



TOWN OF KILLINGLY

TOWN MANAGER'S OFFICE

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April 11, 2019

Via Electronic Mail

Melanie Bachman
Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, Connecticut 06051

Re: Docket No. 470B

Dear Ms. Bachman:

The Town of Killingly would like to offer the attached comments for Docket No. 470B. They are based on the initial submission of orders from the Killingly Inland Wetlands and Watercourses Commission and the Planning and Zoning Commission and reviewed in light of the reopening information of NTE for the proposed Killingly Energy Center.

The Town's expert witness, Carl Stopper, P.E. from TRC, is only available on April 18; he is not available on May 2. I am requesting that his testimony be heard on April 18, 2019.

I look forward to observing the proceedings.

Very truly yours,

Mary T. Calorio
Town Manager

A copy of this correspondence with comments was sent via electronic mail, to the following:

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TO: Connecticut Siting Council (CSC)

FROM: Town of Killingly

DATE: April 11, 2019

Town of Killingly, Inland Wetlands & Watercourses Commission
(IWWC) and Planning and Zoning Commission (PZC)
Update to Order of Regulations and Restrictions

RE: DOCKET NO. 470 and 470B – NTE Connecticut, LLC (NTE) application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance, and operation of a 550-megawatt dual-fuel combined cycle electric generating facility and associated electrical interconnection switchyard located at **180 and 189 Lake Road, Killingly, Connecticut**.

Town of Killingly File Number: 16-1151

WHEREAS, it is recognized by the Town of Killingly, IWWC and PZC that the CSC has exclusive jurisdiction over the location and type of electric generating facilities, pursuant to provisions of Section 16-50g et seq. of the CT General Statutes; and

WHEREAS, the Town of Killingly, IWWC and PZC recognizes that under Section 16-50x.(d) they “**may regulate and restrict**” the proposed facility; and

WHEREAS, the Town of Killingly, IWWC and PZC recognizes that under CT General Statutes, as stated above, the CSC may modify, confirm, or overrule the Order of Regulations and Restrictions as set forth by the Town of Killingly PZC, in whole, in part, or not at all; and

WHEREAS, the Town of Killingly, IWWC and PZC previously submitted to the CSC Orders to Regulate and Restrict dated October 12, 2016 on NTE’s first application to the CSC; and

WHEREAS, NTE filed written appeal of and responses to the Municipal Regulate and Restrict Orders from the Town of Killingly IWWC and PZC on October 27, 2019; and

WHEREAS, the CSC ruled to deny without prejudice a Certificate for Environmental Compatibility and Need for CSC Docket No. 470 on May 11, 2017; and

WHEREAS, NTE filed a motion to reopen and modify CSC Docket No. 470 on January 18, 2019; and

WHEREAS, NTE filed with the CSC, Exhibit 1 dated January 18, 2019, Exhibit 2 dated January 18, 2019 and Exhibit 3 dated January 19, 2019; and

WHEREAS, the CSC ruled, based on changed conditions, granting the NTE motion to reopen and modify CSC Docket No. 470 on February 14, 2019; and

WHEREAS, the Town of Killingly, IWWC and PZC reviewed the above referenced application to the CSC, **“as if” it was** a request for a special permitted use, and therefore referred to Article III (Definitions); Section 410.1.2 (Special Permitted Uses in Rural Development); Section 450 (Dimensional Requirements); Section 470 (Site Plan Review); Sections 470.9, et seq (Site Plan Objectives); Section 720 (Special Permits – Procedure); Section 720.40 (Review of Site and Architectural Plans); Section 740 (Additional Conditions and Safeguards); and Section 790 (Bonding) of the Killingly Zoning Regulations, and the Plan of Conservation and Development of the Town of Killingly during their review; and (move to the paragraph just before 1,2, and 3); and

WHEREAS, the Town of Killingly, has reviewed all of the newly filed Exhibits provided with the NTE motion to reopen CSC Docket 470 and the information and comments given to them by the Town of Killingly’s Consultant, input from the public and the NTE October 27, 2016 appeal and responses to Municipal Regulate and Restrict Orders; and

WHEREAS, the following document presents individually and sequentially each of the original Town of Killingly Orders of Regulations and Restrictions, followed by the October 27, 2016 NTE appeal and responses in bold and followed by the Town of Killingly current response and Order of Regulation and Restrictions in underlined italics text; and

NOW THEREFORE, the Town of Killingly hereby makes the following:

ORDER OF REGULATIONS AND RETRICTIONS

I. INLAND WETLANDS AND WATERCOURSES COMMISSION (IWWC) ORDERS

IWCC #1. Based upon the outlet of the proposed drainage structure and regrading of the site, there is concern that wetlands A1, A3, and X will not receive adequate overland flow resulting in their destruction. A potential solution to this concern is described in the "Recommendations for CSC Conditions and Third-Party Review" by TRC Environmental Corporation (TRC) as:

- Rainfall recharge to groundwater feeding the wetlands will be significantly impacted by the project through the extensive loss of the forested loose understory layer, site regrading and compaction of the site soils. To provide positive means of groundwater recharge a continuous crushed stone filled trench shall be installed along the limits of grading from Wetland A1 to Wetland A3.
- The trench shall be a minimum of 3 feet wide by 5-foot deep and shall be completely enclosed with filter fabric and covered with 1 foot of topsoil.
- The bioretention basin crushed stone underdrains shall be tied into the crushed stone trench. This system will provide additional treated stormwater runoff storage for recharge immediately up gradient from the wetland system.
- Soil breaks in the stone filled trench shall be provided between the bioretention basins to ensure even distribution of water along the entire limits of grading.

The IWWC believes that this potential solution will not only allow the wetlands to receive flows as and where they do currently, it will also be a benefit for the applicant as

they could do away with the proposed wet basin, avoiding a potential "decoy" vernal pool.

NTE Response and Comment IWWC Order #1:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART

The primary storm water basin has been reassessed to incorporate a crushed stone layer into the design to encourage further infiltration. Two additional basins at the headwaters of Wetland A2 and A3 have been added and incorporated into the storm water design (See Exhibit 3 - Revised SWPPP and Exhibit 5 - Updated E&S Plan). The two additional basins will also incorporate a crushed stone layer to encourage infiltration.

Further, NTE will provide an infiltration mechanism as recommended (i.e., a crushed stone trench) between the two new additional basins and wetlands A2 and A3, respectively. NTE has verified that the two additional basins, two additional crushed stone trenches, and the addition of crushed stone to all three basins will allow for more than the recommended infiltration volume. Therefore, NTE APPEALS the limited portion of the order calling for the installation of a trench between KEC's limits of grading and the entirety of wetlands A2 to A3.

It should also be noted that proposed crushed stone surfaces in these features will serve as a further opportunity for infiltration and groundwater recharge at the completion of construction. The "wet pool" feature has been removed from the primary stormwater basin as requested. Although the original design was protective of both the wetland function and potential vernal pool usage, the updated design will also support wetland and vernal pool functions effectively.

The Town of Killingly accepts the changes already made by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for IWWC Order #1.

IWCC#2. The proposed oil tank and containment area pose a number of problems, namely: The size of the containment area forces a large increase in grading towards the wetlands (A1); The drainage inside the containment area could potentially allow for a fuel spill to enter the wetlands; The fabric containment area has to be laid by hand and each seam must be joined adequately or there is a risk of a spill getting into the ground water.

- The IWWC recommends a double walled or tank within a tank configuration rather than the proposed single wall tank and containment area along with a smaller containment area directly surrounding the proposed tank.

Per the report submitted by TRC:

- Eliminate the oil storage tank spill containment berm and change the welded steel tank design to a double-wall or "tank in a tank" design.
- The bottom of the tank shall have a double floor with interstitial leak detection monitoring. The tank bottom shall have an engineered cathodic protection system.
- The welded steel tank shall be designed and constructed in accordance with API Standards and shall comply with seismic design standards. Hydrostatic and leak testing and inspection shall be under the direction of a competent third party

licensed professional engineer.

- Underground fuel piping shall be double walled with interstitial leak detection sensing.
- The fuel unloading area shall have spill containment suitable to handle the largest tanker capacity used to offload fuel to the storage tank and shall conform to 40CFR 112.
- A Spill Prevention, Control and Countermeasures Plan and Facilities Response Plan conforming to 40 CFR 112 shall be prepared and implemented. The operator shall and facility personnel shall receive and keep updated the required spill response training and shall retain the services of an on-call Connecticut licensed spill response contractor to assist with larger spills.

NTE Response and Comment IWWC Order #2:

ORDER ACCEPTABLE.

Although the bermed and lined spill containment design for the ULSD storage tank as originally proposed is a commonly used and accepted design, NTE has revised the ULSD storage tank to include a secondary steel containment (i.e. tank in a tank) as requested, which allows for elimination of the bermed spill containment area (See Exhibit 2 - Revised Site Plan). The tank will include a double floor with engineered cathodic protection and will be designed, fabricated and constructed in accordance with American Petroleum Institute (API) standards applicable to Welded Steel Storage Tanks for Oil Storage (API- 650) and associated appendices for under tank leak detection. The tank will be subject to scheduled inspections as per API-653 (Tank Inspection, Repair and Alteration). Below grade piping shall be comprised of double wall pipe with interstitial leak detection, and the loading areas will be designed in accordance with 40 CFR-112 with spill containment capability suitable to handle the largest tanker capacity used to offload fuel to the storage tank. As required, a spill prevention plan will be prepared and implemented in accordance with 40 CFR-112, which will include contact information for a licensed spill response contractor.

The Town of Killingly accepts the changes already made by NTE. The Town of Killingly recognizes that NTE has committed to complying with the other conditions and that future actions and submissions will required to comply with all of the Municipal Orders to Regulate and Restrict for IWCC Order #2.

IWWC #3. The 25 foot no disturbance buffer in the Killingly IWWC regulations section 6.3 is not being upheld. Section 6.3 states: No disturbance wetland buffer - 25 feet. Separation distances listed above may be increased by the Commission if deemed necessary for the protection and preservation of the natural and indigenous character of the wetlands and/or watercourses system and riparian corridors due to site specific factors such as topography, slope, soil type, presence of rare, endangered and/or species of concern, unique or uncommon habitats, etc.

- The commission recommends that this buffer be increased to a minimum of 75 feet from wetlands A1 and A3 where ever feasible.

The report by TRC agrees with the commission's recommendation:

- Within the main plant parcel, move the limits of all grading activities, clearing and disturbance a minimum of 75 feet from all wetland boundaries and maintain the tree canopy in this zone.
- The location of the administration building, compressor station, main plant facility, tanks and other site features shall be moved to accomplish the required separation.
- Slopes should be no greater than 2 horizontal to 1 vertical and shall have turf established to stabilize the surface from erosion.
- Erosion netting or turf reinforcing mat shall be used on all slopes equal to or steeper than 3 horizontal to 1 vertical along the north side of the site along the wetlands.

The commission also agrees with TRC that a 2:1 vegetated slope should be required, However, if it is feasible to have 3: 1 slopes the commission would prefer that all slopes be at 3: 1.

**NTE Response and Comment IWWC Order #3:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.**

The majority of KEC layout was located more than 25 feet from wetlands, with the exception of the very tip of Wetland A3 (which came within 20 feet of proposed grading) and the area where a retaining wall was constructed to avoid impact to Wetland X. However, in response to this order, certain elements (i.e., air cooled condenser, gas compressor building, ring road) on the Generating Facility Site have been relocated or reconfigured to increase the separation distance from all wetlands boundaries to a minimum of 25 feet as required by the Town IWWC Regulations (See Exhibit 2 – Revised Site Plan). NTE has increased that separation distance/buffer further, to comply with the requested 75-foot separation, where feasible. Side slopes on the Revised Site Plan are predominantly 2:1 and will be vegetated; the only location where a 1:1 slope is required is a 2,500-square foot area adjacent to Wetland X where that steeper slope is required to comply with the 25-foot no disturbance buffer from Wetland X as defined in the Killingly IWWC Regulations. For this limited area, NTE APPEALS that portion of the order calling for a maximum 2:1 slope. Instead, rip-rap will be employed in this limited area for stabilization of the 1: 1 slope. In all other areas, permanent turf reinforcement matting will be utilized as specified in the previously submitted plans and in the order.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and wetland/disturbance separation contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for IWWC Order #3.

4. The proposed Updated E&S Plan is too broad and does not go into enough specifics for the challenges of the site.

- In many instances the proposed silt fence and hay bales may not be enough to stop all sedimentation, especially during construction when retention basins may not be in place and functioning.

- An independent inspector should be onsite to monitor E&S and drainage, in addition to periodic inspections performed by town staff.
- The commission also recommends that temporary drainage basins should be constructed prior to grading the areas around wetlands A1, A3, and X. Runoff shall be directed at the drainage basins.

The TRC report also addresses this recommendation:

- Temporary sediment basins shall be added upgradient of Wetlands A1 and A3 and shall be properly sized in accordance with the CT Water Quality Manual. Killingly Inland Wetlands and Watercourses Regulations section 6.3 states: No system, at any distance from such watercourse or inland wetland, shall be constructed or maintained in such a manner so as to allow untreated surface drainage into any such watercourse or inland wetlands. Guidelines are available in the 2004 Storm Water Quality Manual, available from the Inland Wetlands Agency, the Department of Environmental Protection (DEP), or from the DEP. website: <http://dep.state.ct.us.wtrlstormwaterlstormwtrindex.htm>. (Effective date: May 15, 2011).

NTE Response and Comment IWCC Order #4:

ORDER ACCEPTABLE.

NTE concurs that the discharge of untreated stormwater runoff to wetlands and significant resource areas is unacceptable, and has not, therefore, included that type of discharge in its stormwater design. Temporary sediment basins have been added up gradient of Wetlands A1 and A3 (See Exhibit 5 - Updated E&S Plan) as requested, and these features, along with the other best management practices identified in the Updated E&S Plan, will be among the first measures implemented during initial site disturbance activities. The construction contractor will conduct regular inspections, as will NTE, during construction to affirm that BMPs are properly installed, maintained and functioning for the intended purpose. As required by CTDEEP, monthly inspection reporting will be completed by a licensed professional engineer or certified professional in stormwater quality (CPSWQ). In addition, NTE expects the Council to require that a third-party inspector be utilized during construction and Town and CTDEEP staff will also have authority to visit the site for construction inspections. These various checks and balances will provide assurance that appropriate BMPs are selected and implemented to keep the work area stabilized and prevent off-site concerns.

The Town of Killingly accepts the changes already made by NTE, the more recent changes to the site drawings revised to 01/17/2019 as part of Exhibit 3 and the revised Stormwater Pollution Prevention Plan contained in Exhibit #3. The Town of Killingly recognizes that NTE has committed to complying with the other conditions and that future actions and submissions will required to comply with all of the Municipal Orders to Regulate and Restrict for IWCC Order #4.

IWCC #5. The commission recommends that at least one hydrodynamic chamber that also removes suspended solids be installed in-line with the proposed catch basins prior to the exit to the proposed drainage basin(s). This is in line with past practices on industrial and commercial sites.

**NTE Response and Comment IWWC #5:
ORDER ACCEPTABLE.**

NTE will comply with this order and has amended its project Site Plan and SWPPP accordingly. The original KEC plan specified a hydrodynamic separator with oil isolation capabilities at the single discharge point of the stormwater collection system. The drainage design in the Revised SWPPP has been modified to create 3 separate discharge points with hydrodynamic separators for each discharge. (See Exhibit 3).

The Town of Killingly accepts the changes already made by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for IWWC Order #5.

IWWC #6. The proposed '15,000 square feet of wetlands disturbance at the proposed switchyard site (Wetland D) requires a permit from the US Army Corps of Engineers (USACE). NTE is proposing a reclamation site of approximately 17,000 sq./ft of created wetland.

- Typically, when an applicant proposes a reclaimed / created wetland it is done at a 1.5: 1 (past practice). NTE should propose a larger mitigation area and created wetland.
- Detailed plans and plantings should be submitted to the Killingly IWWC for review.
- This wetland should also be monitored by an independent inspector and maintained after project completion to insure the wetland characteristics remain.
- The created wetland should be monitored for a period of two growing seasons after full establishment.

The TRC report expounds on this:

- Wetland mitigation is proposed to offset the direct impact to Wetland D associated with the construction of the switchyard. A wetland replication area consisting of approximately 17,000 square feet (0.39 acre) is proposed.
- The proposed grading, planting and monitoring plans and details associated with the wetland replication area has not yet been completed.
- However, since the replication area is greater than 5,000 square feet, an application will need to be submitted to the New England District of the USACE. The New England District has detailed wetland creation plan submission requirements that should ensure that sufficient detail is provided in the future.
- The Town of Killingly shall be given an opportunity to review and approve this plan.

**NTE Response and Comment IWWC #6:
ORDER ACCEPTABLE.**

NTE agrees that the proposed wetland fill, of 12,500 square feet (not the 15,000 square feet referenced in the order), requires filing with the USACE to affirm coverage under its General Permit program. As a part of that filing, additional detail will be developed regarding mitigation. NTE has proposed 17,000 square feet of wetland replication, which will provide several hydrologic regimes, not just the "seasonally saturated" regime of the existing

wetland, and support a higher diversity of flora and fauna, including amphibians. The resulting created wetland has the potential to provide more function and value than the existing wetland area, which is transitional in nature and replete with invasive plants: NTE is willing to increase this to 18,750 square feet to reflect a 1.5:1 ratio. In addition to the 18,750 square feet of created wetlands now proposed within a 0.77-acre conservation easement, NTE previously identified in its Application proposed wetland enhancements, including 35,000 square feet on the Generating Facility Site and 18,000 square feet on the Switchyard Site. NTE discussed this proposed mitigation strategy with the USACE during a pre-application meeting on September 28, 2016. At that meeting, the USACE discouraged the use of replication as a mitigation strategy and suggested that an In-Lieu Fee, coupled with the proposed enhancements, was a more appropriate strategy. However, as noted above, NTE is willing to continue to provide for replication and is willing to do so at a 1.5:1 ratio. As noted, additional details will be provided in the US ACE pre-construction notification and will be shared with the Killingly IWWC. Section 5.2 of the *Wetland Report: Proposed Conditions* references evaluation through two growing seasons and notes that additional detail regarding monitoring provisions will be provided in the mitigation plan. However, in order to better align with USACE wetland mitigation guidance, monitoring and requisite maintenance will be expanded to five years post-implementation and will include invasive plant control and eradication. Monitoring will be conducted by a qualified inspector (i.e., wetland scientist or wetland ecologist) with appropriate reports submitted to both the USACE and the IWWC.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to the site drawings revised to 01/17/2019 as part of Exhibit 3. The Town of Killingly recognizes that NTE has committed to complying with the other conditions and that future actions and submissions will required to comply with all of the Municipal Orders to Regulate and Restrict for IWWC Order #6.

IWWC #7. There have been no submissions to the IWWC for permitting of any proposed gas lines and water lines.

- The IWWC requires that all permits for water and gas be applied for and approved prior to the construction of the proposed energy generating facility.

Per the TRC report:

- Water supply from Connecticut Water Company, involving the Killingly system interconnection with the Plainfield system, shall receive permit and other necessary approvals from the Connecticut Department of Energy and Environmental Protection and the Connecticut Department of Health before any work on the site shall commence.
- In addition, the plans for installation of water mains shall receive all local and Connecticut Department of Transportation road disruption and restoration permits, including detailed plans for maintenance and protection of traffic before site work shall commence.
- Plans for the installation of sewer, water main and gas pipelines in Lake Road, including detailed plans for maintenance and protection of traffic, shall require

submission to the Town of Killingly for review and approval before any site work shall commence.

NTE Response and Comment IWWC#7:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE is committed to work with the Connecticut Water Company (CWC), Yankee Gas Services Company (Yankee Gas) and the Town to obtain all necessary State and local permits and approvals for the extension of water, sewer and natural gas service to the KEC facility, including all necessary road disruption and restoration permits needed to complete these improvements. NTE expects, however, that these permitting procedures will run concurrently with certain site construction activity and do not need to be completed before "any site work shall commence". NTE, therefore, APPEALS only this limited portion of this order.

The Town of Killingly understands based on NTE's most recent filings to the Connecticut Siting Council (CSC) that commitments and agreements have been made with CWC and Yankee Gas to obtain the required services needed to operate the plant. The Town of Killingly also understands that a Water diversion Permit application is pending with CTDEEP and local/state approvals for the gas main upgrade have not been secured. Given the critical nature of these approvals to the operation of the plant, the Town of Killingly does not accept NTE's appeal to waive any conditions required to comply with Municipal Orders to Regulate and Restrict for IWWC Order #7.

IWWC #8. NTE is showing an increase in peak runoff from the switchyard site to the neighboring property.

- The IWWC requires that the peak runoff be equal to current peak runoff. Stormwater retention as well as treatment of any runoff shall be submitted and reviewed by the IWWC prior to approval.
- NTE should follow MS4 guidelines for monitoring all stormwater on site prior to any discharge to neighboring properties.

NTE Response and Comment IWWC #8:

ORDER ACCEPTABLE.

A stormwater basin with low level outlet has been designed and placed adjacent to the switchyard to limit peak runoff and discharge at or below pre-construction conditions (see Exhibit 3 - Revised SWPPP and Exhibit 5 - Updated E&S Plan). As required, MS4 guidelines and procedures for stormwater monitoring will be upheld during construction. Peak runoff increases for the switchyard area were minor with the previous design, and the revised design will ensure that the peak runoff will be equivalent to the current peak runoff.

The Town of Killingly accepts the changes already made by NTE, the more recent changes to the site drawings revised to 01/17/2019 as part of Exhibit 3 and the revised Stormwater Pollution Prevention Plan contained in Exhibit #3. The Town of Killingly accepts the changes already made by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for IWWC Order #8.

The IWWC would like to be informed of the Siting Councils ruling, and the procedure followed to procure that ruling. The IWWC would also like to be informed of any modifications to this proposal by either the Siting Council or NTE. Should there be a need to follow through on any recommendations made, please feel free to contact the IWWC staff, Eric Rumsey at (860) 779-5310, or via email at erumsey@killinglyct.org. Referral back to the IWWC should be a condition of approval, any recommendations made by the IWWC will be submitted to the Siting Council for their approval and/or to keep the Siting Council informed of the actions taken by the IWWC and the applicant.

II. PLANNING AND ZONING COMMISSION ORDERS

The following regulations and restrictions are listed under the sections of the Town of Killingly Zoning Regulations for a Site Plan Review that they would apply to S. 470.9.1 - Public Safety

Emergency Management Services

PZC #1. That proper access for fire and all emergency response equipment shall be maintained throughout all stages of the construction period, on site and along Lake Road.

NTE Response and Comment PZC #1:
ORDER ACCEPTABLE.

The Town of Killingly recognizes that NTE has committed to complying with this condition and that future actions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #1.

PZC #2. The owner/operator shall prepare and keep current an emergency response plan and shall maintain at all times a designated team of on-site personnel trained to respond to emergency situations. The plan shall identify Town of Killingly (TOK) fire, police and emergency units, Town Officials, and Town Staff that will be notified in the event of an emergency situation.

NTE Response and Comment PZC #2:
ORDER ACCEPTABLE.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with all of the Municipal Orders to Regulate and Restrict for PZC Order #2.

PZC #3. That the owner / operator put in place an emergency response plan, to include a spill prevention control and countermeasure plan; said plan must be created in conjunction with the proper town staff and emergency personal.

**NTE Response and Comment PZC #3:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with all of the Municipal Orders to Regulate and Restrict for PZC Order #3.

PZC #4 The Fire Marshal, the Town Manager, and all other appropriate town staff shall be notified as soon as practical within the first hour of occurrence of any spills and/or non-routine, unexpected situations that arise at the facility that may pose a heightened risk to the public.

**NTE Response and Comment PZC #4:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions will be required to comply with all of the Municipal Orders to Regulate and Restrict for PZC Order #4.

PZC #5. The owner/applicant must provide access to an on-site first aid station to all employees during the construction phase of the project.

**NTE Response and Comment PZC #5:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions will be required to comply with all of the Municipal Orders to Regulate and Restrict for PZC Order #5.

Water Supply

PZC #6. Engineering drawings for the design for the improvements to the water system (from Plainfield) shall be submitted to the Town of Killingly (Engineering Department/Planning Department) for review to verify that there will be enough water in said supply for the proper fire protection through the construction phase and thereafter.

**NTE Response and Comment PZC #6:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.**

NTE will share the Town's request to review engineering design drawings with the CWC and will comply with all applicable state and local laws and regulations related to water supply improvements, the connection of the Killingly and Plainfield water systems and the adequacy of that water supply to the KEC facility. However, NTE cannot unilaterally commit to the

Town's request without the consent of CWC and, therefore, APPEALS only this limited portion of the order.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will required to comply with all of the Municipal Orders to Regulate and Restrict for PZC Order #6.

PZC #7. (1) Water supply improvements from Connecticut Water Company, involving the Killingly system interconnection with the Plainfield system, shall receive permit and other necessary approvals from the CT Department of Energy and Environmental Protection and from the CT Department of Health before any work on the main site shall commence. (2) In addition, the plans for installation of water mains shall receive all local and CT Department of Transportation road disruption and restoration permits, including detailed plans for maintenance and protection of traffic before any work on the main site shall commence.

NTE Response and Comment PZC #7:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE and the Connecticut Water Company will comply with all applicable State and local requirements related to water supply improvements associated with the connection of the Killingly and Plainfield systems, including any road opening permits or approvals. Work related to these improvements will likely occur concurrently, with other on and offsite project improvements. However, NTE does not believe that the water system improvements, need to be completed before the commencement of "any work on the main [project] site". NTE, therefore, APPEALS this limited portion of the Commission's order.

The Town of Killingly understands based on NTE's most recent filings to the Connecticut Siting Council (CSC) that commitments and agreements have been made with CWC to obtain the required water service needed to operate the plant. The Town of Killingly also understands that a Water diversion Permit application is pending with CTDEEP and CTDOT approvals for the water main upgrade have not been secured. Given the critical nature of these approvals to the operation of the plant, the Town of Killingly does not accept NTE's appeal to waive the need for the regulatory approvals required to comply with Municipal Orders to Regulate and Restrict for PZC Order #7.

PZC #8. That the owner/applicant shall confirm to the Town of Killingly (Engineering Department/ Planning & Development Department) after construction and all improvements; that there is sufficient water supply to provide for the operation of the plant under all circumstances and for the fire protection for the duration of the project. (Reference is hereby made to the correspondence from CT Water Company, stating the project is to be revisited annually.)

NTE Response and Comment PZC #8:

ORDER ACCEPTABLE.

NTE will provide the Town with information from the CWC regarding the

sufficiency of the water supply as requested.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #8.

PZC #9. Appropriate bonds shall be provided to the Town of Killingly to ensure road repair and maintenance and protection of traffic associated with any failure, settlement, defect or other similar associated cost associated with water main installation.

NTE Response and Comment PZC #9:

ORDER ACCEPTABLE.

NTE recognizes that it must comply with all local requirements for any work that may occur within local roadways, including any and all necessary bonding requirements.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #9.

Utilities

PZC #10. Plans for the installation of sewer, water main and gas pipelines in Lake Road, including detailed plans for maintenance and protection of traffic, shall require submission to the Town of Killingly (Engineering Department/Planning & Development Department) for review and approval before any site work shall commence.

NTE Response and Comment PZC #10:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE, in cooperation with CWC, Yankee Gas and the Town will comply with this order and submit all plans for sewer, water and gas line work in Lake Road to the Town prior to the commencement' of work within Lake Road. However, NTE does not believe that the commencement of this permitting for work within Lake Road needs to occur "before any site work shall commence". NTE, therefore, APPEALS only this limited portion of this order.

Given the critical nature of these approvals to the operation of the plant, the Town of Killingly does not accept NTE's appeal to waive any conditions required to comply with Municipal Orders to Regulate and Restrict for PZC Order #10.

PZC #11. Natural gas system interconnection and improvements necessary to supply fuel for the project shall receive all local, state and federal approvals required before any site construction shall commence. All such approvals shall be filed with the Town of Killingly (Engineering Department/Planning & Development Department)

NTE Response and Comment PZC #11:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE will receive all necessary local, state and federal permits and approvals for the natural gas interconnection-service required for the KEC facility, and agrees to file all such approvals with the Town. NTE expects that permitting for the gas line interconnection will occur concurrently with other site development activity and does not need to occur "before any site work shall commence". NTE, therefore, APPEALS only this limited portion of this order.

The Town of Killingly understands based on NTE's most recent filings to the Connecticut Siting Council (CSC) that commitments and agreements have been made with Yankee Gas to obtain the required service needed to operate the plant. The Town of Killingly also understands that local/state approvals for the gas main upgrade have not been secured. Given the critical nature of these approvals to the operation of the plant, the Town of Killingly does not accept NTE's appeal to waive any conditions required to comply with Municipal Orders to Regulate and Restrict for PZC Order #11.

PZC #12. Appropriate bonds shall be provided to the Town of Killingly to ensure road repair and maintenance and protection of traffic associated with any failure, settlement, defect or other similar associated cost associated with utility installations.

**NTE Response and Comment PZC #12:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #12.

Widening of Lake Road and Traffic

PZC #13 The commission would like to see the switchyard be moved across the street (to the north side of roadway) onto the main location of the proposed energy power plant. The reasoning behind this is as follows:

- a) the removal of high-tension lines over the roadway;
- b) less impact on the rural neighborhood;
- c) minimize the impact on the cemetery that is located on the present switchyard site;
- d) would allow the minimization of the curve radius on the widening of Lake Road.

**NTE Response and Comment PZC #13:
ORDER APPEALED.**

NTE APPEALS this order for the following reasons, in response to the PZC's four listed concerns:

- a) Due to, the current configuration, location and size of structures of the existing transmission line right of way east of the Generating Facility Site, as well as the topography on the Generating Facility Site and the existing transmission line right of way, the

interconnection with the Eversource 345 kV transmission system would still be required to take place south of Lake Road, on the Switchyard Site. Therefore, the transmission lines would still be required to cross Lake Road, even if the switchyard itself was located on the Generating Facility Site.

b) There are currently four transmission lines (two 115 kV, two 345 kV) crossing Lake Road approximately 550 linear feet from the location of KEC's proposed Lake Road crossing. The proposed location of the switchyard is immediately adjacent to this major transmission corridor. The location of the switchyard and transmission line crossing over Lake Road is not inconsistent with what currently exists in this area. In addition, placement of the utility switchyard north of Lake Road would significantly lessen the amount of equipment setback to Lake Road, as well as increasing the required amount of grading, potential blasting and potential tree clearing close to the property boundary required, thereby increasing visual impact of the entire project.

c) The cemetery will be protected and enhanced even with the Utility Switchyard on the Switchyard Site. Buffer has been maintained where possible, and a retaining wall has been incorporated into the design to maximize separation where a buffer cannot be established. NTE will work with the State Historic Preservation Office to implement construction and operational measures to prevent impact and to better showcase the cemetery as a local historical resource.

d) The design of the curve radius is independent of the location of the Utility Switchyard. Rather, the location of existing transmission line towers, neighboring properties, and the cemetery are the key factors. Notwithstanding, NTE is proposing to widen the width of the road to accommodate two WB-62 Design vehicles traveling in opposite directions. The design of the roadway will be coordinated with the Town engineering department and all applicable CTDOT and Town specifications will be met.

The Town of Killingly accepts the changes already made by NTE and that further road design submission is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #13.

PZC #14. Engineering drawings for the widening and realignment of Lake Road shall be submitted to the Town of Killingly (Engineering Department/Planning Department) for review and approval. The design shall allow safe travel way and sight distance for large tractor trailer trucks/tankers (WB-62 design vehicles) and Town of Killingly fire trucks traveling east of the plant entrance.

**NTE Response and Comment PZC #14:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #14.

PZC #15. Other signage needed to restrict truck traffic west of the site entrance shall be

provided at the Town of Killingly's direction (Engineering Department)

**NTE Response and Comment PZC #15:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #15.

PZC #16. Any stone walls / fences disturbed by the road realignment shall be restored at a safe distance from the edge of the travel way to maintain the rural character of the road. The owner/applicant shall bear the burden of the cost of said restoration.

**NTE Response and Comment PZC #16:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #16.

PZC #17. All project construction traffic shall be required to enter from the east and leave to the east toward Attawaugan Crossing Road 11-395 along Lake Road. Traffic shall not be permitted to travel west on Lake Road toward Route 101.

**NTE Response and Comment PZC #17:
ORDER ACCEPTABLE.**

NTE assumes for the purposes of this response that "construction traffic" does not include personal vehicles driven by construction workers and employees at the NTE site. Passenger vehicles may well use portions of Lake Road to the west of the site in accordance with current restrictions.

The Town of Killingly accepts NTE's response and recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #17.

PZC #18. When traffic volumes and deliveries during construction create traffic issues, the contractor shall be required to comply with the Town of Killingly's request to provide manual traffic control support or modify activities to alleviate congestion and ensure public safety. Noncompliance will result in project shut-down until measures correct the issues to the Town of Killingly's satisfaction. The contractor is required to alert the Town of Killingly of any deliveries of oversize vehicles that may need traffic control.

**NTE Response and Comment PZC #18:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.**

NTE will comply with this order and will work with the Council and the Town throughout the construction of the KEC to ensure adequate and appropriate traffic and public safety measures are in place and will alert the Town prior to delivery of any oversized vehicles, equipment or facility components. NTE disagrees that non-compliance should result in shut-down of KEC construction activities; rather, should an issue arise, NTE and the Town would determine the specific cause and immediately agree on measures to address the particular issue of concern. Therefore, NTE APPEALS only this limited portion of the PZC order.

The Town of Killingly does not accept NTE's response and waive its right to shut down the work activities until corrective measures are implemented and protect the safety of its residents. The Town of Killingly will work with NTE to remedy a traffic issues but NTE will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #18.

PZC #19. The Town of Killingly requires that inspection of all road construction along Lake Road is inspected by either the Town, or in its sole discretion is designated representative, paid for by NTE, (to make sure that all construction is done to the proper standards and that public safety is recognized and properly required traffic controls, and construction matters are in place at all times). The Town shall have the authority to direct the owner/applicant to cure deficiencies in workmanship; non-compliance will result in road construction project shut-down until measures to correct the issues to the Town of Killingly's satisfaction.

NTE Response and Comment PZC #19:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE will comply with this order and will work with the Council and the Town throughout the construction of the KEC to ensure adequate and appropriate traffic controls and public safety measures are in place for road construction along Lake Road. NTE disagrees that non-compliance should result in shut-down of KEC construction activities; rather, should an issue arise, NTE and the Town would determine the specific cause and immediately agree on measures to address the particular issue of concern. Therefore, NTE APPEALS only this limited portion of the PZC order.

The Town of Killingly does not accept NTE's response and waive its right to shut down the work activities until corrective measures are implemented and protect the safety of its residents. The Town of Killingly will work with NTE to remedy a traffic issues but NTE will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #19.

PZC #20. The Town of Killingly will require that the road widening of Lake Road is completed prior to the commencement of site construction activities. Also, owner/applicant must provide the Town of Killingly with a plan on how they are going to acquire the property in order to complete the widening of Lake Road.

NTE Response and Comment PZC #20:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

Lake Road widening and property acquisition plans will be developed and submitted to the Town for review prior to the commencement of any road widening improvements. Other site construction activities may commence prior to the approval of the Lake Road widening plans. Reconstruction of the roadway will likely be completed early in the construction process but does not need to occur "prior to the commencement of site construction activities". Therefore, NTE APPEALS only this limited portion of the PZC order.

The Town of Killingly does not accept NTE's response and will require that road widening be implemented prior to construction to protect the safety of its residents. NTE will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #19.

PZC #21. The Town of Killingly will require bonding to ensure that all road work is constructed and completed properly and on time.

**NTE Response and Comment PZC #21:
ORDER ACCEPTABLE.**

NTE will comply with all bonding requirements for the Lake Road improvements.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #21.

Pre-Construction and Construction

PZC #22. The Town of Killingly requires a copy of any construction sequencing and management plan to include but not be limited to detailed project schedules for all work activities with weekly work plans, lay down areas, worker numbers, worker parking, traffic management, delivery routes, coordination with local authorities regarding any potentially disruptive deliveries. The Town of Killingly requires they receive a copy of said construction sequencing and management plan, and that said plan be delivered in a prompt and timely manner, including any changes thereto.

**NTE Response and Comment PZC #22:
ORDER ACCEPTABLE.**

NTE will comply with this order and fully expects that the described construction sequencing and management plan will be required as a part of the Council's D&M Plan.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #22.

PZC #23. A pre-construction meeting with key town staff (Engineering Department/ Planning & Development / Building Office / Fire Marshal) is required no less than eight weeks in advance of any proposed construction commencement including initial site clearing and preparation.

**NTE Response and Comment PZC #23:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #23.

PZC #24. Notification shall be provided to the Town of Killingly and key town staff (Engineering Department! Planning & Development / Building Office / Fire Marshal no less than three weeks in advance of:

- a) Commencement of facility construction;
- b) Commencement of facility testing;
- c) Commencement of commercial operation;
- d) Commencement of any routine maintenance which generates loud or unusual noises; and
- e) Permanent termination of any operation of the project.

**NTE Response and Comment PZC #23:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #23.

PZC #24. Notification shall be provided to the Town of Killingly of any unscheduled maintenance which generates loud or unusual noises shall be made as soon as the need is apparent.

**NTE Response and Comment PZC #24:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #24.

PZC #25. The Town of Killingly requires copies of any required construction reports submitted to the Siting Council that are part of the Siting Council's regulations and restrictions; including but not limited to: Quarterly progress reports, starting with the commencement of construction and ending with the commencement of commercial operation.

**NTE Response and Comment PZC #25:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #25.

PZC #26. The Town of Killingly and key town staff (Engineering / Planning & Development / Building Office / Fire Marshal) shall receive copies, notices and the opportunity to review any other applications, petitions or amendments that may be required in conjunction with this project and/or necessary for its interconnection into the public water supply lines, the electrical transmission grid and/or fuel pipeline, or any other related activity.

**NTE Response and Comment PZC #26:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #26.

PZC #27. The Town of Killingly requires that an independent third party engineering/environmental professional be hired by the Town to act as its representative, paid for by the owner / applicant, to be on site every day during the construction period to verify that all proper procedures, regulation~, restrictions, etc. on the federal, state and local level are being met and followed by the owner /applicant and its representatives. The third party (town representative) shall have the authority to direct the contractor to cure deficiencies in workmanship, including requiring additional sedimentation and erosion control measures and dust control. If deficiency is not cured the Town of Killingly shall have the authority to shut down the project until the deficiencies are cured.

**NTE Response and Comment PZC #27:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.**

NTE does not object to the request that the project hire a third party engineering/environmental professional to monitor construction activity. NTE would look to the Council to provide the scope of work to be performed and inspection frequency by a third-party professional. NTE APPEALS that limited portion of the order that attempts to dictate the need for daily site inspections.

The frequency of inspections needs to be driven by the work activities being performed. There is no way to predict in advance the necessary inspection frequency and therefore the Town of Killingly needs to be provided funding to ensure that daily inspection can be performed as the work may dictate. The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #27.

PZC #28. The entire site during the construction phase and after shall be surrounded by security fencing and said security fencing shall be gated at night to protect the public.

**NTE Response and Comment PZC #28:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #28.

Oil Storage Tank

PZC #29. (1) Eliminate the oil storage tank spill containment berm and change the welded steel tank design to a double wall or "tank-in-a-tank" design. The bottom of the tank shall have a double floor with interstitial leak detection monitoring. The tank bottom shall have an engineered cathodic protection system, Exterior tank coating shall be a neutral beige/tan color to be selected by the Town of Killingly (Engineering Department). The welded steel tank shall be designed and constructed in accordance with API Standards and shall comply with seismic design standards. Hydrostatic and leak testing and inspection shall be under the direction of a competent third-party licensed professional engineer. (2) Underground fuel piping shall be double walled with interstitial leak detection sensing. (3) The fuel unloading area shall be designed and constructed with spill containment suitable to handle the largest tanker capacity used to offload fuel to the storage tank and shall conform to 40CFR112. A Spill Prevention, Control and Countermeasures Plan and Facilities Response Plan conforming to 40CFR 112 shall be prepared and implemented. (4) The operator shall and facility personnel shall receive and keep updated all of their required spill response training and shall retain the services of an on-call Connecticut licensed spill response contractor to assist with large spills throughout the lifetime of the power generating plant.

**NTE Response and Comment PZC #29:
ORDER ACCEPTABLE.**

See NTE's response to the IWWC Order No.2 above.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #29.

S. 470.9.2 - Storm Drainage

PZC #30. We defer to the Inland Wetlands & Watercourses Commission; we also refer to our consultant's comments on this matter as listed in their attached report.

**NTE Response and Comment PZC #30:
See NTE's responses to IWWC orders above.**

Refer to The Town of Killingly response to NTE's Response and comment to IWWC.

PZC #31. The Town of Killingly also requires that the owner/applicant be held to the standards listed in the "2002 Connecticut Guidelines for Soil Erosion and Sediment Control" (by the Connecticut Council on Soil and Water Conservation in Cooperation with the Connecticut Department of Environmental Protection / now DEEP); and the "2004 Connecticut Stormwater-Quality Manual" (by the Connecticut Department of Environmental Protection / now DEEP).

**NTE Response and Comment PZC #31:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #31.

8.470.9.3 - Pedestrian and Vehicular Access

PZC #32. The owner/applicant must provide safe and secure pedestrian access to and from the employee parking lot and the main construction site.

**NTE Response and Comment PZC #31:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #32.

PZC #33. That at all times (pre-construction, construction, and post construction) the owner/applicant must make sure that there is an ingress and egress available to emergency services vehicles.

**NTE Response and Comment PZC #33:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #33.

PZC #34. No permanent access is shown on any plans with regard to the switchyard if the switchyard stays on the southern side of Lake Road. This is a concern for public health, safety, and general welfare.

**NTE Response and Comment PZC #34:
ORDER ACCEPTABLE.**

Permanent access to the switchyard site is shown on the original site plan included as a part of the NTE Application on Figure 2-8.

The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #34.

8.470.9.4 - Noise Abatement

PZC #35. The State of Connecticut noise standard and the Town of Killingly noise ordinance defines ambient/background sound as the L90 (not LEQ) standard. Noise analysis and background noise levels shall be rerun using this standard for compliance. The standard also as a numerical definition for prominent discrete tones that shall also be included in the report. If a prominent discrete tone sound is generated by the project, then the allowable 51 dBA limit is reduced by 5 dBA.

NTE Response and Comment PZC #35:

ORDER APPEALED.

NTE respectfully APPEALS this order. The Connecticut noise regulations and the Town of Killingly noise ordinance identify the L90 to characterize background noise; however, background noise is not used to determine compliance unless measured levels are in excess of the standards, which is referred to as 'high-background noise'. If measured levels are in excess of the standards (51 dBA), a sound source is not permitted to exceed the background noise level by 5 dBA. The measured L90 values presented in Section 7.4 of the CSC Application are well below the most stringent 51 dBA standard; therefore, the area surrounding the KEC Site is not considered to have high-background noise and the absolute standards apply. KEC meets the most stringent 51 dBA sound level limit applicable at the property boundaries. Additionally, no discrete tones are expected to be associated with normal operation of the KEC.

The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #35.

PZC #36. The modeling results shall be presented for discrete residential location property lines to show if compliance with the noise standards is achieved, since the ambient measurement locations are not necessarily at the actual residences. The standards apply at the residential property lines.

NTE Response and Comment PZC #36:

ORDER APPEALED.

NTE respectfully APPEALS this order. The Connecticut noise regulations and the Town of Killingly noise ordinance identify the point of compliance as the property boundary. The analysis completed for the KEC includes modeling results at discrete locations that confirm compliance at the property boundary; therefore, normal operation of the KEC will be in compliance with state and local noise standards. The isopleth map, provided in Figure 7-5 of the CSC Application and in the Updated Acoustic Modeling Analysis, illustrates the level of sound resulting from KEC's normal operation in areas surrounding the KEC Site.

The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #36.

PZC #37. There is no analysis in the application of the potential impact that the modeled operational sound levels may result in non-conformance with noise standards. The analysis shall be expanded to show the modeled project sound levels at discrete residential locations, the measured late night ambient L90 (not LEQ) sound levels, and what increases over ambient are expected at night. Showing compliance with the regulatory limits is required, but simply meeting a limit does not necessarily mean that no impacts will occur. A basis or rationale for determining if the expected project noise levels and/or the increase over ambient conditions are significant shall also be provided.

NTE Response and Comment PZC #37:

ORDER APPEALED.

NTE respectfully APPEALS this order. Normal operation of the KEC has been demonstrated to comply with applicable state and local standards, which do not require comparison to ambient conditions unless a project setting is identified as a high-background noise area (as outlined in Section 22a-69-3.6 of the Connecticut noise regulations). As noted above, the area surrounding the KEC Site is not considered a high-background noise area.

The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #37.

PZC #38. A statement is made that there would not be perceptible change in sound at locations near Alexander Lake, yet, there is no analysis of this within the report. Further, no ambient measurements were conducted near Alexander Lake to support this assertion. NTE indicates the noise contours show Project levels of 27 dBA or lower, and that the lowest nighttime measured anywhere was 26 dBA. However, the contours provided by NTE clearly show Project levels of greater than 30 dBA at Alexander Lake. Increased levels of 3 dBA or more are considered perceptible and applicant's data therefore indicates a perceptible change.

NTE Response and Comment PZC #38:

ORDER APPEALED.

NTE respectfully APPEALS this order. Modeled sound levels near Alexander Lake show decibel values ranging from the mid-20s to the low-30s dBA in the Application (Figure 7-5) and even lower levels for more of the Alexander Lake area in the Updated Noise Modeling, which reflects the layout refinements and the effect of intervening structures. KEC has demonstrated compliance with the stringent 51 dBA limit applicable at the property boundaries and sound levels at Alexander Lake are well below that limit. Imperceptibility or inaudibility under all operating conditions is not required by the Town of Killingly or the State of Connecticut and is an unrealistic expectation for this Project or any other industrial or commercial activity.

The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #38.

PZC #39. It is stated that construction may occur 7 days per week, and that construction could last for 3 years. This would have the potential to result in an adverse impact. Some numerical analysis of construction noise levels shall be provided to support the assertion that no adverse or long- term impacts will occur.

**NTE Response and Comment PZC #39:
ORDER APPEALED.**

NTE respectfully APPEALS this order. Both the state and local noise requirements list construction, including loud noises such as blasting, as exceptions to the requirements, if created during daytime hours. NTE has committed to restricting particularly loud construction activities (i.e., blasting, steam blows) to daytime hours. Although a numerical analysis could be conducted, it could only employ assumptions based on the anticipated range of activities during certain phases of construction, which would vary depending on construction progress and would not be particularly meaningful. NTE will establish a procedure prior to the start of construction to address the handling of construction noise related complaints.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #39.

PZC #40. The owner/applicant shall provide to the Town of Killingly staff (Engineering Dept. / Planning Dept.) the name and number of the owner/applicant's key personnel to contact that can resolve an issue the Town of Killingly may have with noise.

**NTE Response and Comment PZC #40:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #40.

PZC #41. The owner/applicant shall also provide notification to the Town of Killingly staff (Engineering / Planning & Development / Building Office / Fire Marshal) if there is going to be noise for an extensive period of time so the public may be notified.

**NTE Response and Comment PZC #41:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #41.

PZC #42. In the event that a noise abatement issue cannot be resolved, in the Town of Killingly's sole discretion in a timely and effective manner; the Town of Killingly shall follow and enforce its existing noise ordinance found in its Code of Ordinances Chapter 12.5 (Planning and Development) Article VI (Noise Ordinance, Sections 12.5-120, et seq, and as may be amended.

**NTE Response and Comment PZC #42:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #42.

S.470.9.5 - Other Pollution or Related Problems

Air Quality

PZC #43. The Commission requests that the CT Siting Council review and consider additional analysis regarding the effect of emissions on nearby sensitive receptors. The additional analysis should include an evaluation through the CT Department of Health on the effect that air emission from the plant will have on the incidence(s) of asthma and other respiratory ailments in the Town of Killingly and surrounding communities. The Town of Killingly is concerned with the effects upon young children and the elderly, as there are schools and elderly care facilities all located within an approximately a 2.00/3.00 mile radius of the proposed site development. The commission refers the CT Siting Council to the following - Centers for Disease Control (<https://www.cdc.gov/air/pollutants.htm>); and the CT Department of Health (<http://www.ct.gov/dph/cwp/view.asp?a=3137&q=398480>).

**NTE Response and Comment PZC #43:
ORDER APPEALED.**

NTE respectfully APPEALS this order. The KEC has been designed to comply with the National Ambient Air Quality Standards (NAAQS), which have been established by the U.S. Environmental Protection Agency to protect the most sensitive populations, such as children, elderly, and individuals suffering from respiratory disease. These and other air quality requirements are addressed in NTE's pending air permit application now undergoing CTDEEP review. Additionally, operation of the KEC will displace older, less efficient generating units, improving the air quality of the surrounding area.

The Town of Killingly recognizes that NTE has obtained the required air permit from CTDEEP to construct the facility in its current configuration. While the Town has no regulatory authority to require the requested analysis, it requests that NTE perform the analysis to allay the concerns of its residents that may be affected by air emissions from the proposed facility. The Town of Killingly does not accept the response by NTE and requests further action to comply with Municipal Orders to Regulate and Restrict for PZC Order #43.

PZC #44. For the emergency generator and fire pump respectively. Tier 2 and Tier 3 emission standards are proposed. These comply with NSPS IIII. But for BACT, one must consider available and innovative technologies. It is reasonable to reject Tier IV engines, which would typically use SCR. But there are Tier III (Less polluting) engines widely available at the rating specified for the emergency generator.

NTE Response and Comment PZC #44:

ORDER APPEALED.

NTE respectfully APPEALS this order. No Tier 3 standards have been promulgated for engines greater than 560 kilowatt (kW); the emergency generator proposed for KEC is 1,500 kW. KEC's proposed fire pump engine (228 kW) meets the Tier 3 standard.

The Town of Killingly recognizes that NTE has obtained the required permit from CTDEEP to construct the facility in its current configuration. The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #44.

PZC #45. Emission for formaldehyde from the CTG are based upon the MACT floor emission rate determined by USEPA for the National Emission Standard for Hazardous Air Pollutants (NESHAP) Subpart YYYY, as representative for a CTG equipped with DLN combustors and an oxidation catalyst, Subpart YYYY applies to major sources of HAPs. The project is an area source. Subpart YYYY does not apply to duct burners. The application should either use vendor data for formaldehyde emissions, or use AP42 emission factors and the heat input as 59F [2,871 MMBtu/hr (CTG) + 895 MMBtu/hr (DB)] the uncontrolled PTE of formaldehyde would be: $(2,871 + 895) * 8.760 * 0.00071 / 2000 = 11.7$ tpy. Note that a source with a PTE of 10-tpy of a single HAP is a major source of HAPS. The actual stack concentration (ASC) of formaldehyde would be approximately twice the maximum allowable stack concentration (MASC) [i.e., it would not comply w/ CT air toxics regulations].

NTE Response and Comment PZC #45:

ORDER APPEALED.

NTE respectfully APPEALS this order. AP-42 emission factors are based upon emissions testing conducted more than 20 years ago on uncontrolled and now-obsolete combustion turbine generators (CTGs) and are inappropriate to apply to the unit proposed for the KEC facility, which is a new state-of-the-art CTG equipped with dry low nitrogen oxide (NOx) combustors and an oxidation catalyst. USEPA's MACT Floor evaluation involved extensive testing of similar state-of-the-art CTGs equipped with similar emission controls. As a result, NTE believes the Subpart YYYY values represent the most applicable formaldehyde emission factor for the KEC CTG. The formaldehyde emission rates used by KEC are identical to the limits approved by CTDEEP as BACT in the most recent combined cycle turbine project in Connecticut (Towantic Energy), as well as those proposed in the most recent application currently before the CTDEEP (Bridgeport Harbor).

It should also be noted that the Subpart YYYY regulation actually does not apply to major sources of HAP; rather, it applies to a CTG located at a major source of HAP, as determined by

potential emissions from the entire facility, not just from the CTG. See 40 CFR 63.6085. KEC is not a major source of HAP, and therefore it is correct that Subpart YYY does not apply to the KEC CTG. However, Subpart YYY remains relevant as setting forth up-to-date and representative emission factors for the KEC CTG. Also, although duct burners are not directly covered under Subpart YYY, in cases such as this where such equipment would be integral and difficult to separately monitor, it is common practice to incorporate duct burner emissions into the CTG emission figures.

The Town of Killingly recognizes that NTE has obtained the required permit from CTDEEP to construct the facility in its current configuration. The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #45.

PZC #46. The Town of Killingly shall be given the opportunity to review Air Permit conditions imposed by the CT DEEP and if there are changes to the plant design and operation, the Town of Killingly shall be given sufficient time to review and respond.

**NTE Response and Comment PZC #46:
ORDER ACCEPTABLE.**

While outside the scope of the Siting Council's authority, the Town currently has reviewed and will continue to have the opportunity to review and comment on the NTE Air Permit application now being reviewed by the CTDEEP.

The Town of Killingly recognizes that NTE has obtained the required permit from CTDEEP to construct the facility in its current configuration. The Town of Killingly accepts the response by NTE and that no further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #46.

Erosion and Sediment (E&S) and Dust Control

PZC #47. Phasing and details of the grading activities shall be provided, with additional E&S control information shown for each phase on the drawings. Locations for soil, topsoil and rock stockpiles shall be provided, with appropriate means to control erosion and sedimentation. Location for the placement of rock crushing and screening operations shall be shown along with appropriate means of E&S Control. Total quantities of estimated earth excavation, rock excavation and fill volumes shall be provided. Any soil material brought to the site and used on the project shall be tested at a frequency of 1 sample per 1000 cubic yards for all constituents to determine compliance with the CT DEEP standards for Residential Direct Exposure and GA Pollutant Mobility Criteria.

**NTE Response and Comment PZC #47:
ORDER ACCEPTABLE**

Should the project be approved by the Council, NTE will prepare and submit a detailed phasing and construction sequencing plan in conjunction with registration under the CTDEEP

General Permit for the Discharge of Stormwater Associated with Construction Activities. This registration will be prepared by a licensed professional engineer and will require a 3rd party review by a second licensed professional engineer prior to submittal to the CTDEEP.

NTE expects approximately 220,000 cubic yards of material to be relocated on site, resulting in a balanced cut and fill. As described in Section 3.2.1 of the Application (Volume I), the intent of the grading plan is to minimize the total net import or export of material to or from the site. Limited quantities of structural fill may need to be brought to the site if adequate material is not present. Imported soils will be subject to appropriate testing.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #47.

PZC #48. Temporary sediment basins shall be added up gradient of Wetland A1 and A3 and shall be properly sized in accordance with the CT WQM.

NTE Response and Comment PZC #48:

ORDER ACCEPTABLE.

See Exhibit 3 - Revised SWPPP and Exhibit 5 - Updated E&S Plan.

The Town of Killingly accepts the changes already made by NTE, the more recent changes to the site drawings revised to 01/17/2019 as part of Exhibit 3 and the revised Stormwater Pollution Prevention Plan contained in Exhibit #3. The Town of Killingly recognizes that NTE has committed to complying with the other conditions and that future actions and submissions will be required to comply with all of the Municipal Orders to Regulate and Restrict for PZC Order #48.

PZC #49. The CT General Permit for Stormwater for Construction Activities requires that for site disturbances of 15 acres or more the Stormwater Pollution Prevention Plan (SWPP) and stormwater system design must be reviewed and certified by a third-party independent Connecticut Licensed Professional Engineer not connected to the project. This shall be a condition of approval.

NTE Response and Comment PZC #49:

ORDER ACCEPTABLE.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #49.

PZC #50. A detailed plan for dust control and management for site grading and on-site soil/rock processing shall be required. Significant volumes of water will be required to prevent fugitive dust and tracking onto Lake Road. Provisions for water supply, water tanker, sprinklers and equipment water sprays shall be provided and in place before site work begins.

**NTE Response and Comment PZC #50:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #50.

PZC #51. The Town of Killingly requires that the applicant shall become familiar with the Town of Killingly Earth Filling and Excavation Regulations (Section 560 - Town of Killingly Zoning Regulations); and that the applicant follow said regulations as a requirement. The Commission requires that the applicant provide the Commission with the detailed plan for dust control and management as noted above.

**NTE Response and Comment PZC #51:
ORDER ACCEPTABLE.**

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #51.

**S.470.9.6 - Landscaping and Screening
Site Plan Conditions/Grading**

PZC #52. The Town of Killingly requires that within the main plant parcel, the owner/applicant shall move the limits of all grading activities, clearing and disturbance a minimum of 75 feet from all wetland boundaries and maintain the tree canopy in this zone.

**NTE Response and Comment PZC #52:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.
See NTE's response to IWWC Order No.3 above.**

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and wetland/disturbance separation contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #52.

PZC #53. The Town of Killingly requires that the location of the administration building, compressor station, main plant facility, tanks and other site features shall be moved to accomplish the required separation.

**NTE Response and Comment PZC #53:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.
See NTE's response to IWWC Order No.3 above.**

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and wetland/disturbance separation contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #53.

PZC #54. The Town of Killingly requires that slopes should be no greater than two (2) horizontal to one (1) vertical and shall have turf established to stabilize the surface from erosion. Erosion netting or turf reinforcing mat shall be used on all slopes equal to or steeper than three (3) horizontal to one (1) vertical along the north side of the site along the wetlands. (That is if the CSC allows the slopes to be greater than 2: 1).

NTE Response and Comment PZC #54:
ORDER ACCEPTABLE IN PART AND APPEALED IN PART.
See NTE's response to IWWC Order No.3 above.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and wetland/disturbance separation contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #54.

Landscaping

PZC #55. The Town of Killingly requires that NTE provide a complete landscaping plan for the main plant site and the switchyard site prepared by a licensed landscape architect. The plan shall be submitted to the Town of Killingly PZC for review and approval. The plan shall provide adequate tree and shrub plantings to provide an effective visual screen from Lake Road and the residential property abutting on the west. Areas of the site disturbed by site grading activities that are not part of the active facility shall be replanted with trees to reestablish wooded / forested coverage. There must be enough soil (12" - 18" of combined top spoil and sub soil) to sustain such forested coverage.

NTE Response and Comment PZC #55:
ORDER ACCEPTABLE.

The revised grading plan and elimination of the fuel tank berm will allow the project to maintain greater vegetated buffers along the western property boundary. Where possible, existing vegetation along Lake Road and the western boundary will also be maintained. Where grading requires removal of vegetation in areas that are not part of the active facility, forested coverage will be re-established to provide visual screening. A landscaping/planting plan will be prepared and presented as a part of the D&M Plan for review by the Town and approval by the Council.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and layout contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. The Town of Killingly recognizes that NTE is committed to complying with the conditions and

that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #55.

PZC #56. The Town of Killingly requires that buffers be doubled (see minimum setback chart attached hereto and incorporated herein by reference) within certain areas of the site, where possible to limit the impact upon the surrounding residential area.

NTE Response and Comment PZC #56:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE will attempt, where possible, to maintain existing vegetation along the perimeter of the KEC site and increase the size of that buffer nearest the adjacent residential neighbors. NTE cannot commit, at this point, to the "doubling" of these buffers and therefore appeals this portion of the PZC order.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and layout contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #56.

PZC #57. The Town of Killingly requires that the owner / applicant shall comply with the necessary lighting to adhere to the Town of Killingly's Dark Sky regulations found in the Town of Killingly Subdivision Regulations Article IV Section 17 Lighting - "Outdoor lighting, if proposed and in the Commission necessary, shall be designed to provide the minimum lighting necessary to ensure adequate safety, night vision, and comfort, and shall not create or cause excessive glare on adjacent properties and public street rights-of-way. Streetlights shall be avoided in subdivisions located in rural areas of Town."

NTE Response and Comment PZC #57:

ORDER ACCEPTABLE.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #57.

S. 470.9.7 - Neighborhood Impact

PZC #58. Should the CT Siting Council and/or CT DEEP find that factors and reasons for not moving the switchyard override the PZC's preference for the move, the PZC requires the owner/applicant do research in the graveyard area, outside of the stone walls to verify that the switchyard will not interfere with any possible grave sites located outside of the stone walls.

NTE Response and Comment PZC #58:

ORDER ACCEPTABLE.

NTE will comply with this order by working with the State Historic Preservation Office (SHPO) to identify appropriate measures in areas where the 50-foot buffer recommended by the SHPO cannot be maintained.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #58.

S. 470.9.8 Architectural and Aesthetic Impact

PZC #59. As stated earlier the commission requests that where it can be accomplished that buffer zones be doubled, where they cannot be doubled, that they be maximized, and that plantings / landscaping are put in place that buffers the energy plant from the surrounding area.

NTE Response and Comment PZC #59:

ORDER ACCEPTABLE IN PART AND APPEALED IN PART.

NTE will attempt, where possible to maintain existing vegetation along the perimeter of the KEC site and increase the size of that buffer nearest the adjacent residential neighbors. NTE cannot commit, at this point to the "doubling" of these buffers and therefore appeals this portion of the PZC order.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and layout contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #59.

PZC #60 The commission would like the total project to be on one parcel of real estate.

NTE Response and Comment PZC #60:

ORDER APPEALED.

See NTE's Response and Comment - Widening of Lake Road and Traffic No.1 on pages 22-24 above.

The Town of Killingly accepts the changes already made by NTE and the more recent changes to grading and layout contained in the site drawings revised to 01/17/2019 as part of Exhibit 3. No further action is required to comply with Municipal Orders to Regulate and Restrict for PZC Order #60.

S. 470.9.9 Zoning Regulations

PZC #61 The commission requires the owner / applicant must be aware of other Town of Killingly Zoning Regulations that apply to this project and should be followed;

a) Section 450 et seq.; - Dimensional Regulations

- b) Section 470 et seq.; - Site Plan Review
- c) Section 560 et seq.; - Earth Filling & Excavation
- d) Section 700 et seq.; - Special Permits
- e) Section 790. - Bonding

NTE Response and Comment #61:

ORDER ACCEPTABLE.


NTE is familiar with the identified provisions of the Killingly Zoning Regulations.

The Town of Killingly recognizes that NTE is committed to complying with the conditions and that future actions and submissions will be required to comply with the Municipal Orders to Regulate and Restrict for PZC Order #61.

ADDITIONAL ORDERS OF REGULATION & RESTRICTION

- 1) Based on Exhibit 3, dated January 19, 2019, the NTE site drawings and noise analysis proposes the following modifications to the site plan: Property Line Noise Barriers have been added that were not part of the original filing by NTE to the CSC:
 - a. Two noise barriers have been positioned along the southwestern property line, one 430 feet long with a height of 28-feet for 314 feet, transitioning to a height of 24-feet for 116 feet; and
 - b. One 16-feet high and 122 feet long.

The locations of the noise barriers are illustrated in the latest site layout. Both of the barriers are approximately 50 feet from the property boundary. Exhibit 3 does not provide any alternative designs to address noise attenuation at the source areas and eliminate the need for the barriers. In the absence of alternative evaluation, the Town of Killingly orders that a full, independent and complete alternative evaluation be performed by a qualified noise expert to determine alternative approaches to noise attenuation and either eliminate the need for the property perimeter noise barriers or minimize the height and length of barriers required to comply with the Killingly and State noise regulations. Structural plans for the noise barrier will need to be submitted to the Town as well. In light of the fact the barriers were not proposed in the original submission, an explanation of what has changed to warrant this significant modification to the site design is a requirement.

BY:  4/11/19
Dated