

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

AN APPLICATION BY TOWANTIC ENERGY, LLC : DOCKET NO. 192B  
FOR A CERTIFICATE OF ENVIRONMENTAL :  
COMPATIBILITY AND PUBLIC NEED FOR THE :  
CONSTRUCTION, MAINTENANCE AND :  
OPERATION OF A PROPOSED ELECTRIC :  
GENERATING FACILITY LOCATED NORTH OF : NOVEMBER 12, 2014  
THE PROKOP ROAD AND TOWANTIC HILL ROAD :  
INTERSECTION IN THE TOWN OF OXFORD, :  
CONNECTICUT :

**OBJECTION TO APPLICANT’S MOTION TO REOPEN AND MODIFY THE  
JUNE 23, 1999 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY  
AND PUBLIC NEED FILED ON NOVEMBER 3, 2014**

The Town of Middlebury, an intervenor in the original contested case - the underlying subject matter known as Docket 192, respectfully objects to the Motion to Reopen and Modify the June 23, 1999 Certificate of Environmental Compatibility and Public Need filed on November 3, 2014 by the successor permittee, CPV Towantic, LLC. Pursuant to Connecticut General Statute §4-181a(b), each of the “intervenors in the original case, shall be notified of the proceeding [that may reverse or modify the final decision] and shall be given the opportunity to participate in the proceeding.” The Council, by its Executive Director, issued notice on November 4, 2014 to the Town of Middlebury to submit its comments with regard to the pending Motion by close of business on November 12, 2014 – a period of just eight calendar days, a mere five business days when excluding a weekend and the Veteran’s Day Holiday. The undersigned filed a Motion for Extension of Time dated November 10, 2014 to review and comment on the Applicant’s Motion, consisting of a Petition and more than 300 pages of Exhibits.

As this Council noted in its Opinion dated January 4, 2007 in Docket 192, the Certificate

Holder at that time and original Applicant, Towantic Energy, LLC, had moved to reopen to relieve the condition of the dual fuel capability and establish a construction deadline dependent on a power purchase agreement. However, the Council denied the request and instead reopened Docket 192 - the underlying docket here, under its own motion as permitted by Connecticut General Statutes §4-181a(b) stating its purpose “to consider allegations of any changed conditions, with the opportunity of due process, from both supporters and opponents of the Certificate.” In that same Opinion, the Council reviewed and restated its purpose in continuing to reserve the right to establish and extend the construction deadlines. Subsequently, the deadline for the construction was extended at that time four more years to January 24, 2011. And again, citing the problem of securing financing for the project, the predecessors to the present Applicant and Certificate Holder sought a further extension of time which was granted providing the duty to have the power plant constructed by June 1, 2016. Now, CPV Towantic, LLC asks for a further three years extending the deadline to June 1, 2019 to allow the time for its “to permit, engineer, finance and construct the updated Facility.” When is enough, enough!

Throughout the Petition, in referring to the nature of the changes to this permitted power plant facility, reference is made to the “Environmental Overview in Support of Petition for Changed Conditions” Report submitted as Exhibit 1 of the Petition a Tetra Tech Report”. However these changes to the facility are NOT the changes the Certificate Holder cites as the statute mandates warranting a reopening “[o]n showing of changed conditions....” Rather, the Certificate Holder claims that “the fundamental changes to the electric, natural gas, and financial markets, as well as environmental regulations, as discussed in Section V [of the Petition], represent new information and unforeseen events that constitute changed conditions.” Thus, the undersigned on behalf of the Town of Middlebury, an Intervenor in this contested case, here only

addresses the claim of changed conditions in the electric and gas market and relies on the Council to provide more time to satisfy the opportunity to address the merits of the proposed modifications.

With respect to its analysis of the electric and gas market, the Petition relies on the written report entitled “New England Wholesale Power market Changes 1999-Present “, prepared for CPV Towantic, LLC dated October 2014 submitted along with the petition as Exhibit 2 referenced as the “CEA Report”. However, the CEA Report has no signature of its authors or curriculum vitae on which the council can rely as required by §16-50j-11 of the Rules of Practice for filings. It is presumptive to give a history lesson (without attribution) on the electric and gas market and environmental impacts to the state agency specifically charged under the Public Utility Environmental Standards Act “to 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 of the state...” CGS§16-50g

In a twenty-seven page written report entitled “Preliminary ISO-NE Annual Energy & Seasonal Peak Forecast 2014-2023” published on February 19, 2014 by David Ehrlich, supervisor of load forecasting, ISO-New England, Inc. summarize that “updated economic forecast and historical load and weather inputs have resulted in: slightly lower energy and peak forecasts; and the summer peak is about 300MW lower by the end of the forecast period.” (at page 27 of 27)<sup>1</sup> In Docket F-2012/2013, the Connecticut Siting Council’s Final Report date December 12, 2013 concludes “... that even taking into account the most conservative predication, the ISO-NE 90/10 forecast, the electric generation supply during 2013-2022 will be adequate to meet demand.” Any deficits... could be made up fairly easily by activating the full range of available generation, maximizing the use of active demand response resources, and

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<sup>1</sup> [http://www.iso-ne.com/trans/celt/fsct\\_detail/2014/pac\\_19feb2014\\_prelim\\_iso\\_energy\\_peak\\_forecast.pdf](http://www.iso-ne.com/trans/celt/fsct_detail/2014/pac_19feb2014_prelim_iso_energy_peak_forecast.pdf)

devising other such operational strategies.” (at page 51 of 61)<sup>2</sup>

The fact that the market place continues to fluctuate and has evolved over the past fifteen years since the original permit issued on Docket 192 is not a “change condition” warranting the reopening for the Certificate Holder to tweak the proposed power plant that is no longer needed. If the current electric market has made the proposed power plant of questionable financial viability, the upgrades in the design as proposed simply make for a more efficient model of a power plant that is no longer needed. The overview of the CEA Report (Exhibit 2 of the Petition) explains the history of the electric and natural gas markets thus giving some indication as to why the subject power plant has not been commenced when it was due to be completed in eighteen months time. In fact, nothing in the Petition gives any assurances that even with each of the modifications that the updated plan will be built. The Petition cites but does not provide explanation for the delay by the Certificate Holder in applying for said permits since its approval in 2012 as the new Certificate Holder. The petition cites to needing additional time “to permit, engineer, finance and construct” (letter G – Extension of Construction Deadline, page 14 of Petition) but provides no timeline for the Council to consider as to when it expects said permits, when it will have completed the engineering of the power plant, when it expects to have the financing secured and begin construction. The Petition appears to be a hedge waiting for a more favorable electric market which is not forecasted to come.

The definition of a hedge is “a means of protection or defense (as against financial loss)” or “a calculatedly noncommittal or evasive statement” according to the Merriam-Webster Dictionary.<sup>3</sup> The current equity ownership of this Certificate Holder, CPV Towantic, LLC is the larger entity with active projects throughout the United States know as Competitive Power

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<sup>2</sup> [http://www.ct.gov/csc/lib/csc/pendingproceeds/forecast\\_2012\\_2013/f2012\\_13\\_finalreport20131212.pdf](http://www.ct.gov/csc/lib/csc/pendingproceeds/forecast_2012_2013/f2012_13_finalreport20131212.pdf)

<sup>3</sup> <http://www.merriam-webster.com/dictionary/hedge>

Ventures Holdings, LLC (CPV).<sup>4</sup> CPV in turn is owned by Warburg Pincus, certain individual investors and many of the members of CPV's management team. Warburg Pincus is a leading global private equity firm that cites more than \$30 billion in assets under management on the CPV website.<sup>5</sup> As an investment vehicle for a hedge fund, CPV historically has obtained the permits, engineered, financed and constructed but not retained ownership of the other electricity generating plants it has invested in to date. Before awarding a 53% increase from 512MW to & 785 MW and an additional three years to the deadline to construct the subject dual-fuel electricity generating plant, the Council should again consider whether they are facilitating the practice of certificate banking.

For the foregoing reasons, the undersigned counsel on behalf of the Town of Middlebury, an Intervenor in the original contested case, respectfully submits the Petition should be denied. However, in the alternative, if the Council should move to reopen Docket 192 that it provide an opportunity for the Town of Middlebury to present evidence and cross-examine the witnesses in one or more public hearings before rendering its decision and opinion on the modification proposed.

TOWN OF MIDDLEBURY

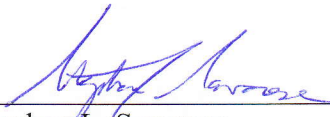
  
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<sup>4</sup> [http://www.cpv.com/namerica\\_map/examples/\\_continents/north\\_america/index.html](http://www.cpv.com/namerica_map/examples/_continents/north_america/index.html)

<sup>5</sup> [http://www.cpv.com/investment\\_partners.html](http://www.cpv.com/investment_partners.html)

## CERTIFICATION

This is to certify that an original and twenty (20) copies of the foregoing were hand delivered by to The Connecticut Siting council, 10 Franklin Square, new Britain, CT 06051 and one copy of the above was mailed or electronically delivered on this 12<sup>th</sup> day of November, 2014, was served on the applicant, parties and intervenors on the attached service list.

  
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Stephen L. Savarese  
Commissioner of the Superior Court

**LIST OF PARTIES AND INTERVENORS  
SERVICE LIST**

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Applicant</b>	CPV Towantic, L.L.C.	Franca L. DeRosa, Esq. Philip M. Small, Esq. Brown Rudnick LLP 185 Asylum Street Hartford, CT 06103 (860) 509-6500 (860) 509-6501 – fax <a href="mailto:fderosa@brownrudnick.com">fderosa@brownrudnick.com</a> <a href="mailto:psmall@brownrudnick.com">psmall@brownrudnick.com</a>
<b>Party</b>	Jay Halpern 58 Jackson Cove Road Oxford, CT 06478 h: 203-888-4976 <a href="mailto:zoarmonster@sbcglobal.net">zoarmonster@sbcglobal.net</a>  Peter Thomas 72 Towantic Hill Rd. Oxford, CT 06478 203-720-1536	
<b>Intervenor</b>	Town of Middlebury	Attorney Dana A. D'Angelo Law Offices of Dana D'Angelo, LLC 20 Woodside Avenue Middlebury, CT 06762 (203) 598-3336 (203) 598-7283 – fax <a href="mailto:Dangelo.middlebury@snet.net">Dangelo.middlebury@snet.net</a>
<b>Intervenor</b>	The Connecticut Light and Power Company (CL&P)	Stephen Gibelli, Esq. Associate General Counsel The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5513 (860) 665-5504 –fax <a href="mailto:gibels@nu.com">gibels@nu.com</a>  John R. Morissette Manager-Transmission Siting and Permitting The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2036 <a href="mailto:morisjr@nu.com">morisjr@nu.com</a>

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SERVICE LIST**

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
	CL&P continued...	<p>Christopher R. Bernard            Manager, Regulatory Policy (Transmission)            The Connecticut Light and Power Company            P.O. Box 270            Hartford, CT 06141-0270            (860) 665-5967            (860) 665-3314 – fax  <a href="mailto:bernacr@nu.com">bernacr@nu.com</a></p> <p>Stella Pace, Senior Engineer            The Connecticut Light and Power Company            Transmission and Interconnection Dept.            P.O. Box 270            Hartford, CT 06141-0270            (860) 665-3569  <a href="mailto:paccess@nu.com">paccess@nu.com</a></p>
<b>Party</b>	Town of Oxford	<p>Francis A. Teodosio, Esq.            Winnick, Vine, Welch &amp; Teodosio, LLC            481 Oxford Road            Oxford, CT 06478  <a href="mailto:fteodosio@vwwtlaw.com">fteodosio@vwwtlaw.com</a>            (203) 881-3600            (203) 881-3606 fax</p>
<b>Party</b>	Naugatuck Valley Chapter Trout Unlimited	<p>Robert M. Perrella, Vice President            TU Naugatuck/Pomperaug Valley Chapter            278 W. Purchase Road            Southbury, CT 06488-1004  <a href="mailto:johnnytroutseed@chartner.net">johnnytroutseed@chartner.net</a></p>
<b>Intervenor</b>	Town of Southbury	<p>Ed Edelson            First Selectman            Town of Southbury            501 Main Street            Southbury, CT 06488  <a href="mailto:selectman@southbury-ct.gov">selectman@southbury-ct.gov</a>            (203) 262-0647            (203) 264-9762 – fax</p>
<b>Party</b>	The Pomperaug River Watershed Coalition	<p>Len DeJong, Executive Director            Pomperaug River Watershed Coalition            39 Sherman Hill Road, C103            Woodbury, CT 06798            203-263-0076  <a href="mailto:LDeJong@pomperaug.org">LDeJong@pomperaug.org</a></p>



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<b>Status Granted</b>	<b>Status Holder (name, address &amp; phone number)</b>	<b>Representative (name, address &amp; phone number)</b>
<b>Intervenor (approved 06/07/06)</b>	Raymond Pietrorazio 764 Charcoal Avenue Middlebury, CT 06762-1311 (203) 758-2413 (203) 758-9519 – fax <a href="mailto:ray@ctcombustion.com">ray@ctcombustion.com</a>	
<b>Intervenor (approved 10/10/06)</b>	GE Energy Financial Services, Inc.	Jay F. Malcynsky The Law Offices of Jay F. Malcynsky, P.C. One Liberty Square New Britain, CT 06051 (860) 229-0301 (860) 225-4627 – fax <a href="mailto:Jmalcynsky@gaffneybennett.com">Jmalcynsky@gaffneybennett.com</a>