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February 16, 2015

VIA ELECTRONIC MAIL AND HAND-DELIVERY

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

RE: Docket No. 192B—Towantic Energy, LLC Motion to Reopen and Modify the June 23, 1999 Certificate of Environmental Compatibility and Public Need Based on Changed Conditions Pursuant to Connecticut General Statutes §4-181a(b) for the Construction, Maintenance and Operation of a 785 MW Dual-Fuel Combined Cycle Electric Generating Facility Located North of the Prokop Road and Towantic Hill Road Intersection in the Town of Oxford, Connecticut—*CPV Towantic, LLC's Responses to Connecticut Siting Council Interrogatories Q-CSC-6, 18, 20-24, 28 and 29, Dated January 26, 2015 (Set 2)*

Dear Chairman Stein:

Enclosed are an original and fifteen (15) copies of CPV Towantic, LLC's ("CPV") Responses to the Connecticut Siting Council's Interrogatories Q-CSC-6, 18, 20-24, 28 and 29, dated January 26, 2015 (Set 2).

Please contact Franca L. DeRosa, Esq. or me at (860) 509-6500 with any questions.

Very truly yours,

BROWN RUDNICK LLP

Philip M. Small
Counsel for CPV Towantic, LLC

PMS/jmb
Enclosures
cc: Service List

61860937 v1-022345/0005

BR

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of February, 2015, the foregoing document was sent via electronic mail, and/or first class mail, to the persons on the attached service list.

By: _____
Philip M. Small

SERVICE LIST OF PARTIES AND INTERVENORS

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
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Intervenor	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 Dangelo.middlebury@snet.net Stephen L. Savarese, Esq. 103 South Main Street Newtown, CT 06470 203-270-0077 attystephensavarese@gmail.com

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Intervenor	Town of Southbury	Ed Edelson First Selectman Town of Southbury 501 Main Street Southbury, CT 06488 (203) 262-0647 (203) 264-9762 - fax selectman@southbury-ct.gov
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Intervenor (approved 10/10/06)	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 Jmalcynsky@gaffneybennett.com
Intervenor (Approved 11/13/14)	Borough of Naugatuck and Borough of Naugatuck Water Pollution Control Authority	Edward G. Fitzpatrick, Esq. Alicia K. Perillo, Esq. Fitzpatrick, Mariano, Santos, Sousa, PC 203 Church Street Naugatuck, CT 06770 203-729-4555 Fitz@fmslaw.org Alicia@fmslaw.org Ronald Merancy, Chairman Water Pollution Control Authority 229 Church Street Naugatuck, CT 06770 203-720-7000 Rjm62159@aol.com
Intervenor (Approved 1/8/15)	Wayne McCormack 593 Putting Green Lane Oxford, CT 06478 wayne@waynemccormack.com	

Intervenor (Approved 1/8/15)	Naugatuck River Revival Group, Inc.	Kevin R. Zak, President Naugatuck River Revival Group, Inc. 132 Radnor Avenue Naugatuck, CT 06770 203-530-7850 kznrrg@sbcglobal.net
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Intervenor (Approved 1/8/15)	Westover School	Kate J. Truini Alice Hallaran Westover School 1237 Whittemore Road Middlebury, CT 06762 203-758-2423 ktruini@westoverschool.org ahallaran@westoverschool.org
Intervenor (Approved 1/8/15)	Greenfields, LLC and Marian Larkin	Edward S. Hill, Esq. Cappalli & Hill, LLC 325 Highland Avenue Cheshire, CT 06410 203-272-2607 ehill@cappallihill.com
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Intervenor (Approved 1/15/15)	Quassy Amusement Park	George Frantzis Quassy Amusement Park P.O. Box 1107 Middlebury, CT 06762 203-758-2913 x108 George@quassy.com

Intervenor (Approved 1/15/15)	Middlebury Bridle Land Association	Nancy Vaughan Middlebury Bridle Land Association 64 Sandy Hill Road Middlebury, CT 06762 203-598-0697 ndzijavaughan@gmail.com
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Intervenor (Approved 1/15/15)	Oxford Flying Club	Burton L. Stevens Oxford Flying Club P.O. Box 371 Woodbury, CT 06798 203-236-5158 bstevens@snet.net

Witness: **Dean Gustafson**
Eric Davison

Question CSC-6:

In reference to Tetra Tech, Inc. Environmental Overview in support of Petition for Changed Conditions (Exhibit 1), Tab F, the Department of Energy and Environmental Protection (DEEP) provided a response to a Natural Diversity Database request that identifies three bat species and one turtle species as "species of special concern." Will CPV Towantic, LLC (CPV Towantic) comply with DEEP's recommendations, particularly that work should not be done between May 1 and August 15 for bats and that sedimentation/erosion controls be installed in a staggered configuration for wildlife and reptiles traveling between habitats and that such products which embedded netting not be used? Will CPV Towantic be able to retain large diameter trees for bats to minimize long term impacts? If CPV Towantic is not able to comply with DEEP's recommendations, describe other alternative mitigation measures that would address DEEP's concerns.

Response:

Based on DEEP's Natural Diversity Data Base ("NDDB") June 10, 2014 letter, the project area is located in proximity to red bat (*Lasiurus borealis*), hoary bat (*Lasiurus cinereus*) and silver-haired bat (*Lasionycteris noctivagans*) habitat, both listed as State Special Concern Species. Mature trees beyond the limits of disturbance will be protected during construction to preserve possible bat roosting habitat. Due to the proposed project's construction schedule which will endure for two and one-half years, a seasonal restriction of May 1 through August 15 is not feasible. However, in order to avoid impact to bat roosting habitat the Applicant proposes the following protective measures that are equally protective of these listed bat species. Tree clearing activities shall be completed between November 1 and April 30 to avoid potential impact to bat roosting habitat through the removal of possible roosting trees prior to the start of the bat's active roosting season (May 1 to August 15). By completing tree clearing activities during this non-bat period, potential bat roosting habitat would be eliminated so that construction could proceed without seasonal restriction as no impact to bats would then occur. If clearing activities are not completed by May 1st, the recommended seasonal restriction would be observed. With adherence to this bat protection program, the proposed development at this property will not have an adverse effect on these listed bat species. A similar bat protection plan was approved by both the Connecticut Siting Council and DEEP in Docket No. 438.

The Applicant has been consulting with Wildlife Biologist Eric Davison of Davison Environmental with respect to the possible presence of eastern box turtle (*Terrapene carolina carolina*) at the site. The DEEP's recommendations on seasonal restriction for placement of erosion controls and placing them in a staggered configuration as noted in the June 10, 2014 NDDB letter are not feasible. Due to the project's construction duration, this seasonal restriction is not possible. Also, placement of staggered erosion controls to allow animal passage through the construction zone will only put animals in harm's way and is not recommended. An isolation barrier that prevents animals from entering into the construction zone is recommended.

Plastic netting used in a variety of erosion control products (i.e., erosion control blankets, fiber rolls [wattles], reinforced silt fence) has been found to entangle wildlife, including reptiles, amphibians, birds and small mammals. No permanent erosion control products or reinforced silt fence will be used on the Applicant's project. Temporary Erosion control products will use either erosion control blankets and fiber rolls composed of processed fibers mechanically bound together to form a continuous matrix (net less) or netting composed of planar woven natural biodegradable fiber to avoid/minimize wildlife entanglement.

Due to the complex of terrestrial forest and open field habitats and wetland habitats that existing both on and surrounding the subject site, suitable habitat may be present for eastern box turtle. Also, these plant community types and hydrologic regimes represent possible suitable habitat for eastern ribbon snake (*Thamnophis sauritus*), a State-listed Special Concern Species and spotted turtle (*Clemmys guttata*), anticipated to be listed as a Special Concern Species in 2015. As a result, the Applicant is proposing to perform biological surveys for these target species along with general inventory surveys for reptiles, amphibians and birds to provide a comprehensive update to the biological data provided in the original application. Details of the proposed anticipated biological surveys are as follows:

Reptiles and Amphibian Surveys

A spring season (2015) survey should be conducted to develop an inventory of amphibians and reptiles within the project area. The survey should focus on the three state-listed species considered to be potential site inhabitants by the CT DEEP via the NDDB screening process and the CSC via interrogatory #6. These three listed species include the special concern eastern ribbon snake (*Thamnophis sauritus*), eastern box turtle (*Terrapene c. carolina*) and spotted turtle (*Clemmys guttata*). While not currently a state-listed species, the spotted turtle is proposed for listing under the revised *Connecticut's Endangered, Threatened and Special Concern Species* list due for adoption in 2015.

Initial surveys should be conducted in early spring (late March-early April), with the precise start date dependent upon the timing of amphibian and early-season reptile emergence from hibernation. This initial survey should include approximately three to four field days with tasks to include:

1. Conducting an initial reconnaissance of the site to assess the overall habitat value for the three target species;

2. Identification of any amphibian breeding areas including vernal pools as these are resources that are exploited as feeding sites by both the spotted turtle and ribbon snake in early spring.

3. Targeted surveys for adult ribbon snake and spotted turtle; and

4. Assessment of the habitat suitability for eastern box turtle and identify areas of focus for late spring surveys.

A second round of surveys should be conducted in mid-spring (mid-April-mid May) to conduct cover searching and visual surveys for adult amphibians, egg masses, and late emerging reptiles. This survey should be conducted for approximately two to three field days.

A third round of surveys should be conducted in the late spring (late May to early June) in order to capture the optimal period for observation of eastern box turtle. During this period, while turtles are actively basking and foraging and females are moving to nesting sites, the density and height of preferred early-successional vegetation remains low, making camouflage more difficult. This survey should be conducted for approximately five to ten days, with the length of the survey dependent upon the initial results. Tasks for this late spring survey should include:

1. Targeted surveys for eastern box turtle;

2. Additional targeted surveys for eastern ribbon snake and spotted turtle; and

3. Tracking the progress of any previously identified amphibian breeding areas.

Following these site surveys the data on species habitat utilization will be mapped and analyzed in order to better understand potential project impacts to wildlife. This analysis will be used to develop appropriate temporary protective measures to be used during construction as well as long-term conservation strategies in the event that certain aspects of the project are shown to directly impact sensitive habitats or rare species.

Avian Surveys

A breeding bird survey should be conducted between approximately May 20th and June 15th. Surveys should be conducted under weather conditions considered to be optimal for the detection of birds; clear or mostly clear skies with little or no wind (Beaufort Wind Scale force of 0 or 1). Surveys will begin in the early morning hours just after sunrise (between 5:00am to 6:00am). The entire survey area will be walked on three visits and birds will be identified via sight and sound. The purpose of this survey will be species inventory as opposed to a population or abundance analysis. Therefore, the methodology used will be similar to a line transect survey method, where the observer moves throughout the entire site cataloging all bird species present within each habitat type. By

utilizing a mobile survey method as opposed to a fixed point-count method, it allows the observer to move freely in search of bird activity, maximizing the number of detected species.

In the event that a state-listed bird species is identified, the survey methodology may be modified to a point-count survey within the habitat or area where the listed species is observed in order to allow for an assessment of species abundance.

Following these site surveys, a report will be drafted documented the survey dates, field conditions and species observed within each habitat type. This data will be analyzed in order to develop appropriate temporary protective measures to be used during construction as well as long-term conservation strategies in the event that certain aspects of the project are shown to directly impact significant bird habitat or rare bird species. The results of these surveys and any recommended conservation strategies will be provided to the Connecticut Siting Council in the Development and Management Plan.

Witness: Dean Gustafson
Curtis Jones

Question CSC-18:

Please detail the compensation/mitigation for lost Wetland 1 under the current plan and provide details that you have the technical capacity to effectively fill this wetland. How will that effect downstream water quality and recharge? How can you ensure that the wetland will not become a concentrator of degraded water and continue to enter the headwaters system and that sediments would flow down hill into Jacks Brook and the Naugatuck River?

Response:

The unavoidable filling of Wetland 1 will be compensated through an agreement to pay a fee "in lieu of" permittee-responsible mitigation to satisfy requirements under the U.S. Army Corps of Engineers Connecticut General Permit Category 2 application and to address additional comments from the DEEP, the two stormwater basins have been redesigned as extended shallow wetland basins. These constructed stormwater wetlands that will create emergent, semi-aquatic and aquatic habitats to provide additional stormwater quality benefits as well as support wildlife habitat.

Wetland 1 will be covered with approximately 8 to 9 feet of structural fill, which will effectively eliminate this wetland. Considering this perched wetland has formed above a low-permeable densic contact, infiltration into the regional water table is not significant due to the unsaturated (vadose) zone present between the regional water table and the perched wetland. As a result, groundwater discharge/recharge is not supported at a Principal or Secondary level by this wetland. Shallow subsurface outflows, which would be eliminated by the proposed project, may occur at the low point on the west perimeter of the wetland as primarily either overland flow or lateral interflow from the perched water table. It is possible that post-development Wetland 1 could continue to provide seasonal groundwater exfiltration. Should that occur, those seepage flows would likely be captured by the existing subsurface curtain drain that is located along the east side of Woodruff Hill Road or the surface drain that is proposed above the curtain drain; please refer to the Applicant's Late File Exhibit C response. Such flows would be properly controlled by the drainage ditches, which outlet into the headwater portion of Wetland 3.

Under the proposed developed condition, stormwater runoff is captured and treated through a comprehensive stormwater management system that provides effective quantity and quality treatment of stormwater prior to discharge off site. As a result, Wetland 1 will

no longer capture (or concentrate) runoff from its existing watershed. The treatment train of various stormwater management features, including two extended detention shallow wetland basins, are highly effective at providing stormwater quality treatment. As a result, the water quality of the wetlands that eventually receive discharge of treated stormwater from the proposed development will not be adversely affected. In addition, the water quality of Jacks Brook and the Naugatuck River will not be adversely affected by the project's stormwater discharges.

Witness: Dean Gustafson

Question CSC-20:

What approvals are needed from ACOE to fill Wetland 1?

Response:

Authorization under the U.S. Army Corps of Engineers ("ACOE") Connecticut General Permit as a Category 2 eligible project is required to fill Wetland 1. This General Permit implements Sections 404 and 401 of the Federal Clean Water Act with the ACOE providing authorization under Section 404 and the Connecticut Department of Energy and Environmental Protection ("CTDEEP") providing authorization under Section 401. All ACOE comments have been addressed to date for the Category 2 application that was filed back in October 2014. The ACOE has verbally indicated that authorization will be granted for the filling of Wetland 1 conditioned on the Applicant's agreement for payment into the Connecticut In-Lieu Fee Program as compensatory wetland mitigation for the Facility's unavoidable wetland impacts.

CPV Towantic is currently working on addressing two minor comments issued by the CTDEEP: (1) redesign of the two stormwater detention basins as constructed stormwater wetland basins to provide additional mitigation for the loss of Wetland 1 (in combination with the ACOE's requirement for entering into the Connecticut In-Lieu Fee Program); and, (2) provide additional stormwater outlet protection at design point location DP-1. Once those two comments have been adequately addressed, CTDEEP has verbally indicated that authorization would be granted for the project.

Witness: Dean Gustafson

Question CSC-21:

Is Wetland 4 proposed to be filled? Is it a vernal pool albeit of anthropogenic origin?

Response:

Yes, filling of Wetland 4 is unavoidable due to its generally central location on the subject property and the building program needs of the proposed Facility. Please refer to the response to Response to Q-CSC-19 for a discussion of Wetland 4 and why it is not considered to support vernal pool breeding habitat.

Witness: **Dean Gustafson**
Eric Davison

Question CSC-22:

Please expand the discussion as to values of Wetlands 1, 2, and 3 as habitat for eastern box turtle, spotted turtle, and eastern ribbon snake.

Response:

A summary of the preferred habitats utilized by these three species along with the suitable habitat areas present within the project area are summarized below:

Eastern Box Turtle
Box turtle are widespread throughout the low-lying portions of Connecticut. They favor old field habitat and deciduous forest ecotones, including power line cuts and logged over woodland (Klemens, 1993). Box turtles utilize different habitat types at different times of the year (Dodd, 2001). Early-successional habitats are generally inhabited during months with moderate temperate while forested habitats are utilized during the heat of the summer as well as for hibernation (Erb, 2011). The presence of early-successional habitats (meadow/old field) along with the presence of saturated (as opposed to flooded) emergent, scrub-shrub and forested wetlands, such as the habitats provided by Wetlands 1, 2 and 3, represents potential suitable habitat for the eastern box turtle.

Ribbon Snake
Ribbon snake are most common in low-lying portions of Connecticut and inhabit a wide variety of shallow water aquatic habitats, favoring open grassy or shrubby areas bordering on streams and wooded swamps (Klemens, 1993). The emergent, forested and scrub-shrub wetland cover types present in Wetlands 1, 2 and 3 represent potential suitable habitat for the ribbon snake.

Spotted Turtle
The spotted turtle inhabits a wide-variety of shallow water habitats, both temporary and permanent (Klemens, 1993). This includes vernal pools, forested and shrub wetlands as well as ponds and the fringes of large lakes. Spotted turtles have complex habitat requirements, often using several different types of shallow, vegetation-rich wetlands as well as terrestrial habitats (e.g., deciduous forest) during different times of the year (Klemens, 2000). The presence and juxtaposition of upland deciduous forest surrounding

the scrub-shrub, emergent and forested cover types of Wetlands 1, 2 and 3 represents potential suitable habitat for the spotted turtle.

References

Dodd, Kenneth C. 2001. North American box turtles, a natural history. University of Oklahoma Press.
Erb, Lori. 2011. Eastern Box Turtle Conservation Plan for Massachusetts. Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program. 1 Rabbit Hill Road, Westborough, MA 01581.
Klemens, Michael W. 1993. Amphibians and Reptiles of Connecticut and Adjacent Regions. Connecticut Department of Environmental Protection Bulletin 112.
Klemens, Michael W. 2000. Amphibians and Reptiles of Connecticut: a checklist with notes on conservation status, identification and distribution. Connecticut Department of Environmental Protection Bulletin 32.

Witness: Dean Gustafson

Question CSC-23:

Discuss the importance of these wetlands as headwaters wetlands, and how they contribute to downstream water quantity and quality. Provide detail as to how the proposed development will mitigate and preserve these pre-construction recharges and flows.

Response:

Considering Wetland 1 is a perched wetland that has formed above a low-permeable densic contact, infiltration into the regional water table which might contribute to recharge of downgradient streams is not significant due to the unsaturated (vadose) zone present between the regional water table and the perched wetland. As a result, groundwater discharge/recharge is not supported in a significant capacity. Although seasonal groundwater exfiltration may occur at the west end of Wetland 1, it is likely associated with a very short hydroperiod due to its perched water table hydrology and limited watershed area and therefore would not be considered a significant contributor to the Jacks Brook watershed.

Wetlands 2 and 3, which merge off Site into a larger wetland system to the west, support groundwater discharge/recharge function, which is likely cyclical depending upon time of year, level of precipitation and landscape position of the wetland system. This function likely gains greater importance as the wetland system expands to the west and approaches the toe of slope contact with the Jacks Brook riparian corridor. Please refer to the Applicant's response to Late File Exhibit C for a discussion on how the proposed development will preserve these pre-construction flow conditions and provide appropriate mitigation for flow conditions which will be altered.

Witness: Dean Gustafson

Question CSC-24:

Based on these questions and other data, please review your functions and values matrices to ensure they accurately factor in the potential for significant species and/or concentrations of wetland-dependent wildlife.

Response:

As a result of additional analysis of typical suitable habitat characteristics utilized by eastern box turtle, eastern ribbon snake and spotted turtle and the potential for Wetlands 1, 2 and 3 to support habitat for those species, additional qualifiers to the functions and values forms included in the Category 2 Application are warranted. Specifically for Wetland 1, the endangered species habitat value qualifier should include the following modification: this wetland does have the potential to support habitat for State-listed species, which is addressed in greater detail in the response to Interrogatories 6 and 22. If any of these species is observed to be utilizing Wetland 1, this value would be assigned a Principal level, upgrading it from a current Secondary capacity. For Wetlands 2 and 3, additional clarification is as follows: as these wetlands converge and expand further west off and away from the site, wildlife habitat function increases to a Principal level. The Secondary capacity value currently assessed is associated with the headwater portions of these wetlands that are in proximity to the proposed development. The Secondary capacity is primarily associated with the existing level of disturbance to these portions of Wetlands 2 and 3 as a result of existing development (e.g., Woodruff Hill Road and electrical transmission/distribution corridors). Similar for Wetland 1, the endangered species habitat value qualifier for Wetlands 2 and 3 should include the following modification: this wetland does have the potential to support habitat for State-listed species, which is addressed in greater detail in the response to Interrogatories 6 and 22. If any of these species is observed to be utilizing Wetlands 2 or 3, this value would be assigned a Principal level, upgrading it from a current Secondary capacity.

Witness: Dean Gustafson

Question CSC-28:

The narrative on Wetland 1 says that it once contained an intermittent watercourse with well-defined banks. How was that ascertained? Was that described in the original permit application, or found in recent evaluations, or at some other time? The wetland apparently enlarged from its original size of ~2,850 square feet in the 1999 permit to ~10,322 square feet in the current evaluation. Is that just an error in the original mapping, or did the wetland actually enlarge? Were any studies done to determine the answer to this question? If no, could studies be done to determine the answer to this question?

Response:

The characterization that Wetland 1 once contained an intermittent watercourse with well-defined banks was obtained from a review of original application materials submitted to the Connecticut Siting Council and Town of Oxford Inland Wetlands Agency in 1998.

The enlargement of Wetland 1 from 2,850 square feet (as noted in the original 1998 application materials) to 10,322 square feet (based on a delineation of jurisdictional wetland limits as performed by All-Points Technology Corp., P.C. ["APT"] in 2014) is associated with an apparent error in the original mapping. Numerous hand-dug test pits were dug by APT to observe soil profiles as part of the 2014 wetland investigation. Observations from these test pits revealed generally intact soil profiles (with typical native soil horizon zones) with only relatively minor alteration of the upper soil profile in the A horizon consisting of shallow organically enhanced topsoil, some mixed with wood chips, of less than 1 foot thick. Subsoil horizons (e.g., B and C horizons) appeared unaltered and within the jurisdictional limits of Wetland 1 exhibited clear indications of a poorly drained (or aquic moisture regime) soil. Such clear indications of these wetland soil conditions would not have formed in the 16-year period separating the time of the original application and the more recent wetland investigation. Therefore, the original mapping of this wetland area appears to be in error.

Witness: Dean Gustafson

Question CSC-29:

If the wetland referenced in question number 28 did enlarge, what were the hydrological dynamics behind the enlargement? Would the supposed intermittent watercourse have had anything to do with the possible enlargement? If the wetland did enlarge, and if certain hydrological dynamics can be found to explain the enlargement, would those dynamics affect the stability of the soil in the area of Wetland 1 to the extent of causing special construction challenges or a possible redesign?

Response:

Please refer to the response provided to Interrogatory 28, which addresses the premise of the questions raised in this Interrogatory. Since the premise that this wetland enlarged somehow was disputed in the response to Interrogatory 28, these questions are no longer applicable.