

PHILIP M. SMALL
direct dial: (860) 509-6575
fax: (860) 509-6675
psmall@brownrudnick.com

CityPlace I
185 Asylum
Street
Hartford
Connecticut
06103
tel 860.509.6500
fax 860.509.6501

May 9, 2013

VIA COURIER

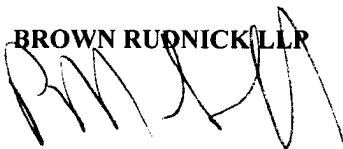
Robert Stein, Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051
United States of America

Re: Docket No. 190B—Meriden Gas Turbines, LLC Certificate of Environmental Compatibility and Public Need for a 530 MW Combined Cycle Generating Plant in Meriden, Connecticut. Reopening of this Docket Pursuant to Connecticut General Statutes § 4-181a(b) Limited to Council Consideration of Changed Conditions and a Decommissioning Plan—*Motion of the City of Meriden to Compel Immediate Access for Site Inspection*

Dear Chairman Stein:

Enclosed are an original and 20 copies of the Motion of the City of Meriden to Compel Immediate Access for Site Inspection. Please contact me with any questions.

Very truly yours,

BROWN RUDNICK LLP


Philip M. Small
Counsel for the City of Meriden

Enclosures

61146825 v1-024513/0002

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

MERIDEN GAS TURBINES, LLC CERTIFICATE : DOCKET NO. 190B
OF ENVIRONMENTAL COMPATIBILITY AND :
PUBLIC NEED FOR A 530 MW COMBINED :
CYCLE GENERATING PLANT IN MERIDEN, :
CONNECTICUT. **Reopening of this docket** :
pursuant to Conn. Gen. Stat. § 4-181a(b) limited to :
Council consideration of changed conditions and : May 9, 2013
Decommissioning Plan.

MOTION OF THE CITY OF MERIDEN TO COMPEL IMMEDIATE ACCESS
FOR SITE INSPECTION

The City of Meriden (the “City”) respectfully requests that the Connecticut Siting Council (the “Council”), pursuant to its authority under Conn. Gen. Stat. §§ 16-50o(a), 16-50u and 4-177b and Conn. Agencies Regs. § 16-50j-22a(c), order Meriden Gas Turbines, LLC (“MGT”) provide the City with immediate access to MGT’s 530-megawatt combined-cycle electric generating facility (the “Project”) at 500 South Mountain Road, Meriden, Connecticut (the “Site”). The purpose of the requested Site access is to allow the City’s outside expert witness in this docket and City officials (who may also be expert witnesses for the City) to inspect the Site to (i) review its current condition, (ii) evaluate MGT’s compliance with the Council-approved development and management plans (the “D&M Plans”), and (iii) develop recommendations to the Council on appropriate provisions for the Project decommissioning plan. The City’s observations and recommendations from the requested Site inspection would be included in the City’s pre-filed testimony in this docket, which must be filed by May 28, 2013.

BACKGROUND

The Council granted the City party status and reopened Docket No. 190 on April 18, 2013, to consider changed conditions related to MGT’s abandonment of the Project and to develop a decommissioning plan for the Project. Subsequently, on April 25, 2013, counsel for

the City, in a telephone call to MGT's counsel, requested access to the Site to allow the City to prepare its pre-filed testimony. By electronic mail, dated April 26, 2013, Counsel for MGT, requested that the City identify its experts and outline the scope and schedule for the proposed Site inspection.¹

On April 30, 2013, counsel for the City replied, identifying the City's experts as Michael Libertine of All-Points Technology Corporation and one or two officials from the City's Public Works Department and/or Planning Division. The City also explained that the purpose of the site inspection would be to (i) review MGT's compliance with the D&M Plans and (ii) identify issues and concerns that can be addressed through the Project decommissioning plan - - issues raised by the City in its motion to reopen Docket No. 190 and which will be material to the Council's consideration in this docket.² In its reply, the City asked that the Site inspection be scheduled "within the next week."

On May 8, 2013, MGT's counsel informed the City's counsel that the City would only "have access to the site during the site visit that is currently scheduled for June 4, 2013." *See Exhibit 1.*

MGT'S DENIAL IMPAIRS THE CITY'S RIGHT TO PRESENT ITS CASE
AND LIMITS THE COUNCIL'S ABILITY TO COMPILE A COMPLETE AND
ACCURATE RECORD

MGT's denial of immediate access to the Site greatly hinders the City's ability to present its case in this docket. MGT's denial is also contrary to the Council's goal of establishing an "informative record necessary for the Council to render a decision." *See Pre-Hearing Conference Memorandum, May 8, 2013.* Specifically, as a party to this proceeding, the City has "the right to present such oral or documentary evidence and to conduct such cross-examination

¹ The chain of electronic mail correspondence is attached as **Exhibit 1**.

² *See* 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, Pgs. 9-12. The appropriate elements and requirements of a decommissioning plan will depend, to a large degree, on whether MGT has complied with the D&M Plan measures intended to mitigate the adverse effects of the Project and whether those measures have been effective.

as may be required for *a full and true disclosure of the facts.*” Conn. Gen. Stat. § 16-50o(a) (emphasis added). Further, the “purpose of discovery is to provide the Council, parties, and intervenors access to all relevant information in an efficient and timely manner to ensure that a complete and accurate record is compiled.” Conn. Agencies Regs. § 16-50j-22a(c).

Here, the Council opened this docket for the purpose of evaluating the environmental, scenic, health and safety impacts of MGT’s decision to abandon the Project in order to determine the scope and terms of a decommissioning plan. For the Council to have an adequate record to decide these issues, the record must contain evidence and testimony regarding the present condition of the Site, the extent of MGT’s compliance with the D&M Plans, and appropriate decommissioning plan conditions. MGT’s refusal to grant the City’s expert and City officials prompt and reasonable access to the Site is unjustified given that the condition of the Site is the ultimate issue in this proceeding.

Importantly, the City intends to submit, by the Council’s May 28, 2013 deadline, pre-filed expert testimony from Mr. Libertine related to the condition of the Site, MGT’s compliance with the D&M Plans, and recommendations on decommissioning plan requirements along with photographic evidence. In addition, the City intends to submit to MGT interrogatories based on its evaluation of the Site. Consequently, the record can only be developed fully if the City has reasonable access to the Site well prior to the May 28, 2013 deadline for pre-filed testimony.

THE COUNCIL HAS THE AUTHORITY TO ORDER ACCESS TO THE SITE

The Council has the authority to require MGT to grant access to the Site and should exercise that authority in this case. Under Conn. Agencies Regs. § 16-50j-22a(c), the Council “may subpoena witnesses or require the production of records, physical evidence, papers and documents to any hearing” In this case, the relevant “physical evidence” is the condition of the Site, which can only be made a part of the record through inspection, documentation, and testimony. The record in this proceeding will simply not be complete and accurate unless and

until the City has the opportunity to promptly examine the Site so that it can prepare and submit its pre-filed testimony in a timely manner. Additionally, the Council “shall take reasonable steps to insure that each facility for which a certificate has been issued is constructed, maintained and operated in compliance with such certificate and any other standards established pursuant to this chapter.” Conn. Gen. Stat. § 16-50u. Requiring MGT to provide the City with access to a Site would be a reasonable (and necessary) step to ensure the Project is in compliance with the D&M Plans.

CONCLUSION

Based on the above discussion, the City respectfully requests that the Council order MGT to provide reasonable access to the Site at least two (2) weeks prior to the May 28, 2013 deadline for pre-filed testimony to allow the City adequate time to present evidence necessary for “a full and true disclosure of the facts.” Conn. Gen. Stat. § 16-50o(a).

Respectfully submitted,

CITY OF MERIDEN

By: 

Philip M. Small
Thomas J. Regan
Scott A. Muska
Brown Rudnick LLP
CityPlace I, 185 Asylum Street
Hartford, CT 06103-3402
(860) 509-6575 (tel)
(860) 509-6501 (fax)
psmall@brownrudnick.com
tregan@brownrudnick.com
smuska@brownrudnick.com
Its Attorneys

EXHIBIT 1

Small, Philip M.

From: Andrew W. Lord <ALORD@murthalaw.com>
Sent: Wednesday, May 08, 2013 4:49 PM
To: Small, Philip M.
Cc: 'Churaman, Mahendra'
Subject: RE: Docket No. 190B-- City of Meriden Request for Site Access

Phil:

The City's experts may have access to the site during the site visit that is currently scheduled for June 4, 2013.

Andrew

Andrew W. Lord

Partner

alord@murthalaw.com



Murtha Cullina LLP | Attorneys at Law | www.murthalaw.com
CityPlace I, 185 Asylum Street | Hartford | CT | 06103-3469
Direct: 860-240-6180

Fax: 860-240-5723

Please consider the environment before printing this email

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this e-mail is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this e-mail may have been written to support the promotion or marketing of the transactions or matters discussed in this e-mail, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

CONFIDENTIALITY NOTICE: This message originates from the law firm of Murtha Cullina LLP. The information contained in this e-mail and any files transmitted with it may be a confidential attorney-client communication or may otherwise be privileged and confidential. If the reader of this message, regardless of the address or routing, is not an intended recipient, you are hereby notified that you have received this transmittal in error and any review, use, distribution, dissemination or copying is strictly prohibited. If you have received this message in error, please delete this e-mail and all files transmitted with it from your system and immediately notify Murtha Cullina by sending a reply e-mail to the sender of this message. Thank you.

From: Small, Philip M. [<mailto:PSmall@brownrudnick.com>]
Sent: Tuesday, April 30, 2013 8:48 AM
To: Andrew W. Lord
Subject: Docket No. 190B-- City of Meriden Request for Site Access

Andrew,

In response to your email:

1. The City's experts visiting the site would be Michael Libertine of All-Points Technology and one or two City public works and/or land use officials.

2. The purpose of the site visit would be to review MGT's compliance with the Siting Council-approved D&M plan requirements, and to identify requirements that should be included in a decommissioning plan. The site visit would consist of an MGT/NRG-escorted tour of the site including the taking of photographs. No intrusive testing would be performed.

3. The City would like to schedule the site visit within the next week.

Please advise me promptly as to when this site visit can be scheduled. Thank you.

Phil

From: Andrew W. Lord [<mailto:ALORD@murthalaw.com>]
Sent: Friday, April 26, 2013 10:13 AM
To: Small, Philip M.
Subject: Re: Docket No. 190B-- City of Meriden Letter re Public Site Review

Phil:

Please send me a letter or email identifying your experts and outlining the scope and schedule for the proposed site visits. Thank you.

Sent from my iPhone

On Apr 24, 2013, at 3:22 PM, "Small, Philip M." <PSmall@brownrudnick.com> wrote:

Please see the attached filing.

<image001.jpg>

Philip M. Small
Counselor at Law

Brown Rudnick LLP
City Place 1 185 Asylum Street
Hartford, CT 06103
T: 860.509.6575
F: 860.509.6501
psmall@brownrudnick.com
www.brownrudnick.com

IRS Circular 230 Disclosure: To ensure compliance with U.S. Treasury Regulations governing tax practice, we inform you that:

Any U.S. tax advice contained in this communication (including attachments) was not written to be used for and cannot be used for (i) purposes of avoiding any tax related penalties that may be imposed under Federal tax laws, or (ii) the promotion, marketing or recommending to another party of any transaction or matter addressed herein.

The information contained in this electronic message may be legally privileged and confidential under applicable law, and is intended only for the use of the individual or entity named above. If the recipient of this message is not the above-named intended recipient, you are hereby notified that any dissemination, copy or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify Brown Rudnick LLP, (617) 856-8200 (if

dialing from outside the US, 001-(617)-856-8200) and purge the communication immediately without making any copy or distribution.

<Letter to R. Stein re_ Public Site Review.pdf>

**SERVICE LIST
DOCKET NO. 190**

Applicant

Meriden Gas Turbines, LLC

Its Representatives

Andrew W. Lord, Esq.
Murtha Cullina LLP
CityPlace I, 185 Asylum Street
Hartford, CT 06103-3469
alord@murthalaw.com

Raymond G. Long
Director, Government Affairs
NRG Energy, Inc.
Middletown Station
P.O. Box 1001
1866 River Road
Middletown, CT 06457

Jonathan Milley
Vice President, NE Region
NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
jonathan.milley@nrgenergy.com

NRG Energy, Inc.
c/o Julie L. Friedberg, Senior Counsel – NE
211 Carnegie Center
Princeton, NJ 08540
Julie.friedberg@nrgenergy.com

Intervenor

The Connecticut Light and Power Company

Its Representative

Stephen Gibelli, Esq.
Associate General Counsel
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270
gibels@nu.com

John R. Morissette, Manager
Manager - Transmission Siting and Permitting
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270

morisjr@nu.com

Christopher R. Bernard
Manager, Regulatory Policy (Transmission)
The Connecticut Light & Power Company
P.O. Box 270
Hartford, CT 06141-0270
bernacr@nu.com

Intervenor

Rivers Alliance of Connecticut/
Farmington River Watershed Association

Its Representative

Eric Hammerling, President
Rivers Alliance of Connecticut
P.O. Box 1797
Litchfield, CT 06759

Kevin Case
Farmington River Watershed Association
749 Hopmeadow Street
Simsbury, CT 06070

Party

Quinnipiac River Watershed Association

Its Representative

Mary Mushinsky
Executive Director
Quinnipiac River Watershed Association
P.O. Box 2825
Meriden, CT 06450
qrwa@sbcglobal.com