaning is to be used) (citations omitted).

The Council has addressed the issue of what constitutes “changed conditions” in its prior opinions, holding that a changed condition requires “new information or facts that were not available at [the time of the final decision or] . . . unknown or unforeseen events.” *Town of Fairfield*, 238 Conn. at 366 (quoting from the Council’s opinion denying a petition to modify an order). Consistent with this approach, the Council has recently reopened a number of electric generating facilities dockets and revised final decisions under Conn. Gen. Stat. § 4-181a(b) based on new facts or when circumstances not previously contemplated by the Council have arisen.

For example, the Council reopened Docket No. 187 to examine new information regarding the use of potable water for cooling purposes under emergency or contingency events. (Docket No. 187, *Milford Power, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion for Conn. Gen. Stat. § 4-181a(b) Proceeding, April 7, 2009). In its opinion, which addressed whether changed conditions existed, the Council noted that “at the time of certification, the record did not speak to sources of cooling water for contingency events.” (*Id.* at Pg. 2). In short, because the Council had not originally considered the issue of whether, and to what extent, potable water could be used during emergencies, new information documenting the occurrence of such contingency events was sufficient for the Council to reopen the docket and modify the final decision. (*Id.*)

Similarly, the Council has reopened dockets where external events warranted the finding of changed conditions. (*See, e.g.*, Docket NT-2010, *Reopening of Final Decisions*, Opinion,

March 17, 2011 (finding that the adoption of new industry practices regarding gas pipe cleaning constituted changed conditions); Docket No. 225B, *Kleen Energy Systems, LLC Certificate of Environmental Compatibility and Public Need*, Opinion, July 22, 2009 (finding that the State's imposition of an aquifer protection zone subsequent to the issuance of the certificate was a changed condition); Docket No. 187A, *Milford Power, LLC, Certificate of Environmental Compatibility and Public Need*, Opinion, Dec. 2, 2010 (finding that a subsequent increase in natural gas supply, improvements to the electrical transmission grid and construction of other generation facilities were changed conditions).

MGT's abandonment of the Project is likewise a changed condition because it is "new information" that was plainly not available when the Council issued the Certificate in 1999. Neither the Decision nor the Findings of Fact in Docket No. 190 contain any reference to or recognition of the prospect that MGT might commence construction of but fail to complete the Project. Had the Council been informed of this possibility, it probably would have imposed conditions in the Certificate requiring removal of structures and other mitigation measures similar to those it imposes on telecommunications and wind facilities. (*See, e.g.*, Docket No. 984, *Petition of BNE Energy, Inc.*, Decision and Order, June 9, 2011, Condition No. 3.m; Docket No. 427, *Application of North Atlantic Towers, LLC and New Cingular Wireless PCS, LLC*, Decision and Order, Dec. 13, 2012, Condition Nos. 6 and 8).

Further, the potential abandonment of the Project by MGT was an unforeseen event for the Council, the City and even for MGT. For more than a decade, MGT and its parent, NRG, have publicly maintained that the Project would be completed. In fact, in October 2011, NRG Northeast Region President Lee Davis stated "[w]e have a project in Meriden that we're very close to finishing the permitting on, but more importantly that project is nothing but shovel-

ready."<sup>4</sup> Even more recently, on March 2, 2012, NRG stated in comments to the Department of Energy and Environmental Protection: "Additionally, NRG is prepared to proceed with the following repowered and new generation projects as soon as suitable off-take contracts can be secured, such as in response to an RFP pursuant to the Final IRP:

- Meriden Gas Turbines – 530 MW natural gas combined cycle plant in Meriden. This project has approvals from both the Siting Council and DEEP...."<sup>5</sup>

Therefore, until very recently, the abandonment of the Project was not anticipated by the Council. MGT's decision to abandon the Project is precisely the type of "new information" or "unforeseen event" that constitutes a changed condition under Conn. Gen. Stat. § 4-181a(b). As a result, the Council is authorized to reopen Docket No. 190 and modify the Decision to address MGT's abandonment of the Project.<sup>6</sup>

C. THE COUNCIL HAS THE STATUTORY AUTHORITY TO ATTACH CONDITIONS TO THE DECISION REQUIRING MITIGATION OF THE ADVERSE EFFECTS OF MGT'S ABANDONMENT OF THE PROJECT.

The Council has the statutory authority to revise the Decision to include conditions requiring MGT to mitigate the adverse effects of abandoning the Project. Conn. Gen. Stat. § 16-50g requires the Council to balance public need against the adverse effects of facilities. In fact, "[t]he purposes of this chapter [277a, the Public Utility Environmental Standards Act] "are to: Provide for 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

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<sup>4</sup> Adam Wittenberg, *NRG Energy Says It's Ready To Finish Plant*, Record-Journal (Oct. 8, 2011) (attached as Exhibit 3).

<sup>5</sup> Comments of NRG Energy on the Department of Energy and Environmental Protection 2012 Integrated Resource Plan (March 2, 2012) (excerpt attached as Exhibit 4).

<sup>6</sup> In addition, the City respectfully requests the Council to consider initiating a proceeding against MGT in Superior Court under Conn. Gen. Stat. § 16-50u to enforce compliance by MGT with Council requirements that MGT has failed to meet. The Council has previously taken action against MGT under this statute.



of the state and to minimize damage to scenic, historic, and recreational values;...” To implement its statutory mandate, the Council may grant an application “upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate.” Conn. Gen. Stat. § 16-50p(a)(1); *see, also, Preston v. Connecticut Siting Council*, 20 Conn. App. 474, 491-492 (1990) (“The council was well within its statutory authority in imposing [an environmental permitting] condition, and we will not substitute our judgment for that of the council regarding the adequacy and reasonableness of the condition.”), *cert. denied*, 214 Conn. 803 (1990).

Further, the Appellate Court in *Preston* found that “General Statutes § 16-50g mandates that the council, in performing its statutory functions, . . . balance the need for public utility services at a reasonable cost with environmental, ecological, scenic, historic and recreational values; . . .” *Id.* at 485; *see, also, Conn. Gen. Stat. § 16-50p(3)(B)* (the Council must evaluate the impact on “public health and safety, scenic, historic and recreational values, forests and parks.”).

As described above, the Council has broad statutory authority and the obligation to impose conditions that properly balance the public benefit and the environmental harm resulting from a facility. A condition that requires the decommissioning and removal of a vacant facility is within with the Council’s authority because, once a partially-constructed project is abandoned, it no longer provides any public benefits to offset the adverse visual, environmental, scenic, public safety and other effects the facility imposes on the public.

Importantly, the Council has long recognized its authority to require developers to decommission and remove abandoned facilities. For example, since the 1980s, if a telecommunications tower is abandoned, the Council has mandated that the certificate holder “dismantle the tower and remove all associated equipment . . . .” (*See e.g., Docket No. 87,*

*Application of SNET Cellular, Inc.*, Decision and Order, March 22, 1988, Condition No. 9; Docket No. 420, *Application of SBA Towers III and New Cingular Wireless PCS, LLC*, Decision and Order, Feb. 2, 2012, Condition Nos. 7 and 9; Docket No. 427, *Application of North Atlantic Towers, LLC and New Cingular Wireless PCS, LLC*, Decision and Order, Dec. 13, 2012, Condition Nos. 6 and 8).

Similarly, the Council recently required BNE Energy, Inc. to include a “Project Decommissioning Plan” in the D&M Plans for its 4.8-megawatt wind generating project. (See Petition No. 984, *BNE Energy, Inc.*, Decision and Order, June 9, 2011, Condition No. 3.m). The Project Decommissioning Plan included the removal of the turbines, the wind towers, and associated foundations to two feet below grade. (See Petition No. 984, *Decommissioning Plan – Colebrook North*, Oct. 21, 2011). The plan even included the provision of financial assurance to guarantee the decommissioning and removal is completed. (*Id.*)

Consequently, the Council, in keeping with its statutory mandates to balance public benefit and adverse effects and to protect “public health and safety, scenic, historic and recreational values,” has the authority to impose conditions requiring MGT to dismantle and remove the Project’s remaining structures.

**D. MGT’S ABANDONMENT OF THE PROJECT JUSTIFIES MODIFYING THE DECISION TO REQUIRE THAT MGT SUBMIT AND IMPLEMENT A PROJECT DECOMMISSIONING PLAN, INCLUDING THE REMOVAL OF BUILDINGS AND MITIGATION OF ADVERSE EFFECTS.**

MGT’s decision to abandon the Project creates a vast imbalance between the public benefits and the adverse effects caused by the Project. Modifying the Decision to require a decommissioning plan would correct this imbalance by mitigating the adverse effects of MGT’s abandonment.

When originally issuing the Certificate, the Council determined that the Project “offers substantial benefits to the public that outweigh potential environmental damage.” (Opinion, Pg. 3). The “environmental damage” included installing structures and buildings along a traprock ridge near the top of Cathole Mountain – an “undesignated greenbelt.” (*Id.*) Further, the Council’s Findings of Facts state that the Project would be visible from Meriden and the Town of Berlin, including from Meriden’s City Hall almost two miles away. (Findings of Fact, Pgs. 11-12). Similarly, Council Members Brian Emerick and Colin C. Tait in their dissent noted that the Project would be “visually conspicuous” and “a distant visual feature for a large area.” (Dissenting Opinion, Pg. 1). Appropriately and as required by its governing statutes, in issuing the Certificate, the Council balanced these effects against the prospect of “a clean and reliable source of electric generation” and “economic benefits.” (Opinion, Pg. 3).

MGT’s plan to abandon the Project, however, now eliminates the “substantial benefits to the public” which originally counterbalanced and outweighed the environmental and scenic damage. As the dissent presciently noted, “[t]he market risk of overbuilding power plants is on the proponents; but the environmental risks are on the public.” (Dissenting Opinion, Pg. 1). MGT’s abandonment of its partially-constructed electric generating facility will result in many adverse impacts to the area without providing any corresponding public benefit. To correct this imbalance, the City asks the Council to require MGT to mitigate the environmental, visual and safety impacts by implementing a plan to decommission and dismantle the Project.

As the Council’s prior decisions approving telecommunications towers and wind generating facilities establish, the Council recognizes that abandoned facilities must be decommissioned and removed in order to mitigate their adverse effects. Due to the Project’s scope and size, MGT’s abandonment creates greater concern than abandonment of

telecommunications towers and wind generating facilities. Therefore, MGT's abandonment warrants the imposition of a condition requiring a similar degree of abatement.

Specifically, MGT's partially constructed facility will continue to be a blemish on this scenic traprock ridge which forms a "north-south greenway corridor through central Connecticut." (Opinion, Pg. 3). The deserted Turbine Building will continue to be visible from throughout the City of Meriden and the Town of Berlin. Further, the Site could become a nuisance and a public safety hazard. Access will be difficult to restrict given the access road, its location within a forested recreational area, and the fact that the Site, which is set back from the road, will be shielded from the view of public safety officials. There is, however, no longer any corresponding public benefit (i.e. cleaner, more reliable electricity) to weigh against these public harms.

Equally troubling, based on inspections by its Planning Commission and its Public Works Department, the City believes that MGT has failed to implement and/or to maintain numerous requirements of the approved D&M Plan intended to mitigate the adverse effects of the Project's construction that will endure long after its abandonment. These include D&M plan requirements for: erosion and sedimentation control measures; storm drainage, paving, landscaping and planting; safety; and the access road.

The adverse effects of MGT's abandonment of the Project justifies modification of the Decision by the Council to require MGT to remove the Turbine Building and other vacant structures remaining at the Site, and to mitigate the adverse effects of the abandonment and of its apparent noncompliance with the approved D&M Plan. Consequently, given the changed condition and the adverse effects that would result from MGT abandoning the Project, the City respectfully requests the Council to modify the Decision by adding the following conditions:

1. As an amendment to its approved D&M Plan, MGT shall submit, for the Council's review and approval, a Project Decommissioning Plan (the "Plan"). The Plan shall include the following elements and the timeframe for completing each element:
  - a. All buildings and structures shall be removed to grade level.
  - b. MGT shall identify all approved D&M Plan measures that it has not fully implemented and/or adequately maintained, and provide plans and schedules for completing such measures except for those measures the Council determines are no longer applicable.
  - c. Site access shall be restricted with physical barriers and signage.
  - d. MGT shall provide financial assurance to ensure the Plan will be completed.
2. Upon approval of the Plan by the Council, MGT shall fully implement the approved Plan in the approved timeframe.
3. MGT shall provide quarterly reports to the Council and the City on its progress in implementing, completing and adequately measures required by the approved Plan.

### III. REQUEST FOR PARTY STATUS

Although the City has actively participated in Docket No. 190, it is not a party in this docket. Given the City's obvious interests in both its governmental capacity, and as an adjacent landowner to the Project, the City's legal rights, duties and privileges will be affected by the Council's action on this Petition. Therefore, pursuant to Conn. Gen. Stat. § 4-177a(a) and Regulations of Connecticut State Agencies § 16-50j-14, the City respectfully requests that the Council grant party status in this proceeding to:

City of Meriden  
142 East Main Street  
Meriden, CT 06450

Communications regarding this Petition should be directed to the following

representatives of the City:

Deborah L. Moore  
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#### V. CONCLUSION

MGT, by abandoning the Project, will disturb the careful balance struck by the Council between the public benefit and adverse environmental and other effects in issuing the Certificate in Docket No. 190. In order to restore that balance, the City requests that the Council require MGT to abate the environmental, scenic, and safety impacts arising from its to-be-abandoned, vacant and incomplete electric generating facility Project. Therefore, for the reasons described above, the City respectfully requests that the Council reopen Docket No. 190, and modify the Decision by requiring MGT to submit and implement a Project Decommissioning Plan to mitigate the adverse effects of its abandonment of the Project.

Respectfully submitted,

CITY OF MERIDEN

By: 

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Its Attorneys

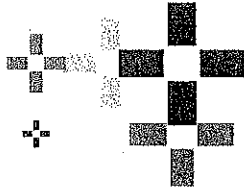
## Exhibit List

- Exhibit 1            NRG Energy, Inc. Letter, dated April 3, 2012
- Exhibit 2            *NRG to Exit Power Plant Project in Meriden*  
Record-Journal (March 5, 2013)
- Exhibit 3            *NRG Energy Says It's Ready To Finish Plant*  
Record-Journal (Oct. 8, 2011)
- Exhibit 4            Comments of NRG Energy, Inc. on the Department of Energy and  
Environmental Protection 2012 Integrated Resource Plan (March 2, 2012)  
(*Excerpts*)



**Exhibit 1**

**NRG Energy, Inc. Letter, dated April 3, 2012**



NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540

CONFIDENTIAL

April 3, 2012

VIA Hand Delivery

The City of Meriden  
142 East Main Street  
Meriden, Connecticut, 06450  
Attention: Lawrence Kendzior, City Manager

Re: Notice of Abandonment

Dear Mr. Kendzior:

On behalf of NRG Energy, Inc. ("NRG") and pursuant to paragraph 6 of the Property Tax Payment Settlement Agreement (the "Settlement Agreement") between the City of Meriden (the "City") and Meriden Gas Turbines LLC ("MGT"), which modifies that certain Property Tax Payment Agreement entered into by the parties on or about October 29, 2001, MGT hereby notifies the City in this Notice of Abandonment of its intent to relinquish, surrender and/or not renew its permits to construct and operate the Generating Station. Capitalized terms used in this letter and not defined herein shall have the meaning assigned to them in the Settlement Agreement.

In accordance with the Settlement Agreement, upon delivery of this Notice of Abandonment, the City shall no longer regard the Site as a power generating facility property for all purposes, effective on the beginning of the 7/1/2012 tax year. In accordance with the Settlement Agreement, MGT will work cooperatively and in good faith with the City to cause a new tax assessment to be established based upon the fair market value of the real and personal property assuming the Site's best and highest use other than a power generation facility.

NRG appreciates the support the City has provided MGT in its effort to develop the site. We look forward to working cooperatively with the City of Meriden to successfully transition the property.

Sincerely,

Judith Lagano  
Vice President, Asset Management  
NRG Energy, Inc.

cc: Steve Cinoski

**Exhibit 2**

***NRG to Exit Power Plant Project in Meriden***

**Record-Journal (March 5, 2013)**

## **NRG to exit power plant project in Meriden**

**Mary Ellen Godin | Posted: Tuesday, March 5, 2013 1:02 pm**

MERIDEN -- NRG has informed the city that it is withdrawing plans to complete a 544-watt gas-fired power plant in the city's northwest corner.

NRG provided the city of Meriden with a Notice of Abandonment on April 3, 2012 under the Property Tax Payment Settlement Agreement, said NRG spokesman David Gaier.

The notice formally expressed the company's intent to stop developing the site as a power generating station.

"We don't see a path forward for the project, given that the Connecticut Integrated Resource Plan concludes that Connecticut won't need new power generation until 2022," Gaier wrote in an e-mail. "In addition, the state's Comprehensive Energy Plan provides no path for procurement of conventional power generation."

Under those conditions, NRG doesn't believe it's possible to secure financing for the project, because that would require a long-term contract, Gaier said.

NRG acquired the unfinished plant and development permits on top of Cathole Mountain in 2000. Since then, the energy giant filed for bankruptcy and the turbines were sold off the city project.

NRG also had a 32-year tax agreement with the city for \$111 million. The company and the city reached a settlement on the tax agreement in 2005.

In 2006, the Connecticut Siting Council approved a five-year extension of the project certificate. On March 4, 2011, the siting council granted another extension to Apr. 27, 2016.

In October 2011, NRG Northeast Region President Lee Davis told the Record-Journal that the project was close to finishing the permitting process.

Part of the agreement included a four-year deferment. The city will receive some of that deferment this year.

NRG disagrees the property should remain taxable as a power plant site under the current agreement after it provided its notice of abandonment.

"We believe that NRG should no longer be paying property taxes as if the site were an operating power plant, beginning with the next tax payment due in July, 2013," Gaier said.

**Exhibit 3**

***NRG Energy Says It's Ready To Finish Plant***

**Record-Journal (Oct. 8, 2011)**

## **NRG Energy says it's ready to finish plant**

By Adam Wittenberg, Record-Journal staff | Posted: Saturday, October 8, 2011 3:05 am

MIDDLETOWN - The grand opening was in Middletown but the news was all about Meriden.

As executives from NRG Energy gathered to celebrate the opening of a new peaking plant in Middletown, NRG President David Crane and Northeast Region President Lee Davis told the crowd of dignitaries and officials that Meriden is one of the plants it's targeting next.

"We have a project in Meriden that we're very close to finishing the permitting on, but more importantly that project is nothing but shovel-ready," Davis told the 100 guests, which included officials from United Illuminating, which collaborated on the 200-megawatt Middletown plant.

Work in Meriden "can create jobs now and create more reliability and create a better energy product for our New England area as well as Connecticut," Davis said. "We need to be focused on making that happen, so that's one of my top priorities as region president."

The partially built power plant on Cathole Mountain has been an empty white shell since construction stopped in 2002.

The city is still receiving tax revenue from the project - \$2 million a year under an agreement reached in 2008 - but the amount would increase to about \$3 million if construction resumed. A 32-year, \$111 million tax deal was signed with the city in 2001, although payments were reduced to \$2 million annually for five years under the 2008 agreement, which settled a lawsuit over how much the plant should be taxed.

Speaking outside the event, Davis explained why the company is "very excited" about the project.

"The foundation's already poured. There's buildings there. A lot of the stuff has already been done there," he said, which could lead to a faster turnaround time than building a plant from the ground up. He estimated it would take 30 months to complete the work using more than 500 workers and 1.5 million work hours.

ISO New England, which runs the region's power grid, has reported that one-quarter of the region's electricity generation capacity comes from plants that are at least 40 years old, and Davis said NRG sees a wave of those older facilities closing in the next five to seven years.

Meriden's plant would produce about 550 megawatts. It would have two combustion turbines, two heat recovery steam generators and "one big steam turbine on the back," Davis said. It would also create about 25 permanent, full-time jobs.

The combined cycle plant - which means it can provide base load power and also start quickly during spikes in demand - would run on natural gas and would require water for cooling. Those

obstacles helped derail the original plant, but Davis was "extremely confident" the company has them surmounted.

The firm is looking at several options for bringing water to the plant, including some that were considered 10 years ago, although he declined to elaborate. Natural gas lines are "a couple of miles away," he said, "and we believe we've figured out the best path for that and so we're negotiating with some folks on how we get the gas there."

Yankee Gas had sued NRG for allegedly violating a 2002 agreement involving Yankee's building a 4.4-mile pipeline from Southington, which wasn't completed, to service the plant. The status of the suit could not be determined Friday.

The state Department of Energy and Environmental Protection is determining the state's power needs through a process called integrated resource planning. Once finished, it could issue a request for proposals to meet those needs.

Davis is confident the Meriden plant would be "if not the best project, (then) at the very top of the projects" that would be considered in the competitive bidding process. The state could consider many options, including bringing in hydro power from Canada or transmitting electricity from other regions, he said.

The company is working with politicians to make them aware of Meriden and is interested in collaborating with state and local officials, as it did in Middletown, to make it a reality.

Crane, who is also NRG's chief executive officer, said he mentioned the Meriden plant to Gov. Dannel P. Malloy in a meeting Friday morning.

"He's supportive of jobs and revitalizing" the economy and industry, Crane said. "We think it can do all of those things. We think it would be very competitive, so hopefully there'll be some sort of solicitation."

State Sen. Leonard F. Suzio, R-Meriden, also supports the project.

He attended Friday's event because Middletown is part of his district, but he said he plans to work in a bipartisan manner with Meriden's legislative delegation to keep the focus on Meriden.

"It's got to become a high priority," he said. The environment would also benefit from a cleaner plant and state labor union support it because of the construction jobs, he said. "We've got to get the wheels rolling again."

Meriden City Council Majority Leader Keith Gordon, who was not at the event, was aware that NRG had been keeping up permits on the plant, although he wasn't aware of specific plans to finish it. He noted that the city has received well in excess of \$20 million in revenue even though the plant is not done.

Mayor Michael S. Rohde could not be reached Friday for comment and City Manager Lawrence J. Kendzior was on vacation.

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**Exhibit 4**

**Comments of NRG Energy, Inc. on the Department of Energy and  
Environmental Protection 2012 Integrated Resource Plan (March 2, 2012)  
(*Excerpts*)**

**COMMENTS OF NRG ENERGY, INC. ON THE DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION 2012 INTEGRATED RESOURCE PLAN**

**March 2, 2012**

NRG Energy, Inc. ("NRG") appreciates the opportunity to comment on the 2012 Draft Integrated Resource Plan developed by The Department of Energy and Environmental Protection ("DEEP") Policy Group as called for in Sections 89 and 90 of Public Act No. 11-80. NRG applauds DEEP's efforts to prepare this significant document under a very compressed timeline that coincided with the statutory reorganization of the state's energy regulatory and policy functions within DEEP. While the draft plan reflects substantial effort and a strong commitment to end-use energy efficiency as Connecticut's resource of choice, the draft plan falls short in several areas. Without substantial revisions, the plan sets the stage for overbuilding the transmission system at a significant cost to Connecticut electric customers and missing opportunities to develop new generation resources that can moderate electricity pricing, bolster reliability and improve the efficiency and emissions profile of Connecticut's generation fleet.

NRG's comments focus on i) ensuring that all reasonable alternatives are fairly evaluated in establishing the 'base case' for the IRP; ii) assessing the timing and magnitude of electric generation retirements and quantifying the benefits to Connecticut consumers of taking definitive and timely steps to replace those resources with new, efficient, lower emitting generating units; iii) integrating Governor Malloy's energy goals into the plan, iv) highlighting the role of NRG's Montville biomass project as a means to

interconnection infrastructure already on site to serve the existing fossil steam turbines at that facility. Additionally, while all Connecticut municipalities can use new tax base, the town of Montville is currently grappling with the large economic shortfall left by the retirement and likely decommissioning of the AES Thames facility in that town. Expediting development of the NRG Montville biomass conversion project would help the town of Montville restore its grand list to previous levels.

#### V. NRG'S COMMITMENT TO CONNECTICUT

Over the past 11 years, NRG has permitted and commissioned several power projects in Connecticut and is currently developing a growing retail presence in the state. The Cos Cob peaking units were expanded by 40 MW. The GenConn projects (a joint venture between NRG and United Illuminating) included two 200 MW quick start peaking plants on NRG property in Milford and Middletown. Additionally, NRG is prepared to proceed with the following repowered and new generation projects as soon as suitable off-take contracts can be secured, such as in response to an RFP pursuant to the Final IRP:

- Meriden Gas Turbines – 530 MW natural gas combined cycle plant in Meriden. This project has approvals from both the Siting Council and DEEP.
- Montville Biomass – 40 MW clean wood biomass repowering of an existing boiler at the NRG plant in Montville. This project is currently the lowest cost renewable project proposed in CT, and, similar to the Meriden project, this project has approvals from both the Siting Council and DEEP.
- Solar – NRG has identified several sites for MW-scale solar development in Connecticut, including land located at NRG's Norwalk Harbor facility.

All of these proposed projects would provide substantial benefits to Connecticut and help to achieve the goals for energy policy set by Governor Malloy. Natural Gas

Combined Cycle projects like the one proposed in Meriden are the most efficient and economical projects at this time. In addition to helping lower energy costs, these projects will create substantial construction jobs and on-going economic activity to support the plant over its lifespan. Montville Biomass is currently the lowest cost renewable project in the state, and substantially below the cost of any greenfield biomass project, since it involves conversion of an existing boiler rather than construction of an entirely new facility. This project can be completed within 18 months of signing an off-take contract.

## VI. CONCLUSION

NRG Energy, Inc. appreciates the opportunity to comment on the DEEP's 2012 Procurement Plan. To help ensure effective modeling of resource alternatives, the Draft IRP analysis should be modified to reflect the following:

- A direct comparison of the relative economics and reliability performance of in-state generation and demand resources to the proposed NEEWS project, to ensure that the Final IRP reflects the most cost-effective means to meet Connecticut's power supply needs.
- Lower energy market prices and the accompanying job creation from new supply resource additions (efficiency or generation) should be modeled and presented on an apples-to-apples basis.

- Resource adequacy analysis should recognize that impending retirements of incumbent generation,<sup>15</sup> likely delays in transmission projects and long power plant permitting and construction lead times make it critical that Connecticut move forward with a development plan now. A generation procurement process held in 2012 will ensure that new resources are brought on line in the 2015-2016 time frame – at a time when ISO-NE has noted a significant risk of capacity shortfalls.<sup>16</sup>

Connecticut has the opportunity in the 2012 IRP procurement plan to proactively and decisively address these impending concerns thoughtfully to put the state on a smooth path to a more efficient, lower-emitting and lower cost future, and NRG urges the DEEP to seize the opportunity for the good of the people of Connecticut.

NRG again appreciates this opportunity to provide Comments on the Draft 2012 Integrated Resource Plan.

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<sup>15</sup> Although the exact timing of when these pressures will force existing resources to exit the market and exactly how many resources will exit is unknown, a substantial number of units are undoubtedly at risk. The number and impact will become more readily apparent after capacity auctions that will take place in 2012, 2013 and 2014. The anticipated substantial market exit will not only create reliability problems, but also the potential for significant increased costs associated with mitigating these concerns in haste.

<sup>16</sup> ISO New England, 2011 Regional System Plan, October 21, 2011, p. 4.

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