brief

RUBIN AND RUDMAN LLP

COUNSELLORS AT LAW

50 ROWES WHARF • BOSTON, MASSACHUSETTS 02110-3319

TELEPHONE: (617) 330-7000 • FACSIMILE: (617) 439-9556 • EMAIL: FIRM@RUBINRUDMAN.COM

John A. DeTore
Direct Dial: (617) 330-7144
E-mail: jdetore@rubinrudman.com

November 9, 2000

VIA FEDERAL EXPRESS

The Honorable J. Michael Harrison
Administrative Law Judge
New York State Board on Electric Generation Siting and the Environment
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

The Honorable Daniel P. O'Connell
Administrative Law Judge
New York State Board on Electric Generation Siting and the Environment
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-1550

RE: Case # 99-F-0558 – Application of Heritage Power LLC for a Certificate of Environmental Compatibility and Public Need to Construct and Operate an 800 Megawatt Natural Gas-fired Combined Cycle Combustion Turbine Electric Generating Plant in the Town of Scriba, Oswego County, N.Y.

Dear Examiners Harrison and O'Connell:

Enclosed please find the Brief of Heritage Power LLC in the above-captioned matter.

Very truly yours,

Rubin and Rudman LLP
Attorneys for Heritage Power LLC

By: John A. DeTore

Enclosure
cc: Attached Service List

IN THE MATTER
- of the -
CASE 99-F-0558 - Application of Heritage Power LLC for a Certificate of Environmental Compatibility and Public Need to construct and operate an 800 megawatt natural gas-fired combined cycle combustion turbine electric generating plant in the Town of Scriba, Oswego County, N.Y.

AFFIDAVIT OF SERVICE

State of New York)
) SS.:
County of Albany)

Elizabeth Farry, being duly sworn, deposes and says: that on the 9th day of November, 2000, a true and complete copy (or copies as noted) of the Brief of Heritage Power LLC was served upon each party or person on the attached list by overnight mail (Friday delivery).

The Honorable J. Michael Harrison
Administrative Law Judge
New York State Board on Electric Generation Siting and the Environment
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

The Honorable Daniel P. O'Connell
Administrative Law Judge
New York State Board on Electric Generation Siting and the Environment
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-1550

The Honorable Janet Hand Deixler
Secretary
New York State Board on Electric Generation Siting and the Environment
New York State Public Service Commission
Executive Office, 14th Floor
Three Empire State Plaza
Albany, NY 12223-1350
(25 copies)

Kevin M. Lang, Esq.
Kimberly Johnson, Esq.
Staff Counsel
Office of the General Counsel
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Meghan A. Purvee, Esq.
Senior Attorney
Office of the General Counsel
New York State Department of Environmental Conservation
50 Wolf Road, Room 638
Albany, NY 12233-1500

Robert A. Torba
Deputy Permit Administrator
Region 7 Permits
New York State Department of Environmental Conservation
615 Erie Boulevard West
Syracuse, NY 13204-2400

Robert L. Ewing
Environmental Analyst
Environmental Permits
New York State Department of Environmental Conservation
50 Wolf Road, Room 538
Albany, NY 12233-1750

A. Kevin Gleason, Chief
Anthony J. Grey, Ph.D., Assistant Director
Bureau of Toxic Substance Assessment
New York State Department of Health
Flanigan Square
547 River Street, Room 330
Troy, NY 12180-2216

Frank J. DeCotis, Esq.
Associate Attorney
Division of Legal Affairs
New York State Department of Health
Corning Tower Building, Room 2455
Five Empire State Plaza
Albany, NY 12237

Jeffrey Gerber
Project Manager
New York State Energy Research & Development Authority
Corporate Plaza West
286 Washington Avenue Extension
Albany, NY 12203-6399

L. Michael Treadwell
Executive Director
Operation Oswego County
44 West Bridge Street
Oswego, NY 13126

Bruce N. Clark, Esq., County Attorney
Jack Tierney, County Administrator
Oswego County Administrator's Office
Oswego County Office Building
46 East Bridge Street
Oswego, NY 13126

William Shannon
Oswego County Building Trades
23 Mitchell Street
Oswego, NY 13126

Norman Seiter, Jr., Esq.
The Seiter Law Firm
3306 Main Street, Suite A
PO Box 120
Mexico, NY 13114

Keith J. Roland, Esq.
Roland, Fogel, Koblenz & Petroccione, LLP
One Columbia Place
Albany, NY 12207

Gary Toth
4120 State Route 69
Mexico, NY 13126

Michael W. Murphy, Esq.
Niagara Mohawk Power Corporation
Law Department, A-3
300 Erie Boulevard West
Syracuse, NY 13202-4250

William H. Malcolm
ANR Pipeline Company
500 Renaissance Drive, 10th Floor
Detroit, MI 48243

Michael Whiteman, Esq.
Timothy P. Morrison, Esq.
Robert A. Hussar, Esq.
Whiteman, Osterman & Hanna
One Commerce Plaza
Albany, NY 12260

By: Elizabeth Farry
Elizabeth Farry

Subscribed and sworn on this 9th day
of November, 2000.

Anne M. Iosi
Notary Public
My Commission Expires: 1/21/05

NEW YORK STATE
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

Org files
C 99-F-0558
Copies:
Full distribution
20 copies

CASE 99-F-0558

IN THE MATTER
– of the –
Application of Heritage Power LLC for a Certificate of Environmental Compatibility and Public Need to construct and operate an 800 megawatt natural gas-fired combined cycle combustion turbine electric generating plant in the Town of Scriba, Oswego County, N.Y.

INITIAL BRIEF OF HERITAGE POWER LLC

John A. DeTore, Esquire
Rebecca L. Tepper, Esquire
Michael D. Ernst, Esquire
Keren Schlomy, Esquire
Counsel for Heritage Power LLC
RUBIN AND RUDMAN LLP
50 Rowes Wharf
Boston, MA 02110
Telephone: (617) 330-7000

Sam Laniado, Esquire
Howard Read, Esquire
Counsel for Heritage Power LLC
READ AND LANIADO, LLP
25 Eagle Street
Albany, NY 12207-1901
Telephone: (518) 465-9313

Dated: November 9, 2000
Boston, MA

430933_3

TABLE OF CONTENTS

I. INTRODUCTION

Heritage Power LLC (the "Applicant" or "Heritage Power") seeks a Certificate of Environmental Compatibility and Public Need ("Certificate") from the New York State Board on Electric Generation Siting and the Environment (the "Siting Board" or "Board") for the construction and operation of a 800-megawatt (MW) combined-cycle electric generating facility (the "Facility", "Project" or "Heritage Station").

A. Project Description

The proposed Facility will be located on land that is part of the site of the existing Independence Station electric generating facility, allowing integration of the Project on the site with minimal impact to the environment and the surrounding community. The Facility site is on County Route 1A, east of the City of Oswego, in the Town of Scriba, Oswego County.

The Project will be a merchant facility, designed to sell electricity to the wholesale market. It is a joint undertaking by affiliates of Sithe Energies, Inc. and General Electric Company ("GE"). The Project will utilize the GE 7H gas turbine system--the newest generation of gas turbines designed to achieve a fuel efficiency of 60 percent. This level of efficiency has never been achieved for a fossil fuel power plant of this size in the United States. The installation of the GE 7H turbines at Heritage Station will be the first in this country.

To achieve low air emissions, the Project will use natural gas as its exclusive fuel. The interconnection for gas supply will be approximately 950 feet and will be entirely on the Independence Station site. Water will be provided to the Project via an existing water main from the Town of Scriba. The Town of Scriba obtains its water through an interconnection with the City of Oswego which, in turn, withdraws water from Lake Ontario.

The Project's wastewater discharge will be treated on-site and directed to a new holding pond. From the Project's holding pond, wastewater will then flow to the discharge line currently used by Independence Station. Sanitary wastewater from the Project will be directed to the Independence Station sanitary wastewater treatment facilities. No other discharge facilities are required to be constructed for the Project.

B. Procedural Background

1. Pre-application Procedures

To encourage public participation and to gain early input from regulatory agency personnel, Heritage Power followed the pre-consultation process outlined in Public Service Law ("PSL") § 163. After numerous meetings and discussions with various agencies, municipal officers and local residents during the Fall and Winter of 1998, Heritage Power submitted a Pre-application Report to the Siting Board in April of 1999. Thereafter, staff of the State of New York Department of Public Service ("DPS"), the New York State Department of Environmental Conservation ("DEC"), the New York State Department of Health ("DOH") and the Applicant entered into stipulations describing the scope of studies to be performed by the Applicant.[1]

2. Application Submission

On February 23, 2000, Heritage Power submitted to the Siting Board an Application for a Certificate to construct and operate the Facility (the "Application"). The Application was docketed, effective as of the date of the filing and assigned case No. 99-F-0558. The Application was served upon the entities and the individuals required to be served by PSL § 164(2)(a) and

[1] Exhibit ("EXH") -1(3) Appx. A.

16 NYCRR § 1000.5. Contemporaneous with the filing of the Application, proof of service was filed in accordance with PSL § 164(2)(a) and 16 NYCRR § 1000.5(c)(2) and (3). The required notice of the Application pursuant to PSL § 164(2)(b) and 16 NYCRR § 1000.6 was published before and after filing in newspapers of general circulation in the area in which the Project will be located. Proof of such notice was also filed contemporaneously with the filing of the Application. The Application was accompanied by the $300,000 fee prescribed by PSL § 164(6) for deposit in the intervenor fund.

3. Compliance Determination

On April 21, 2000, the Chairman of the Board determined that the Application generally complied with PSL § 164(1) and therefore, contained the requisite information and studies (the "Compliance Determination").[2] The Chairman's determination of compliance commenced the 12-month period within which a final determination must be made on the Application. See PSL § 165(4). In the Compliance Determination, the Chairman also sought additional information from the Applicant to supplement the Application. The Applicant complied with the Chairman's request by filing the requested information.[3]

4. Conferences and Hearings

Pursuant to PSL § 165(2), on May 16, 2000 and June 22, 2000, the Presiding Examiner convened prehearing conferences. During the May 16, 2000 prehearing conference, the Presiding Examiner identified the active parties in the case and discussed the initiation of settlement negotiations.

[2] EXH-23.

[3] See EXH-5 through EXH-22.

During the June 22, 2000 prehearing conference, the Presiding Examiner adopted a case schedule and conducted additional discussions regarding the format for settlement negotiations and the documents resulting therefrom.

On September 26, 2000, the Presiding Examiner convened a public statement hearing, the purpose of which was to receive unsworn statements from members of the public regarding the Application. On October 3, 2000, the Presiding Examiner convened an Issues Conference, the purpose of which was to identify all issues that were to be adjudicated at an evidentiary hearing. At the Issues Conference, the Presiding Examiner ruled that there were no adjudicable issues.

5. Discovery

The staff of the DPS submitted 42 information requests to the Applicant, which the Applicant answered (EXH-DPS-1 through EXH-DPS-42). The staff of the DOH submitted 18 information requests to the Applicant, which the Applicant answered (EXH-DOH-1 through EXH-DOH-18).

C. Settlement Process

A Notice of Impending Negotiations ("Notice of Negotiations") was published in the Syracuse *Herald-Journal* on July 23 and July 30, 2000 and in the *Palladium Times* on July 22 and July 29, 2000.[4] The Notice of Negotiations stated that settlement negotiations would be held on Monday, August 14, 2000 and if needed, would continue from August 15 through August 18, 2000. The Notice of Negotiations stated that the purpose of the impending settlement negotiations was to attempt to reach agreement on issues related to the Project and the

[4] See Settlement Procedures, Rules of Procedure of the Public Service Commission § 3.9.

Application and to develop Certificate Conditions for consideration by the Board. The Notice of Negotiations was also posted on Heritage Power's website and at the Oswego City Library, Penfield Library, Oswego County Administrator's Office and Scriba Town Offices. Active parties on the service list were provided with the Notice of Negotiations.

On August 14, 2000 through August 17, 2000 the Applicant, and the staffs of the DOH, DPS and DEC participated in settlement negotiations in Oswego and in Albany, NY. Over the following few months, these parties continued to engage in settlement negotiations, exchanging drafts of settlement documents and conducting numerous conference calls in relation thereto.

As a result of these negotiations, the Applicant, the DPS, DEC, DOH, the New York State Energy Research and Development Authority, the Town of Scriba, the County of Oswego Industrial Development Agency, and the Oswego County Building and Trades entered into a comprehensive settlement agreement addressing all issues and potential issues involved in this case (the "Joint Stipulations"). Included in the Joint Stipulations are the following documents:

- TOPIC AGREEMENTS -- the signatories agreed upon 11 separate topic-specific settlement documents (each document addressing a separate issue relevant to this proceeding) each of which contain agreed-upon factual and legal findings.[5]
- PROPOSED CERTIFICATE CONDITIONS -- the signatories negotiated and agreed to proposed Certificate Conditions for presentation to the Board.[6]

[5] Joint Stipulations at Tab A, 1-11.

[6] Joint Stipulations at Tab C.

- JOINT EXHIBIT LIST -- the signatories agreed to a Joint Exhibit List which references the documents which constitute the record in this proceeding.[7]
- EXHIBIT BINDERS -- the signatories compiled the documents listed on the Joint Exhibit List (other than Exhibit 1, the Application, which constitutes seven volumes) and placed those documents into exhibit binders.
- LIST OF ACRONYMS -- the signatories agreed to a list of acronyms that were used in the Joint Stipulations and the Application for use of reference.[8]

The Joint Stipulations' signatories agreed that the Joint Stipulations contain all the necessary information from which the Board can make the findings outlined in PSL § 168 and issue the Applicant a Certificate.

D. Evidentiary Hearing

On November 1, 2000, the Presiding Examiner convened an evidentiary hearing. At that hearing, the executed Joint Stipulations were submitted to the Presiding Examiner and entered into the record. All parties waived the right to cross-examination and the Presiding Examiner entered the pre-filed direct testimony into evidence on affidavits. In addition, the Presiding Examiner entered the Joint Exhibits into evidence and set November 10, 2000 as the date for filing Initial Briefs.

[7] Joint Stipulations at Tab B.

[8] Joint Stipulations at Tab D.

II. THE ISSUES

A. Approved Procurement Process

The Project was selected pursuant to an approved procurement process ("APP") in accordance with PSL § 168(2)(a)(ii). During the May 16, 2000 prehearing conference, the Presiding Examiner ruled that the Project, as a merchant plant, was selected pursuant to an APP. No party challenged that ruling.

B. Air Impacts

It is undisputed that the predictable environmental impacts on air quality, public health and safety, and aesthetics from the Project's air emissions have been evaluated and any adverse impacts have been minimized, considering the state of available technology, in accordance with PSL §§ 168(2)(b) and 168(2)(c)(i); that the Project is compatible with public health and safety in accordance with PSL § 168(2)(c)(ii); and that the Project will be in compliance with all applicable emission control requirements and air quality standards in accordance with PSL § 168(2)(c)(iv).[9]

The Project has two sources of air emissions: combustion gasses from the stacks[10] and evaporation of water from the cooling towers. For both of these emissions the record contains an evaluation of the cumulative effect of air emissions from the Project and the nearby

[9] See Air Quality Topic Agreement.

[10] Combustion gasses are regulated pursuant to the federal Clean Air Act, 42 USC §§ 7401-7676q, and New York Environmental Conservation Law Article 19.

Independence Station, and the potential for significant deterioration in local air quality.[11] The record demonstrates that the Project will operate pursuant to all applicable air permits, including the State Part 201-6 air permit and Federal air permits, including the Prevention of Significant Deterioration ("PSD") Permit, Clean Air Act Title IV Acid Rain Permit, and Title V Operating Permits, ensuring compliance with the standards and requirements regulated thereby.[12] As the proposed Project is not located in an area designated as severe nonattainment of ambient air quality standards, no evaluation relating to impact in such area was required by PSL § 168(2)(b).[13]

1. PSD and Criteria Pollutants

The Application includes an air quality impact assessment of criteria pollutant emissions (NO_x, CO, PM_{10} and SO_2) from the stacks using the Environmental Protection Agency's ("EPA") ISCST3 model and the SCREEN3 model in the VALLEY mode, as well as a cavity zone analysis and shoreline fumigation analysis.[14] The Project's ground level impacts associated with the Project's emissions are below Significant Impact Levels for all criteria pollutants.[15] The DEC has issued a State Part 201-6 Permit to Construct and Certificate to Operate and a Federal PSD air permit.[16] The Project's application of the Lowest Achievable Emission Rate for NO_x

[11] EXH-1(1) §§ 6.1.3, 6.1.4, 6.7; EXH-1(3) Appx. B.

[12] Air Quality Topic Agreement, §§ IV.B, E, F, J; Proposed Certificate Conditions I.B, II.F, VI.F.

[13] The Oswego area is in attainment for ozone, but is treated as being in moderate nonattainment. EXH-1(1) § 6.1.1.

[14] EXH-1(1) § 6.7; EXH-1(5) Appendices H.2, H.5, H.6.

[15] EXH-1(1) Tables 6-24, 6-29 and 6-30; EXH-1(2) Schulman at 4-5; EXH-1(3) Appx. B § 9 ; EXH-1(5) Appendices H.2, H.4.

[16] EXH-28; EXH-29.

and use of Emission Reduction Credits will ensure compliance with nonattainment New Source Review Requirements.[17] The Project will utilize the Best Available Control Technology to control emissions of NO_x, CO, PM, SO_2 and H_2SO_4.[18] Further, the Project will comply with opacity limits.[19] The emergency diesel generator will meet fuel sulfur limits set forth in DEC regulations.[20] Modeling of deposition rates shows that the highest cumulative acid rain impacts from Heritage and Independence Stations combined is less than 0.25% of the total deposition rate from all sources and is therefore minimal in impact.[21]

2. Non-criteria Pollutants

The Application also evaluates the non-criteria pollutants emitted by the Project alone and combined with Independence Station and compares those emissions to the health risk-based benchmark concentrations.[22] The Project's emissions of non-criteria pollutants will result in air quality impacts well below state regulatory and health risk-based benchmark concentrations.[23] The Applicant will construct cooling towers with a drift design rate of not greater than 0.0005% and will maintain them properly through use of measures such as low level biocides, continuous

[17] Air Quality Topic Agreement, §§ III.A and IV.D.

[18] Air Quality Topic Agreement, § III.B.

[19] Air Quality Topic Agreement, § III.E.

[20] Air Quality Topic Agreement, § III.C.

[21] EXH-1(1) § 6.9; EXH-1(5) Appx. H.9.

[22] EXH-1(1) § 6.8; EXH-1(2) Schulman at 5-6; EXH-1(5) Appx. H.8.

[23] Air Quality Topic Agreement, § IV.G.

free chlorine residual testing, and periodic biological assays.[24] Further, the Project will help reduce greenhouse gasses through displacement of more polluting power plants.[25]

3. Fogging and Icing

The potential for fogging and icing of surrounding roadways was addressed using the CALPUFF model.[26] The Project is compatible with public safety because over a five-year period only 64 hours are predicted to have fogging or icing impacts due solely to Heritage Station cooling tower operation.[27]

4. Vegetation

Salt deposition from the Project and Independence Station was predicted with the SACTI computer model.[28] Vegetative sensitivity was evaluated using EPA screening techniques.[29] No adverse impacts to soils and vegetation are expected from cooling tower salt deposition or other pollutants.[30]

5. Aesthetics

The record evidence evaluates the predictable impacts on aesthetics with respect to combustion stack and cooling tower plumes. A cooling tower and plume visibility analysis was conducted using the CALPUFF model which demonstrates that: (1) nearly 56% of the

[24] Air Quality Topic Agreement, §§ II.B and F; Proposed Certificate Condition VI.H.

[25] Air Quality Topic Agreement, § III.F.

[26] EXH-1(1) § 6.11.7, Tables 6-46 and 6-47.

[27] EXH-1(1) §§ 6.11.7, 6.11.8, Tables 6-46 and 6-47; EXH-1(2) Schulman at 8.

[28] EXH-1(1) § 6.11.10; EXH-1(5) Appx. H.10.

[29] EXH-1(1) § 6.12.3; EXH-1(5) Appx. H.11.

[30] Air Quality Topic Agreement, § III.G.

combustion stack plumes are less than 20 meters ("m") in length and 83% are less than 300 m long; and (2) 50% of the cooling tower plumes are less than 100 m long and 76% are less than 300 m.[31] A quantitative visibility analysis of the Project's plume for Class I areas was conducted using the EPA VISCREEN program. These analyses demonstrate that the plume would be below perceptibility thresholds at all Class I areas analyzed.[32]

6. Construction Impacts

The Applicant will control potential construction dust through use of wetting agents, covered trucks, limited storage of spoils on site, and grading and landscaping exposed areas.[33]

C. Water Quality, Fish And Other Marine Life Impacts

It is undisputed that the predictable environmental impacts on water quality, fish and other marine resources have been evaluated and any adverse impacts have been minimized as required by PSL §§ 168(2)(b) and 168(2)(c)(i), and that the Project will be in compliance with all applicable water quality standards and regulations of the DEC pursuant to PSL § 168(2)(c)(iii).[34]

1. Water Use

The record evidence describes Heritage Station's predicted water use, which is limited to an average of 3.7 million gallons of water per day ("mgd") and a maximum of 4.9 mgd, to be supplied by the City of Oswego from Lake Ontario via an existing intake structure located 6,200

[31] EXH-1(1) § 6.11, Tables 6-40 to 6-45; EXH-1(5) Appx. H.10.

[32] EXH-1(1) § 6.12.1; EXH-1(5) Appx. H.11.

[33] Air Quality Topic Agreement, § II.C; Proposed Certificate Conditions III.M and IV.F.

[34] See Water Resources Topic Agreement.

feet offshore.[35] The Project's use of water via the City of Oswego will benefit the local area through the Applicant's payments to improve the City's water treatment plant, thereby increasing the plant's ability to provide water to the region.[36]

The Project will minimize impacts to aquatic resources through the use of the existing, low velocity intake which results in negligible impingement and minimal entrainment. Expected entrainment of icthyoplankton by the intake structure corresponds to the loss of up to 219 alewife adult equivalents and 527 threespine stickeback adult equivalents; no significant impingement of fish is expected.[37]

2. Water Discharge

The Project's discharges include thermal and chemical pollutants which will be regulated by the Project's discharge permits. The Application sets forth the applicable water quality standards and effluent limitations, characterizes the Project's wastewater and proposed treatment, and demonstrates that Project wastewater will be in compliance with all applicable standards.[38] The Project is limited to discharging an average of 0.663 mgd and a maximum of 0.884 mgd of treated wastewater to Lake Ontario via an existing outfall pursuant to the DEC-issued State Pollutant Discharge Elimination System ("SPDES") permit, which ensures compliance with

[35] EXH-1(2) §§ 17.1, 17.5.3.1; EXH-1(5) Appx. F; EXH-5 at 10-14; Water Resources Topic Agreement, § II.C; Proposed Certificate Condition VI.A.

[36] Water Resources Topic Agreement, § III.A; Proposed Certificate Condition II.G.

[37] EXH-1(2) § 17.5.3.1; EXH-5 at 10-14.

[38] Water Resources Topic Agreement, § IV.A.

applicable water quality standards and ensures that the Project's discharges will not significantly impact water quality or limit other water uses.[39]

Operational stormwater and sanitary wastewater will be discharged through Independence Station's stormwater and sanitary wastewater facilities, respectively, pursuant to a modification of the Independence Station SPDES permit.[40] Construction-related stormwater will be discharged pursuant to the General Construction Activity Stormwater Permit.[41] The Applicant will submit a stormwater pollution prevention plan prior to commencing Project construction.[42]

The Project will utilize best management practices for erosion control during construction and will stabilize all disturbed areas.[43] The Project will also operate in compliance with the State Water Quality Certification issued by the Board.

3. Chemical and Hazardous Waste Storage

The Facility will store several chemicals onsite for use during construction and operation, including liquid sodium hypochlorite, sodium bromide, and aqueous ammonia in a solution of less than 20%.[44] Impacts include possible release of chemicals to the surface or ground water.

Potential indirect impacts to ground water and surface water will be minimized by storage of on-site chemicals and other hazardous materials indoors or under covered areas or

[39] EXH-1(2) § 17.2; EXH-1(4) Appx. C; EXH-8; EXH-30; Water Resources Topic Agreement, § III.C; Proposed Certificate Condition VI.B.

[40] EXH-1(2) § 17.2; EXH-1(4) Appx. C; EXH-8; EXH-30.

[41] EXH-1(2) § 17.7.1.

[42] Water Resources Topic Agreement, § II.H; Proposed Certificate Condition VI.C.

[43] Water Resources Topic Agreement, § II.F; Proposed Certificate Conditions III.P, R.

[44] EXH-1(1) §§ 3.2.2.3, 3.2.2.12, 6.10.

through use of berming and secondary containment systems; compliance with all chemical and waste storage, use and handling regulations; informing local fire department and emergency management teams of chemicals on site; and by implementing a spill prevention and control plan and an emergency management response plan.[45]

The Project is not a solid waste disposal facility, and will implement a program to minimize solid waste and encourage recycling.[46] The Applicant will ensure, prior to hiring, that all solid waste handling and disposal contractors are licensed and permitted.[47] The Project will comply with the Federal Resource Conservation and Recovery Act for all hazardous wastes.[48] Therefore, the Facility does not include a solid waste facility and will control the disposal of all solid and hazardous waste as required by PSL §§ 168(2)(c)(v) and (vi).

D. Terrestrial Ecology and Wildlife Impacts

It is undisputed that the predictable environmental impacts on terrestrial ecology, including any impacts on forests and wildlife, from the Project have been evaluated and any adverse impacts have been minimized as required by PSL §§ 168(2)(b) and 168(2)(c)(ii).[49]

The record evidence describes the upland and wetland acreage on site and the extent to which it will be disturbed by the Project.[50] Facility siting has reduced the amount of permanent

[45] Water Resources Topic Agreement, §§ II.I, J, G, III.B, V.B; Proposed Certificate Conditions VI.G and I.

[46] EXH-1(1) § 3.2.2.11.

[47] Proposed Certificate Condition III.O.

[48] Water Resources Topic Agreement, § III.G.

[49] See Terrestrial Ecology Topic Agreement.

[50] EXH-1(2) § 14.7, Figure 14-2, Table 14-7; EXH-1(7) Appendices R, S; EXH-9.

loss of botanical resources to the greatest extent possible and mitigation further ensures the minimum impact to terrestrial ecology: only 10.33 acres of vegetated land will be used by the Project and only 0.26 acre of those are wetlands, impacts to which will be regulated pursuant to an Army Corps of Engineers permit and mitigated as required thereunder.[51]

The record also analyzes the characteristics of upland forests.[52] The proposed development will not fragment the forest or hinder its natural progression.[53]

The record further assesses potential amphibian habitats, and notes the presence of the spotted salamander, a former species of special concern.[54] No threatened or endangered species have been found on the Project site.[55] Therefore, the Project will not adversely impact any threatened or endangered species of plant or wildlife.[56] Nevertheless, the Applicant has agreed to implement an amphibian upland habitat mitigation plan which provides for reduction of habitat fragmentation and mitigation for construction laydown.[57]

[51] Terrestrial Ecology Topic Agreement, §§ I.C.4., II.B.1, and III.E; Proposed Certificate Condition VIII.B.

[52] EXH-10.

[53] Terrestrial Ecology Topic Agreement, § III.D.

[54] EXH-9.

[55] EXH-1(2) §§ 14.4, 14.5; EXH-1(7) Appx. T.

[56] Terrestrial Ecology Topic Agreement, § III.C.

[57] Terrestrial Ecology Topic Agreement, §§ II.A, III.B; Proposed Certificate Condition VIII.A.

E. Land Use Impacts, Including Historic and Recreational Values and Parks

It is undisputed that the predictable impacts from the Project on existing land uses including historic sites, forests and parks have been evaluated and any adverse impacts have been minimized in compliance with PSL §§ 168(2)(b) and 168(2)(c)(i).[58]

The record demonstrates that the Project will have no impact on historic or cultural resources on or eligible for inclusion on the National Register of Historic Places.[59] In the event that historic or cultural resources are encountered during construction, the Applicant will follow its Unanticipated Discovery Plan to protect such resources.[60]

To help preserve local forests and parks, Heritage Power will deed to Oswego County approximately 19.5 acres of forested land along the northern property line of the Independence Industrial Energy Park and adjacent to the Independence Park Nature Trails.[61] Heritage Power will also donate $500,000 to fund construction of nature trails on the deeded land and a bathhouse and other projects at Sandy Island Beach for the public's recreational activities.[62]

The Project is also compatible with recreational land uses, including parks, within two miles of the site[63] and the relevant sections of the Town of Scriba and Oswego County

---

[58] See Land Use and Local Laws Topic Agreement; Visual & Cultural Resources & Aesthetics Topic Agreement.

[59] EXH-1(1) § 7; EXH-1(5) Appx. I; EXH-1(6) Appx. K; EXH-7 at 3-5.

[60] EXH-1(2) § 7.3; EXH-1(5) Appx. J; EXH-1(2) Gresock at 3; Visual & Cultural Resources & Aesthetics Topic Agreement, § II.F; Proposed Certificate Condition III.V.

[61] Land Use and Local Laws Topic Agreement, § II.B; Proposed Certificate Condition VIII.E.

[62] Land Use and Local Laws Topic Agreement, § II.C; Proposed Certificate Condition VIII.F.

[63] EXH-1(1) § 10.2.1.4.

Comprehensive Plans.[64] In addition, the Project is consistent with the state coastal zone management policies.[65]

Heritage Power's commitment to provide a corporate guarantee, bond or other comparable financial instrument in the amount of $2.4 million ensures that any disturbed areas will be restored in the event that the Project is not completed.[66] The Applicant's decommissioning plan and related financial guarantees will ensure that the site is restored upon closure of Heritage Station.[67]

F. Noise Impacts

It is undisputed that the predictable impacts from Project-related noise have been evaluated and any adverse impacts have been minimized, as required by PSL §§ 168(2)(b) and 168(2)(c)(i), and that the Project is compatible with public health and safety, as required by PSL § 168(2)(c)(ii).[68]

A comprehensive noise study compares existing noise levels in the vicinity of the Project to those anticipated to result from Project construction and operation.[69] The record also evaluates potential adverse noise impacts from operational and construction noise levels.[70]

---

[64] EXH-1(1) §§ 10.3.2, 10.3.3; EXH-26; EXH-32.

[65] EXH-1(1) § 10.4.2.

[66] EXH-1(1) § 10.5; Land Use and Local Laws Topic Agreement, § II.D; Proposed Certificate Condition VII.A.

[67] EXH-1(1) § 10.5; Land Use and Local Laws Topic Agreement, § II.E; Proposed Certificate Condition VII.B.

[68] See Noise Topic Agreement.

[69] EXH-1(1) §§ 11.1, 11.2, 11.3, 11.4; EXH-1(6) Appx. O; EXH-1(2); O'Neal at 2-7; EXH-7 at 1-2.

[70] EXH-1(1) § 11.4.3; EXH-1(2) O'Neal at 9-10.

The Applicant has agreed to implement numerous measures to minimize any adverse impacts associated with construction noise, including properly maintaining equipment and using appropriate mufflers;[71] limiting noisy construction activities to the day shift, to the extent practicable;[72] complying with federal noise level requirements for employees;[73] complying with federal regulations limiting truck noise;[74] utilizing best practice techniques for blasting activities and doing so only during the day shift;[75] installing and assembling equipment within the building shell to contain noise emissions;[76] and installing a temporary vent silencer on the steam-blow vent during pipe cleanout.[77] Finally, the Applicant has agreed to notify the public at least three days prior to the starting date of especially noisy intermittent construction activities, such as high pressure steam-blows and blasting, by hand delivery notification of all residents within 1000 feet of the site boundary and by posting a notice at the Scriba Town Hall.[78]

[71] EXH-1(1) § 11.5.1; EXH-1(6) Appx. O; EXH-1(2) O'Neal at 7; Noise Topic Agreement, § II.A; Proposed Certificate Condition III.E.

[72] EXH-1(1) § 11.5.1; EXH-1(2) O'Neal at 10; Noise Topic Agreement, § II.B; Proposed Certificate Condition III.F.

[73] EXH-1(1) § 11.4.3.1; EXH-1(2) O'Neal at 2; Noise Topic Agreement, § II.C; Proposed Certificate Condition III.G.

[74] EXH-1(1) § 11.5.1; EXH-1(2) O'Neal at 2; Noise Topic Agreement, § II.D; Proposed Certificate Condition III.H.

[75] EXH-1(1) §§ 11.3.2.1, 11.5.1; EXH-1(6) Appx. O; Noise Topic Agreement, § II.E; Proposed Certificate Condition III.J.

[76] EXH-1(1) § 11.5.1; Noise Topic Agreement, § II.F; Proposed Certificate Condition III.K.

[77] EXH-1(1) §§ 11.4.3.8, 11.5.1; Noise Topic Agreement, § II.G; Proposed Certificate Condition III.I.

[78] Noise Topic Agreement, § II.H; Proposed Certificate Condition III.L.

The Project also has been designed to meet strict acoustic design goals and local noise requirements during operation.[79] Operational noise sources will be minimized by a combination of mitigation measures, which may include: enclosure of the combustion turbines, HRSGs, steam turbines, generators, boiler feed pumps, and other auxiliary equipment within the generation building constructed of a heavy gauge insulated metal wall system; silencers for combustion turbine air intakes and vent fans, and/or HRSG exhaust stacks; quiet transformers or transformer barrier walls; and/or noise-abated cooling towers.[80;81]

G. Traffic Impacts

It is undisputed that the predictable impacts from Project-related traffic have been evaluated and any adverse impacts have been minimized as required by PSL §§ 168(2)(b) and 168(2)(c)(i), and that the Project is compatible with public health and safety, as required by PSL § 168(2)(c)(ii).[82]

The record fully describes existing traffic conditions near the Project site, including current traffic volume, school bus and emergency vehicle routes, and accident data on key local roads and intersections.[83] The record also evaluates likely traffic impacts during Project

[79] EXH-1(1) §§ 11.4.1, 11.4.2, 11.2.3.7; EXH-1(6) Appx. O; EXH-1(2) O'Neal at 6-10; EXH-7 at 2; EXH-31 (Sections 5.10(2), 5.10(6) of the Scriba Site Plan Review Ordinance).

[80] EXH-1(1) § 11.5.2; EXH-1(2) O'Neal at 7-11; Noise Topic Agreement, § III.B.2.

[81] If requested, the Applicant will consult with neighbors regarding noise issues related to the Facility. Noise Topic Agreement, § II.J; Proposed Certificate Condition VI.D.

[82] See Traffic Topic Agreement.

[83] EXH-1(2) § 15.2; EXH-1(2) Derrig at 9-10; Traffic Topic Agreement, § I.C.1.

construction, including an evaluation of construction deliveries and an intersection capacity analysis.[84]

Project-related traffic impacts during construction will be minimized by avoiding shift changes during the peak afternoon commuter hour,[85] periodically consulting with the Oswego County Sheriff's Department about traffic conditions near Heritage Station, and, if requested by the County Sheriff's Department, funding uniformed police officers or flagmen and/or modifying construction shift schedules.[86] Mr. Derrig, the Applicant's traffic expert, testified that all transportation-related impacts of the Project have been minimized, considering available mitigation measures.[87]

Project-related traffic during operation will result in no changes in Level-of-Service ratings at local intersections; and thus, Project operational traffic impacts will be minimized without additional traffic mitigation measures.[88]

H. Soils, Geology, Seismology And Agricultural Lands Impacts

It is undisputed that the predictable impacts on soils, rocks and viable agricultural lands from the Project, and the predictable impacts on the Project from the risk of earthquakes, have been evaluated and any adverse impacts have been minimized as required by PSL §§ 168(2)(b)

[84] EXH-1(2) § 15.3; EXH-1(2) Derrig at 9-12; EXH-7 at 13-14; Traffic Topic Agreement, § I.C.2.

[85] EXH-1(2) § 15.3; EXH-1(2) Derrig at 11-12.

[86] EXH-1(2) §§ 15.3.4, 15.3.5; EXH-1(2) Derrig at 12.

[87] EXH-1(2) Derrig at 12.

[88] EXH-1(2) § 15.4; EXH-1(2) Derrig at 12.

and 168(2)(c)(i), and that the Project is compatible with public health and safety as required by PSL § 168(2)(c)(ii).[89]

The record describes the existing soils, geology and seismology near the Project site, and contains an evaluation of likely Project-related impacts on the soils and rocks.[90] Specifically, the Project will excavate an estimated 20,400 cubic yards ("cy") of topsoil, 65,000 cy of subsoil, and 15,000 cy of rock.[91] As excess excavated material is expected to be used for fill on site, impacts will be minimal.[92] Impacts from Project-related blasting will be minimized by limiting blasting to the smallest extent possible, use of pre-qualified contractors supervised by licensed blasting inspectors, controlled blasting techniques, use of industry standard acceptable vibration levels, seismographs, blast mats, limiting blasting hours, and traffic stoppage.[93] Transportation and storage of explosives will comply with state requirements and a delivery route will be reviewed with local officials.[94]

The Town of Scriba is in a relatively inactive seismic region.[95] However, the Applicant will design the Project to withstand the expected effects of a seismic event in accordance with New York State Building Code for Seismic Zone C regions.[96]

---

[89] See Soils, Geology, Seismology and Agricultural Lands Topic Agreement.

[90] EXH-1(1) §§ 13.2.1, 13.2.2.

[91] EXH-1(1) § 13.3.4; EXH-7 at 2-3 and attached Blasting Plan.

[92] Soils, Geology, Seismology and Agricultural Land Topic Agreement, § III.B.

[93] Soils, Geology, Seismology and Agricultural Land Topic Agreement, §§ II.A-C, E, III.C; Proposed Certificate Conditions III.J, S, T, U.

[94] EXH-7.

[95] EXH-1(1) § 13.5.1.

[96] Soils, Geology, Seismology and Agricultural Land Topic Agreement, §§ II.D, III.D; Proposed Certificate Condition III.W.

Finally, the Project minimizes impacts to viable agricultural lands because the area has not been farmed for several decades and is not currently suitable for farming because it has become forested.[97]

I. Aesthetic and Scenic Impacts

It is undisputed that the predictable visual impacts from the Project have been evaluated and any adverse impacts have been minimized with respect to aesthetics, as required by PSL §§ 168(2)(b) and 168(2)(c)(i).[98]

A Visual Impact Assessment compares the existing visual setting at Independence Station to the anticipated visual characteristics of the proposed Project facilities;[99] identifies 14 locations surrounding the site with the best view of the site and presents photographs of the existing site and simulated views of the proposed Project from each location;[100] presents simulated views of the Project under three different weather conditions;[101] projects the level of viewer exposure from various viewer groups and landscape similarity zones;[102] projects cooling tower plume

[97] Soils, Geology, Seismology and Agricultural Land Topic Agreement, § III.A.

[98] See Visual & Cultural Resources & Aesthetics Topic Agreement.

[99] EXH-1(2) §§ 16.2, 16.3; EXH-1(2) Gresock at 7.

[100] EXH-1(2) §§ 16.4.1, 16.4.2; EXH-1(2) Gresock at 7-12; EXH-1(2) Przybyla at 8-11; EXH-DPS-8; EXH-DPS-10.

[101] EXH-1(2) § 16.4.6, Figures 16-21, 16-22; EXH-1(2) Gresock 12.

[102] EXH-1(2) §§ 16.4.3, 16.4.4, 16.4.5; EXH-1(2) Przybyla at 8.

frequency, height and length under various conditions and the visual impact of various plumes;[103] projects short-term and long-term visual impacts;[104] and describes proposed Project lighting.[105]

Aesthetic impacts will be minimized by limiting the stack height to below Good Engineering Practice, to a height similar to the Independence Station stacks, while still optimizing air emission dispersion;[106] consolidating Project facilities and electric and gas interconnections at an existing power plant site (Independence Station) in an area with other power plants;[107] and by locating the Heritage Station powerhouse and stacks directly adjacent to the existing Independence Station powerhouse and stacks in a region where atmospheric conditions often result in cloudy sky conditions to minimize plume visibility.[108]

Aesthetic and scenic impacts will be further minimized by preserving appropriate portions of existing forests and vegetation around the perimeter of the Project site to screen views from likely receptors; restoring forest and vegetation removed during Project construction within a 100-foot buffer along the southern site boundary along Route 1A; and restoring forest and vegetation removed during Project construction within a 35-foot buffer along the western border of Riker's Beach Road abutting the site (with the exception of the area required for a new

[103] EXH-1(2) § 16.4.6; EXH-1(2) Gresock at 12; EXH-DPS-6; EXH-DPS-41; EXH-7 at 11.

[104] EXH-1(2) § 16.5.

[105] EXH-1(2) § 16.3, Figure 16-2; EXH-1(2) Gresock at 13; EXH-12 at 3-6; EXH-7 at 8.

[106] EXH-1(2) §§ 16.3, 16.6; EXH-1(2) Gresock at 6, 13.

[107] EXH-1(2) Gresock at 12-13.

[108] EXH-1(2) § 16.4.6; EXH-1(2) Gresock at 6, 12; EXH-DPS-41 (A 26-year federal study of this region found an average of 64 days per year with no clouds).

access road to the new switchyard).[109] In addition, Ferguson Beach Road from Route 1A to the Heritage Station cooling tower will be closed after construction and vegetative screening of the Facility will be added at a location as close as practicable to Route 1A.[110] Furthermore, the Applicant will develop a mitigation plan for the post-construction screening of the new wastewater holding pond.[111]

Consequently, Project buildings will be screened from view from most locations, with views of the Project stacks providing only an incremental change in a distant view from most locations.[112] The Project setting and its associated screening, as well as its proximity to an existing similar visual element, will minimize the impact of Project elements even when they are potentially visible.[113] Potential plumes associated with the Project (which will vary depending upon meteorological conditions) also will represent only an incremental change, with plumes anticipated to match those from the existing Independence Station.[114] From some vantage points, only minimal change in view will result because the viewing orientation will result in the positioning of one facility plume behind the other; from other locations, where this overlapping

[109] Visual & Cultural Resources & Aesthetics Topic Agreement, § III.A.2.b; Proposed Certificate Condition VIII.C.

[110] Visual & Cultural Resources & Aesthetics Topic Agreement, § III.A.2.a; Proposed Certificate Condition IV.E.

[111] Visual & Cultural Resources & Aesthetics Topic Agreement, § II.G; Proposed Certificate Condition VIII.D.

[112] EXH-1(2) §§ 16.3, 16.4.6, 16.5, 16.6; EXH-1(2) Gresock at 6-7, 12-14.

[113] EXH-1(2) §§ 16.3, 16.4.6, 16.5, 16.6; EXH-1(2) Gresock at 6-7, 12-14.

[114] EXH-1(2) §§ 16.3, 16.4.6, 16.5, 16.6; EXH-1(2) Gresock at 6-7, 12-14.

does not occur, the cumulative visible plume will seem to be somewhat broader than would exist without Heritage Station.[115]

Aesthetic impacts also will be minimized by the use of low-glare, neutral-colored architectural materials for the Heritage Station facilities that match the existing Independence Station.[116] Off-site lighting impacts will be minimized through use of task lighting, shades, blinds and louvers;[117] lighting fixture shields and non-continuous and directional lighting particularly on the CEMS stack platform, roof, cooling tower fan decks, and perimeter;[118] and dual lighting system on powerhouse stacks with flashing white lights during the day and a steady red beacon at night to reduce off-site lighting impacts at night.[119]

J. Electric Transmission Facilities Impacts

It is undisputed that the predictable impacts on the environment from the Project's electric transmission facilities have been evaluated and any adverse impacts have been minimized in compliance with PSL §§ 168(2)(b) and 168(2)(c)(i), and that the Project is compatible with public health and safety, as required by PSL § 168(2)(c)(ii).[120]

---

[115] EXH-1(2) §§ 16.3, 16.4.6, 16.5, 16.6; EXH-1(2) Gresock at 6-7, 12-14.

[116] EXH-1(2) § 16.6; EXH-1(2) Gresock at 12-13; EXH-DPS-7; Visual & Cultural Resources & Aesthetics Topic Agreement, § II.C; Proposed Certificate Condition IV.C.

[117] EXH-1(2) § 16.3; Visual & Cultural Resources & Aesthetics Topic Agreement, § II.A; Proposed Certificate Condition IV.A.

[118] EXH-1(2) § 16.5; EXH-12 at 3-6; EXH-7 at 8; Visual & Cultural Resources & Aesthetics Topic Agreement, § II.A; Proposed Certificate Condition IV.A.

[119] EXH-1(2) §§ 16.3, 16.4.5, 16.6; EXH-1(3) Appx. D; EXH-1(2) Gresock at 6, 13; EXH-7 at 8-9; Visual & Cultural Resources & Aesthetics Topic Agreement, § II.B; Proposed Certificate Condition IV.B.

[120] See Electric Transmission Facilities Topic Agreement.

The proposed electric transmission facilities consist primarily of two transformers that will connect to two 345 kV transmission lines, extending approximately 1,200 feet eastward from the turbine generator building to a new switchyard located at the southeastern end of the existing Independence Station substation.[121] The record demonstrates that all electric transmission facilities interconnecting Heritage Station to the New York electric grid are located entirely on site, avoiding any off-site environmental impacts.[122] The electric transmission interconnection from the powerhouse to the new switchyard adjacent to the existing Independence Substation will minimize on-site environmental impacts.

The record evidence also demonstrates that the only long-term impact from the construction of the electric transmission facilities on site is the selective clearing of trees that may grow over 20 feet high from the forested portions of Wetland Area 14 under the transmission lines, leaving shrub swamp wetland under the lines. However, such impacts are minimal and no wetland area will be lost.[123] During construction near wetlands, including construction of the three transmission towers in the 100-foot wetland buffer zone around Wetland Area 14, strict erosion and sedimentation control measures will be implemented to minimize the impact to the wetlands, including the use of siltation barriers and reclamation through natural re-vegetation of as much of the buffer zone as possible after completion of construction.[124]

[121] EXH-1(1) § 8.2; EXH-1(2) Mitsche at 29.

[122] EXH-1(1) § 8.2; EXH-1(2) Mitsche at 29.

[123] EXH-1(2) §§ 17.6.1.1, 17.6.5, 17.6.6; Figure 17-16; EXH-1(2) Vaccaro at 5-7; EXH-1(6) Appx. Q.

[124] EXH-1(2) §§ 17.6.1.1, 17.6.5, 17.6.6; Figure 17-16; EXH-1(2) Vaccaro at 5-7; EXH-1(6) Appx. Q.

In addition, the record contains a study of likely electromagnetic field impacts from the Project's electric transmission facilities, including a comparison of state electric and magnetic field level guidelines with projected electric and magnetic field levels at the Heritage Station transmission line right-of-ways during maximum and emergency line load levels.[125] The Applicant will design, engineer and construct (or fund the construction of) the transmission interconnection such that its operation will comply with the electric and magnetic field strength standards established by the New York Public Service Commission in Opinion No. 78-13 (issued June 19, 1978) and *Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities* (issued September 11, 1990), respectively.[126]

Finally, the Applicant will design, engineer, and construct (or fund the construction of) the electric transmission facilities as provided in the System Reliability Impact Study approved by the New York Independent System Operator ("NYISO") Operating Committee and in accordance with the applicable and published planning and design standards and best engineering practice of the NYISO, local transmission operators and electric grid reliability organizations, depending upon where the facilities are to be built and which standards and practices are applicable.[127] The Applicant also will operate Heritage Station in accordance with the approved tariffs and applicable rules and protocols of the NYISO, local transmission operators, and electric grid reliability organizations.[128] Moreover, the Applicant will work with the local transmission operators, and any successors, to ensure that with the addition of Heritage

[125] EXH-1(1) § 8.8; EXH-1(6) Appx. L; EXH-DPS-16.

[126] Electric Transmission Facilities Topic Agreement, § II.A; Proposed Certificate Condition V.A.

[127] Electric Transmission Facilities Topic Agreement, § II.B; Proposed Certificate Condition I.F.

[128] Electric Transmission Facilities Topic Agreement, § II.C; Proposed Certificate Condition II.E.

Station, the Oswego Complex transmission lines will have relay protection system equipment and appropriate communication capabilities to ensure that operation of the transmission system meets the protection requirements at all times of the NYISO, local transmission operators, and electric grid reliability organizations.[129]

K. Gas Transmission Facilities Impacts

It is undisputed that the predictable impacts on the environment from the Project's natural gas transmission facilities have been evaluated and any adverse impacts have been minimized in compliance with PSL §§ 168(2)(b) and 168(2)(c)(i), and that the Project is compatible with public health and safety, as required by PSL § 168(2)(c)(ii).[130]

Natural gas will be supplied to Heritage Station from the Dominion Transmission, Inc. (formerly, Consolidated Natural Gas Transmission) or Empire State Pipeline gas transmission systems via the existing Niagara Mohawk Power Corporation's ("NMPC") Pipeline No. 63, after certain operational enhancements are made to their respective systems.[131] The proposed 950-foot long dedicated high pressure natural gas lateral pipeline interconnecting Pipeline No. 63 at the existing Independence Station metering station on-site with the Heritage Station gas compressor building will be constructed along the shoulder of an existing road to avoid any adverse environmental impacts.[132] Because all such interconnection construction will be onsite,

[129] Electric Transmission Facilities Topic Agreement, § II.D; Proposed Certificate Condition VIII.J.

[130] See Gas Transmission Facilities Topic Agreement.

[131] EXH-1(1) §§ 3.2.2.5, 9.2.2; EXH-DPS-17-S, Attachment DPS-17-S-B, Attachment DPS-17-S-C.

[132] EXH-1(1) §§ 9.1.1, 9.1.2, 9.1.3, Figure 9-1.

the Project will avoid any environmental impacts associated with off-site interconnection construction.[133]

Equipment will be installed to ensure safe operation of the gas transmission facilities, including valves, regulators, metering equipment, service taps, and related pipeline facilities such as fencing and pipeline markers.[134] Finally, the proposed Heritage Station gas transmission facilities and interconnection will have no adverse impact on the existing gas transmission and NMPC distribution systems.[135]

III. COMPLIANCE WITH APPLICABLE STATE AND LOCAL LAWS

The Project is designed to operate in compliance with applicable state laws and regulations issued thereunder.[136] Heritage Station will comply with all but two of the Town of Scriba Site Plan Review Regulations. Heritage Station will fully comply with Site Plan Review requirements regarding parking design and space; loading areas; signage; landscaping and buffering; sign, wetland and road setbacks; noise and vibration; driveway locations; temporary use; and maximum building height limits.[137]

Scriba Regulation § 5.75, which requires all structural materials to be removed from a site within 60 days after abandonment, is unreasonably restrictive as applied to Heritage Station, because all structural materials from a major power plant and associated facilities cannot be

[133] EXH-1(1) §§ 9.1.1, 9.1.2, Figure 9-1.

[134] EXH-1(1) § 9.1.1.

[135] EXH-1(1) §§ 9.2.2, 9.3.

[136] See Brief Section II, generally.

[137] EXH-1(1) §§ 10.3.1, 11.4.1, 11.2.3.7; EXH-1(2) Turner at 5; EXH-1(2) O'Neal at 6-10; EXH-1(6) Appx. O; EXH-31.

removed within 60 days of closure.[138] Consequently, the Town of Scriba Planning Board reviewed Heritage Power's decommissioning plan and stated by Resolution dated February 7, 2000 that such plan "is in the best interest of the Town of Scriba" and declared inapplicable the 60-day Scriba decommissioning requirement as it relates to Heritage Station.[139] In addition, the Town of Scriba Planning Board adopted a Resolution on September 13, 2000 expressly supporting the Siting Board's issuance of a waiver for the Project from Scriba Regulation § 5.75 pursuant to PSL § 168(2)(d).[140]

Scriba Regulation § 5.55(A)(1), which requires a fence around each public utility building to be set back at least 100 feet from the building, is unreasonably restrictive as applied to Heritage Station.[141] The Heritage Station powerhouse will be located less than 100 feet from the border of Wetland 14, and an access road also must be constructed around the powerhouse to run between the powerhouse and Wetland 14.[142] To locate a fence a minimum of 100 feet from the powerhouse would require either construction of the fence through a significant portion of Wetland 14 or jeopardize the security function of the fence.[143] Consequently, the Town of Scriba Planning Board adopted a Resolution finding Scriba Regulation § 5.55(A)(1)

[138] EXH-1(1) § 10.3.1; EXH-1(2) Turner at 5; EXH-31.

[139] EXH-1(1) § 10.3.1; EXH-31; EXH-35.

[140] EXH-1(1) § 10.3.1; EXH-1(2) Turner at 5; EXH-31; EXH-34.

[141] EXH-31.

[142] See Attachment to EXH-19.

[143] See Attachment to EXH-19.

unreasonably restrictive as applied to Heritage Station and supporting the Siting Board's issuance of a waiver from Scriba Regulation § 5.55(A)(1), pursuant to PSL § 168(2)(d).[144]

Because Scriba Regulations §§ 5.55(A)(1) and 5.75 are unreasonably restrictive as applied to the Project, the Board should issue the Applicant waivers therefrom as provided by PSL § 168(2)(d).

IV. PUBLIC INTEREST

It is undisputed that the construction and operation of the Facility is in the public interest, pursuant to PSL § 168(2)(e).[145] As demonstrated above, the Facility will result in significant net air quality benefits for the region and any minimal adverse environmental impacts have been mitigated.[146] Among other matters, the Project will make a material contribution to competition in the electric generation market, lower the electricity production costs of the State by approximately $72 million annually, and reduce Location Based Marginal Prices at various locations throughout the State.[147] The Facility will also contribute to the reliability of the electric system in New York by adding supply at a time of projected capacity shortages.[148] In addition, the Project is consistent with the State Energy Plan.[149]

---

[144] EXH-31; EXH-34.

[145] See Public Interest Topic Agreement.

[146] See Application of Athens Generating Company, L.P. for a Certificate of Environmental Compatibility and Public Need, 97-F-1563 at 13; 96; EXH-1(2) Younger at 26-28; EXH-1(2) McGowan at 4.

[147] EXH-1(6) Appx. M; EXH-1(1) § 1.3.1; EXH-1(2) Younger at 27-28; EXH-1(2) McGowan at 4; Athens at 90-96; EXH-1(1) §§ 1.3, 8.5, 8.7; EXH-1(2) Younger at 22, 26-29.

[148] EXH-1(7) Appx. W, Draft System Impact Study (March 22, 2000); EXH-1(2) Mitsche at 30-32; EXH-1(2) Younger at 19-22; EXH-1(1) §§ 8.4-8.7; EXH-1(2) Mitsche Supplemental at 1-3; EXH-1(1) § 8.9.

[149] EXH-1(6) Appx. M; EXH-1(1) § 1.3.1; EXH-1(2) Younger at 28-29; EXH-1(2) McGowan at 4.

The public will also benefit from the testing at the Facility of a new, very efficient turbine technology[150] and from the creation of jobs and other economic benefits resulting from the Project's construction and operation.[151] Moreover, the Applicant will deed nearly 20 acres of forested land adjacent to the Independence Park Nature Trails and donate $500,000 for construction of nature trails and recreational facilities.[152]

V. CONCLUSION

The Board should issue Heritage Power a Certificate because, as demonstrated above, the Board can make the all required findings outlined in PSL § 168. First, because the Project will operate as a merchant plant in the competitive electric generation market, the Facility was selected pursuant to an APP, as required by § 168(2)(a)(ii). Second, the record contains a complete review of the likely environmental impacts in all the areas of concern listed in § 168(2)(b). Third, with respect to each such concern, the Facility minimizes any adverse environmental impacts as contemplated in § 168(2)(c)(i). Fourth, the Facility is compatible with public health and safety, will not be in contravention of air or water quality standards, and will control the disposal of hazardous waste, as required by §§ 168(2)(c)(ii), (iii), (iv), and (vi). Fifth, the Facility is designed to operate in compliance with all applicable state and locals laws except for two Town of Scriba Site Plan Review Regulations from which the Town supports the Board granting the Applicant a waiver, in accordance with § 168(2)(d). Finally, the construction and

[150] EXH-1(1) §§ 3.2.2.3, 1.4.1; EXH-1(4) Appx. E; EXH-1(2) Lowe at 11-14.

[151] EXH-1(1) §§ 12.2, 12.3, 12.4; EXH-1(2) Derrig at 6; EXH-1(2) Turner at 7-8; EXH-7 at 12-13.

[152] Land Use and Local Laws Topic Agreement, §§ II.B and C; Proposed Certificate Conditions VIII.E and F.

operation of the Facility is in the public interest considering its environmental impacts, in accordance with § 168(2)(e).

Dated: November 9, 2000

Respectfully submitted,

John A. DeTore
Rebecca L. Tepper
Michael D. Ernst
Keren Schlomy
Counsel for Heritage Power LLC
RUBIN AND RUDMAN LLP
50 Rowes Wharf
Boston, MA 02110

By: _____
John A. DeTore

Sam Laniado
Howard Read
Counsel for Heritage Power LLC
READ AND LANIADO, LLP
25 Eagle Street
Albany, NY 12207-1901