

IN THE MATTER OF : ***APPLICATION NOS.***
199805258; 19990251-0253;
199902285; 199902285;
199902314-02315 &
199903120

TOWANTIC ENERGY, LLC : ***JUNE 26, 2003***

FINAL DECISION

I. INTRODUCTION

On October 2, 2002, pursuant to General Statutes §22a-174, the Hearing Officer issued a *Proposed Final Decision* in the above-referenced matter, recommending that the Commissioner issue to Towantic Energy, LLC (“the applicant”) permits associated with the construction and operation of a combined cycle gas turbine power plant in Oxford in accordance with the terms and conditions of the permit modifications outlined in the *Proposed Final Decision*.

The first application, filed with the DEP Bureau of Air Management, seeks seven new source air permits for the following sources: two combustion turbine generator trains; two oil storage tanks; two emergency engines; and an auxiliary boiler (new source application). The second application, submitted to the DEP Bureau of Water Management, seeks a permit to pretreat and discharge process wastewater to the Town of Oxford public sewer system for

final treatment at the Naugatuck wastewater treatment plant (water discharge application)

The applicant; the intervenors: the Coalition (the Town of Middlebury, Citizens for the Defense of Oxford, Inc., and Preservation Middlebury), Town of Oxford, and James Callahan; and DEP filed exceptions to the *Proposed Final Decision*. The Coalition and James Callahan requested oral argument. Following the filing of briefs concerning the exceptions, the parties were heard at oral argument on March 26, 2003.

Having considered the arguments raised by the parties in the briefs and at oral argument, overall, nothing was presented that dissuades me from upholding the Hearing Officer's analysis of the issues and conclusions of the *Proposed Final Decision*. There is one jurisdictional issue and a couple of additions and revisions related to the conditions of the new source application, however, that merit further comment based upon the points raised in the briefs and at oral argument.

II. DISCUSSION

Despite the fact that I am satisfied that the jurisdictional issue related to the authority of the Connecticut Siting Council and local planning, zoning and conservation board were adequately addressed by the Hearing Officer during the hearing process and in the *Proposed Final Decision*, I am compelled to reemphasize this issue by specifically responding to the intervenors exceptions that revolve around the appropriate jurisdiction of this agency.

This issue was specifically raised in the context of the applicant's alternatives analysis required as part of the State Implementation Plan for nonattainment area permits. §22a-174-3a(1)(2); 42 USC section 7503(a)(5). The *Proposed Final Decision* affirms that the applicant received all of the required municipal planning, zoning and wetlands permits for the proposed project, a *Certificate of*

Environmental Compatibility and Public Need (Certificate) from the Connecticut Siting Council and a no hazard determination from the Federal Aviation Administration. *Proposed Final Decision*, Finding of Fact #18. Alternatives that address siting, public need, safety, traffic, convenience, necessity, location, transmission routes and other land use matters were reviewed by those agencies that have primary jurisdiction over such issues. For such reasons, I agree with the Hearing Officer that “it is therefore reasonable to limit the scope of the alternatives analysis required by §22a-174-3a(1)(2) to those factors which advance or hinder the goals and policy objectives of the non-attainment portion of Connecticut’s State Implementation Plan (SIP). *Proposed Final Decision* at 50-51.

It is not within the jurisdiction of this agency to address issues that have already been decided by those other agencies having primary jurisdiction over those matters. See, e.g. §§16-50i(a)(3) and 16-50x, Connecticut Siting Council’s exclusive jurisdiction over the siting of electric generating facilities. Furthermore, this agency does not need to reconsider those issues that have already been provided with “...an adequate opportunity to litigate.” *Convalescent Center of Bloomfield, Inc. v. Department of Income Maintenance*, 208 Conn. 187, 195 (1988).¹ The intervenor appealed the decisions of the municipal planning and zoning and conservation boards and the Siting Council first to the Siting Council and then to Superior Court.² Both times the previous determinations of those entities were upheld. There is no need to reopen the question in making a determination on the subject permits.

¹ The requirement of an adequate opportunity to litigate is met when the “factual disputes resolved were clearly relevant to issues properly before [the administrative agency], and both parties had a full and fair opportunity to argue their version of the facts and an opportunity to seek court review of any adverse findings.” *Convalescent Center of Bloomfield, Inc. v. Department of Income Maintenance*, 208 Conn. 187, 195 (1988)

² See, *Citizens for the Defense of Oxford v. Connecticut Siting Council*, No. CV 99-00497075S, Memorandum of Decision November 14, 2000.

I agree with the Hearing Officer as stated in the *Proposed Final Decision* that the benefits of the proposed project include not only its potential to substantially augment the existing reliability and quantity of electrical power available to the New England region but also its potential to improve air quality by supplanting power generation from older, fossil-fueled facilities that presently contribute to the degradation of air quality in the region. *Proposed Final Decision* at 51.

III. FINDINGS OF FACT

I adopt the findings of fact set forth in the *Proposed Final Decision* dated October 2, 2002.

IV. CONCLUSIONS OF LAW

I adopt the conclusions of law set forth in the *Proposed Final Decision* dated October 2, 2002.

V. TERMS AND CONDITIONS MODIFICATIONS

Except as noted below, I authorize the issuance of the proposed permits subject to the modifications set forth in the *Proposed Final Decision*.

- As amended by *Errata* dated December 4, 2002.
- As applied to both **Permit Nos.144-0010 and 144-0011/Combustion Gas Turbines:**

Part V MONITORING, REPORTING AND RECORD KEEPING
REQUIREMENTS

VOC Emissions Limitation

Add the following after Item 10.

“ 11. The Permittee shall provide the Town of Oxford with a copy of the results of the monthly monitoring reports required by this permit. The Permittee shall provide the reports contemporaneous with their submission to the DEP.”

Part X. ADDITIONAL TERMS AND CONDITIONS

Consideration of Solid Ammonia, Urea

Modify Item #5.

Change the “three calendar years from the date of commencement of commercial operation, or at such other time as the permittee or the commissioner deems appropriate” to “*prior to the completion of construction*” and change the “may” submit a report to the commissioner on the feasibility of using solid ammonia, Urea, to a “*shall.*”

BACT Analysis

Add the following provision as Item #15.

“ Unless directed otherwise by the commissioner, if the proposed facility is not constructed within three calendar years from the date of issuance of said permit, the permittee shall be required to recertify and conduct further BACT analysis.”

VI. CONCLUSION

In conclusion, having reviewed the *Proposed Final Decision*, the record, and considered arguments raised by the applicant, intervenor and staff in the briefs and at oral argument, I hereby affirm the recommendation to issue the seven permits that are the subject of the new source application, incorporating the terms and conditions set forth in the *Proposed Final Decision* as modified herein. I also affirm the recommendation that, upon completion of the

permitting process and construction and approval of the wastewater treatment system, the water discharge permit be issued subject to the modifications proposed in the *Proposed Final Decision*.

June 26, 2003
Date

/s/ Arthur J. Rocque, Jr.
Arthur J. Rocque, Jr.
Commissioner

PARTY LIST

Final Decision in the matter of Towantic Energy, LLC
(Application Nos. 199805258; 199900251-0253; 199902285; 199902314-02315 and 199903120)

PARTY

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