

NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

CASE 97-F-2162 - Application by PSEG Power New York, Inc. for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 750 Megawatt Natural Gas-Fired Combined Cycle, Combustion Turbine Generating Facility in the Town of Bethlehem, Albany County.

OPINION AND ORDER GRANTING A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED  
SUBJECT TO CONDITIONS

Issued and Effective: February 28, 2002

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NEW YORK STATE BOARD ON ELECTRIC  
GENERATION SITING AND THE ENVIRONMENT

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BY THE BOARD:

INTRODUCTION

Procedural History

In November 1998, Niagara Mohawk Power Corporation filed an application in this case for a Certificate of Environmental Compatibility and Public Need (Certificate) to construct and operate a 750 megawatt (MW) combined-cycle electric generation station on the 186-acre site in the Town of Bethlehem where the 400 MW Albany Steam Station is currently located. However, in May 2000, Niagara Mohawk sold 84 acres and the Albany Steam Station to PSEG Power LLC. Subsequently, on July 2, 2001, PSEG Power New York Inc. supplemented the November 1998 application and thus resumed the process to redevelop the site with modern electric generation technology.<sup>1</sup> On August 31, 2001, the Chairman of the Siting Board determined that the PSEG application complied with the requirements of Public Service Law (PSL) §164(1) and that public hearings on the PSEG application could begin.

Concurrent with its Siting Board application, PSEG filed applications with the State Department of Environmental Conservation (DEC) for a State Pollutant Discharge Elimination System (SPDES) permit, a State Preconstruction Permit and Certificate to Operate, and a Clean Air Act (CAA) Title IV permit. Federal authority to issue these water and air permits for the facility has been delegated to the State DEC by the U.S. Environmental Protection Agency (EPA).

Pursuant to notice, public statement hearings on PSEG's Article X application were held during the day and evening of October 17, 2001. Eight persons spoke at the hearings; all of them supported the project. Letters and resolutions also supporting the proposed facility have been received from various municipal and commercial organizations,

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<sup>1</sup> PSEG Power New York Inc. is affiliated with PSEG Power LLC which is a subsidiary of Public Service Enterprise Group. The Group owns Public Service Electric and Gas Company, the largest electric and gas utility company in New Jersey.

and from local residents. A legislative hearing was also held on December 3, 2001 in the DEC's companion proceedings.<sup>2</sup> The Examiners were unable to consolidate this hearing with the ones held on October 17 due to a public notice publication error on the part of the applicant.

On October 23, 2001, the Examiners conducted an Article X prehearing and issues conference to identify the active parties, to discuss scheduling and procedural matters, to address intervenor funding requests, and to identify potential issues. On November 15, 2001, they issued a ruling establishing the issues for the Article X proceedings.

Administrative Law Judge P. Nicholas Garlick also conducted an issues conference in the DEC proceedings on December 12, 2001. In his January 3, 2002 ruling, Judge Garlick determined that no air or water permit matters required adjudication. Judge Garlick's ruling was appealed by Dr. and Mrs. Uriel M. Oko who had sought an adjudicatory hearing with respect to the amount of polychlorinated biphenyls (PCBs) the proposed facility may emit into the air and the health risks they may present. However, on January 31, 2002, the DEC Commissioner denied Dr. and Mrs. Oko's appeal.<sup>3</sup>

An evidentiary hearing was held in this case on January 17, 2002 for purposes of receiving on the record the Joint Stipulations the parties had executed. The Joint Stipulations are endorsed by the applicant, the staff representatives of three State agencies (the Departments of Environmental Conservation, Health and Public Service), two municipal parties (the Town of Bethlehem and the Rensselaer County Environmental Management Council; and three environmental groups (Riverkeeper, Inc., Scenic Hudson, Inc. and Natural Resources Defense Council). The Joint Stipulations were unopposed at the hearing. As such, they provide a comprehensive

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<sup>2</sup> DEC Case 4-0122-00044-00021, PSEG Power New York Inc. - Bethlehem Energy Center.

<sup>3</sup> DEC Case 4-0122-00044-00021, supra, Interim Decision (issued January 31, 2002).

resolution of all Article X matters that must be considered in this case.

On February 1, 2001, the Examiners issued a recommended decision proposing that the Siting Board grant PSEG a Certificate of Environmental Compatibility and Public Need subject to the conditions to which the applicant has agreed in the Joint Stipulations. Briefs on exceptions to the recommended decision were due on February 8; however, none were filed.<sup>4</sup>

Subsequently, State DEC Commissioner Crotty provided the Siting Board the environmental permits needed for the proposed facility, as required by PSL §172(1).

### The Proposed Facility

PSEG plans to construct and operate a 750 MW combined-cycle electric generation facility to replace the existing 400 MW Albany Steam Station. The existing facility will be retired when the Bethlehem Energy Center (BEC) begins to operate. The Albany Steam Station's boilers, turbines and generators will be retired in place but its four 336-foot stacks will be removed. Three new 248-foot stacks will be built. Coal conveyors on the site that have not been used in recent times will also be removed.

The BEC will have three new combustion turbines equipped with electric generators, three heat-recovery steam generators, and a new steam turbine with an electric generator. These combined-cycle units rival the efficiency of any other commercial units currently available.

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<sup>4</sup> On February 8, the applicant filed a letter stating its full support for the recommended decision. Department of Public Service Staff also filed a letter on February 7 clarifying three matters. First, DPS staff observed that the Joint Stipulations ensure that the proposed facility will operate in compliance with applicable state laws. Next, it points out that Certificate Condition III. A applies to both contractors and subcontractors. Finally, it notes that the Siting Board should issue a water quality certification pursuant to Federal Clean Water Act §401. These matters are addressed below.



The BEC will primarily use natural gas but it can also burn low sulfur distillate oil within the limits set by the State DEC air permits. The BEC will be equipped with selective catalytic reduction facilities to minimize nitrous oxide (NOx) emissions. It will also have oxidation catalysts to minimize carbon monoxide (CO) and volatile organic compounds (VOCs).

THE RECOMMENDED DECISION

Required Findings

The Examiners noted that Article X empowers the Siting Board to grant or deny PSEG's application, or to certify the facility upon such terms, conditions, limitations or modifications to the proposed construction or operation of the proposed facility as are necessary to meet the Article X requirements. In order for PSEG to obtain a Certificate for the proposed facility, 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.<sup>5</sup>
- 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.<sup>6</sup>
- 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

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<sup>5</sup> PSL §168(2)(a).

<sup>6</sup> PSL §168(2)(b).

under PSL §164(1)(b), and (c) the interest of the State in aesthetics, preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other pertinent considerations.<sup>7</sup>

- That the facility is compatible with public health and safety.<sup>8</sup>
- 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.<sup>9</sup>
- That the facility will not emit any air pollutants in contravention of applicable air emission control requirements or air quality standards.<sup>10</sup>
- That the facility will control the runoff and leachate from any solid waste disposal facility.<sup>11</sup>
- That the facility will control the disposal of any hazardous waste.<sup>12</sup>
- That the facility will operate in compliance with applicable state and local laws and associated regulations, except that the Siting Board may refuse to apply specific local laws, ordinances,

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<sup>7</sup> PSL §168(2)(c)(i).

<sup>8</sup> PSL §168(2)(c)(ii).

<sup>9</sup> PSL §168(2)(c)(iii).

<sup>10</sup> PSL §168(2)(c)(iv).

<sup>11</sup> PSL §168(2)(c)(v).

<sup>12</sup> PSL §168(2)(c)(vi).

regulations, or requirements it regards as unduly restrictive.<sup>13</sup>

- That the construction and operation of the facility is in the public interest, considering its environmental impacts and the reasonable alternatives considered under PSL §164(1)(b).<sup>14</sup>

As stated above, the Siting Board must find that the proposed facility will not discharge any effluent that will be in contravention of the DEC standards and that it will not emit any air pollutants in contravention of applicable air emission control requirements or air quality standards.<sup>15</sup> In Article X proceedings like this one, the Siting Board defers to the judgment of the DEC Commissioner, who is delegated federal responsibility to issue air and water permits.<sup>16</sup>

#### The Joint Stipulations

The Joint Stipulations submitted in this case by the applicant, the state agencies, the local municipalities and the environmental groups contain 14 topic agreements that address: air, water and earth resources; terrestrial ecology; visual resources, aesthetics, and cultural resources; traffic and noise; electric transmission and gas supply facilities; the

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<sup>13</sup> PSL §168(2)(d).

<sup>14</sup> PSL §168(2)(e).

<sup>15</sup> PSL §168(2)(c)(iii) and (iv).

<sup>16</sup> See Case 99-F-0558, Heritage Power LLC, Opinion and Order Granting Certificate (issued January 19, 2001), pp. 7-8; Case 99-F-1314, Consolidated Edison Company of New York, Inc., Opinion and Order Granting Certificate (issued August 30, 2001), pp. 34-36.

approved procurement process, reasonable alternatives to the proposed facility and various public interest considerations.<sup>17</sup>

Each topic agreement identifies the nature of the probable environmental impacts from the proposed facility and identifies the basis for the certificate conditions that are needed to minimize adverse impacts as required by Article X. The topic agreements highlight the record evidence that supports the parties' agreements and they provide stipulated facts for the Siting Board to render its determinations.

The Examiners reviewed, in detail, each of the topic agreements and in each instance they found that the topics identified by PSL §168 were fully and properly evaluated, and that the evidentiary record in this case supports a decision to certify the proposed facility, subject to the certificate conditions to which the applicant has agreed to be bound.

#### Certificate Conditions

In this proceeding, the applicant has agreed to various certificate conditions for the proposed facility. The Examiners have recommended that the Siting Board certify the project subject to the conditions PSEG is committed to honor.

On February 7, 2002, DPS Staff submitted a letter stating that the certificate conditions that apply to PSEG's contractors also apply to subcontractors. The applicant accepts this clarification provided by DPS Staff.

#### 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 the State DEC. However, Article X operates to transfer the jurisdiction for the issuance of this license from the State DEC to the Siting Board.

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<sup>17</sup> As DPS Staff has pointed out in its February 7, 2002 letter, the Joint Stipulations could have included a topic agreement addressing applicable state law requirements. However, in this instance, the Joint Stipulations addressed such matters throughout the various topic agreements.

PSEG owns and operates petroleum storage tanks on the 84 acres it purchased from the Niagara Mohawk Power Corporation in May 2000. It has three 9.4 million gallon residual oil storage tanks and two unused 1.15 million gallon distillate oil tanks. On March 28, 2001, the State DEC issued a MOSF license for these facilities; the license expires on March 31, 2003.

In this case, PSEG has proposed to remove two residual oil tanks and to convert the other tank to store low sulfur distillate oil. PSEG is also considering the construction of a new distillate oil storage tank on the site.

PSEG entered into a Stipulation Agreement with the DEC and DPS staff representatives which recommends that jurisdiction to regulate the storage, handling and transport of petroleum products (and to enforce containment and remediation of petroleum discharges) be transferred back to the State DEC. The Stipulation Agreement provides that the State DEC will issue and reissue MOSF licenses for PSEG's petroleum storage facilities and DEC will enforce the terms of the permits it issues. The Examiners reviewed the terms of the MOSF Stipulation Agreement and they recommended that the Siting Board adopt its provisions. We find that this proposal is reasonable and we are providing the requisite authorization for the State DEC to act.

Federal Clean Water Act §401

In its February 7, 2002 letter, DPS Staff points out that the Joint Stipulation provided for the Siting Board to issue a water quality certification for the BEC pursuant to Section 401 of the Federal Clean Water Act.<sup>18</sup> DPS Staff also notes that this uncontested matter was not specifically addressed in the recommended decision. It urges the Siting Board to expressly act on this matter to avoid any potential confusion.

We are adopting the draft Water Quality Certification provided by the applicant, the state agencies and the other

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<sup>18</sup> This matter was addressed in the topic agreement concerning water resources.

parties. This is consistent with the provisions of the Joint Stipulation we are adopting in this case.<sup>19</sup>

STATUTORY DETERMINATIONS

On the basis of the foregoing discussion, and the findings contained in the Examiners' recommended decision to the extent they are consistent with this decision, we find and determine that:

1. The proposed facility was selected pursuant to an approved procurement process [PSL §168(2)(a)(ii)]. The project will be a merchant facility participating in the competitive wholesale electricity generation market and thus it will help to lower the cost of electricity throughout the state.

2. On the basis of the full record in this proceeding, the nature of the probable environmental impacts of the proposed facility, 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 as summarized in the Examiners' recommended decision [PSL §168(2)(b)]. The probable adverse environmental impacts in this instance will be minor at most. The predictable beneficial environmental benefits will be substantial.

3. For the reasons set forth in this decision and the Examiners' recommended decision, if the proposed facility is constructed and operated in accordance with the certificate conditions set forth in Appendix A and the terms of the permits issued by other agencies, it 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(2)(c)(i)]. The record demonstrates that the adverse

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<sup>19</sup> Appendix B.

environmental impacts that will result from the construction and operation of the proposed state-of-the-art generating facility, at an existing power plant site, will be minimized consistent with the statutory requirement.

4. For the reasons demonstrated on the record and explained in the Examiners' recommended decision, if the proposed facility is constructed and operated in accordance with the certificate conditions set forth in Appendix A and the terms of the permits issued by other agencies, it will be compatible with public health and safety [PSL 168(2)(c)(ii)]. The overall reduction of air pollutant emission rates as a result of the operation of the proposed facility, and the retirement of the Albany Steam Station, ensure that it is compatible with public health and safety.

5. For the reasons stated in this Opinion and in the Examiners' recommended decision, if the proposed facility is constructed and operated in accordance with the certificate conditions set forth in Appendix A, and the terms of the permits issued by other agencies, it will not discharge any effluent in contravention of applicable water quality standards [PSL §168(2)(c)(iii)].

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

7. The proposed facility does not include any solid waste disposal facility and is not expected to generate hazardous waste; however, any hazardous wastes that are generated will be disposed of properly [PSL §168(2)(c)(v) and (vi)].

8. For the reasons stated in this Opinion and in the Examiners' recommended decision, if the proposed facility is constructed and operated in accordance with the certificate conditions set forth in Appendix A, and the terms of the permits

issued by other agencies, it will operate in compliance with all applicable state and local laws and associated regulations [PSL §168(2)(d)]. The record demonstrates compliance with the state regulation implementing the best technology available requirement, state coastal zone policies and the substantive provisions of applicable local laws concerning flood plain development, site plans, construction, performance standards and zoning.

9. For the reasons stated in this Opinion and the Examiners' recommended decision, if the proposed facility is constructed and operated in accordance with the certificate conditions set forth in Appendix A, and the terms of the permits issued by other agencies, it will be in the public interest, considering the environmental impacts of the proposed facility and the reasonable alternatives examined [PSL §168(2)(e)]. The minor visual, traffic and noise impacts that are expected to result from the construction and operation of the proposed facility are more than offset by benefits relating to air and water quality, the competitive electricity supply market, electric system reliability and the socio-economics of the proposed facility.

We therefore grant to PSEG Power New York, Inc. a Certificate of Environmental Compatibility and Public Need for the construction and operation of a 750 megawatt natural gas-fired electric generating facility at the proposed site, located in the Town of Bethlehem, Albany 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-1627 orders:

1. The recommended decision of Examiners William Bouteiller 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 the Siting 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 PSEG Power New York, Inc. (the Applicant) for the construction and operation of an approximately 750 megawatt gas-fired electric generating facility in the Town of Bethlehem, Albany 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 requirements set forth in 16 NYCRR 1003.3(c) and Certificate Condition II(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 97-F-2162

(SIGNED)

JANET HAND DEIXLER  
Secretary to the Board

NEW YORK STATE BOARD  
ON ELECTRIC GENERATION  
SITING AND THE ENVIRONMENT

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IN THE MATTER

- of the -

Case 97-F-2162

Application by PSEG Power New York, Inc. for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 750 megawatt natural gas-fired combined cycle combustion turbine generating facility, in the Town of Bethlehem, Albany County.

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**CERTIFICATE CONDITIONS**

**I. Project Authorization**

- A. The Certificate Holder is authorized to construct and operate the Project, as described in the Application Supplement, except as waived, modified, or supplemented by this Certificate.
- B. The Certificate Holder is responsible for obtaining all necessary federal and federally delegated permits, including a State Pollutant Discharge Elimination System Permit (“SPDES”) and a U.S. Army Corps of Engineers (“ACOE”) permit under the Clean Water Act (“CWA”), a Prevention of Significant Deterioration (“PSD”) permit, a Title IV (acid rain) permit, a preconstruction State Air Facility Permit with New Source Review conditions under the Clean Air Act (“CAA”), and other approvals and permits that may be required for this Project, and which the Siting Board is not empowered to provide. The Certificate Holder shall also be responsible for obtaining a license under Article 12 of the Navigation Law from the New York State Department of Environmental Conservation (“NYDEC”) for the major on-shore storage of fuel.
- C. The Project shall be designed to operate and be operated in compliance with all applicable federal and state laws and regulations. Subject to the Board’s ongoing jurisdiction, the Project shall be designed to operate and be operated in compliance with all applicable local laws and regulations.
- D. The Certificate Holder is authorized to connect the Project facilities to the Dominion pipeline, the Tennessee Gas pipeline, distribution facilities of Niagara Mohawk Power Corporation, or any combination of the above.

- E. The Certificate Holder is authorized to perform the on-site, and have the applicable transmission owner perform the off-site, electric transmission upgrades described in the Application Supplement.

II. General Conditions

- A. The Project and its site shall be constructed, operated, and maintained as set forth in the Application Supplement 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 set forth in conditions contained in the SPDES, State Air Facility, PSD, and Major Oil Storage Facility (“MOSF”) permits issued by the NYSDEC.
- B. The Certificate Holder shall submit a schedule of all plans, filings, and other submissions to the Board as may be 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 Board of their desire to receive a copy of such filings.
- D. The Certificate Holder shall prepare an “Unanticipated Discovery Plan” before the start of construction and shall submit the plan as part of a licensing package to provide protection in the event that cultural resources are encountered during construction. The plan shall include the retaining of a qualified archeologist during construction, in the event that cultural resources are encountered during Project activities.
- E. Until the necessary PSD, new source review (“NSR”), MOSF, SPDES, and ACOE permits are issued for the Project, the Certificate Holder shall not engage in any construction or operation activity, as applicable, for which any such permit would be necessary.
- F. The Certificate Holder shall create approximately 1.05 acres of wetlands to mitigate the loss of 1.5 acres of federally regulated wetlands. In addition, the Certificate Holder shall minimize impacts to wetlands during construction of the transmission lines by utilizing existing access roads, siting towers on upland areas, using upland areas for staging areas and work spaces, and using timber mats or other material to spread the weight of equipment when necessary to provide access to construction equipment to or through wetlands.
- G. The Certificate Holder shall submit, as licensing packages, (1) a wetland enhancement/mitigation plan that provides for the replacement of permanently

impacted 1.5 acres of low value “man induced” wetlands; (2) a Storm Water Pollution Prevention Plan (“SWPPP”) addressing all construction activities through final site stabilization; and (3) a spill prevention control and countermeasures (“SPCC”) plan.

- H. The Certificate Holder shall submit a plan for monitoring and reporting visible plumes from the exhaust stacks as a Compliance Filing.
- I. The Certificate Holder shall submit a plan for the intermittent operation of the hybrid cooling system that minimizes the occurrence of visible cooling tower plumes during periods when formation of such plumes is expected.
- J. Before the start of plant construction, and with the concurrence of New York State Department of Transportation (“NYSDOT”), the contractor shall arrange for the erection of five directional signs (white lettering on green background with directional arrows) to facilitate arriving truck and construction worker traffic, and obtain any other applicable permits from NYSDOT. The five locations for the signs are on southbound and northbound U.S. Route 9W approaches at the SR 32 intersection, eastbound and southbound approaches at the intersection of SR 144 and SR 32 and the southbound off-ramp of I-787 at the intersection with SR 32.
- K. The Certificate Holder shall apply to NYSDEC for a license or licenses for a Major On-Shore Storage Facility (“MOSF”) in accordance with the MOSF Stipulation Agreement among the Certificate Holder, NYSDEC staff, and NYSDPS staff.
- L. This Certificate incorporates all approvals that would otherwise be required by the Town of Bethlehem absent the applicability of Article X.
- M. Within 90 days after the grant of a Certificate, the Certificate Holder shall prepare and submit a Compliance Filing containing a decommissioning plan for the Facility that addresses the activities identified in Section 9.3.2, and the financial assurance mechanisms detailed in Section 9.2.2 of the Application Supplement.
- N. The Certificate Holder shall negotiate with Central Hudson concerning the appropriate level of funding to be paid Central Hudson for the proposed 115 kV series reactor and bypass circuit breaker at the North Catskill substation and 115 kV line reactor at the Milan substation. In the event agreement is not reached, the Certificate Holder shall submit the dispute to the NYSPSC, which shall appoint an administrative law judge who shall adopt procedures to hear the matter and prepare a recommendation to the NYSPSC for resolution of the matter. Submission of the dispute to the NYSPSC shall not constitute a waiver of any rights the Certificate Holder or Central Hudson may have, or any positions either party may wish to advocate to the NYSPSC, or in any other forum.
- O. The Certificate Holder shall install and maintain a permanent surveyors monument at the reference point for the noise easement granted by Niagara Mohawk Power Corporation. As-built drawings shall be filed, indicating final facility layout, and depicting the location of the monument and noise easement.

Bearing and distance from property lines and nearby corners of property or structures shall be provided.

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 Project shall be constructed within the 84-acre site where the existing Albany Steam Station is located and will comply with all applicable local laws and regulations.
- D. The Certificate Holder shall implement the following measures to mitigate or avoid noise impacts during Project construction:
  - 1. Maintain and operate construction equipment in accordance with manufacturer's recommendation.
  - 2. Pile driving equipment shall not be operated between the hours of 8:00 PM and 7:00 AM from Monday through Saturday, or Sunday.
  - 3. Use a blow-down tank outfitted with a steam discharge silencer able to provide a 30-dBA reduction in steam noise for pipe cleaning prior to system start-up. The Certificate Holder shall provide adequate advance notification to the entities listed in III(D)(4) below.
  - 4. The normal construction shifts for the Project will include two shifts occurring between 7:00 AM and 2:00 AM. Pile driving is described in II.A.2, above. The following noise producing construction activities shall not be conducted between 8:00 PM through 7:00 AM unless required by scheduling difficulties and after notification to the list of agencies and government offices provided in the next sentence: (1) pile driving, jackhammering or demolition; (2) use of bulldozers, excavators or dump trucks for Site preparation; (3) loading or off loading big pipes or other materials that could make excessive noise; or (4) conducting scheduled steam or air blows. Such notice shall be made to NYSDPS, Town of Bethlehem Supervisor, Town of Bethlehem Building and Engineering Department, Town of Bethlehem Police Department, Mayor of the City of Rensselaer, Supervisor of the Town of East Greenbush, and Rensselaer County Environmental Management Council one business day prior to conducting the activities listed in (1) through (4) above during the 8:00 PM through 7:00 AM time frame.
- E. The Certificate Holder shall revise the signalized intersections of U.S. Route 9W and SR 32 to raise the estimated Level of Service ("LOS") during weekday morning peak hour from LOS F to LOS D.

- F. The Certificate Holder shall perform additional monitoring at the left turn from SR 32 to determine the need for additional police officer control at this intersection.
- G. The Certificate Holder shall post warning signs on SR 144 indicating the entrance of heavy vehicles into the roadway. Clearing and grubbing on both sides of the driveway shall be performed to provide adequate sight lines.
- H. The Certificate Holder shall incorporate travel demand management (“TDM”) strategies to reduce the overall number of vehicles traveling to and from the Project site.
- I. The Certificate Holder shall distribute instructions to trucking companies that will deliver supplies, etc. to and from the site to utilize NYS Routes 32 and 9W, and to avoid Glenmont Road (sometimes called Feura Bush Road).
- J. During peak construction periods, the contractor shall alert the Bethlehem School District, the Town Supervisor’s Office, the Town Building and Engineering Department, and the Town of Bethlehem Police Department on a weekly basis of expected levels of traffic to be generated by the plant construction for the following week.
- K. The Certificate Holder shall make available to construction workers and truck operators maps that show preferred major arrival and departure routes.
- L. The Certificate Holder shall provide for traffic control officers during the morning and evening Peak Hours (6:30 – 9:00 A.M. and 3:30 – 6:00 P.M.) for the construction period beginning with Act ID 500 through Act ID 605 per Figure 2.2.11-1 of the Application. Before the start of construction, the contractor shall arrange for the NYSDOT to update the cycle length and phase timing of the traffic signal at the intersections of Rt. 9W and Rt. 32, Rt. 32 and the I-787 southbound off ramp and all traffic signals between I-787 and the plant.
- M. The Certificate Holder shall not dispose of construction-related waste by burning those waste materials on the site. All construction wastes shall be disposed of in accordance with applicable laws and regulations.
- N. The Certificate Holder shall pay the building permit fee in compliance with the Town of Bethlehem Code in an amount not to exceed \$90,000. The Building Inspector of the Town will undertake the customary inspections of the facility and review and comment on, as necessary, the Compliance Filings by the Certificate Holder.
- O. The Certificate Holder shall submit final site plans and building plans which include the appropriate certifications of a New York State Licensed Engineer or Architect that the Facility, as designed, is in compliance with Flood Damage Prevention Hazard Regulations of the Town of Bethlehem and the New York State Uniform Fire Prevention and Building code (Building Code). Upon completion of the Project, the Certificate Holder’s New York State licensed engineer or architect shall issue a certification that the Project was constructed in

compliance with the Building Code. The Certificate Holder may seek a variance in accordance with §381(1)(f) of the Executive Law. (Note: the Certification should be treated as a Compliance Filing. 16 NYCRR §1003.3. Copies of the “as built” plans also need to be filed with the Town of Bethlehem, NYSDPS and the Siting Board/NYSPSC, as the case may be.)

Prior to commencing construction other than demolition, MOSF related work, site clearing preparation, the Certificate Holder shall submit a licensing package addressing implementation of these requirements, and providing, *inter alia*, that:

1. The Town of Bethlehem will be provided with two (2) complete sets of plans for each building, including structural plans, plumbing, electrical schematics, HVAC details and elevations;
  2. The licensed Architect or Engineer mentioned above must stamp any non-material alteration or field changes in design, detail or plans and submit such change to the Town of Bethlehem Building Department as part of “as built” plans within 180 days after Project completion;
  3. All test reports on soil compaction or soil, concrete or structural analysis must be submitted to the Town of Bethlehem Building Department; and
  4. The periodic reports on compliance referenced above must be submitted at least monthly.
- P. The Certificate Holder shall submit an environmental compliance plan to ensure (1) implementation and maintenance of required environmental mitigation measures; (2) compliance with the terms of this Certificate; and (3) compliance with applicable federal, state and local statutes, ordinances, rules and regulations. The Compliance Plan shall include:
1. the name(s) of the environmental inspector(s) and a statement of qualifications for each inspector demonstrating sufficient knowledge and experience in environmental matters to complete the inspections and audits;
  2. a certification of the authority of the inspector(s) to "stop work" in cases of non-compliance or imminent environmental or safety hazard;
  3. provision for deployment of more than one inspector if required to monitor major field operations;
  4. a proposed checklist of matters to inspect for compliance, including the specific items or locations to be inspected, the inspection method to be employed (e.g., visual, auditory, testing by instrument, etc.), and acceptability criteria to be applied by the inspector(s);
  5. a procedure setting forth how the Certificate Holder shall respond to and correct problems found by the inspector(s);

6. a schedule for monthly submission of inspection reports during construction and submission of audit checklists, together with a written explanation of problem(s) signed by the inspector(s) and an authorized representative of the Certificate Holder, to DPS Staff, DEC Staff, and local agency and/or building inspectors; and
7. a schedule for submission to DPS, DEC, and appropriate local agencies of an annual certification by a responsible corporate official of compliance with the terms of this Certificate during the first two years of operation of the Facility.

IV. Construction – Energy Facility

- A. The Certificate Holder shall construct a hybrid cooling system with a plume design point of 20°F at 85% relative humidity.
- B. The Certificate Holder shall construct the Facility pursuant to the applicable provisions of final air permits issued by NYSDEC under Article 19 of the ECL, the PSD program (40 C.F.R. § 52.21 and 40 C.F.R. Part 124), the final SPDES permit issued by NYSDEC, and the final MOSF license issued by NYSDEC.
- C. The Certificate Holder shall file as a Compliance Filing, and shall implement, a soil erosion and sediment control program involving measures such as silt fencing, restriction of heavy traffic to designated corridors and implementation of dust abatement practices. In addition, the Certificate Holder shall commence cleanup and revegetation operations immediately after the completion of construction activities.
- D. The Certificate Holder shall design the new powerhouse and steam turbine buildings in a manner that will be similar or complimentary in character to the existing powerhouse with a focus on the aesthetics of the building exteriors. The other project elements including the stacks, cooling tower, roof, and ancillary equipment will use darker non-reflective colors and materials to minimize visual contrast with the background landscape. An architectural drawing and detail plan specifying color, materials, and architectural treatments will be provided to NYSDPS, RCEMC, Scenic Hudson and the Town of Bethlehem for comment prior to its submission as a Compliance Filing.
- E. Details of vegetation clearing, tree protection measures and landscape plantings shall be presented as compliance filings. The goals of these compliance filings are, to the maximum extent practicable, maintain existing vegetation on site for continued site screening and plant new vegetation at key locations to fill in or enhance existing screening.
- F. The Certificate Holder shall submit an asbestos abatement plan to the Siting Board as a Compliance Filing. The Certificate Holder shall also file a copy of the asbestos abatement plan with the Town of Bethlehem. The Certificate Holder



shall conduct all asbestos removal in accordance with the applicable New York State Department of Labor and USEPA standards.

- G. The Certificate Holder shall implement the following measures to mitigate or avoid in-river impacts during construction:
1. Perform activities in accordance with applicable provisions of the final water permits issued by NYSDEC and ACOE.
  2. To the extent practicable, no in-river construction will occur from April 1 through July 15 in an effort to minimize the impacts of sediment suspension (i.e., turbidity) on aquatic biota that could potentially occur in the area.
  3. If scheduling requires such activities to occur during April 1 through July 15, the Certificate Holder shall provide NYSDEC Region 4 Division of Fish and Wildlife Fisheries Manager with an explanation of the work to be conducted during this time period at least 30 days in advance of performance of those activities for review and approval. The NYSDEC's approval of such activities shall not be unreasonably withheld.

V. Construction – Gas and Electrical Interconnects

- A. The Certificate Holder shall design, engineer and construct (or fund the construction of) the transmission interconnection such that its operation will comply with the “Interim Guidelines on Limits of Exposure to 50/60 Hz Electric and Magnetic Fields, “ of the Non-Ionizing Radiation Committee of the International Radiation Protection Association.
- B. The Certificate Holder shall design, engineer, and construct the transmission interconnection such that its operation shall comply with the electromagnetic field (“EMF”) standards established by the NYSPSC in Opinion No. 78-13 (issued in June 19, 1978) and the Statement of Interim Policy on Magnetic Fields of Major Electric Transmission Facilities (issued September 11, 1990), respectively.
- C. Except for facilities owned by Niagara Mohawk Power Corporation or Central Hudson Gas & Electric, the Certificate Holder is authorized to construct and shall design, engineer, and construct the proposed transmission facilities in a manner consistent with the information provided in the System Reliability Impact Study (“SRIS”) approved by the TPAS, the NYISO Operating Committee and the NYISO 2001 Transmission Reliability Assessment Study (“TRAS”), and in accordance with the applicable and published planning and design standards and best engineering practices of Niagara Mohawk and 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 and TPAS in the approved SRIS and by any interconnection or facilities modification agreement negotiated with

Niagara Mohawk. Any construction at substations owned by Central Hudson or Niagara Mohawk shall be performed by those entities or under their direction.

- D. The Certificate Holder shall ensure that construction of any Gas Transmission Line complies with all applicable State and federal safety regulations, including but not limited to, 16 N.Y.C.R.R. Part 255.
- E. The re-routed Albany #8 – New Scotland Transmission line shall be located to minimize its visibility from River Road. All new single-shaft steel poles shall be a non-reflective color and non-specular conductors shall be required for the re-routed line as well as all electrical interconnects.
- F. An archaeological team shall monitor the excavations prior to placement of the gas interconnection lines. In the event of identification of significant cultural resources during Project construction, they will be evaluated, documented, and recovered according to professional archeological standards by the archeological team.
- G. The Certificate Holder shall prepare and submit as Compliance Filings a Transmission Line Relocation Plan and Profile drawings for the proposed relocation of Albany #8 – New Scotland Transmission line on the BEC site. The plan and profile drawings shall show details including: BEC facility site plans; ROW location; existing and proposed structure locations, heights, color and design; details of vegetation clearing, trimming, protection, and disposal. The Plan and Profile drawings and details shall be submitted to staff for review 30 days prior to planned submittal as compliance filings.

VI. Operation and Maintenance

- A. The Certificate Holder shall operate the Facility pursuant to the final air permits issued by NYSDEC under Article 19 of the ECL, the Prevention of Significant Deterioration program (40 C.F.R. § 52.21 and 40 C.F.R Part 124), the final SPDES permit issued by NYSDEC, and the MOSF License, as such permits may be modified or amended by NYSDEC from time to time.
- B. The Certificate Holder shall operate the Project in accordance with the approved tariffs and applicable rules and protocols of Niagara Mohawk, NYISO, NYSRC, NPCC, NERC, and NAERO, and successor organizations. The Certificate Holder agrees to obey the lawful directives of the system operator at the NYISO and the Niagara Mohawk operator or their successor. The Certificate Holder reserves the right to seek subsequent review of any specific operational orders of the NYISO, the Federal Energy Regulatory Commission, or Niagara Mohawk, in any appropriate forum.
- C. The Certificate Holder shall ensure public safety and reliability of the natural gas interconnection facilities by including valves, regulators, metering equipment, service taps, and related piping.
- D. The Certificate Holder shall implement the following measures to mitigate or avoid noise impacts during Project operation:

1. Construct the building wall and roof with a minimum sound transmission class rating of 35.
  2. Install duct silencers or acoustical louvers, as appropriate, for all fan ventilation openings.
  3. Install roll-up doors with a minimum 16-gauge thickness and gasketed.
  4. Avoid operable windows on the west side of the HRSG building and the Steam Turbine building.
  5. Install duct silencing on combustion turbine air intakes and in HRSG outlet transition or exhaust stack.
  6. Use low speed airfoil blade fans in the cooling tower.
  7. Meeting design goals for all acoustic treatments.
  8. House combustion turbines individually in enclosures such that the sound level at a distance of 5 feet outside the enclosures does not exceed 85 dBA.
  9. Install blow-off silencers on all steam and air discharges outside of the plant. The silencers will be sized to ensure that blow-off sound levels do not exceed a sound level of 90 dBA at 25 feet.
- E. The Facility shall be designed to meet the CNR rankings listed in Table 4.6.2-4 of the Application Supplement and shall meet a CNR ranking of C at the subject receptors.
- F. The Certificate Holder shall conduct a post-construction ambient noise monitoring program within six months of the starting of commercial operation to demonstrate that, based on noise measurements and acoustic observations, the operating plant complies with the acoustic design goal of a CNR ranking of C. The CNR analysis, as described in the Application Supplement, will include the ambient noise data presented in the Application Supplement and the sound monitoring data of the operating plant. Prior to conducting the noise monitoring program, a protocol will be developed and submitted for approval as a Compliance Filing subsequent to the issuance of the Certificate.
- G. The Certificate Holder shall minimize impacts to vegetation resulting from salt and trace metal deposition associated with cooling tower operation by using highly efficient drift eliminators.
- H. The Project site shall be maintained in accordance with a Facility Maintenance Plan and Vegetative Maintenance Plan, which shall incorporate maintenance of the Albany Steam Station structures that will remain on the Project site. The Facility Maintenance Program and Vegetative Maintenance Plan shall be filed with the NYSPSC within six months prior to commencing commercial operations at the Facility.

- I. The Certificate Holder shall install and use stack heater or alternate mitigation technology (such as the design of the heat recovery steam generators to raise stack temperatures) designed for daily operation between one half hour before sunrise and one half hour after sunset when a visible stack plume is expected to occur and distillate oil is burned in a unit. PSEGRY shall provide plans, specifications and an operational protocol to the Board as part of a Compliance Filing.
- J. The Certificate Holder shall install warning lights on the stacks as required by FAA Advisory Circular AC 70/7460-1K (USDOT, 2000). A dual lighting system consisting of red lights for nighttime and medium intensity flashing white lights for daytime and twilight use will be installed approximately 5 feet below the top of each stack.
- K. The Certificate Holder shall install outdoor lighting on the new powerhouse. Best management practices shall be employed to minimize unwanted glare and fugitive light while ensuring a safe and secure work environment. Primary principles to be employed include: orienting lighting downward; use of task lighting; use of cut-off shields to prevent upward light; and limiting illumination to the level necessary for employee safety and function. Detailed final lighting plans shall be presented as a Compliance Filing.
- L. The Certificate Holder shall abide by the Facility's best management practices for storm water mitigation set forth in the SWPPP .
- M. The Albany Steam Station shall be permanently retired upon commercial operation of the Project

NEW YORK STATE BOARD  
ON ELECTRIC GENERATION SITING  
AND THE ENVIRONMENT

WATER QUALITY CERTIFICATION

Pursuant to: Section 401 of the Federal Clean Water Act;  
Article X of the NYPSL; and 6 NYCRR Section 608.9

Certification Issued to: PSEG Power New York Inc.  
80 Park Plaza  
T-16-H  
Newark, NJ 07102

Location of Project

PSEG Power New York Inc. proposes to construct and operate the Bethlehem Energy Center located in the Town of Bethlehem, Albany County. The facilities include a 750 MW Energy Facility, Water Intake/Discharge Facilities on the Hudson River, Gas, and Electric Interconnections.

Certification Conditions

A 401 Water Quality Certification is issued to PSEG Power New York Inc. subject to the following conditions contained in the Article X Certificate.

1. The Certificate Holder is responsible for obtaining all necessary federal and federally delegated permits, including a State Pollutant Discharge Elimination System Permit ("SPDES") and a U.S. Army Corps of Engineers ("ACOE") permit under the Clean Water Act ("CWA"), a Prevention of Significant Deterioration ("PSD") permit, a Title IV (acid rain) permit, a preconstruction State Air Facility Permit with New Source Review conditions under the Clean Air Act ("CAA"), and other approvals and permits that may be required for this Project, and which the Siting Board is not empowered to provide. The Certificate Holder shall also be responsible for obtaining a license under Article 12 of the Navigation Law from the New York State Department of Environmental Conservation ("NYDEC") for the major on-shore storage of fuel.
2. The Project shall be designed to operate and be operated in compliance with all applicable federal and state laws and regulations. Subject to the Board's ongoing jurisdiction, the Project shall be designed to operate and be operated in compliance with all applicable local laws and regulations.
3. The Project and its site shall be constructed, operated, and maintained as set forth in the Application Supplement 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 set forth in conditions contained in the SPDES, State Air Facility, PSD, and Major Oil Storage Facility ("MOSF") permits issued by the NYSDEC.

4. The Certificate Holder shall submit a schedule of all plans, filings, and other submissions to the Board as may be 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.

5. Until the necessary PSD, new source review ("NSR"), MOSF, SPDES, and ACOE permits are issued for the Project, the Certificate Holder shall not engage in any construction or operation activity, as applicable, for which any such permit would be necessary.

6 The Certificate Holder shall create approximately 1.05 acres of wetlands to mitigate the loss of 1.5 acres of federally regulated wetlands. In addition, the Certificate Holder shall minimize impacts to wetlands during construction of the transmission lines by utilizing existing access roads,

7. The Certificate Holder shall submit, as licensing packages, (1) a wetland enhancement/mitigation plan that provides for the replacement of permanently impacted 1.5 acres of low value "man induced" wetlands; (2) a Storm Water Pollution Prevention Plan ("SWPPP") addressing all construction activities through final site stabilization; and (3) a spill prevention control and countermeasures ("SPCC") plan.

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

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

10. The Certificate Holder shall submit an environmental compliance plan to ensure (1) implementation and maintenance of required environmental mitigation measures; (2) compliance with the terms of this Certificate; and (3) compliance with applicable federal, state and local statutes, ordinances, rules and regulations.

11. The Certificate Holder shall implement the following measures to mitigate or avoid in-river impacts during construction:

1. Perform activities in accordance with applicable provisions of the final water permits issued by NYSDEC and ACOE.

2. To the extent practicable, no in-river construction will occur from April 1 through July 15 in an effort to minimize the impacts of sediment suspension (i.e., turbidity) on aquatic biota that could potentially occur in the area.

3. If scheduling requires such activities to occur during April 1 through July 15, the Certificate Holder shall provide NYSDEC Region 4 Division of Fish and Wildlife Fisheries Manager with an explanation of the work to be conducted during this time period at least 30 days in advance of performance of those activities for review and approval. The NYSDEC's approval of such activities shall not be unreasonably withheld.

12. The Certificate Holder shall abide by the Facility's best management practices for storm water mitigation set forth in the SWPPP.

Date: February 28, 2002

\_\_\_\_\_  
Robert A. Simpson, Alternate  
for Maureen O. Helmer,  
Chairman  
New York State Board on  
Electric Generation Siting  
and the Environment