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April 27, 2015

VIA ELECTRONIC MAIL AND HAND-DELIVERY

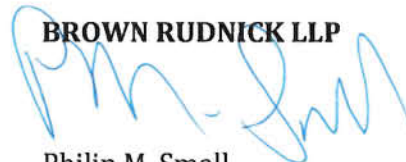
Mr. Robert Stein, Chairman
Connecticut Siting Council
Ten Franklin Square
New Britain, CT 06051

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 Brief

Dear Chairman Stein:

Enclosed are an original and fifteen (15) copies of the Brief of CPV Towantic, LLC. Please contact Franca L. DeRosa, Esq. or me at (860) 509-6500 with any questions.

Very truly yours,

BROWN RUDNICK LLP


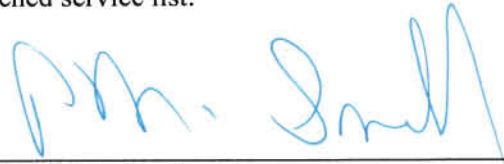
Philip M. Small
Counsel for CPV Towantic, LLC

PMS:jmb
Enclosures
cc: Service List
61937122 v1-022345/0005



CERTIFICATE OF SERVICE

This is to certify that on this 27th day of April, 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)
Applicant	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 fderosa@brownrudnick.com psmall@brownrudnick.com
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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 (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
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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 1/15/15)	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 Sylvia Preston Middlebury Bridle Land Association 64 Sandy Hill Road Middlebury, CT 06762 203-598-0697 ndzjavaughan@gmail.com sylvia.preston@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
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**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

CPV TOWANTIC, LLC MOTION TO REOPEN AND : DOCKET NO. 192B
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, : APRIL 27, 2015
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

BRIEF OF CPV TOWANTIC, LLC

I. INTRODUCTION

CPV Towantic, LLC (“CPV”) submits this Brief in support of its Petition to Reopen and Modify the Decision in Docket No. 192 Due to Changed Conditions (the “Petition”). The extensive factual record of this Docket, as summarized in the Council’s comprehensive Draft Findings of Fact (“FOFs”) and CPV’s April 17 Written Comments on the FOFs (the “CPV Comments”), establish the following: (1) changed conditions have occurred and justify the changes proposed in the Petition; (2) CPV’s proposed generating facility (“Facility”) provides significant public benefits; and (3) the public benefit of the proposed Facility greatly outweighs its environmental effects. Accordingly, the Connecticut Siting Council (“Council”) should grant CPV’s Petition.

II. CHANGED CONDITIONS

The Petition describes in detail the Council's statutory authority under Conn. Gen. Stat. §4-181a(b) to reopen and modify its Decision in Docket No. 192 based on changed conditions and relevant Council precedent. (CPV 1, pp. 7-10). CPV's Petition also describes the changed conditions that have occurred since the Council granted the original Certificate of Public Need and Environmental Compatibility ("Certificate") on June 23, 1999. (CPV 1, pp. 1-4). These changes generally include significant improvement in gas turbine technology, changes in wholesale and retail energy markets and regulation, and more stringent environmental regulations affecting electric generating facilities. The Petition also explains how these changed conditions justify the modifications to CPV's proposed Facility which will be more efficient, cleaner and economically feasible. (CPV 1, pp. 15-19). The changed conditions and their nexus to the modifications proposed to the Facility are supported by the two expert reports, the Concentric Energy Advisors ("CEA") report and the Tetra Tech report attached to CPV's Petition, and the extensive evidentiary record. Further, the fact that the proposed Facility cleared in the recent ISO-New England Forward Capacity Auction provides independent validation of its viability, as redesigned based on changed conditions, and that the proposed Facility will be relied upon to enhance reliability of the electric supply in Connecticut and in New England.

III. PUBLIC BENEFITS

In determining whether to issue a Certificate for an electric generating facility, the Council must determine if the Facility provides a "public benefit," which is defined as follows: "a public benefit exists when a facility is necessary for the reliability of the electric power supply of the state *or for the development of a competitive market for electricity*" Conn. Gen. Stat. § 16-50p(c)(1), (3). (italics added)

This “public benefit” standard for electric generating facilities differs from the “public need” standard that applies to the other types of facilities the Council regulates (and applied to electric generating facilities until 1998). The “public need” standard is defined as “when a facility is necessary for the reliability of the electric power supply of the state.” Conn. Gen. Stat. § 16-50p(c)(1), (3) (h). Despite the distinction between these two legal standards, the record also demonstrates that the proposed Facility would also meet the “public need” standard.

Notably, the only court decision interpreting the public benefit standard involved an appeal from the Council’s granting of the Certificate in Docket No. 192. In that decision, the Superior Court upheld the Council’s public benefit determination. *Citizens for the Defense of Oxford v. Connecticut Siting Council*, No. CV990497075S, 2000 WestLaw 1785118 (2000) (CPV Administrative Notice item 18). The Court stated that the Council found that the approved Facility would provide public benefits including the following: improve reliability of electric supply, displace existing generating plants that are more costly or have significantly higher air emissions, enhance the potential for local and state economic development, improve air quality, and maximize water conservation. *Citizens for the Defense of Oxford* at 1, 3-4. Significantly, all of the Docket No. 192 public benefits identified in *Citizens for the Defense of Oxford* for the approved Facility remain valid for the proposed Facility, and, in many cases, have been enhanced.

The Court provided the following interpretation of the “public benefit standard” and made clear that it is to be construed liberally:

“CDO [Citizens for Defense of Oxford] contends that the Council must first determine the need for the proposed electric generating plant before it can reach the question of the public benefit of the plan[t] and here, because the Council failed to do that, the case should be remanded for that determination.

This assertion misconstrues the law. Before the Restructuring Act of 1998, § 16-50p provided that before the Council granted a certificate to a facility having a substantial adverse environmental effect, it shall find and determine “a public need for the facility and the basis of the need” The 1998 Act added § 16-

50p(c) to the effect that for electric generating facilities the Council shall not grant a certificate “unless it finds and determines (A) a public benefit for the facility”;

Clearly, the standard of benefit differs from that of need. **The meaning of “benefit” is something that “aids or promotes well being,”** (emphasis added) *Webster’s Third New International Dictionary*, 204 (1993), while “need” is commonly defined as a “necessary duty” or “a want of something requisite, desirable or useful.” *Id.* at 1512 663 A.2d 1011.” *Citizens for the Defense of Oxford* at 3 (italics in original).

The last time the Council considered an application for a certificate for a new electric generating facility, Kleen Energy, it applied the public benefit standard, found similar public benefits to those identified in Docket No. 192, and issued the certificate. *See Kleen Energy Systems, LLC*, Docket No. 225, Opinion at 1, Findings of Fact Nos. 9-15; Opinion at 1 (Nov. 21, 2002).

The public benefits of the proposed Facility and the changes from the Facility approved by the Council in 1999 are thoroughly documented in the record. They include the following: enhanced electric reliability for Connecticut; savings in both energy and capacity costs for Connecticut residents; economic benefits for the Town of Oxford and the State, including jobs, additional tax revenue, etc.; substantial regional reductions in air emissions through displacement of generation from less efficient, higher emitting generating units; flexible generation to accommodate and allow the growth of intermittent renewable resources and to offset and mitigate demand response and other uncertainties resulting from recent court decisions; and winter reliability from the Facility’s dual fuel capability. These benefits are described and documented in the CEA and Tetra Tech reports attached to CPV’s Petition, and other record evidence.

Importantly, many of the benefits are recognized and independently validated by the Department of Energy and Environmental Protection (“DEEP”) in its January 28, 2015 Letter to

the Council and its Final 2014 Integrated Resource Plan for Connecticut (“IRP”), dated March 17, 2015 (Council Administrative Notice Item No. 59, *see also* CPV 33).

Further, the fact that the proposed Facility cleared in the 2015 ISO-NE Forward Capacity Market Auction establishes that the proposed Facility is viable and that it enhances “the development of a competitive market for electricity.” Conn. Gen. Stat. § 16-50p(c)(1), (3). The CPV Facility was the first combined-cycle facility to clear in the Forward Capacity Auction following the implementation of a sloped demand curve and the other major changes in the forward capacity market described in the CEA report. The timely construction and implementation of the proposed Facility will be vital in ensuring that confidence in the ability of the capacity market to meet system reliability goals remains intact.

IV. BALANCE OF PUBLIC BENEFITS AND ENVIRONMENTAL EFFECTS

The Council must also determine that the public benefit of CPV’s proposed changes to the Facility outweighs the adverse environmental effects of those proposed changes. *See* Conn. Gen. Stat. §§ 16-50g; 16-50p(a). The record establishes numerous instances where the proposed Facility will have *less* environmental effect than the Facility approved in 1999 (e.g., reduced particulate matter emissions, less water usage, and less wastewater discharges) or no additional adverse environmental affects (e.g. noise, visibility, ambient air impacts, wetlands, air safety, and traffic), and no instances of material increases in environmental effects. Therefore, the identified public benefits of the proposed Facility greatly exceed the adverse environmental effects of those proposed changes.

V. CONCLUSION

For the reasons stated in this Brief and the document discussed herein, CPV respectfully requests that the Council grant its Petition.

Respectfully submitted,

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