

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

CASE 99-F-1625 - Application by KeySpan Energy for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 250 Megawatt, Cogeneration, Combustion Turbine Electric Generating Facility to be Developed at the Existing Ravenswood Generating Station in Long Island City, Borough of Queens.

OPINION AND ORDER GRANTING CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Issued and Effective: September 7, 2001

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	2
Procedural History	2
The Proposed Facility	5
THE RECOMMENDED DECISION	6
Required Findings	6
The Joint Stipulations	7
REMAINING ISSUES	8
Local Laws	8
1. Generally	8
2. New York City Air Code	9
a. Background	9
b. Discussion	13
Approved Procurement Process	20
Project Monitoring	22
STATUTORY DETERMINATIONS	23
ORDER	
APPENDICES	

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

BOARD MEMBERS PRESENT:

Thomas J. Dunleavy, Alternate for
Maureen O. Helmer, Chairman
New York State Public Service Commission

David L. Smith, Alternate for
Antonia C. Novello, M.D., M.P.H., Commissioner
New York State Department of Health

Roger McDonough, Alternate for
Charles A. Gargano, Commissioner
Empire State Development

Erin M. Crotty, Commissioner
New York State Department of Environmental Conservation

Peter R. Smith, Alternate for
Vincent A. DeIorio, Chairman
New York State Energy Research and Development Authority

William Koh, Ad Hoc Member

Perry S. Reich, Ad Hoc Member

CASE 99-F-1625 - Application by KeySpan Energy for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 250 Megawatt, Cogeneration, Combustion Turbine Electric Generating Facility to be Developed at the Existing Ravenswood Generating Station in Long Island City, Borough of Queens.

OPINION AND ORDER GRANTING CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

(Issued and Effective September 7, 2001)

BY THE BOARD:

INTRODUCTION

Procedural History

On July 28, 2000, KeySpan Energy (KeySpan or the applicant) filed an application for a Certificate of Environmental Compatibility and Public Need (Certificate) to construct and operate the Ravenswood Cogeneration Facility, a 250 megawatt (MW) electric generating facility on 2.5 acres at its existing Ravenswood generating station located on a 27.6-acre site along the East River in Long Island City, Queens, New York.¹ By letter dated September 26, 2000, Chairman Helmer informed KeySpan that its application did not comply with the filing requirements set forth in PSL §164. On November 10, 2000, KeySpan submitted additional materials to supplement its application.² By letter dated January 24, 2001, Chairman Helmer found, pursuant to PSL §165(1), that the application as supplemented complied with the PSL §164 requirements. The Chairman also fixed February 28, 2001 as the date for the commencement of public hearings.

With its PSL Article X application for a Certificate, KeySpan also filed applications with the New York State Department of Environmental Conservation (DEC) for (1) a State Pollutant Discharge Elimination System (SPDES) permit pursuant to Environmental Conservation Law (ECL) Article 17; (2) a pre-construction air permit pursuant to ECL Article 19; and (3) a Prevention of Significant Deterioration (PSD) permit pursuant to the federal Clean Air Act and Title 40 of the United States Code of Federal Regulations (40 CFR §52.21). As discussed in the Recommended Decision, the authority to issue the required water

¹ KeySpan Energy has requested that the Certificate be issued to KeySpan-Ravenswood, Inc.

² Supplemental direct testimony conforming the prepared testimony in the July 2000 application with the November 2000 supplement was filed on February 12, 2001.

and air permits pursuant to federal law has been delegated to DEC by the federal Environmental Protection Agency (EPA).

Pursuant to notices issued by the Secretary to the Siting Board and the DEC Office of Hearings and Mediation Services, a joint legislative/public statement hearing was convened at 7:00 p.m. on February 28, 2001 at P.S. 112 in Long Island City. Out of the 21 speakers, four of the commenters spoke in favor of the project based upon projected needs for electricity in areas of the Borough of Queens and New York City that were undergoing revitalization. The other speakers raised concerns about air pollution and the addition of emissions, health impacts such as respiratory disease, noise, loss of recreational opportunities, and odors. Some speakers expressed a preference for repowering old generating plants instead of building new facilities. A number of the speakers who opposed the project did state that KeySpan had done a good job in meeting with the community and modifying the project to address certain concerns, but argued that those efforts were not sufficient to overcome potential negative impacts. In addition to the oral comments received at this hearing, there were additional written statements that were provided and distributed subsequently to those participating in these proceedings.

On the following day, March 1, pursuant to the public notices, a joint conference concerning DEC air and water permitting issues, PSL Article X issues, and the schedule for this proceeding was held at the Public Service Commission's New York City office. An additional conference concerning air permit issues was held on April 5, 2001 at the same location. The Examiners issued an order specifying Article X issues³ on March 26, 2001, and the Associate Examiner issued a ruling

³ PSL §165(2).

holding that there were no adjudicable air and water permit issues⁴ on April 18, 2001.

Consistent with the requirements outlined in 16 NYCRR §3.9, KeySpan duly published a notice of settlement meeting on May 9, 2001. Meetings among representatives of KeySpan, DEC Staff, DPS Staff, the Staff of the Department of Health (DOH Staff), the City of New York (the City), and the Queens Borough President were held on May 17, May 23, May 31, June 6, and June 13. Draft joint stipulations, topic agreements, and certificate conditions were developed and circulated among the participants for review and comment. Following the settlement meetings, KeySpan, DEC Staff, DPS Staff, and DOH Staff developed comprehensive joint stipulations that addressed and resolved all but one issue, namely, the City's claim that it has jurisdiction to subject the applicant to additional air permitting.

Pursuant to a notice of evidentiary hearing dated June 8, 2001, a hearing was convened at the Public Service Commission's New York City office on June 14, 2001. The purpose of the hearing was to receive into the record the negotiated joint stipulations, the application and supplements, and certain additional exhibits. A record consisting of 34 exhibits (prepared testimonies were marked as exhibits) was compiled at the hearing. The parties were authorized to file post-hearing briefs and reply briefs on the sole contested issue, with the due dates to be determined by the date of issuance of the decision on interlocutory review by the Case 99-F-1314 Siting Board.⁵ Briefs were filed by KeySpan, DEC Staff, DPS Staff, and the City; the foregoing parties and DOH Staff filed replies.

⁴ 6 NYCRR §624.4(b)(5).

⁵ Case 99-F-1314, East River Generating Station, Order Concerning Interlocutory Appeals (issued June 22, 2001). The due date for initial briefs was five business days following the issuance of the order (i.e., June 29, 2001), and replies were due seven days later (July 6, 2001).

On August 7, 2001, the examiners' Recommended Decision was issued, supporting the issuance of a Certificate and DEC permits. Briefs raising exceptions or seeking clarification of the Recommended Decision were filed by KeySpan, DEC Staff, DPS Staff, and the City. Briefs opposing exceptions were not entertained.

Subsequently, the DEC Commissioner provided us with the environmental permits, as required by PSL §172(1). Therefore, we may conclude that the air and water quality impacts covered by these programs have been minimized, and make the related findings required by PSL §168(2).

The Proposed Facility

The proposed facility would consist of a combustion turbine, a heat recovery steam generator (HRSG) with a duct burner for supplemental firing, and a steam turbine. The steam produced by the HRSG would be used to drive the steam turbine generator to produce additional electricity and might also be sold as a supply to the steam distribution system of Consolidated Edison Company of New York, Inc. Selective catalytic reduction will be used to control nitrogen oxide (NO_x) emissions and an oxidation catalyst would be used to control carbon monoxide (CO) and volatile organic compounds (VOCs). A single 400-foot exhaust stack is planned and an air-cooled condenser would be used to cool exhaust from the steam turbine generator. KeySpan expects to operate at a capacity factor greater than 80% but might operate the combustion turbine at a capacity factor as low as 50%. The turbine will be fueled by natural gas and, for up to 30 days per year, low-sulfur (0.04%) kerosene, while the duct burner will be fueled exclusively by natural gas.

KeySpan proposes to use existing infrastructure at the Ravenswood site, including an adjacent electric substation, a gas transmission line, and East River wastewater discharge structures. KeySpan maintains that following operation of the

proposed facility, the combined discharge of wastewater from the newly constructed facility and the existing plant will meet the thermal discharge limits set forth in the SPDES permit for the existing Ravenswood station and will not cause the East River to violate water quality standards. The applicant proposes to use the New York City water distribution system for its water supply requirements, so no intake of East River water will be required.

THE RECOMMENDED DECISION

Required Findings

The examiners set forth the findings that we are required to make under PSL §168. Those findings are as follows:

- 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."⁶
- The nature of the probable environmental impact, 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.⁷
- 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.⁸

⁶ PSL §168(2)(a).

⁷ PSL §168(2)(b).

⁸ PSL §168(2)(c)(i).

- That the facility is compatible with public health and safety.⁹
- 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.¹⁰
- That the facility will not emit any air pollutants in contravention of applicable air emission control requirements or air quality standards.¹¹
- That the facility will control the runoff and leachate from any solid waste disposal facility.¹²
- That the facility will control the disposal of any hazardous waste.¹³
- That the facility will operate in compliance with all applicable state and local laws and associated regulations, except that the Board may refuse to apply specific local laws, ordinances, regulations, or requirements it regards as unduly restrictive.¹⁴
- 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)].¹⁵

The examiners noted that Article X allows us to grant or deny the application as filed, or certify a facility "upon

⁹ PSL §168(2)(c)(ii).

¹⁰ PSL §168(2)(c)(iii).

¹¹ PSL §168(2)(c)(iv).

¹² PSL §168(2)(c)(v).

¹³ PSL §168(2)(c)(vi).

¹⁴ PSL §168(2)(d).

¹⁵ PSL §168(2)(e).

such terms, conditions, limitations or modifications of the construction or operation of the facility as the board may deem appropriate."¹⁶

The Joint Stipulations

The joint stipulations consist of 11 separate topic agreements: air quality; surface water and aquatic resources;

¹⁶ PSL §168(2).

terrestrial ecology; soils, geology, seismology and agricultural lands; visual and cultural resources and aesthetics; traffic; noise; land use and local laws; electric transmission interconnection; gas transmission interconnection; and public interest. Each topic agreement identifies the nature of the probable environmental impacts of the proposed facility, provides proposed certificate conditions related to the topic, and discusses how the proposed certificate conditions will minimize adverse impacts as required by PSL §168. The topic agreements include stipulated facts with references to exhibits that provide the evidentiary basis for the agreements.

The examiners reviewed the topic agreements and, where pertinent, the briefs of the parties addressing the one remaining contested issue. The examiners also addressed KeySpan's motion, filed with its initial application, seeking a determination that the proposed facility has been selected pursuant to an approved procurement process. The examiners found that the joint stipulations thoroughly address all topic areas identified in PSL §168, and that the evidentiary record compiled in this proceeding is comprehensive, supports the terms of the joint stipulations, and provides a factual basis sufficient for us to determine whether the proposed facility should be certificated. The discussion that follows addresses the matters raised in the parties' briefs following the Recommended Decision.

REMAINING ISSUES

Local Laws

1. Generally

The proposed facility would, in the absence of PSL Article X, require various permits and approvals under local regulations issued by the City of New York and its agencies. Such approvals include building permits, street excavation permits, street closure permits, permits for structural welding, permits under the City Fire Code, permits for the use and supply

of water, and permits to discharge wastewater and stormwater into the sewer system. As requested by the applicant, we are exercising our authority, pursuant to PSL §172(1), to authorize the appropriate municipal agencies to issue the permits and approvals required under applicable local laws for the proposed facility. We conclude that such a process facilitates an efficient and orderly regulatory evaluation of the proposed facility, and is therefore in the public interest.¹⁷

2. New York City Air Code

a. Background

The parties to the joint stipulations expressly agreed that the proposed facility should not be held subject to the provisions of the New York City Administrative Code that would require the proposed facility to obtain an air permit from the City's Department of Environmental Protection (DEP).¹⁸ The parties were authorized to file post-hearing briefs addressing that particular stipulation.

The City filed a brief asking the examiners to recommend disapproval of that stipulation, and to recommend that we authorize the City to require the applicant to obtain a City permit. The City's position was opposed by the applicant, DEC Staff, DPS Staff, and DOH Staff.

The City's position was summarized in the Recommended Decision as follows:

- "a. The City Air Code includes a requirement that a new source of air emissions must conduct a cumulative air impact analysis (CAIA) that is 'quite different' from analyses required by DEC.

¹⁷ Inasmuch as no party has contended that any of these applicable local laws is unreasonably restrictive, there is no contested issue to be resolved under PSL §168(2)(d).

¹⁸ New York City Administrative Code, Title 24, Chapter 1, Subchapter 4, §§24-120 through 24-135 (the "Air Code").

According to the City, 'DEC requires a cumulative analysis only if significant impact levels ("SILS") are exceeded, and only for the specific pollutants that exceed those levels.' In contrast, argues the City, DEP 'requires that the analysis consider all relevant health-based NAAQS criteria pollutants.'¹⁹

- "b. Thus, the City continues, the City Air Code is a local law to which the proposed facility should be held applicable pursuant to PSL §168(2)(d), unless the Siting Board finds that compliance with that law would be unreasonably restrictive.
- "c. And therefore, the City concludes, although it does not have the authority to require a City air permit, because of the general preemption of local permitting requirements by PSL §172(1), the Siting Board should exercise its authority under that provision to delegate air permitting authority to the City."²⁰

The examiners asked the parties to address this issue in light of the decision on interlocutory review by the Case 99-F-1314 Siting Board.²¹ In that decision, the Siting Board stated as follows:

[P]ursuant to authority granted by the federal Environmental Protection Agency (EPA) under the federal Clean Water Act and Clean Air Act, the DEC determined whether air emission and water discharge permits should be issued to power plant developers subject to PSL Article X. The Board cannot issue a certificate unless it first finds that the proposed facility will not violate applicable [DEC] regulations and water and air quality standards. The DEC permits, therefore, are a prerequisite to certification.

The Siting Board must also find, as a prerequisite to issuing a certificate, that the proposed facility will minimize adverse environmental impacts (PSL

¹⁹ The City's Initial Brief, p. 4.

²⁰ Recommended Decision, p. 38.

²¹ Case 99-F-1314, East River Generating Station, Order Concerning Interlocutory Appeals (issued June 22, 2001).

§168(2)(c)(i)) and will be compatible with public health and safety (PSL §168(2)(c)(ii)). The DEC permits ensure that impacts to air and water quality are minimized and compatible with public health and safety, including imposition of appropriate control technologies and permit conditions. Consequently, the Board must accept the specific findings and conclusions of the DEC Commissioner relating to air emission and water discharge permits issued pursuant to federal delegation. In considering environmental issues that are subsumed by DEC's air and water permits, the Board must incorporate the DEC's resolution of these questions. . . .

The DEC is the expert agency with the responsibility to issue permits relating to air emissions. . . . Our responsibilities do not include consideration of issues addressed in the DEC permitting process. We may consider the issuance of permits by DEC as a basis for making the findings we are required to make under PSL §168.²²

In its brief to the examiners, the City contended that the East River decision is "readily distinguishable from the instant matter," because in that case the Siting Board refused to examine, as an Article X issue, an emission type for which there are no regulatory standards. In contrast, the City asserted, "the DEP cumulative air impact analysis models sources not modeled by the State DEC to determine whether there are localized exceedences of any health-based ambient air quality standards."²³

The examiners, while noting (but not reciting) criticisms of the City's claims about the relative thoroughness of DEC's and DEP's permitting process, relied more on the fact that after the East River decision was issued, another Siting Board addressed itself to the matter of the role of the DEC air permitting process in an Article X proceeding. That Board concluded as follows:

²² Id., pp. 13-14, footnote omitted.

²³ The City's Initial Brief, p. 14.

[T]he DEC determines what permitting issues warrant adjudication and arguments concerning such issues are ultimately considered by the DEC Commissioner alone. The DEC Commissioner's decision is final and any permits granted by the DEC Commissioner become the sole basis for all required Board findings related to such issues, including those related to predicting the probable environmental impacts, ensuring adverse environmental impacts are minimized, and evaluating whether construction and operation of the proposed facility is in the public interest. . . .

As the DEC Commissioner alone will act on matters related to air and water permits, evidence on such topics is neither relevant nor material under Article X as it will not impact any findings we will make or any conclusions we will reach in this case.²⁴

The examiners concluded that the City "would have the Siting Board authorize a duplicative review, by a delegatee under PSL §172(1), that other Boards have refused to authorize directly under PSL §168(2)(b) and (c)." The examiners went on to state that "[a] fair reading of the other Boards' recent decisions leads us to the conclusion that the Board in this case is unlikely to be inclined to reach a different decision, and we will not recommend a different decision."²⁵

The City has filed a brief on exceptions that largely reiterates the arguments it made before the examiners. Responding to the citations from the East River and Ramapo Energy orders appearing in the Recommended Decision, the City contends as follows:

The language in these cases establishes only that the Board should not revisit those issues that are addressed under the DEC permitting process. The decisions, however, do not preclude the Board from addressing local

²⁴ Case 98-F-1968, Ramapo Energy Limited Partnership, Order Concerning Interlocutory Appeals from Article X Issues Ruling (issued July 25, 2001), pp. 5-6.

²⁵ Recommended Decision, pp. 40-41.

permitting issues that are different from and supplement the DEC criteria.²⁶

b. Discussion

PSL Article X and relevant sections of the ECL recognize that DEC has been delegated the authority to issue, among other permits, the requisite air quality permit. As required by PSL §172(1), the DEC Commissioner provided such permits to the Siting Board prior to our determination whether or not to issue a certificate. With the fulfillment of the DEC Commissioner's requirement, we can make the findings required by PSL §§168(2)(b), (c)(i)-(iv), (d), and (e) relating to air and water quality matters discussed in the DEC permits, and render a final decision.²⁷

PSL §168(2)(d) provides the Siting Board with the authority to decide whether to apply any local ordinance, regulation, standard, or requirement that would otherwise be applicable, depending upon whether the local law, as applied to a proposed facility, would be unreasonably restrictive. PSL §172(1) provides the Board with the authority to decide whether necessary state permits or approvals, other than DEC permits and approvals under federally-delegated and approved environmental permitting authority, and all local permits or approvals, should (essentially) be granted by the Board as part of a certificate; or whether, instead, they should be granted by the state or local agencies who would grant those permits or approvals for

²⁶ The City's Brief on Exceptions, p. 10.

²⁷ The Siting Board's decision is final irrespective of whether the Applicant still needs to obtain related permits. Indeed, in the air quality area, the Siting Board's certificate is part of the preconstruction review under the Clean Air Act; and yet the Siting Board must determine in advance of issuing a certificate that the facility will be able to comply with Title V requirements.

non-Article X projects. In general, compliance by the sponsor of an Article X project with the substantive provisions of a local law is expected, but the municipality is not authorized to require an Article X project sponsor to obtain a permit or other approval under that local law without our authorization.

DEC prepared a draft air permit for the proposed facility, and two issues conferences concerning the draft permit were held. The City was represented by counsel at the first issues conference,²⁸ but raised no issues about any aspect of KeySpan's air permit application, including the cumulative impact analysis that is part of the environmental justice analysis included in the application for PSD conditions. No representative of the City attended the second issues conference. The associate examiner subsequently issued a ruling holding that no adjudicable air permit issues had been raised at the issues conferences.²⁹

The City was represented by counsel at the Article X prehearing conference, but did not propose, either then or in a written statement required to be filed by March 19, 2001, to litigate any Article X issues about air quality, compliance with local laws, or delegation of permitting authority.³⁰ The examiners subsequently issued an order that adopted another party's proposal to allow compliance with local laws and authorization of local permitting authority as issues that could be litigated,³¹ but the City submitted no testimony or exhibits on the May 1, 2001 due date established by the examiners.³² It

²⁸ Transcript (Tr.) at 8.

²⁹ DEC Case No. 2-6304-00024/0004 et al., Part 624 Issues Ruling (issued April 18, 2001).

³⁰ Tr. 76-77, 82-83, and 90-96.

³¹ Case 99-F-1625, Order Specifying Article X Issues (issued March 26, 2001), p. 2.

³² Case 99-F-1625, Procedural Ruling (issued March 12, 2001),

was not until over two weeks after the due date for reply briefs to the examiners that the City mailed to the examiners and parties the prepared proffered testimony of a DEP employee. The testimony purported "to demonstrate that the DEP CAIA is not duplicative of the DEC permitting analyses."³³

For the reasons set forth below, we conclude that it would be inconsistent with the public interest to authorize the City's DEP to require KeySpan's proposed facility to obtain a City air permit.

First, we find unconvincing the City's attempt to frame this issue as a matter of compliance with the substantive provisions of a local law that must be addressed pursuant to PSL §168(2)(d). The City's laws and regulations set no emission limits, nor do they contain any standard or requirement for the type of cumulative air quality impact analysis the City would have KeySpan perform.

We reject the City's attempt to blur the distinction between PSL §§168(2)(d) and 172(1). Before the examiners, the City cited two provisions of its Air Code, §§24-105 and 24-106, that it claimed establish a substantive requirement for a cumulative analysis. But those sections are merely enabling provisions establishing DEP's general authority to undertake its own studies or otherwise secure their performance.³⁴ Air Code §24-105 sets forth the powers of DEP's Commissioner and states that the Commissioner "may adopt" rules and regulations to effectuate the purposes of the Air Code. The Commissioner has not, in fact, adopted any rules or regulations establishing a requirement for a cumulative impact study. Air Code §24-106 spells out the Commissioner's authority to, among other things,

p. 3.

³³ The City's Brief on Exceptions, p. 3.

³⁴ Both sections are in Subchapter 2 of the Air Code. Permitting is governed by Subchapter 4.

"make tests, conduct hearings, compel the attendance of witnesses, and take their testimony" in the course of undertaking an investigation. The phrase empowering the Commissioner to "make or cause to be made" an investigation cannot be fairly interpreted as giving the Commissioner authority to require a third party to perform a study, as a condition of permit issuance or otherwise. And even if that phrase were interpreted as a condition for permit issuance, PSL §172(1) forbids the City to require such a condition without our express authorization.

On exceptions, the City introduces into its argument Air Code §24-125(a)(8), which provides that the DEP Commissioner shall not grant a City air permit unless an applicant "demonstrates and/or certifies to the satisfaction of the [C]ommissioner that . . . [o]peration of the equipment will not prevent the attainment or maintenance of applicable emission criteria." The City argues that this provision establishes "a specific legal requirement," and that "the CAIA is a procedure through which DEP implements a legal requirement." But the requirement, by the very terms of the Air Code, is imposed on the DEP Commissioner in the course of conducting a permitting proceeding. Clearly, the DEP Commissioner could be authorized to give KeySpan a permit under the cited provision, but the question before us, pursuant to PSL §172(1), is whether there is any need for KeySpan to be an applicant in such a proceeding. A finding by us that KeySpan's proposed facility will comply with all applicable, health-based air quality standards would not be undermined by our decision not to require the applicant's participation in a City air permit proceeding, because all applicable air quality standards (and compliance with those standards) were addressed by the DEC in its permit proceeding.

Second, as the examiners noted, the parties correctly criticized the City's claim that KeySpan's air permit application and DEC's review of the application were in any respect

deficient.³⁵ The City's generalizations about KeySpan's and DEC's analyses have been thoroughly answered, and refuted, by those parties. For example:

1. The City repeatedly claims that the proposed facility has not been subject to review for localized health impacts.³⁶ In fact, KeySpan, as part of its analysis conducted in accordance with PSD review requirements, modeled maximum air quality impacts at a total of 1,518 local ground-level receptors, 358 elevated receptors, and 100 receptors at locations where especially sensitive individuals are most likely to be found (e.g., hospitals and schools). Although the City asserts that the unique topography of New York City requires that it should be permitted to require further analyses, high-rises and other "flagpole" receptors were included in the analysis performed by KeySpan.³⁷
2. The City asserts that distance and other factors limit the effectiveness of air monitors in Queens, as opposed to receptors near the proposed facility, for measuring air quality impacts. In fact, in the cumulative analysis within the environmental justice analysis submitted to DEC as part of the PSD application, KeySpan used data from Manhattan and Brooklyn monitoring stations located closer to the proposed facility than the Queens stations to which the City refers.³⁸
3. The City asserts that the analysis it would require is "different from, and supplements," analyses required by DEC because, it claims, DEC requires a cumulative analysis only if significant

³⁵ Recommended Decision, p. 40.

³⁶ The City's contention is that "while the DEC permitting process ensures compliance with air pollution standards on a larger scale, it does not focus on the potentially serious consequences at the local level detailed by the DEP CAIA" (the City's Brief on Exceptions, p. 22).

³⁷ Exhibit 1, § 5.4.4; Exhibit 1(5B), § 7.4.4 and Appendix I; see also Exhibit 1(5A).

³⁸ Exhibit 1(5F), § 3.2.1 and Table 3-1.

impact levels are exceeded and only for the specific pollutants that exceeded those levels. In fact, in its cumulative analysis, KeySpan modeled all criteria pollutants.

4. The City implies that it would rely on distinct standards or criteria in evaluating the proposed facility, alluding to "health-based ambient air quality standards" as if they were something other than the NAAQS and NYAAQS that DEC enforces. In fact, all of the primary NAAQS standards are health-based,³⁹ as are DEC's NYAAQS standards.⁴⁰ Meanwhile, as noted by the applicant, "the City has not cited to or referenced any actual local health-based or other standards, for the simple reason that none exist."⁴¹

In short, the City failed to support its proposal to be granted permitting authority with timely-filed, supporting evidence.⁴² To the extent that the City wished to supplement or modify DEC's air quality analysis, it should have raised such

³⁹ Clean Air Act, 42 U.S.C. §7409(b).

⁴⁰ See, e.g., 6 NYCRR §257-1.1 ("Air quality standards are designed to provide protection from the adverse health effects of air contamination"); 6 NYCRR §257-2.2 (SO₂ standards; "[a]lthough plant damage to sensitive vegetation and significant metal corrosion and other effects may occur at other ambient air concentrations, the primary objective of these standards is to prevent adverse health effects"); 6 NYCRR §257-3.2(a) (particulates standards; objective is "protection from adverse health effects, taking into consideration its synergistic effects"); 6 NYCRR §257-4.2 (CO standards; objective is "[p]rotection from adverse health effects"); 6 NYCRR §257-5.2 (photochemical oxidants standards; objective includes prevention of irritation to mucous membranes); 6 NYCRR § 257-6.2 (hydrocarbon standard; objective is to inhibit health effects of photochemical smog formation); 6 NYCRR §257-7.2 (NO₂ standards; objective is protection of public health and welfare); 6 NYCRR §257-9.2 (beryllium standard; objective is prevention of chronic beryllium disease, and acute respiratory and skin problems).

⁴¹ KeySpan's Reply Brief, p 7.

⁴² PSL §166(1)(h).

issues before the DEC,⁴³ which decides air quality issues in the process of considering whether to issue air emission permits. The City failed to do so; for this reason alone, the proposal was properly rejected. The "proffer" by the City after post-hearing briefs had been filed was untimely, and the examiners properly declined to consider it or reopen the hearings to do so. The PSL directs the presiding examiner to "to expedite the orderly conduct and disposition of the hearing,"⁴⁴ and it imposes on the parties the concomitant obligation to "be prepared to proceed in an expeditious manner at the hearing so that it may proceed regularly until completion."⁴⁵ This is not to say that an issue may never be taken up outside an established schedule,⁴⁶ but the reasons for doing so should be compelling.

Third, even if we were to agree with the notion that a DEP CAIA is a "local standard or requirement which would otherwise be applicable"--and we do not--we would be constrained to conclude that KeySpan's compliance with it would be "unreasonably restrictive in view of . . . the needs of or costs to ratepayers."⁴⁷ As noted by DEC Staff, the City has not yet developed an inventory of major air emission sources in the area; for the present, a cumulative analysis along the lines sought by the City for the proposed facility cannot be easily begun or efficiently conducted.⁴⁸ Moreover, the lack of complete background information is accompanied by a lack of predefined standards of attainment. An applicant could only guess about

⁴³ 6 NYCRR §624.4(c)(4).

⁴⁴ PSL §165(2); see also PSL §167(1)(a).

⁴⁵ PSL §165(3).

⁴⁶ See PSL §165(2).

⁴⁷ PSL §168(2)(d).

⁴⁸ DEC's Reply Brief, p. 2.

what level of new emissions would trigger "non-compliance" in the view of DEP. And most importantly, there exists the possibility that our requirement of compliance with a currently undefined local air permit condition would result in a facility design that differs from the one that had been reviewed by DEC. The Siting Board in the Ramapo Energy case concluded that not conducting an additional air quality impact review by the Board would be efficient and "also practical because it avoids altogether situations in which the Board might be called upon to impose conditions or restrictions that would conflict in any manner with those established by the DEC Commissioner (another state agency)."⁴⁹ For the same reason, we are not inclined to authorize an additional review under PSL §172(1).

For the foregoing reasons, we find that authorizing the City to require KeySpan to obtain an additional air permit from the City's DEP (i) is unnecessary for the protection of the health, safety, and welfare of the public, because the proposed facility would comply with all applicable, health-based air quality standards (as determined in DEC's air permit proceeding), and (ii) would give rise to unreasonably costly, duplicative, and prolonged regulatory reviews.

Approved Procurement Process

Accompanying KeySpan's application was a "motion for declaratory ruling" to the effect that the proposed facility has been selected pursuant to an approved procurement process. KeySpan pointed out in the motion that the state Public Service Commission (PSC) has held that "[c]ompetition in the electricity supply market is an approved procurement process because it is an electric capacity procurement process approved as reasonably consistent with the 1998 State Energy Plan." The PSC went on to

⁴⁹ Case 98-F-1968, supra, Order Concerning Interlocutory Appeals from Article X Issues Ruling, p. 6.

state that it is up to case-specific Siting Boards to determine whether particular major electric generating facilities are selected pursuant to an approved procurement process that is part of the emerging competitive electricity generation market.⁵⁰

KeySpan's application states that (1) the proposed facility will operate as a merchant plant in competitive electric markets, and that construction and operation of the facility will result in increased competition and encourage lower electric rates within the state's electric industry.⁵¹ KeySpan's motion states in addition that the applicant will not seek to recover any costs from ratepayers under the Public Service Law, nor will it operate as a qualifying facility and seek a contract under the Public Utility Regulatory Policies Act of 1978. Thus, KeySpan argues, no economic risk will be borne by electricity consumers, as all such risks associated with the construction and operation of the proposed facility will be borne by the applicant.

KeySpan's motion was unopposed by any party. The examiners concluded that "[a]lthough the competition that has emerged in electricity markets has been less robust than might have been envisioned, the fact remains that the addition of capacity in a geographical market, such as New York City, with persistently tight peak-period reserve margins should improve market conditions over time, especially if suitable wholesale market price mitigation measures are in place in the near term."⁵² The examiners went on to note that "even with those

⁵⁰ Case 99-E-0089, Petition of Ramapo Energy Limited Partnership of a Declaratory Ruling, Declaratory Ruling Concerning Approved Procurement Process (issued August 25, 1999).

⁵¹ Exhibit 1, Volume I, §1.4.

⁵² Recommended Decision, p. 42, citing Federal Energy Regulatory Commission (FERC) Docket No. EL01-45-001 et al., Consolidated Edison Company of New York, Inc., 96 FERC ¶61,095 (2001) and FERC Docket No. ER01-2076-000, New York Independent System Operator, Inc., 95 FERC ¶61,471 (2001).

regulatory measures in place, the risk of recovering the costs of the proposed facility's construction and operation costs will still be borne by the applicant."⁵³

In view of the foregoing, we find that the declarations in KeySpan's motion and the underlying material in the application support a finding that the applicant's proposed facility was selected pursuant to an approved procurement process.

⁵³ Id.

Project Monitoring

In a letter submitted on the due date for briefs on exceptions, DEC Staff expresses a concern that "a lack of specificity [in the draft Certificate] on the subject of monitoring for both construction and initial operation of the proposed Ravenswood facility . . . may lead to the absence of regulatory oversight during crucial times."⁵⁴ DEC Staff continues as follows:

Presently, the draft Certificate obligates [KeySpan-Ravenswood, Inc.] to submit various compliance filings to provide the Board and the agencies with more specific information on how and when the facility will be constructed. Without an obligation to submit regular monitoring reports, the agencies will not have a mechanism in place to determine whether construction is proceeding in accordance with those plans.⁵⁵

The proposed facility will be constructed and operated under permits obtained from a number of different agencies, including DEC, and the Certificate will not preclude any of those agencies from providing for their own monitors. In addition, certificate conditions pertinent to the concerns raised by DEC Staff were approved by the Siting Board in Case 97-F-1563.⁵⁶ We have modified the draft Certificate proposed in the joint stipulations to include Certificate Condition II.F, which is comparable to the conditions adopted in Case 97-F-1563 and requires the submission of an environmental compliance plan to ensure (1) implementation and maintenance of required environmental mitigation measures; (2) compliance with the terms of the Certificate; and (3) compliance with applicable federal,

⁵⁴ DEC Staff's Letter, dated August 17, 2001, p. 1.

⁵⁵ Id.

⁵⁶ Case 97-F-1563, Athens Generating Company, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued June 15, 2000), Conditions IV.D and IV.E.

CASE 99-F-1625

state, and local statutes, ordinances, rules, and regulations.

STATUTORY DETERMINATIONS

We find and determine that:

1. On the basis of the findings and determinations in this Opinion and the examiners' Recommended Decision, the proposed facility was 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 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 examiners' Recommended Decision [PSL §168(2)(b)].

3. For the reasons set forth the examiners' Recommended Decision, the proposed facility, if constructed and operated in accordance with all the Certificate conditions set forth in Appendix B of this Opinion 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(2)(c)(i)].

4. For the reasons set forth in this Opinion and the examiners' Recommended Decision, the proposed facility, if constructed and operated in accordance with all the Certificate conditions set forth in Appendix B of this Opinion 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 Opinion and the examiners' Recommended Decision, the proposed facility, if constructed and operated in accordance with all the Certificate conditions set forth in Appendix B of this Opinion and the terms

of permits issued by other agencies, will not discharge any effluent in contravention of DEC standards [PSL §168(2)(c)(iii)].

6. For the reasons set forth in this Opinion and the examiners' Recommended Decision, the proposed facility, if constructed and operated in accordance with all the Certificate conditions set forth in Appendix B of this Opinion and the terms of permits 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 Opinion and the examiners' Recommended Decision, the proposed facility, if constructed and operated in accordance with all the Certificate conditions set forth in Appendix B of this Opinion and the terms of permits issued by other agencies, will operate in compliance with all applicable state and local laws and associated regulations [PSL §168(2)(d)].

9. For the reasons set forth in this Opinion and the examiners' Recommended Decision, the proposed facility, if constructed and operated in accordance with all the Certificate conditions set forth in Appendix B of this Opinion and the terms of permits issued by other agencies, will be in the public interest, considering the environmental impacts of the proposed facility and the reasonable alternatives examined [PSL §168(2)(e)].

We therefore grant to KeySpan-Ravenswood, Inc., a Certificate of Environmental Compatibility and Public Need for the construction and operation of a 250 megawatt natural gas-fired electric and steam cogeneration facility at the Ravenswood generating station site, 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-1625 orders:

1. The Recommended Decision of examiners Robert R. Garlin and Helene G. Goldberger, 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 KeySpan-Ravenswood, Inc. (the applicant) for the construction and operation of a 250 megawatt gas-fired electric and steam cogeneration facility on the Ravenswood generating station site in 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(s) 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(s) may file comments on the compliance filing within 15 days of the service date of the filing.

4. This proceeding is continued.

By the New York State Board
on Electric Generation Siting
and the Environment for
Case 99-F-1625

(SIGNED)

JANET HAND DEIXLER
Secretary to the Board

APPEARANCES

FOR KEYSpan-RAVENSWOOD, INC.:

Arnold & Porter (by Michael B. Gerrard and Andrew S. Ratzkin, Esqs.), 399 Park Avenue, New York, New York 10022.

FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

Jennifer Hairie, Esq., 625 Broadway, Albany, New York 12233.

FOR THE NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE:

Jean A. McDonnell, Esq., Three Empire State Plaza, Albany, New York 12223.

FOR THE NEW YORK STATE DEPARTMENT OF HEALTH:

A. Kevin Gleason, Esq., 547 River Street, Room 330, Troy, New York 12180.

FOR THE NEW YORK POWER AUTHORITY:

James D. Lyons, Esq., 123 Main Street, White Plains, New York 10601

FOR THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION:

Richard B. Miller and Jay L. Kooper, Esqs., 110 William Street, New York, New York 10038

FOR THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Joseph W. Ketas, 59-17 Junction Boulevard, 19th Floor, Corona, New York 11368

FOR THE OFFICE OF PRESIDENT, BOROUGH OF QUEENS:

Hugh B. Weinberg, Esq., 120-55 Queens Boulevard, Kew Gardens, New York 11424

FOR CITIZENS HELPING ORGANIZE A KLEANER ENVIRONMENT:

Mario D'Elia, 28-21 46th Street, Astoria, New York 11103

APPEARANCES

FOR THE NATURAL RESOURCES DEFENSE COUNCIL:

Katherine Kennedy, Esq., 40 West 20th Street, New York,
New York 10011

FOR COMMUNITY ENVIRONMENTAL CENTER, INC.:

Dr. Donald Dodelson, 43-10 11th Street, Long Island
City, New York 11109

FOR THE EAST RIVER ENVIRONMENTAL COALITION:

Daniel Gutman, 407 West 44th Street, New York, New York
10036

FOR KODA CONSULTING, INC.:

Richard J. Koda, 409 Main Street, Ridgefield,
Connecticut 06877

PRO SE:

Beth Cullinane, 10-31 48th Avenue, Long Island City,
New York 11101

APPENDIX B

CERTIFICATE CONDITIONS

TABLE OF CONTENTS

I.	Project Authorization	1
II.	General Conditions	1
III.	Construction Conditions – General	3
IV.	Construction – Energy Facility	5
V.	Construction – Gas, Waterline and Electrical Interconnects	5
VI.	Operation and Maintenance	7
VII.	Decommissioning	8
VIII.	Traffic	8
IX.	Visual and Cultural Resources and Aesthetics	9
X.	Air Quality	10
XI.	Noise	11
XII.	Soils, Geology, Seismology and Agricultural Lands	13
XIII.	Land Use and Local Laws	13
XIV.	Surface Water and Aquatic Resources	14
XV.	Terrestrial Ecology.. ..	15

CERTIFICATE CONDITIONS

I. Project Authorization

A. The Certificate Holder is authorized to construct and operate the Ravenswood Cogeneration Facility (“Facility”), including associated on-site interconnects within the Proposed Development Site described in Figure 3-1 of 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 Prevention of Significant Deterioration (“PSD”), New Source Review, Clean Air Act (“CAA”) Title IV (acid rain), CAA Title V (major stationary source), and any other approvals, land easements, and rights-of-way that may be required for this Facility and which the Board is not empowered to provide.

C. The Facility shall be designed to operate and be operated in compliance with all applicable federal and state laws and regulations. The Facility shall be designed to operate and be operated in compliance with all applicable local laws and regulations. The Certificate Holder will provide, as part of a Compliance Filing, a Final Site Plan to demonstrate conformance with applicable provisions of the New York City Zoning Resolution..

D. The Certificate Holder is authorized to construct and operate the Energy Facility comprised of the components described in Section 3.0 of the Application, provided, however, that in the event that the Certificate Holder does not reach agreement with Con Edison regarding the export of steam, the Certificate Holder will not be required to construct or operate components relating to the export of steam.

E. The Certificate Holder is authorized to connect to the existing Con Edison 30-inch natural gas transmission main located on the Con Edison easement at the Ravenswood site, as described in Section 3.5.6 of the Application and as shown on Figures 3-3 and 3-7 of the Application.

F. The Certificate Holder is authorized to add a new breaker (**5W**) to the Con Edison Rainey Substation 345kV ring bus configuration, and to connect a 345kV solid dielectric cable to the 345kV terminus, created by the addition of the new **5W** breaker, to carry the electricity generated by the Facility to the Rainey Substation.

II. General Conditions

A. The plant and/or plant site shall be constructed, operated, maintained, restored and monitored as set forth in the Application and other submissions, and as indicated by the Certificate Holder in stipulations and agreements, if any, during this proceeding, except as these may be waived, modified or supplemented by the Siting

Board, and except as regarding conditions contained in the SPDES and PSD Permits issued by the New York State Department of Environmental Conservation (“NYSDEC”).

B. The Certificate Holder shall submit a schedule of all plans, tilings and other submissions to the Board as required by these Certificate Conditions, and shall coordinate the schedule and document requirements 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. Prior to completion of construction of the Facility, the Certificate Holder shall meet with the New York City Police Department to plan how the Facility site staff will coordinate with the existing NYPD services.

E. Local New York City Fire Department companies shall be given periodic training tours of the Facility, both during construction and operation.

F. 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 Plans shall include:

- a. 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;
- b. a certification confirming the independence of the inspector(s) from the Certificate Holder; and certifying the authority of the inspector(s) to “stop work” in cases of non-compliance or imminent environmental or safety hazard;
- c. provision for deployment of more than one inspector in the event that two or more major field operations are undertaken simultaneously, such that at least one inspector shall be assigned to each construction area and no inspector shall be assigned to more than two active construction areas at any one time.
- d. 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);

- e. a procedure setting forth how the Certificate Holder will respond to and correct problems found by the inspector(s);
- f. a schedule for monthly environmental audits during construction and submission of audit checklists, together with a written explanation of problem(s) encountered, if any, and the actions taken to correct the problem(s) signed by the auditor(s) and an authorized representative of the Certificate Holder, to DPS Staff, DEC Staff, and local agency and/or building inspectors; and
- g. a schedule for submission of annual audits during the first two years of operation of the Facility to DPS, DEC, and appropriate local agencies.

III. Construction Conditions - General

A. These Certificate Conditions shall be made contract requirements for the construction contractors as applicable, to the extent commercially feasible.

B. Appropriate construction personnel shall be trained in environmental compliance matters. During all construction times, the authority to stop construction shall be conferred on at least one person with appropriate environmental degree(s) and/or experience.

C. The Certificate Holder shall describe in a licensing package a community liaison program designed to maintain communication with the surrounding communities prior to and during construction. This plan shall include a dedicated phone line and the maintenance of a complaint log. The community liaison program shall continue for a period of six months after the Facility becomes operational.

D. To the extent practicable, construction work shall take place between 7:00 a.m. and 6:00 p.m. For certain construction phases and activities, such as initial plant start up and final commissioning of the Facility, concrete pours and low pressure steam blows, additional work hours may be necessary. Nothing herein shall preclude the Certificate Holder from making necessary arrangements for the extension of work hours with appropriate authorities of the City of New York.

E. The Certificate Holder shall comply with federal regulations limiting truck noise (40 CFR § 205).

F. A temporary vent silencer shall be installed on the steam-blow vent during pipe clean out. High pressure steam blows shall take place only between 7:00 a.m. and 6:00 p.m. Low pressure steam blows, which are less noisy, may be conducted continuously over a period of days.

G. If required during construction, blasting shall be done using best practice techniques to minimize noise and shall be conducted only between 7:00 a.m. and 5:00 p.m.

H. Equipment installation and assembly shall be performed to the fullest extent possible within the building shell to contain noise emissions.

I. 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.

J. If dust palliatives other than water are required, only those that are listed on the New York State Department of Transportation's Approved Materials List shall be used, in accordance with the associated conditions for use of those chemicals.

K. 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 only at facilities authorized to accept such waste, unless the material is otherwise exempt from regulation as a solid waste under 6 NYCRR Part 360 or the applicable regulations of the state where the waste is to be disposed, and, to the extent applicable, in accordance with the terms of any Voluntary Clean-Up Agreement entered among the Certificate Holder and the NYSDEC. All unused, excavated materials and/or construction debris shall be removed within a reasonable time upon completion of construction and placed at facilities authorized to accept such waste, unless the material is otherwise exempt from regulation as a solid waste under 6 NYCRR Part 360 or the applicable regulations of the state where the waste is to be disposed.

L. The Certificate Holder shall submit a Grading and Drainage Plan and a Soil Erosion and Sediment Control Plan, as provided in Appendix 3D of the Application. In addition, the Certificate Holder will complete and file, as part of the Compliance Filing, a Notice of Intent to comply with the terms of the NYSDEC's SPDES General Permit for Storm Water Discharges During Construction, as provided in Section 1.9.1 of the Application.

M. The Certificate Holder shall control potential emissions from construction related activities through use of dust and emissions controls, proper handling of dewatering control effluent, proper disposal of excavated soil, paving of exposed areas, and the adoption of an Environmental Health and Safety Plan, as discussed in Section 6.5.2 of the Application.

IV. Construction – Energy Facility

A. The Facility shall be constructed of architectural materials that approximate in appearance the existing Ravenswood Generation Station, and housed in a metal-clad building, painted in a metallic-silver color similar to the existing Ravenswood plant. The new stack will be marked in alternating red and white bands at the top, similar to the existing Ravenswood plant stacks. The pattern of colors, starting from the red at the top, will be red, white and red. The balance of the stack, down to the base, will be unpainted concrete. A paint system will be as manufactured by Sherwin Williams, or approved equal, as follows: (i) Red shall be “Safety Red,” S W408 1, LRV 11%; and (ii) White shall be “Ultra White,” LRV 88%, “Brilliant White,” LRV 86%, or “Pure White,” LRV 85%. An architectural drawing and detail plan will be submitted to the Siting Board as part of the Compliance Filing. All paints shall comply with DEC regulations for VOC content contained in 6 NYCRR Part 228, in particular Section 228-7 (table of limits for each product).

B. The Certificate Holder shall design the Facility to withstand the expected effects of a seismic event in accordance with the New York State Building Code for regions identified as Seismic Zone C with an effective peak acceleration determined to be 0.15 g, and in accordance with reference standard RS 9-6, as provided in Sections 6.2.3 and 6.5.1 of the Application.

V. Construction – Gas, Waterline and Electrical Interconnects

A. The Certificate Holder shall attempt to complete negotiations on all necessary contractual arrangements associated with its electric, gas and water interconnections as soon as practicable, and agrees to accept the assistance of the staff of the New York State Department of Public Service (“NYSDPS”) to mediate any disputes that **cannot** be resolved directly between the Certificate Holder, the New York City Department of Environmental Protection and Con Edison and its successors, or any other parties.

B. Electric **Interconnections**

1. The Certificate Holder is authorized to construct and shall design, engineer, and construct the transmission interconnection 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 best engineering practice of Con Edison, the NYISO, Con Edison, 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. Specific requirements shall be those required by the NYISO Operating Committee in the approved SRIS, the Class of 2001

annual transmission reliability study, and by any interconnection or facilities modification agreement negotiated with Con Edison, NYSRC, and any successor Transmission Owners (as such term is defined in the New York Independent System Operator Agreement-Composite Reflecting Commission Orders Through July 13, 2000, as updated (“NYISO Agreement”). Copies of the studies and agreements will be filed with the New York State Public Service Commission (“NYSPSC”).

2. The Certificate Holder shall operate the Facility 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 Facility 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 NMPC or NYPA, 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, NYSPSC, the Federal Energy Regulatory Commission, or in any other appropriate forum.
3. The Certificate Holder shall work with Con Edison, and any successors, to ensure that, with the addition of the Facility affected transmission lines will have relay protection system equipment and appropriate communication capabilities to ensure that operation of the transmission system is adequate under NPCC “Bulk Power System Protection Criteria,” and meets the protection requirements at all times of the NYSRC, NYISO, and Con Edison, and successor Transmission Owners (as defined in the NYISO Agreement). The Certificate Holder shall be responsible for the costs, together with associated expenses incurred, to **verify** that the relay protection system is in compliance with applicable NPCC criteria.
4. The Certificate Holder shall file a copy of the following documents with the Board and with the NYSPSC: (1) the SRIS approved by the NYISO Operating Committee; (2) any requirements imposed by the NYSRC; (3) Class of 2001 annual transmission reliability studies; (4) all facilities agreements and interconnection agreements with Con Edison, and successor Transmission Owners (as defined in the NYISO Agreement) specific to the Facility.
5. The Certificate Holder agrees to construct and operate the Facility and associated electric transmission interconnection facilities in accordance with applicable laws, regulations, and requirements as

specified in the conditions for approval of the Facility set forth in Section V.B. 1-4, above.

6. If at any time the Facility fails to meet any reliability requirement of Con Edison, NYISO, NPCC, NERC, NAERO or any successor Transmission Owners (as defined in the NYISO Agreement), the Certificate Holder shall notify the NYISO and the NYSPSC immediately in **wiriting** upon obtaining such knowledge.

C. Gas Interconnections

1. The natural gas interconnection facilities will include a filter/scrubber, valves, regulators, an ultrasonic flow meter and gas regulating station, a combustible gas detection system, and sound attenuation enclosures for gas compressors to assure public safety and reliable service.
2. Gas supply will be transported to the Facility from interstate delivery points through New York Facilities System pipelines owned and operated by Con Edison. Applicant will negotiate a gas transportation agreement and comply with the applicable Con Edison gas transportation tariff for delivery of gas to the Facility. After execution, the agreement will be filed with the New York State Public Service Commission.

VI. Operation and Maintenance

A. The Certificate Holder shall submit a Preliminary Spill Prevention Control and Countermeasures Plan, as provided in Section 1.9.1 of the Application.

B. Certificate Holder will continue to maintain a telephone hotline to receive and respond to complaints.

C. The Certificate Holder shall perform post-construction monitoring to demonstrate that, based on noise measurements and acoustic observations, the operating plant complies with the acoustic design goals contained in the Application. Prior to conducting the noise monitoring program, the Certificate Holder will develop a monitoring protocol and submit it to the NYSDPS and NYSDEC for approval.

D. The Certificate Holder shall obtain a CAA Title V Operating Permit, a Title IV Acid Rain Permit, and a PSD permit, and operate the Facility in accordance with their terms. The Facility will require modification of the SPDES permit issued by DEC under Article 17 (6 NYCRR Part 750) for the discharge of wastewater and will operate in accordance with the effluent limitation imposed thereunder.

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

VII. Decommissioning

A. Prior to commencing any construction, other than research, surveying, boring or related activities necessary to prepare final design plans and permitting, the Certificate Holder shall file with the Secretary a parent guarantee from **KeySpan** Corporation to assure funding for the restoration of any disturbed areas in the event that the Facility is not completed. If at any time before the completion of the Facility, either (1) the tangible net worth of **KeySpan** Corporation falls below \$1 billion; or (2) if **KeySpan** Corporation experiences a downgrading, or is placed on a credit watch for a possible downgrading of its Senior debt below investment grade, then the Certificate Holder shall promptly notify the Siting Board in writing of such event, and shall provide some other or additional financial assurance as might be required by the Board to demonstrate its ability to restore the site.

B. The Certificate Holder shall file with the Secretary evidence that sufficient funds are available to cover the cost of decommissioning, dismantling, closing, or reusing the plant when it has reached the end of its service life. Such evidence shall be in the form of a performance bond, escrow, letter of credit or other appropriate financial instrument, or satisfaction of a financial test, with appropriate renewal provisions. The Certificate Holder shall not commence commercial operation of the Facility until the Public Service Commission has determined that the financial instrument provided by the Certificate Holder is appropriate and sufficient to cover the cost of decommissioning.

VIII. Traffic

A. The Certificate Holder shall periodically consult with the New York City Department of Transportation (“NYCDOT”) about traffic conditions near the Ravenswood Generating Station. After such consultation and/or if requested by the Department, the Certificate Holder shall fund a uniformed traffic control officer, as necessary to facilitate traffic at the intersection of 40th Avenue and Vernon Boulevard during the morning peak period.

B. To the extent required in connection with the delivery of oversized facility components, Certificate Holder or its suppliers will obtain any necessary permits from the NYCDOT.

C. The normal construction shift for the Facility will be from 7:00 a.m. to 3:00 p.m. to avoid the peak morning commuter hour of **7:45** a.m. to **8:45** a.m. and only partially overlap the peak afternoon commuter hour of 3: 15 p.m. to 4: 15 P.M.

D. Acceptable LOS ratings of **"D"** or better will be maintained at each local intersection approach, except at the westbound approach at the intersection of **40th** Avenue and Vernon Boulevard, which is already rated LOS F. The conservative analysis did not consider the operational improvements that will be provided by nearby **traffic** control signals.

IX. Visual and Cultural Resources and Aesthetics

A. The Certificate Holder shall submit as part of its Compliance Filing a detailed Lighting Plan. The Plan shall include: measures to prevent off-site glare by using full-cutoff fixtures on all exterior area lights; use of task-lighting of component areas as feasible; a demonstration that illumination design conforms to applicable worker safety requirements for work area lighting while minimizing off-site lighting impacts; and a report on the feasibility of synchronizing flashing lights on new and existing stacks.

B. A lighting system with flashing lights similar to the existing stack lighting system, and, if feasible, synchronized with the existing stack lighting shall be installed on the new stack in accordance with FAA requirements.

C. The Facility shall be constructed using architectural materials that approximate in appearance the existing Ravenswood Generating Station. The main building facade shall be painted in a metallic-silver similar to the existing Ravenswood Generating Station. The stack shall be marked in alternating red and white bands at the top, similar to the existing Ravenswood plant stacks. The balance of the stack, down to the base, will be unpainted concrete.

D. The Certificate Holder shall follow its Unanticipated Discovery Plan submitted as Appendix 11A to its Application to provide protection in the event that cultural resources are encountered during construction.

E. Visual impacts will be minimized by the following measures:

1. consolidating Facility facilities and electric and gas interconnections at an existing power plant site in an area with other power plants;
2. locating the Facility powerhouse and stack directly adjacent to the existing Ravenswood Generating Station powerhouse and stack; and
3. minimizing **offsite** lighting impacts through use of task lighting, lighting fixture shields and non-continuous and directional lighting.

F. Certificate Holder will request assistance from the New York City Department of Parks and Recreation in evaluating the feasibility of planting additional trees around the playground at P.S. 76 and will consult with the school regarding location and placement. Following such consultations, Certificate Holder will report on any resulting agreement or understanding among Certificate Holder, the Department of Parks and Recreation and P.S. 76 in a Compliance Filing. Based on the results of the feasibility evaluation, **KeySpan** will commit to the funding of the planting of additional street trees on 9th Street along the playground at P.S. 76.

G. Aesthetic and urban design impacts will be minimized by using low-glare, architectural materials and finishes that match the existing Ravenswood Generating Station.

X. Air Quality

A. The Certificate Holder shall operate the Facility pursuant to the air permits issued by the DEC under Article 19 (6 NYCRR Part 200 et seq.), PSD regulations (40 CFR sections 52.21 and 124), and the nonattainment New Source Review program (6 N.Y.C.R.R. Part 23 1-2).

B. The Certificate Holder shall control potential emissions **from** construction related activities through limitation of exposed soils, use of covered trucks for transport of soils and other dry materials, limited storage of spoils on the construction site, final grading and protection of exposed areas.

C. The Facility will install controls to achieve the lowest achievable emission rate (“LAER”) for **NO_x**, in the form of selective catalytic reduction and dry low-NO_x combustors. In addition, the Certificate Holder has purchased 185 tons of **NO_x** emission reduction credits, thereby removing **NO_x** from the air at a rate of 1.3 :1.

D. The Facility will install controls to achieve LAER for **VOCs**, in the form of dry low-NO_x combustors and an oxidation catalyst. In addition, the Certificate Holder has purchased 145 tons of VOC emission reduction credits, thereby removing **VOCs** from the air at a rate greater than 1.3 :1.

E. The Facility will install controls to achieve LAER for CO, in the form of an oxidation catalyst.

F. The Facility will utilize best available control technology (“BACT”) to control emissions from the combustion turbines as follows:

1. **SO₂** and **H₂SO₄** BACT will be achieved through use of natural gas as the primary fuel, which has a fuel sulfur content of 2.5 grains/100 scf. Low-sulfur distillate (0.04% sulfur by weight) will be used as a back-up fuel.
2. PM BACT will be achieved through use of clean burning fuels natural gas (primary fuel) and low-sulfur distillate (back-up fuel) and good combustion practices.

G. The Facility will comply with opacity limits by firing primarily natural gas in the turbines and by using state of the art combustion technology employing ultra low sulfur distillate back-up fuel. Opacity will be monitored by a Continuous Opacity Monitor (COM).

H. The Facility will operate in compliance with National and New York State Ambient Air Quality Standards and PSD increments for criteria pollutants.

I. The Facility will comply with New Source Performance Standards (“NSPS”) for stationary gas turbines (40 C.F.R. Part 60, Subpart GG), which impose emission limits for NO_x and SO₂, and the NSPS for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978 (40 C.F.R. Part 60, Subpart Da), which impose emission limits for NO_x, SO₂ and particulate matter.

J. The Facility will comply with non-attainment new source review requirements (6 NYCRR Subpart 23 1-2).

K. The Certificate Holder has submitted an application for a Clean Air Act Title V Operating Permit and shall operate the Facility pursuant to that permit when issued, ensuring compliance with Title V standards.

L. The Certificate Holder has submitted an application for a Clean Air Act Title IV Acid Rain Permit and shall operate the Facility pursuant to that permit when issued, ensuring compliance with the Title IV standards.

M. The Facility’s emissions of non-criteria pollutants will result in predicted air concentrations that are well below state regulatory and health risk-based benchmark concentrations.

N. The Facility will utilize aqueous ammonia at a concentration of less than 20%, which is below the threshold for Section 112(r) of the Clean Air Act that would require a risk management plan.

O. Low sulfur distillate oil will be used only as a backup fuel (for the CTG only).

XI. Noise

A. Construction noise sources shall be mitigated by proper equipment maintenance and the use of appropriate mufflers, as provided in Section 12.5.2 of the Application.

B. The Certificate Holder will carry on construction activities outside the walls of buildings whose exterior walls and roof are substantially complete between the hours of 7 a.m. and 6 p.m. (the “Daytime”), as required by Section 24-227 of the Noise Code. Construction activities may be conducted within the interior of buildings during other hours except that during such periods the Certificate Holder shall not conduct or allow to be conducted activities that will cause noise considered excessive under City standards at nearby sensitive receptors, including, but not limited to, heavy rigging operations, debris loading or removal or hauling by trucks, jack hammering, or external wall installation. Deliveries related to construction activities shall take place during the Daytime, except that, to the extent required to accommodate oversized delivery pursuant

to NYCDOT permit, the Facility shall be exempt from restrictions limiting delivery to Daytime.

C. Specific noise control measures shall be incorporated in the design of the Facility to achieve the required noise design goals. These measures may include:

1. Low-noise air-cooled condenser unit.
2. Tuned HRSG stack silencers.
3. Acoustically treated turbine building including acoustical insulation on the interior and acoustic louvers on any openings.
4. Enclosures for the gas compressing station and circulating pumps.

D. The Facility will be designed to meet the specific design goals at the various sensitive receptors in accordance with the Noise Code (residential nighttime standard of 55 **dB**A), the CEQR Technical Manual (increase of 3 **dB**A or less above late night **L**₉₀ levels) and the Modified CNR analysis (CNR rating at any residential area of “C” or better). In addition, the Facility will be designed to meet the octave band limits specified in the New York City Zoning Resolution, and the noise emitted from the Facility will comply with the New York City Zoning Resolution limits.

E. The Certificate Holder shall comply with federal noise level requirements for employees during construction and operation of the Facility as established by OSHA (40 CFR § 1910.95).

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 goals contained in the Application. 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. If requested, the Certificate Holder shall consult with neighbors regarding noise issues related to the Facility.

H. The Facility will be designed such that operational noise levels will be below 55 **dB**A at any residential zones and below 70 **dB**A at any industrial zones.

I. During Facility operation, daytime and night-time noise levels at the property line of residential and school receptors will be limited to 55 **dB**A, in compliance with the requirements of the Noise Code.

XII. Soils, Geology, Seismology and Agricultural Laws

A. Construction will be conducted in accordance with an approved Remedial Action Work Plan for the Voluntary Cleanup Agreement (“VCA”) to address the management and disposal of materials generated during excavation activities.

B. The Certificate Holder will design the Facility to withstand the expected effects of a seismic event in accordance with the New York State Building Code for regions identified as Seismic Zone C with an effective peak acceleration determined to be 0.15g.

C. An Environmental, Health and Safety Plan will be developed to prevent potential contaminant exposure and migration during construction of the Facility.

D. The Certificate Holder will design the Facility to withstand the expected effects of a seismic event with an effective peak acceleration of 0.15 g.

E. Facility construction and blasting, if required, will proceed according to applicable regulations, including the Bureau of Alcohol, Tobacco and Firearms, Occupational Safety and Health Administration, Federal Fire Code, New York State Code 39, the New York City Building Code and the Rules of the City of New York..

F. Storage of explosives, if any, will comply with New York State Department of Labor requirements. Transportation of any explosives will comply with New York State Department of Transportation requirements. A delivery routing plan will be reviewed with the local New York City officials prior to delivery of any explosive materials.

XIII. Land Use and Local Laws

A. The Facility shall be designed to operate and be operated in compliance with all applicable federal and state laws and regulations. The Facility shall be designed to operate and be operated in compliance with all applicable local laws and regulations.

B. Before commencing any construction, other than research, surveying, boring or related activities necessary to prepare final design plans and permitting, the Certificate Holder shall post a parent guarantee, to assure the restoration of any disturbed areas in the event the Facility is not completed. The type of construction security shall be stated by the Certificate Holder in a Compliance Filing.

C. The Certificate Holder will provide, as part of a Compliance Filing, a Final Site Plan to demonstrate conformance with applicable provisions of the New York City Zoning Resolution.

D. The City of New York has determined that the provisions of §§ 44-52 through 44-58 of the New York City Zoning Resolution, pertaining to off-street loading berths, do not apply to electric generation facilities in general or the Facility in particular.

Accordingly, the Certificate Holder need not seek from the Siting Board any waiver or exemption from these requirements.

XIV. Surface Water and Aquatic Resources

A. The Facility will obtain and operate pursuant to the SPDES permit modification issued by DEC under Article 17 (6 NYCRR Part 750) for discharge of wastewater, and will operate in accordance with the effluent limitations imposed thereunder.

B. The Facility will discharge stormwater and low volume waste water to the existing Ravenswood Generating Station discharge canal pursuant to a modification of the Ravenswood SPDES permit to accept those wastes.

C. The Facility will utilize erosion prevention best management practices during construction including a system of straw bale dikes and silt fences as described in the Application.

D. The Certificate Holder will submit a Spill Prevention Control and Countermeasures (“SPCC”) plan as part of the Compliance Filing, to assure that water quality remains protected as required by the Clean Water Act and the Environmental Conservation Law.

E. The Certificate Holder will submit a Notice of Intent to comply with the terms of NYSDEC’s SPDES General Permit for Storm Water Discharges During Construction as part of the Compliance Filing.

F. All chemical storage areas will be diked and designed to contain a minimum of 110% of the largest tank in the diked group or a minimum of 110% of a single tank/dike system, with a minimum freeboard of 6 inches, and will use containers that comply with all applicable requirements.

G. An Environmental, Health and Safety Plan (EHS Plan) will be developed to detail the engineering controls and other procedures that will need to be implemented to minimize contaminant exposure and migration during excavation and construction. If plant construction requires dewatering of certain excavations, then the EHS Plan will include proper handling of dewatering effluent, including testing, possible treatment, and discharge. Effluent will be discharged through an existing SPDES permitted outfall in accordance with the applicable SPDES permit, or managed in an appropriate manner based on the physical and chemical characteristics of the discharge in accordance with all applicable federal, state and local requirements.

H. Wastewater effluents discharged through the existing discharge canal will be subject to a SPDES permit and will therefore comply with all applicable thermal and chemical water quality standards.

I. Stormwater from the Facility will be directed to the existing Ravenswood Generating Station discharge canal, and will comply with all applicable water quality standards as per the Ravenswood Generating Station SPDES permit.

J. The Certificate Holder will obtain the necessary SPDES permit modification from the DEC and approvals granted by the Siting Board including, if necessary, CWA § 401 State Water Quality Certification.

K. The Certificate Holder's SPCC Plan that covers potential oil spills and chemical releases will demonstrate compliance with environmental and public health and safety laws and regulations.

L. The Certificate Holder's erosion and sediment control best management practices will be designed, implemented and maintained in accordance with DEC Erosion and Sediment Control Guidelines.

M. The Certificate Holder will obtain all necessary permits and approvals and design the Facility so as to comply with all substantive requirements of the NYCDEP with respect to any discharges to the POTW and for any potable water withdrawals from the New York City water supply system.

XV. Terrestrial Ecology

The following conditions are included in settlement agreements for other topics but are noted here as they are protective of terrestrial resources:

A. The Certificate Holder shall use best management practices to control erosion and sedimentation.

B. The Certificate Holder shall minimize the amount of fugitive dust that will occur during construction.