

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 99-F-1191 - Application of Astoria Energy LLC, for a
Certificate of Environmental Compatibility and
Public Need to Construct and Operate an
Approximately 1000 Megawatt Generating Facility
in the Astoria Section of Queens County.

OPINION AND ORDER GRANTING
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY
AND PUBLIC NEED

Issued and Effective: November 21, 2001

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NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

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BY THE BOARD:

INTRODUCTION

On June 19, 2000 this application for a Certificate of
Environmental Compatibility and Public Need was filed by Astoria

Energy LLC (Astoria Energy, or the Applicant). Subsequently, Astoria Energy provided supplemental information in eleven separate filings between September 18, 2000 and June 21, 2001. In a letter dated March 1, 2001, Chairman Maureen Helmer informed Astoria Energy that its application generally complied with the filing requirements of Public Service Law (PSL) §164.¹

A pre-hearing conference was held before the Presiding and Associate Examiners on March 26, 2001. At that conference, active parties were identified, scheduling and other procedural matters were discussed, and a review of requests for intervenor funds commenced.²

Astoria Energy's application for a PSL Article X certificate included requests to the Department of Environmental Conservation (DEC) for a Clean Air Act (CAA) Title V permit, a CAA Title IV permit, a Prevention of Significant Deterioration (PSD) permit, and the transfer and modification of a State Pollutant Discharge Elimination System (SPDES) storm water discharge permit. DEC required filing of comments on draft air and SPDES permits by April 19, 2001.

Joint legislative/public statement hearings were held in the Article X and DEC proceedings at 7:00 p.m. on April 18 and April 19, 2001 at P.S. 141 in Astoria, Queens. More than 200 people attended these two hearings, at which a total of 23 made oral statements for the record. The majority of the comments were supportive of the proposed project.

¹ In a letter dated September 13, 2001, Chairman Helmer subsequently appointed Public Service Commission (PSC) Commissioner Leonard A. Weiss to be Chairman of the Board, pursuant to PSL §161.

² Pursuant to PSL §164 and 16 NYCRR §1000.9, \$169,890 of the \$300,000 available funds was awarded, \$127,000 to the Office of the President, Borough of Queens/Coalition Helping to Organize a Kleaner Environment (Queens/CHOKE), and \$42,890 to Citizens Environmental and Economic Coalition (CEEC).

An issues conference was conducted jointly in the DEC and Article X proceedings on May 2 and 3, 2001, and on May 24, 2001, the Examiners issued their "Article X and DEC Part 624 Issues Ruling." Jointly, the Examiners specified a list of issues identified for Article X adjudication,³ while Examiner Garlick determined there were no substantive and significant issues regarding the requested DEC permits.⁴

Astoria Energy filed a notice of impending settlement negotiations with the Siting Board on June 13, 2001. Negotiations resulted in a Joint Stipulation dated July 13, 2001 settling all issues, which was signed by representatives of the Applicant, DEC Staff, Department of Public Service (DPS) Staff, and Department of Health (DOH) Staff.⁵ Other active parties in the proceeding subsequently signed the Joint Stipulation (New York City signed it on October 31, 2001, and the Queens Borough President and CHOKe, separately, signed it on November 1, 2001.)

A hearing was held on July 18, 2001, at which evidence was identified and received into the record. A total of 78 exhibits were received, including Astoria Energy's exhibits and testimony, the Joint Stipulation, testimony of DPS Staff witnesses, and a further stipulation agreement among DEC Staff, DPS Staff, and the Applicant resolving an on-site oil storage

³ Interlocutory appeals were filed objecting to the exclusion of some Article X issues, but the appeals were subsequently withdrawn as matters became resolved. An appeal filed on June 5 by DEC Staff, objecting to the Examiners' refusal to require offers of proof in setting the Article X issues list, lacked the extraordinary circumstances needed for our review. That question has since become moot, as none of the issues in question were subsequently contested in litigation.

⁴ On July 17, 2001, DEC Commissioner Crotty upheld Examiner Garlick's issues determinations on appeal.

⁵ The Joint Stipulation includes eleven separate topic-specific settlement agreements, proposed certificate conditions, and a list of applicable acronyms.

facility permitting issue. No other party presented any testimony and, with one exception, no party challenged the Joint Stipulation or the proposed certificate conditions in any respect. The sole exception was an issue pressed by New York City involving the applicability of its Air Code.

The Applicant and DPS Staff filed briefs on August 13, 2001. On August 24, 2001, Astoria Energy filed a brief replying to DPS Staff, and presenting initial comments on New York City air issues. New York City filed its initial comments on August 24, 2001 as well. On August 30, New York City filed a reply to Astoria Energy, and on August 31, the Applicant filed a reply to New York City.

The Examiners issued a recommended decision on September 26, 2001. A joint brief on exceptions was filed by DPS Staff and DEC Staff on October 17, 2001, and the Applicant filed a brief on exceptions on October 17, 2001 as well. New York City was permitted to file its brief on exceptions by November 2, 2001. It declined to file a brief, however, having reached an accord with the Applicant on its air quality issues.

On November 1, 2001, the Applicant filed a "Supplemental Agreement Regarding Air Quality and Public Interest Issues," signed by all of the active parties in the proceeding.⁶ On that date, as well, Astoria Energy filed signatures of New York City, the Queens Borough President, and CHOKE, to the Joint Stipulation signed earlier by the other parties. With those stipulations signed by all parties, then, no issues remain in controversy in the proceeding.

Subsequently, DEC Commissioner Crotty has provided us with the environmental permits, as required by PSL §172(1).

⁶ The signatories include Astoria Energy, DEC Staff, DOH Staff, DPS Staff, New York City, the Queens Borough President, and CHOKE.

The Proposed Facility

The proposed facility would be a merchant facility, intending to sell electricity into New York's wholesale market. It would be located at 17-10 Steinway Street, on an approximately 23-acre brownfield site currently utilized as an operational fuel oil storage and distribution terminal. The site is in an M3-1 Heavy Manufacturing Zone, amongst other manufacturing and heavy industrial uses, including the Steinway and Sons manufacturing factory, the Bowery Bay Water Pollution Control Plant, electric transmission facilities, other power generating facilities, and a variety of smaller manufacturing and warehousing facilities.

The proposed facility would use efficient, combined-cycle electric generating equipment, with natural gas as its primary source of fuel, and low-sulfur distillate fuel oil as a backup fuel for up to 720 hours annually. The primary structural components of the facility would consist of a 612 foot by 110 foot turbine building and adjacent heat recovery steam generator enclosures, four nested 269-foot stack flues, two air-cooled condensers (AC) for cooling (each with 40 cells in a 4 x 10 arrangement), two 150,000 barrel oil storage tanks, and an open air switchyard outside the turbine building.

A new 138 kV aerial electric transmission line would connect the proposed facility to the existing Astoria East Substation, which is located about one-half mile southwest of the site on Consolidated Edison Company of New York, Inc. (Con Edison) property. In addition, a new 20-inch diameter natural gas pipeline would be constructed underground along Steinway Place from the proposed facility site to the Con Edison 24-inch main located about one-third of a mile to the south at the intersection of Steinway Place and 20th Avenue.

The Applicant would use the existing New York City municipal water and sewer infrastructure located adjacent to the

site to supply water to and receive discharged water from the proposed facility. The existing storm water management system at the site is to be upgraded as a part of redevelopment.

THE RECOMMENDED DECISION

The Examiners observed that we are empowered either to grant or deny this application as filed, or to certificate a facility "upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the board may deem appropriate."⁷ To grant a certificate, the Examiners observed, we must find:

- That the facility is reasonably consistent with the policies and long-range planning objectives and strategies of the most recent state energy plan, or that the facility was selected pursuant to an approved procurement process."⁸
- The nature of the probable environmental impacts, specifying predictable adverse and beneficial effects on (a) the normal environment and ecology, (b) public health and safety, (c) aesthetics, scenic, historic, and recreational values, (d) forest and parks, (e) air and water quality, and (f) fish and other marine life and wildlife.⁹
- That the facility minimizes adverse environmental impacts, considering (a) the state of available technology, (b) the nature and economics of reasonable alternatives required to be considered under PSL §164(1)(b), and (c) the interest of the state respecting aesthetics, preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations.¹⁰

⁷ PSL §168(2).

⁸ PSL §168(2)(a).

⁹ PSL §168(2)(b).

¹⁰ PSL §168(2)(c)(i).

- That the facility is compatible with public health and safety.¹¹
- That the facility will not discharge any effluent in contravention of DEC standards or, where no classification has been made of the receiving waters, that it will not discharge effluent unduly injurious to fish and wildlife, the industrial development of the state, and the public health and public enjoyment of the receiving waters.¹²
- That the facility will not emit any air pollutants in contravention of applicable air emission control requirements or air quality standards.¹³
- That the facility will control the runoff and leachate from any solid waste disposal facility.¹⁴
- That the facility will control the disposal of any hazardous waste.¹⁵
- That the facility will operate in compliance with all applicable state and local laws and associated regulations, except that we may refuse to apply specific local laws, ordinances, regulations, or requirements we regard as unduly restrictive.¹⁶
- That the construction and operation of the facility is in the public interest, considering its environmental impact and the reasonable alternatives considered [under PSL §164(1)(b)].¹⁷

The Examiners noted further that our required findings include that the proposed facility "will not discharge any effluent that will be in contravention of the standards adopted

¹¹ PSL §168(2)(c)(ii).

¹² PSL §168(2)(c)(iii).

¹³ PSL §168(2)(c)(iv).

¹⁴ PSL §168(2)(c)(v).

¹⁵ PSL §168(2)(c)(vi).

¹⁶ PSL §168(2)(d).

¹⁷ PSL §168(2)(e).

by the department of environmental conservation. . . ,"¹⁸ and "will not emit any pollutants to the air that will be in contravention of applicable air emission control requirements or air quality standards."¹⁹ In past Article X proceedings, siting boards have deferred to the judgment of the DEC Commissioner, who has been delegated responsibility to issue permits from the United States Environmental Protection Agency (EPA) pursuant to the CAA and Clean Water Act (CWA).²⁰ In this proceeding, these issues relate to the following permits: (1) a SPDES permit for storm water management; (2) a CAA Title IV permit; (3) a CAA Title V permit; and (4) a Prevention of Significant Deterioration (PSD) determination. Thereafter, those siting boards reviewed the joint record of the proceedings and, accepting the DEC's findings as to air and water quality, reached conclusions as to overall environmental impacts.

With respect to air quality, the proposed facility would use efficient combustion equipment that would primarily burn natural gas, add-on emission controls including selective catalytic reduction (SCR), and a carbon monoxide catalyst, to meet federal lowest achievable emission rate (LAER) and best available control technology (BACT) standards. The DEC Commissioner's decision to issue permits relies on the joint Article X and DEC record, which includes among other things the results of air emission modeling of existing and proposed facilities in the area through 2004. The information indicates

¹⁸ PSL §168(2)(c)(iii).

¹⁹ PSL §168(2)(c)(iv).

²⁰ Case 99-F-0558, Application of Heritage Power LLC, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued January 19, 2001), pp. 7-8; Case 99-F-1314, Application of Consolidated Edison Company of New York, Inc., Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued August 30, 2001), pp. 34-36.

that the proposed facility can be expected to displace generation from older units, reducing emissions of NO_x, SO₂, and CO₂.

The facility would use dry cooling, thus minimizing its need for water in the cooling process. Hence, all water used at the proposed project would be purchased from the New York City public water supply system. All discharges from the proposed facility would be made to the Bowery Bay Water Pollution Control Plant. Because there would be no discharges of wastewater to either surface water or groundwater, no SPDES permit is needed. However, the Applicant does need, and has obtained from DEC, a SPDES permit for storm water management.

Moreover, the Applicant must obtain an Industrial Sewer Discharge Permit normally issued by the New York City Department of Environmental Protection. This permit is outside the DEC permitting process, and it is among those which the Joint Stipulation recommends we authorize New York City to issue under Article X, as discussed below.

Certificate Conditions

In this proceeding, with the exception of New York City's air quality issue, the parties agreed to the certificate conditions to be imposed on Astoria Energy. The Examiners concluded that the record supported the findings we must make under PSL §168 and the proposed certificate conditions.

Proposed certificate conditions were amended on exceptions by Astoria Energy, DPS Staff, and DEC Staff.²¹ In response to a suggestion by the Examiners, conditions formerly listed in the topic agreements of the Joint Stipulation, and incorporated by reference in the proposed certificate conditions, were directly included in the certificate

conditions. Additional conditions were added to include submission of an Environmental Compliance Plan and a Community Liaison Program. The Environmental Compliance Plan contains measures designed to ensure implementation and maintenance of required environmental mitigation measures, compliance with other certificate conditions, and compliance with federal, state, and local environmental laws.²² The Community Liaison program would provide liaison and communication with the surrounding community before and during construction and, thereafter, throughout the operation of the facility.²³

The Supplemental Agreement

All active parties involved throughout the proceeding have now signed the Supplemental Agreement, submitted November 1, 2001, addressing the applicability of certain provisions of New York City's Air Code to the proposed facility. In this agreement, New York City agrees that the proposed facility, if operated in accordance with the DEC permits and the proposed Article X certificate, will meet the requirements of New York City's Air Code relating to fuel and emissions standards, and will not contravene the general prohibition against detrimental air emissions. Further, New York City has agreed that the Applicant is not required to apply for any air permits under New York City air pollution laws and regulations, including any permit under New York City Administrative Code §24-120 et seq. The Applicant also agrees to provide \$4,800,000 to the New York City Economic Development Corporation, within three years after commencement of commercial operation of the proposed facility.

²¹ The revised proposed certificate conditions are attached as Appendix B.

²² Appendix B, ¶III.M.

²³ Ibid., ¶III.C.

The funds would be used to assist the local Queens community in the development and implementation of projects such as local air quality improvement, health improvement, or amenities programs in the vicinity of the facility's site.

In their recommended decision, the Examiners discussed the issue of applicability of the New York City Air Code to this proposed facility, and recommended that we deny New York City's request to authorize it to require Astoria Energy to obtain an air permit.²⁴ The Supplemental Stipulation effectively withdraws this issue from our consideration, by acknowledging that no New York City air permits are required for this facility.

Local Law Compliance

The Examiners reported that the parties agreed and the record demonstrated that the proposed facility can be expected to operate in compliance with local laws and regulations.²⁵ There has been no request in this proceeding to waive the application of any local requirements as unduly restrictive.

In the Supplemental Stipulation, the parties provide their agreement that the City of New York will have continuing authority to enforce its Air Code,²⁶ but that in the event of any future amendment to the Air Code the certificate holder would have the right, within 90 days of the enactment of such amendment, to petition the Siting Board for a finding that the amendment is unreasonably restrictive. Thereafter, the parties agree the new provisions could be enforced unless the effectiveness of the amendment is stayed by the Siting Board within 180 days of the date of filing of such a petition.

²⁴ Recommended Decision, p. 36.

²⁵ Recommended Decision, p. 30.

²⁶ This provision relates to matters not associated with the air permit requirements.

We conclude, pursuant to PSL §168(2)(d), that the facility is designed to operate in compliance with all applicable state and local laws, and regulations issued thereunder.

With respect to the provisions of the Supplemental Stipulation, we note that enforcement of local laws and regulations not waived as unreasonably restrictive by a Siting Board remains the responsibility of local authorities. Certificate holders always have the right to petition the permanent Siting Board for a waiver of any future changes in local laws or regulations they consider unreasonably restrictive as applied to their facilities. The Applicant in the Supplemental Stipulation has constrained its right to file a petition, as to the proposed facility, to 90 days after enactment of a new provision under New York City's Air Code. That presents no issue for our consideration.

The further provision agreed upon by the parties that the Siting Board must act within 180 days of the filing date of any such petition has no foundation in Article X, and, therefore, is unacceptable. Although the Supplemental Stipulation is not binding upon us and is not adopted as a part of our opinion and order, we are compelled to expressly reject that provision, so that it is clear that it is not effective in any way.

New York City Permits

In the normal course of business, Astoria Energy expects to require certain other permits and approvals under regulations issued by New York City and its agencies, including building permits, street closure permits, street evacuation permits, and permits under the New York City Fire Code. The Joint Stipulation contains agreement among the parties that we should authorize the Department of Buildings, Department of

Transportation, Department of Environmental Protection, Fire Department, and Department of Building Services to issue the permits or approvals listed in Exhibit 27.²⁷

The request is reasonable, and no party opposes it. Accordingly, we authorize the New York City departments just listed to issue the various permits and approvals listed in Exhibit 27.

Major Onshore Storage Facility (MOSF) License

New York State Navigation Law requires that any person seeking to operate a MOSF must obtain a license from DEC.²⁸ However, Article X transfers jurisdiction for the issuance of this license from DEC to the Siting Board. In this case, the Applicant proposes to purchase an existing, licensed tank farm and to construct the proposed facility at the site. While most of the existing tanks on the site would be decommissioned, the Applicant proposes to refurbish two 150,000 barrel fuel oil storage tanks, to store low sulfur distillate fuel oil used as back-up fuel.

The Applicant, DEC Staff, and DPS Staff have executed a "MOSF Stipulation Agreement"²⁹ which recommends that we transfer the jurisdiction back to DEC to regulate the storage, handling and transport of petroleum and to enforce the containment and remediation of petroleum discharges. According to this agreement, the Applicant will file a complete

²⁷ Exh. 39, Land Use and Local Laws Topic Agreement, p. 5. The agreement acknowledges that the Siting Board retains ultimate jurisdiction over issuance of the listed permits, upon petition by the Applicant if, for example, the Applicant alleges unreasonable delay or conditions.

²⁸ Navigation Law §174.

²⁹ Exh. 40.

application for the MOSF license within 60 days of taking title to the site of the proposed facility.

The Examiners recommend that we authorize DEC Staff to issue the MOSF license, regulate the facility, and otherwise execute state MOSF authority respecting this site. We find this request reasonable and make the requisite authorization.

STATUTORY DETERMINATIONS

On the basis of the foregoing discussion, and of the Examiners' recommended decision and the findings made therein, to the extent herewith consistent, we find and determine that:

1. The proposed facility has been selected pursuant to an approved procurement process [PSL §168(2)(a)(ii)].
2. Based upon the full record in this proceeding, the nature of the probable environmental impacts including predictable adverse and beneficial impacts of the proposed facility; on the environment and ecology; public health and safety; aesthetics, scenic, historic, and recreational values; forest and parks; air and water quality; and fish and other marine life and wildlife, will be as described in the record and summarized in the Examiners' recommended decision, if the facility is constructed and operated in accordance with all the certificate terms set forth in this decision and the terms of permits issued by other agencies [PSL §168(2)(b)].
3. For the reasons set forth in this decision and the Examiners' recommended decision, the proposed facility, if constructed and operated in accordance with all the certificate terms set forth in this decision and the terms of permits issued by other agencies, will minimize adverse environmental impacts, considering the state of available technology and the interest of the state respecting aesthetics, preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations [PSL §168(c)(i)].

4. For the reasons demonstrated in the record and explained in the Examiners' recommended decision, the proposed facility, if constructed and operated in accordance with all the certificate terms set forth in this decision and the terms of permits issued by other agencies, will be compatible with public health and safety [PSL §168(2)(c)(ii)].

5. For the reasons set forth in this decision and the Examiners' recommended decision, the proposed facility, if constructed and operated in accordance with all the certificate terms set forth in this decision and the terms of permits issued by other agencies, will not discharge any effluent in contravention of DEC standards; and, where no classification has been made of the receiving waters the proposed facility will not discharge effluent unduly injurious to fish and wildlife, the industrial development of the state, or the public health and public enjoyment of the receiving waters [PSL §168(2)(c)(iii)].

6. For the reasons set forth in this decision and the Examiners' recommended decision, the proposed facility, if constructed and operated in accordance with all the certificate terms set forth in this decision and the terms of such permits properly issued by other agencies, will not emit any air pollutants in contravention of applicable air emission control requirements or air quality standards [PSL §168(2)(c)(iv)].

7. Because the proposed facility will not include a solid waste disposal facility and will not generate hazardous waste, the adverse environmental impacts governed by PSL §168(2)(c)(v) and (vi) will not occur.

8. For the reasons set forth in this decision and the Examiners' recommended decision, the proposed facility, if constructed and operated in accordance with all the certificate terms set forth in this decision and the terms of permits issued by other agencies, will operate in compliance with all applicable state and local laws and associated regulations, and

that there are no specific local laws, ordinances, regulations, or requirements that are unduly restrictive in view of the existing technology or the needs of or costs to ratepayers located inside or outside the municipality that enacted such local laws, ordinances, regulations, or requirements [PSL §168(2)(e)].

We therefore grant to Astoria Energy LLC a Certificate of Environmental Compatibility and Public Need for the construction and operation of an approximately 1000 megawatt natural gas-fired electric generating facility at the proposed site, located in the Astoria section of Queens County, subject to the terms, conditions, and limitations set forth in this opinion and order.

The New York State Board on
Electric Generation Siting and the
Environment for Case 99-F-1191 orders:

1. The recommended decision of Examiners J. Michael Harrison and P. Nicholas Garlick, to the extent consistent with this opinion and order, is adopted and, together with this opinion and order, constitutes the decision of this Board in this proceeding.

2. Subject to the conditions appended to this opinion and order, a Certificate of Environmental Compatibility and Public Need is granted pursuant to Article X of the Public Service Law to Astoria Energy LLC (the Applicant) for the construction and operation of an approximately 1000 megawatt gas-fired electric generating facility in the Astoria section of Queens County, provided that the Applicant files, within 30 days after the date of issuance of this opinion and order, a written acceptance of the certificate pursuant to 16 NYCRR §1000.14(a).

3. Upon acceptance of the certificate granted in this opinion and order or at any time thereafter, the applicant shall serve copies of its compliance filing in accordance with the

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requirements set forth in 16 NYCRR §1003.3(c) and Certificate Condition III(c). Pursuant to 16 NYCRR §1003.3(d), parties served with the compliance filing may file comments on the filing within 15 days of the service date of the compliance filing.

4. This proceeding is continued.

By the New York State Board on Electric
Generation siting and the Environment
for Case 99-F-1191

(SIGNED)

JANET HAND DEIXLER
Secretary to the Board

APPENDIX A

APPEARANCES

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FOR BOROUGH OF QUEENS AND CHOKE:

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FOR NEW YORK POWER AUTHORITY:

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FOR NATURAL RESOURCES DEFENSE COUNCIL:

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CERTIFICATE CONDITIONS

APPENDIX B

PROPOSED CERTIFICATE CONDITIONS

I. Project Authorization

A. The Certificate Holder is authorized to construct and operate the Project, as described in the Application, except as waived, modified or supplemented by this Certificate or other permits.

B. The Certificate Holder is responsible for obtaining all necessary permits, including State Pollutant Discharge Elimination System ("SPDES") and United States Army Corps of Engineers ("ACOE") approvals under the Clean Water Act ("CWA"), Clean Air Act ("CAA") Prevention of Significant Deterioration ("PSD") permit, New Source Review permit, CAA Title IV (acid rain) permit, CAA Title V (major stationary source) permit, and any other approvals, land easements, and rights-of-way that may be required for this Project and which the Board is not empowered to provide. The Certificate Holder also shall be responsible for obtaining a license under Article 12 of the Navigation Law from the New York State Department of Environmental Conservation ("NYSDEC") for the major storage of petroleum in connection with the Project ("MOSF license").

C. The Project shall be designed to operate and be operated in compliance with all applicable federal and state laws and regulations. The Project shall be designed to operate and be operated in compliance with all applicable local laws and regulations, subject to the Board's ongoing jurisdiction regarding any additional waivers sought by the Certificate Holder and for which the Board grants a waiver.

D. The Certificate Holder is authorized to construct electric transmission facilities and interconnect those facilities to Con Edison's existing 138 kV Astoria East substation. The Certificate Holder is authorized to construct and shall design, engineer, and construct electric transmission facilities as provided in the System Reliability Impact Study ("SRIS") approved by the New York Independent System Operator ("NYISO") Operating Committee and in accordance with the applicable and published planning and design standards and good engineering practice of the NYISO, the New York State Reliability Council ("NYSRC") Northeast Power Coordinating Council ("NPCC"), North American Electric Reliability Council ("NERC"), and North American Electric Reliability Organization ("NAERO"), and successor organizations depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required by the NYISO Operating Committee in the approved SRIS and by any interconnection or facilities modification agreement negotiated with Con Edison, and any successor Transmission Owners (as such term is defined in the New York Independent System Operator ("NYISO Agreement")).

E. The Certificate Holder is authorized to connect the Project to the Con Edison 24 inch gas distribution main located on 20th Avenue.

F. The Certificate Holder is authorized to connect the Project to the New York City public water supply system through an existing 20-inch water supply line located adjacent to the Project Site. The Certificate Holder is authorized to connect the Project to the New York City public sewer system piping adjacent to the Project Site.

II. General Conditions

A. The Project and/or its Site shall be constructed, operated and maintained as set forth in the Application and other submissions, and as indicated by the Certificate Holder in stipulations and agreements during this proceeding, except as these may be waived, modified or supplemented by the Board, and except as regarding conditions contained in the SPDES permit, Title V Air Operating Permit and PSD Permits issued by the NYSDEC.

B. The Certificate Holder shall submit a schedule of all filings and other submissions to the Siting Board as required by these Certificate Conditions, and to the extent practicable, shall coordinate the schedule for submitting Compliance Filings with the relevant state agencies having jurisdiction over such Compliance Filings.

C. The Certificate Holder shall submit a Compliance Filing consistent with Part 1003 of the Article X regulations. A "licensing package" is defined herein as a component of the Compliance Filing and includes all plans or other submissions required by these Certificate Conditions. Licensing packages may be submitted individually or on a combined basis. All filings shall be served on all active parties that have advised the Siting Board of their desire to receive a copy of such filings.

D. Before the commencement of commercial operations of the Project, the Certificate Holder shall file with the New York Public Service Commission ("NYPSC") a petition as to the regulatory regime that will apply to it as an electric corporation.

E. Operation of the Project shall be in accordance with the SPDES, PSD and Title V Air Operating Permits.

F. The Certificate Holder shall file a copy of the following documents with the Siting Board and with the NYPSC: (1) the SRIS approved by the NYISO Operating Committee, which shall be filed prior to commencement of construction; (2) any requirements imposed by the NYSRC, which shall be filed prior to commencement of construction; (3) all electric facilities agreements and electric interconnection agreements, and any amendments thereto, with Con Edison and successor Transmission Owners (as defined in the NYISO Agreement), which shall be filed prior to commencement of commercial operation of the Project; (4) a Relay Coordination Study, which shall be filed not later than 18 months prior to the projected commercial operation date of the Project; (5) the detailed design of the electric interconnection facilities, and updates thereto, which shall be

filed prior to commencement of commercial operation of the Project; (6) all natural gas transportation agreements, and any amendments thereto, with Con Edison and any successor owners of the Con Edison natural gas transmission and distribution facilities, which shall be filed prior to commencement of commercial operation of the Project; and (7) water and sewer interconnection contracts, agreements, approvals and/or permits which shall be filed prior to commencement of commercial operation of the Project (copies of which also will be filed with the New York City Department of Environmental Protection ["NYCDEP"]).

G. The Certificate Holder shall operate the Project in accordance with the approved tariffs and applicable rules and protocols of the NYISO, NYSRC, NPCC, NERC, and NAERO, and successor organizations. Should aspects of network operation be affected by the Project that are under the lawful control of Con Edison, or successor Transmission Owners (as defined in the NYISO Agreement), rather than NYISO control, the Certificate Holder shall operate the facilities according to the procedures of Con Edison, or successor Transmission Owners (as defined in the NYISO Agreement). The Certificate Holder reserves the right to seek subsequent review of any specific operational orders at the NYISO, NYPSC, the Federal Energy Regulatory Commission, or in any other appropriate forum.

H. Subject to the Siting Board's ongoing jurisdiction, the Certificate Holder shall seek the regulatory permits and approvals specified in the Application from the relevant New York City agencies pertaining to the construction work for or operation of the Project.

III. Construction Conditions - General

A. These Certificate Conditions shall be made contract requirements for the construction contractors as applicable.

B. Appropriate construction personnel shall be trained in environmental compliance matters.

C. The Certificate Holder shall describe in a licensing package a community liaison program designed to maintain communication with the surrounding community during construction. This plan shall include the maintenance of a complaint log. The community liaison program shall continue once the Project becomes operational to keep communication lines open between the Certificate Holder and the community.

D. The Certificate Holder shall assign an Environmental Inspector to monitor the Project Site during construction.

E. Construction noise sources shall be mitigated by proper equipment maintenance.

F. The normal construction shifts for the Project will include two shifts occurring between 7:00 AM and 12:30 AM. Between the hours of 6:00 PM and 7:00 AM, Certificate

Holder shall not: (1) engage in pile driving, jackhammering or demolition; (2) use bulldozers, excavators or dump trucks for Site preparation; (3) load or off load big pipes or other materials that could make excessive noise; (4) conduct scheduled steam or air blows; or (5) exceed any regulatory noise limits. Steam blow noise will be mitigated through use of portable, high performance mufflers and scheduled steam blows will not be performed before 9:00 AM or after 5:00 PM. Deliveries related to construction activities shall take place during the hours of 7:00 AM to 6:00 PM unless; (1) delivered by barge; (2) to accommodate oversized delivery pursuant to NYCDOT permit; or (3) otherwise involving incidental deliveries of small items. All night time barge deliveries, the unloading of which could cause excessive noise, will not be unloaded unless such unloading activity has commenced before 12 p.m. (noon) and, for safety reasons, must be completed without interruption. Notwithstanding the preceding sentence, Certificate Holder will remain in compliance with the City's nighttime noise standards. The Project's construction activities, whether daytime or nighttime, will comply with the applicable regulatory requirements.

G. A temporary, portable, high performance muffler shall be used to attenuate noise from steam blows that occur before the steam system is connected to the turbine and the steam line temporarily is routed to the debris trap and muffler and high pressure steam is vented through the tubing. Steam blows shall not be performed before 9:00 AM or after 5:00 PM.

H. Trucks used for transporting soil or gravel during construction shall be covered to avoid loss of transported material and truck speed on-site shall be controlled to minimize dust. Vehicles carrying hazardous material shall be instructed to travel to and from Astoria Boulevard along Steinway Street.

I. The Certificate Holder shall not dispose of construction related waste by burning those waste materials on the site. The Certificate Holder shall be responsible for the actions of its contractors to prevent the burning of waste materials on the site. All construction wastes shall be disposed of in accordance with applicable laws and regulations.

J. Before hiring contractors for solid waste haulage, the Certificate Holder shall request evidence that such contractors are in possession of all required permits and licenses. During the period of operation, the Certificate Holder shall retain for inspection records showing that all waste hauling and disposal contractors have all required permits and licenses. Solid waste shall be disposed of in accordance with applicable laws and regulations.

K. All unused, excavated materials and/or construction debris shall be removed upon completion of construction and disposed of in accordance with applicable laws and regulations.

L. All disturbed areas shall be seeded and/or stabilized with erosion control materials within 15 days of final grading and when construction has been suspended. In all areas of the Project site that will not be covered by impervious surfaces, with the exception of the portion of the Site that qualifies as New York State regulated wetlands "adjacent area",

the Applicant shall place one foot of clean fill. After the commencement of commercial operations, and with the exception of emergency conditions, the Certificate Holder shall notify the NYCDEP in writing, at least 24 hours prior to engaging in any excavation which will exceed one foot in depth. In all cases the Certificate Holder shall follow its health and safety plan.

M. The Certificate Holder shall follow its Unanticipated Discovery Plan submitted as Appendix 4.6-2 to its Application to provide protection in the event that cultural resources are encountered during construction.

N. The Project shall be constructed in accordance with the NYC Seismic Code, Local law 1/95; NYC Administrative Code 27-569 and reference Standard 9-6.

IV. Construction - Energy Facility

A. The Turbine Building shall be constructed using non-reflective, metal panels in colors that maximize consistency with brick structures in the Project vicinity. The low bay portion of the building shall have a non-reflective gray metal roof. The air cooled condensers shall be sided with non-reflective, painted metal panels similar to those used on the Terminal Building. The stack flues shall be marked in accordance with FAA requirements. Both the existing brick administration building and boiler house building will remain on site.

B. Lighting shall be pole mounted and designed to reduce glare through shielding and use of low glare lighting elements. Project lighting shall be in accordance with local zoning and building codes. The Certificate Holder shall provide a detailed lighting plan as part of its Compliance Filing.

C. The Certificate Holder shall control potential emissions from construction related activities through the use of wetting agents on exposed soils, use of covered trucks for soils and other dry materials, limited storage of spoils on the construction site and final grading and landscaping of exposed areas.

V. Construction - Gas and Electrical Interconnects

A.. The Certificate Holder shall design, engineer, construct (or fund the construction of) and operate the transmission interconnection in compliance with the electric and magnetic field strength standards established by the New York Public Service Commission ("NYPSC") 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.

B. The Certificate Holder shall complete negotiations on all necessary contractual arrangements with its electric and gas transmission interconnections as soon as practicable.

C. If the Project interconnects with Con Edison's gas system, Applicant shall comply with the applicable Con Edison natural gas tariff requirements.

VI. Operation and Maintenance

A. The Certificate Holder shall submit a Spill Prevention Control and Countermeasures plan and a Stormwater Pollution Prevention Plan as part of the Compliance Filing.

B. The Certificate Holder shall implement the following noise mitigation measures: (1) use of tuned HRSG stack Silencers; (2) the Turbine Building will include acoustical insulation on the interior and will be designed so that any openings are treated with acoustic louvers or oriented away from residential areas; (3) enclosures will be used for the air and gas compressing stations; and (4) specially designed low-noise cooling condensers will be used.

C. The Certificate Holder shall submit a post-construction report by an acoustical engineer to demonstrate that, based on noise measurements and acoustic observations, the operating plant complies with the acoustic design goals contained in the Application and also produces no prominent pure tones. This report shall be submitted within six-months of the start of commercial operation of the entire Project.

D. The Certificate Holder shall obtain and operate the Project pursuant to a CAA Title V Operating Permit, a CAA PSD permit, a CAA Title IV Acid Rain permit, a SPDES permit and an MOSF license..

E. The Certificate Holder shall comply with all applicable state and federal chemical and waste-storage use and handling regulations and will keep the local fire department apprised of chemicals and waste on site.

F. Within 6 months of startup of commercial operation of the Project, the Applicant shall submit a vegetation planting and maintenance plan for the Project site as a compliance filing.

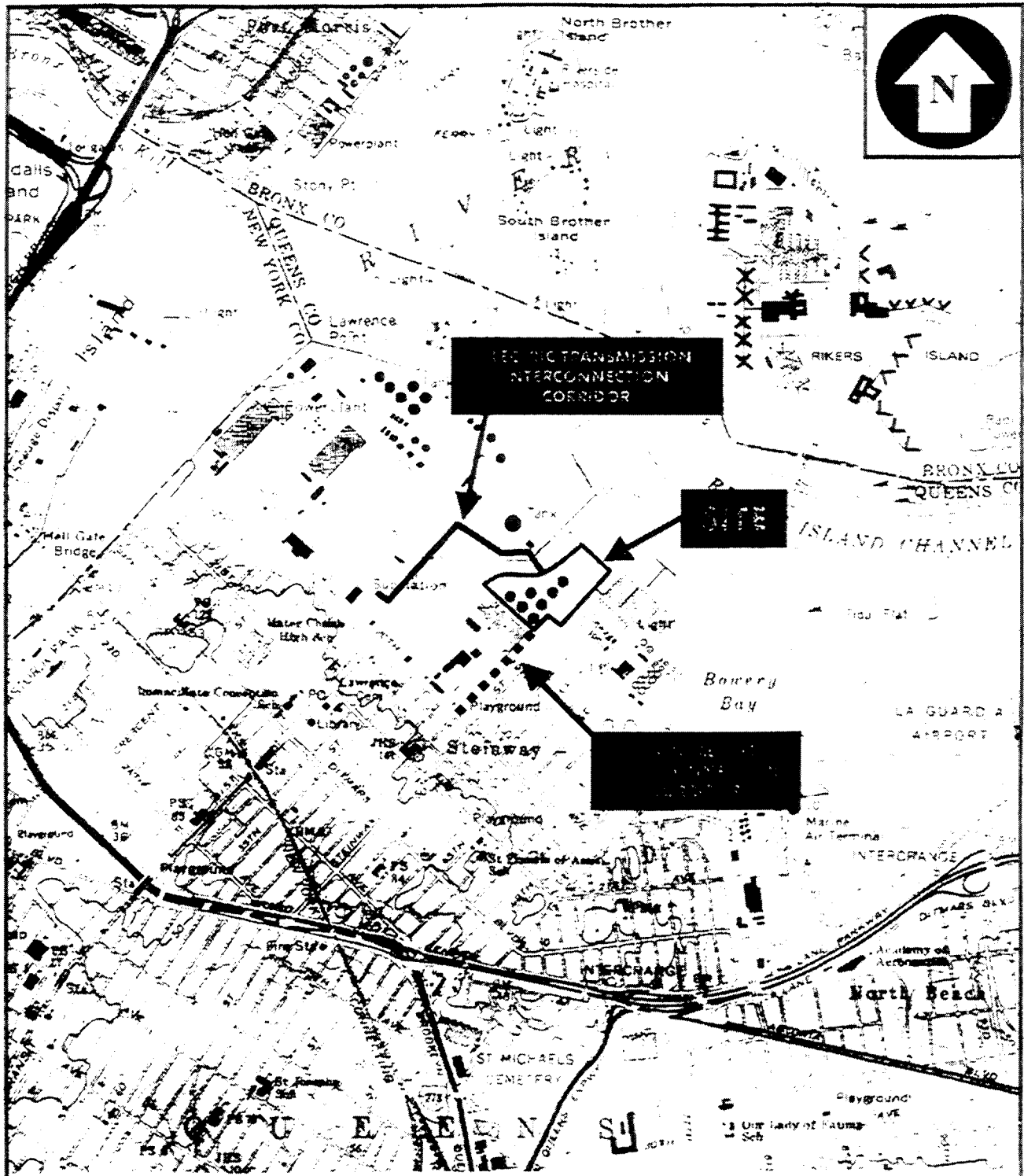
G. The Applicant will provide funding in the amount of \$10,000 per year for three years following completion of construction, or approximately 40 trees per year at \$250.00 each, for off-site street tree plantings in the Project viewshed pursuant to the New York City Adopt-a-Tree Program or other similar tree planting program involving community input in order to minimize visibility of the Project's stacks if orange and white FAA markings are required

VII Decommissioning, Security Fund and Insurance

A. During construction, Certificate Holder shall post, or cause its construction contractor to post, insurance coverage consistent with industry standards, including builders' risk insurance, general liability insurance, auto liability insurance and workers' compensation. During operation, Certificate Holder shall secure insurance coverage typical for a power generation facility, including broad form property insurance, boiler and machinery insurance, general liability insurance, and workers' compensation.

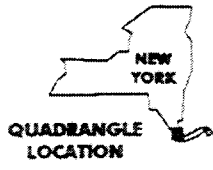
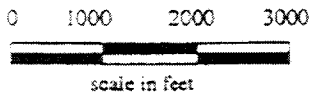
B. Before commencement of construction of the Project, other than research, surveying, boring or related activities necessary to prepare final design plans and obtain necessary permits, the Applicant shall file with the Secretary of the NYPSC proof of adequate financial security (such as a restoration bond, escrow or other similar financial instrument) in the amount of \$3.15 million to meet the decommissioning costs in the event that either construction is not completed or the facility is decommissioned at a later date. The security, if drawn upon, shall be used for decommissioning the Project, dismantling the project by removing aboveground structures that could not reasonably be used for any industrial purpose, and restoring all disturbed areas. To the extent that the activities set forth in the immediately preceding sentence exceed the amount of the security, the Applicant shall provide funding to accomplish such activities.

FACILITY SITE MAPS

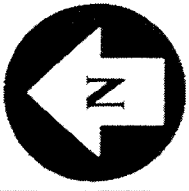


BASE MAP IS A PORTION OF THE FOLLOWING 7.5' USGS
 TOPOGRAPHIC QUADRANGLE: CENTRAL PARK, NY-NJ, 1966;
 PHOTOREVISED 1979

L99-43104181E PPT



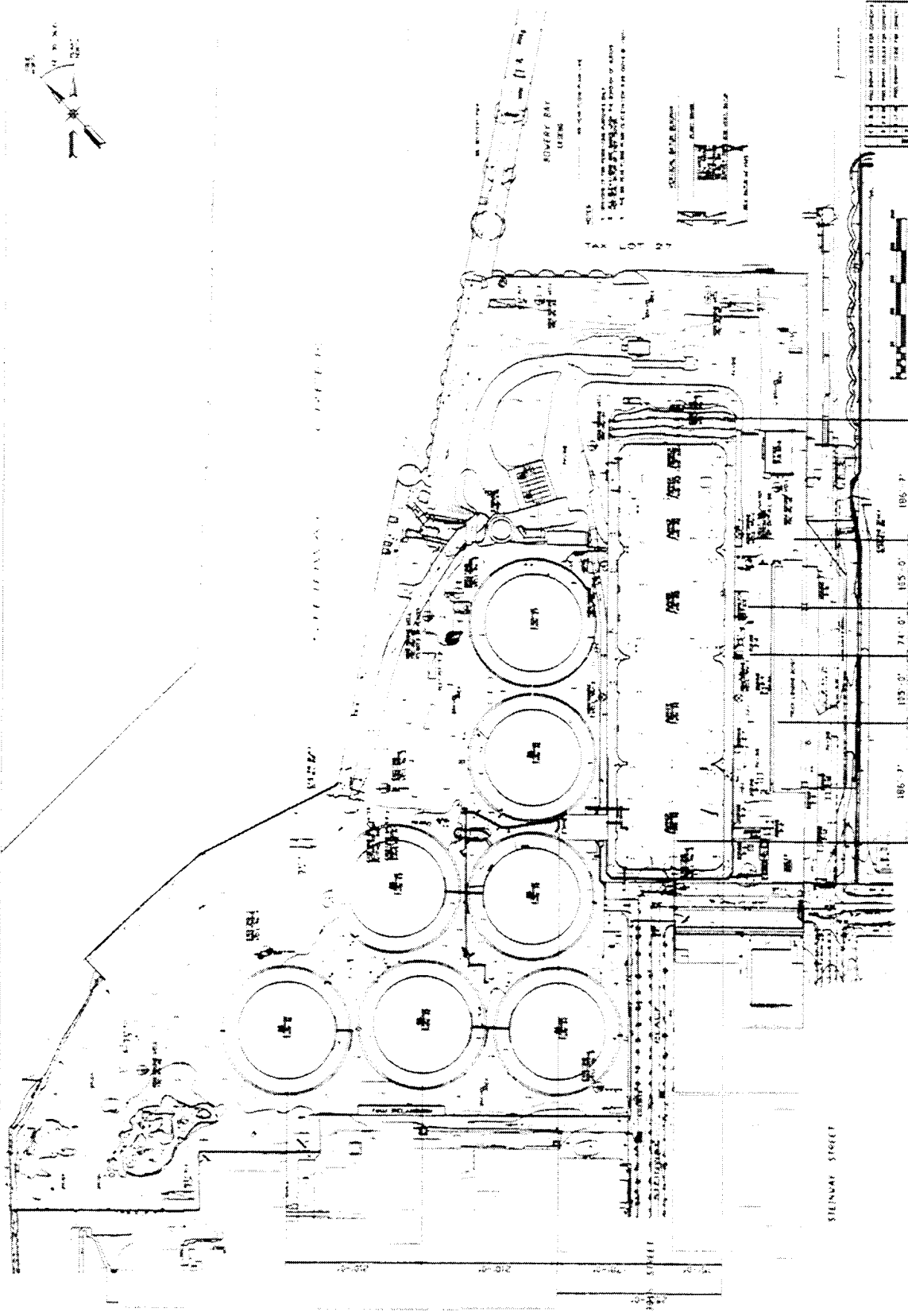
TRC	Boot Mills South Foot of John Street Lowell, MA 01852 978-970-5600
	TOPOGRAPHIC MAP OF PROJECT SITE AND INTERCONNECTION ROUTES ASTORIA ENERGY LLC QUEENS, NEW YORK
FIGURE 1-1	PROJ. NO. 26476



TRC
Broad Mo'is South
Foot of John Street
Lowell, MA 01852
978-970-5600

AERIAL PHOTOGRAPH
ASTORIA ENERGY LLC
QUEENS, NEW YORK

FIGURE 1-2 **PROJ. NO. 26476**



- NOTES
1. SEE THE OTHER SHEETS FOR THE PROJECT.
 2. ALL DIMENSIONS ARE IN FEET AND INCHES.
 3. ALL DIMENSIONS ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.



GRAPHIC SCALE
 NOTE: A LARGER SCALED DRAWING IS INCLUDED IN APPENDIX 4.9

BERMAN, P.C.

STEWART STREET

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMITS	10/15/14	J. BERMAN	J. BERMAN
2	ISSUED FOR PERMITS	10/15/14	J. BERMAN	J. BERMAN
3	ISSUED FOR PERMITS	10/15/14	J. BERMAN	J. BERMAN

ASTORIA WATER LLC
 97103-1871

FIGURE 3-2
 EXISTING SITE PLAN

Doc: 79149-C-001

Engineering & Construction

4 of 4

EQUIPMENT LIST

- ① 400 GPM WASTE STORAGE TANK
- ② 400 GPM WASTE STORAGE TANK
- ③ COMPRESSOR TANK
- ④ 400 GPM TANK
- ⑤ MAIN TRANSFORMER
- ⑥ 400 GPM TRANSFORMER
- ⑦ 400 GPM TRANSFORMER
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REFERENCE DRAWINGS
 FIGURE 3-6 GENERAL ARRANGEMENT
 SECTION A, A' & B, B'
 ELEVATION

STEAMWATER
 TREATMENT
 PLANT
 ACCESS TO WATER

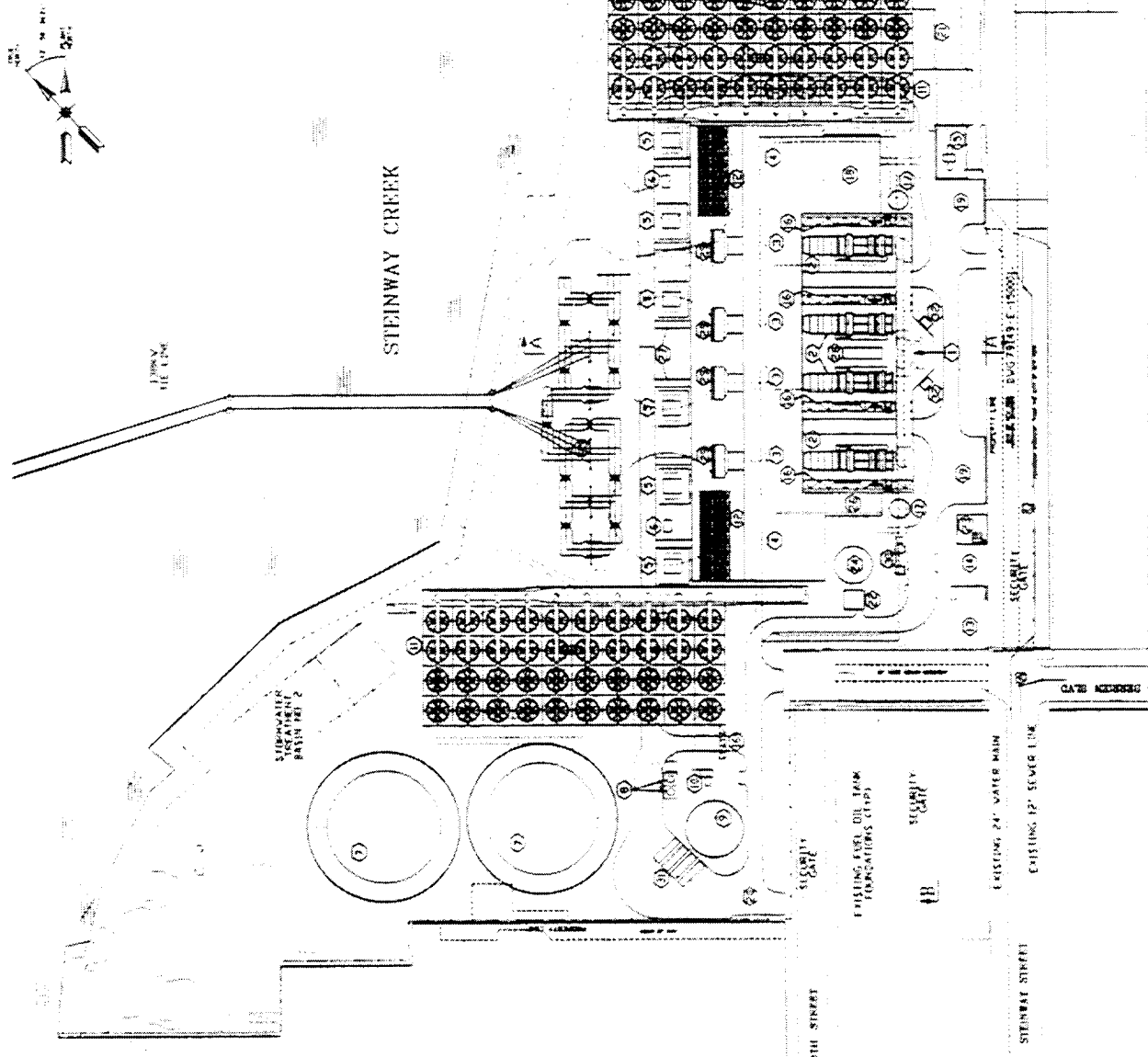
BOWERY BAY

GRAPHIC SCALE
 0 50 100 150 200 300

ASHTON CONSULTING
 ACCESS TO WATER

FIGURE 3-5
 PROJECT LAYOUT

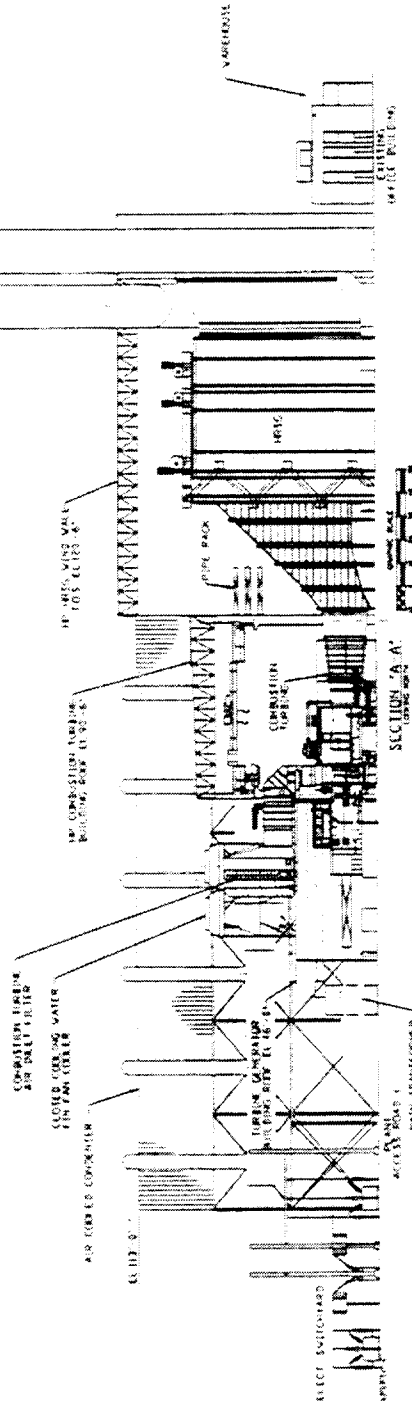
NO. 79149-E-150000



SCALE

REFERENCE DRAWINGS
3-3 - COIL PLAN

CL 022-5' - FLOOR C



SECTION 'A-A'

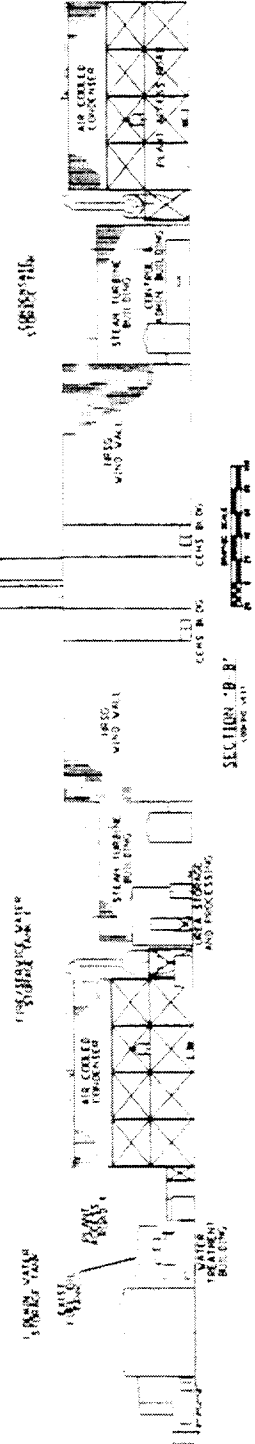
FLOOR A - FLOOR

EL. 125' (7'-6\"/>

SECTION 'B-B'

FLOOR A - FLOOR

EL. 125' (7'-6\"/>



SECTION 'B-B'

FLOOR A - FLOOR

EL. 125' (7'-6\"/>

NO.	DATE	BY	CHKD.
1			
2			
3			
4			
5			

STANDARD ENGINEERING
 CHEMICAL ENGINEERING
 300 PINE STREET
 PHOENIX, ARIZONA

FIGURE 3-6
 PRO JET PROFILE
 79149-E-150001

14-B