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brief

December 18, 2001

VIA HAND DELIVERY

Honorable Janet Hand Deixler
Secretary
New York State Board on Electric
Generation Siting and the Environment
Three Empire State Plaza - 14th Floor
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C99-F-1164
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Re: Case 99-F-1164: In the Matter by the Application of Mirant Bowline, L.L.C. (formerly Southern Energy) for a Certificate of Environmental Compatibility and Public Need to Construct and Operate Bowline Unit 3, a 750 Megawatt Generating Facility in the Town of Haverstraw, Rockland County

Dear Secretary Deixler:

Enclosed for filing are an original and 25 copies of the "Brief on Exceptions of Mirant Bowline, L.L.C. on Article X Required Findings."

Very truly yours,

COUCH WHITE, LLP

Barbara S. Brenner

Barbara S. Brenner

BSB/sem
Enclosures

cc: Hon. Gerald L. Lynch (via email and hand delivery w/enc.)
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**CASE 99-F-1164
MIRANT BOWLINE, L.L.C. ARTICLE X
SERVICE LIST**

December 18, 2001

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NEW YORK STATE BOARD
ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

IN THE MATTER

- of the -

Case 99-F-1164

Application by Mirant Bowline, L.L.C.
(formerly Southern Energy, L.L.C.) for a
Certificate of Environmental Compatibility and
Public Need to Construct and Operate Bowline
Unit 3, a 750 Megawatt Generating Facility in
the Town of Haverstraw, Rockland County

Original

**BRIEF ON EXCEPTIONS OF MIRANT BOWLINE, L.L.C.,
ON ARTICLE X REQUIRED FINDINGS**

December 18, 2001

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INTRODUCTION

Mirant Bowline, L.L.C. ("Applicant or Mirant") seeks a Certificate of Environmental Compatibility and Public Need ("Certificate") under Article X of the Public Service Law ("PSL") from the New York State Board on Electric Generation Siting and the Environment ("Siting Board") for the construction and operation of a nominal 750 megawatt ("MW") combined-cycle electric generating facility ("Project" or "Bowline Unit 3") located at the Bowline Generating Station property in the Town of Haverstraw, County of Rockland, New York.

The Recommended Decision issued by the Article X Hearing Examiners on November 30, 2001 recommended that the Siting Board grant Mirant a Certificate of Environmental Compatibility and Public Need for the construction of Bowline Unit 3 subject to the terms and conditions set forth in the draft Opinion and Order. In accordance with the "Notice for Filing Exceptions," issued on November 30, 2001, Mirant hereby files its Brief on Exceptions.

SUMMARY OF POSITION

The Hearing Examiners recommended that two local law waivers sought by the Applicant be denied and that certain modifications be made to the Applicant's proposed Certificate Conditions. The denial of the waivers and the change in the proposed Certificate Conditions to which the Applicant excepts were recommended, sua sponte, by the Hearing

Examiners. No party opposed the waivers or proposed the change in the conditions at issue herein.

The Applicant excepts to the following recommendations: (1) that the requested waiver of Section 167-65 of the Town of Haverstraw Code which requires a buffer of at least 15 feet when constructed adjacent to a 100 year flood plain, be denied; (2) that the requested waiver of Section 167-40, which limits the hours when construction activities can be conducted, be denied; and (3) that Certificate Condition II.A be modified because it is too general. As demonstrated herein, the floodplain waiver is necessary for the Project to be constructed at the Bowline Generating Plant property because virtually the entire site is located within the floodplain. The limitation on the hours of construction needs to be waived in order for the Project to be completed expeditiously. Certificate Condition II.A., which has been included as a condition in other Article X certificates, should be adopted, as originally proposed by the Applicant, because it is not vague.

In addition to the exceptions, this Brief on Exceptions responds, as directed, to questions posed by the Hearing Examiners. The Hearing Examiners have requested that the Applicant comment in its Brief on Exceptions on specific topics, namely: (1) whether and how the revised Article V of the Rockland County Code affects, if at all, the discussion, findings, and conclusions pertaining to potable water in the Recommended Decision (R.D. at 76); (2) the temperature and humidity for the hybrid cooling towers (R.D. at 19, n. 45); (3) any additional portions of the Certificate Conditions in Appendix 5 that expressly relate to matters under federal authority delegated exclusively to DEC which should be deleted or modified (R.D. at 101); and

(4) any additional portions of the Appendix 5 Certificate Conditions that would apply expressly to the transmission lines, and should be deleted or modified. (R.D. at 129)

The Hearing Examiners also raised three other questions pertaining to the proposed certificate conditions.¹ The first question is whether the parties intentionally omitted a proposed condition aimed at maximizing reuse of excavated materials and balancing cuts and fills. Second, is whether the provisions in the Attachment to Appendix 5 of the Recommended Decision pertaining to environmental compliance should be included as a Certificate Condition in this case. The third question pertains to the cost allocation for the expenses related to a traffic control officer, if one is necessary, to deal with traffic delays during peak construction at the intersection of Samsondale Avenue and West Side Avenue/Broadway. The Applicant responds to these questions below.²

¹ In addition, in footnote 90, the Hearing Examiners state that the extra capital costs of dry cooling alone are approximately \$6 million. However, consistent with page 16-5 of Exhibit 1, this reference should be corrected to indicate that the extra capital cost of dry cooling versus hybrid cooling is approximately \$16 million.

² The Hearing Examiners also ask whether a date should be set for the submission of the Public Construction Information Program ("PCIP") referenced in Certificate Condition III.D. See R.D., App. 5 at 11. Consistent with the Certificate issued in the East River proceeding, the Applicant proposes that the PCIP be submitted prior to the commencement of construction. Siting Board Case 99-F-1314, Application of Consolidated Edison Company of New York, Inc. for a Certificate of Environmental Compatibility and Public Need to Repower its East River Generating Station Located in the Borough of Manhattan, New York City, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued August 30, 2001), App. B, at 9 ("East River Order").

POINT I

**THE SITING BOARD SHOULD GRANT THE WAIVERS
REQUESTED BY THE APPLICANT**

In the Recommended Decision, the Hearing Examiners denied the Applicant's request for a waiver of Section 167-65 and Section 167-40 of the Town of Haverstraw Code. The Applicant excepts to the denial of the waivers of these two sections and requests that the Siting Board grant the waivers.

A. Section 167-65

In the Recommended Decision, the Hearing Examiners denied the Applicant's request for a waiver of Section 167-65 of the Town of Haverstraw Code. (R.D. at 120-121) This provision of the Code requires a buffer of at least 15 feet when constructing adjacent to a 100 year floodplain. The Hearing Examiners held that because the Applicant will construct "all above ground facilities above 10 feet over sea level, it is not clear whether . . . a waiver request is really warranted." (R.D. at 120) In the event that a waiver is still requested, the Hearing Examiners held that the local requirement was not unreasonably restrictive in light of existing technology. (R.D. at 120) As set forth below, the waiver is necessary in order to construct Bowline Unit 3. As the Hearing Examiners properly found, it is undisputed that the majority of the Project is located within the 100 year flood plain.³ Denial of the requested waiver of Section

³ See Exh. 24, Response to Request No. 116, at 3. It should be noted that the referenced drawing includes a depiction of an air cooled condenser rather than the hybrid cooling system

167-65 is inconsistent with the recommendation that the Siting Board grant a Certificate for Bowline Unit 3 because without the waiver Bowline Unit 3 cannot be constructed on the Bowline Generating Station Property.

At the request of the Town of Haverstraw Engineer, the Applicant agreed to flood proof the Project by constructing all above-ground facilities above the 100 year flood level. Nonetheless, the Project continues to be located within the 100 year flood plain and subject to Section 167-65 of the Code.⁴ The fact that the Applicant will construct the above ground facilities 10 feet over sea level does not obviate the need for a waiver. As demonstrated in Exhibit 24, it is not possible to construct the Project on the Bowline Generating Station Property 15 feet outside the 100 year flood plain because virtually the entire Project site is located within the 100 year floodplain. The location and construction of the Project within the 100 year flood plain is unavoidable.

The New York State Public Service Commission granted a waiver of the same Section 167-65 of the Code in the certificate granted to Hudson Valley Gas Corporation to construct and operate the natural gas pipeline that would supply natural gas to Bowline Units 1, 2 and 3.⁵ The Commission stated that because “Bowline Units 1 and 2 and proposed Unit 3 are _____ proposed by the Applicant. The hybrid cooling tower would be located within the 100 year flood plain.

⁴ See Exh. 16, Response to Request No. 52, at 13; Exh. 24, Response to Request No. 116, at 3.

⁵ NYSPSC Cases 99-T-1814 and 70100, Application of Hudson Valley Gas Corporation (formerly Southern Energy Bowline, LLC) for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 4.2 miles of 24-inch Natural Gas Pipeline.

located within this floodplain, the installation of the gas pipeline and M&R station is consistent with the existing use of the property and cannot be avoided.”⁶ Thus, the Commission granted the waiver, holding that:

In view of the existing technology, we find a waiver of this provision to be reasonable and necessary in order to permit the construction of the pipeline to serve gas to the existing Bowline Units and potentially Unit 3.⁷

Inasmuch as the Project cannot be constructed at the Bowline Generating Station site without the waiver, the Siting Board should grant a waiver of Section 167-65 of the Town of Haverstraw Code.

B. Section 167-40

Section 167-40 of the Town of Haverstraw Code limits construction, blasting, drilling and demolition work to Monday through Friday, 7:00 AM to 7:00 PM; and Saturday 8:00 AM through 5:00 PM. In the Article X Application, the Applicant requested that the Siting Board waive Section 167-40 as it applies to night time and Sunday inside work as unreasonably

in the Towns of Haverstraw and Clarkstown and the Village of West Haverstraw, Rockland County, “Order Granting Certificate of Environmental Compatibility and Public Need and Acknowledging Filing of Certified Statement (issued March 29, 2001), at 19 (“Article VII Gas Order”). By letter dated April 25, 2001, Hudson Valley Corporation (“Hudson Valley”), an affiliate of the Applicant, accepted the Certificate and agreed to comply with all its conditions. The new natural gas pipeline is under construction.

⁶ Article VII Gas Order at 19.

⁷ Id. (emphasis added).

restrictive.⁸ The waiver is necessary and consistent with both Public Service Commission and Siting Board precedent.

In the Recommended Decision, the Hearing Examiners denied the requested waiver on the grounds that: (1) the Applicant has not demonstrated that the provision is unreasonably restrictive in view of the existing technology or needs or costs to ratepayers (R.D. at 118); and (2) the Applicant has not explained the relationship of the activities for which it seeks a waiver to the applicable County noise standard. (R.D. at 118) In addition, the Hearing Examiners stated that even if the requested waiver were granted, the proposed framework for eliminating “major” outdoor noise creating activities at prohibited times is fairly general and would afford the Applicant too much discretion to proceed with construction in off-hours that may be objectionable to its immediate neighbors. (R.D. at 119)

First, the provision is unreasonably restrictive in light of existing technology. There is certain work, such as concrete pours, which must be finished once started because existing technology has not advanced to the point that work can be halted in mid-process. For this reason the New York Commission granted Hudson Valley Gas Corporation a waiver of this specific provision of the Town of Haverstraw Code in conjunction with the construction of its pipeline.⁹ The Commission stated that the request for a waiver that would allow work to continue during restricted hours was “reasonable” and, accordingly, granted the waiver.¹⁰

⁸ Exh. 1, Vol. I, at 4-89 to 4-90.

⁹ Article VII Gas Order at 18.

¹⁰ Id.

Moreover, the provision is unreasonably restrictive in view of the needs and costs to ratepayers, i.e. consumers. The ability to perform inside construction work after 7:00 P.M. on weekdays; after 5:00 P.M. on Saturday; and on Sundays and legal holidays will expedite construction, and lower costs thereby benefitting consumers. The New York Independent System Operator has recommended the addition of 8,600 MW of new installed capacity by 2005.¹¹ The waiver will expedite the construction of Bowline Unit 3, enhancing the reliability of the electric system in New York State. In addition, construction of Bowline Unit 3 will reduce the price of electricity. As demonstrated by the MAPS analysis performed by the Applicant, the operation of Bowline Unit 3 will result in a decrease in energy prices in New York State.¹² It also will reduce air emissions.¹³ Thus, the provision is unreasonably restrictive in view of the needs and costs to consumers.

Moreover, the Siting Board implicitly has granted a waiver of a similar provision of the New York City Noise Code for the construction of the East River Generating Station,¹⁴ the Astoria Energy Project,¹⁵ and the Ravenswood Station.¹⁶ The City of New York Noise Code

¹¹ Power Alert: New York's Energy Crossroads, Report by the New York Independent System Operator (March 2001), at 1.

¹² Exh. 1, Vol. II, at 17-5.

¹³ Id. at 17-6.

¹⁴ East River Order at 53.

¹⁵ Siting Board Case 99-F-1191, Application of Astoria Energy, LLC, for a Certificate of Environmental Compatibility and Public Need to Construct and Operate an Approximately 1000 Megawatt Generating Facility in the Astoria Section of Queens County, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued November 21,

limits construction activities to the weekday hours of 7:00 A.M. to 6:00 P.M.¹⁷ Notwithstanding that provision of law, subject to certain conditions, the “Opinion and Order Granting Certificate of Environmental Compatibility and Public Need” granted to the Astoria Energy project permits Astoria Energy to engage in normal construction work between the hours of 7:00 A.M. and 12:30 A.M. seven days a week.¹⁸

The Siting Board likewise implicitly waived the New York City Noise Code in the Certificate to Construct and Operate the East River Generating Station.¹⁹ The East River Project indoor construction hours extend beyond the hours allowed in the City Noise Code.²⁰ The East River Hearing Examiners found that the noise mitigation measures proposed at the East River project minimized the East River project’s noise impacts.²¹

2001), at 15-16 (“Astoria Order”).

¹⁶ Siting Board 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 (Sept. 7, 2001), at 27 (“Ravenswood Order”).

¹⁷ New York City Admin. Code, § 24-224 (a).

¹⁸ Astoria Order, App. B, ¶ III.F. The Certificate Condition is more expansive than the waiver sought by the Applicant, which, if granted, permits only indoor activities at night and on weekends and legal holidays.

¹⁹ East River Order, App. B, ¶ VII.D.

²⁰ Id.

²¹ Siting Board Case 99-F-1314, Application of Consolidated Edison Company of New York, Inc. for a Certificate of Environmental Compatibility and Public Need to Repower its East River Generating Station Located in the Borough of Manhattan, New York City, Recommended

Similarly, pursuant to the Ravenswood Station Certificate Conditions, KeySpan may conduct indoor construction activities that do not cause excessive noise (e.g., jack hammering) during all hours.²² In addition, to accommodate oversized deliveries, Ravenswood was exempted from restrictions limiting deliveries to daytime hours.²³

Moreover, the requested waiver is consistent with the provisions of the applicable County noise standard. The County noise standard expressly provides that the noise standards do not apply to “[s]ounds that originate on construction sites between the hours of 6:00 a.m. and 10:00 p.m.”²⁴ Thus, the activities for which the waiver is requested are exempt from the Rockland County noise standard.

Based on the record in this proceeding and Commission and Siting Board precedent, the Siting Board should waive Section 167-40 of the Haverstraw Town Code and reinsert the original certificate condition III.G proposed by the Applicant.

Decision (June 28, 2001), at 144; East River Order at 36, 53, & App. B, ¶ VII.D.

²² Ravenswood Order, App. B, ¶ XI.B.

²³ Id.

²⁴ Rockland County Sanitary Code, § 9.8.5.1.8.

POINT II

ONLY ONE CERTIFICATE CONDITION NEEDS TO BE MODIFIED

In the Recommended Decision, the Hearing Examiners raised several issues relating to the proposed Certificate Conditions. As set forth below, only one Certificate Condition needs to be modified. The Hearing Examiners ordered the Applicant to identify any additional portions of the conditions in Appendix 5 that expressly relate to matters under federal authority delegated exclusively to DEC and which should be deleted or modified in the final certificate conditions (R.D. at 98) and to identify any additional portions that expressly apply to the transmission lines. (R.D. at 125) They also stated that Certificate Condition II.A. is too vague and should be modified. (R.D., App. 5 at 11)

The Applicant has not identified any additional portions of the Certificate Conditions that should be deleted or modified in the Final Certificate Conditions because they pertain to the transmission lines. The Applicant has identified one provision that should be modified because it relates to a federally delegated matter. In Section V of the Certificate Conditions, which is entitled "Operation and Maintenance", the words "and a Stormwater Pollution Prevention Plan" in Paragraph A should be deleted.²⁵

²⁵ The Section 401 Water Quality Certification should not be deleted or modified. (See 16 NYCRR § 1000.7) Pursuant to Section 1000.7 of the Siting Board's regulations, the Applicant requests that the Siting Board grant Section 401 Water Quality Certification for the Project. A grant of Section 401 Water Quality Certification to the Applicant is consistent with the Siting Board's previous grants of Section 401 Certification in the Ravenswood, Heritage, and Athens Article X proceedings. See Ravenswood Order, App. B, ¶ XIV.J; Siting Board Case 99-

As indicated above, the Hearing Examiners recommended that Certificate Condition II.A. be modified because “the reference to agreements and stipulations for this purpose is too vague.” (R.D., App. 5 at 11) The Certificate Condition states:

The Project and/or Project 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 during this proceeding, except as these may be waived, modified or supplemented by the Board, and except as regarding conditions contained in the SPDES Permit, Title V Operating Permit, and PSD Permit issued by the Department of Environmental Conservation (NYSDEC).

(R.D., App. 5 at 2)

This provision is identical to Certificate Condition II.A of the Certificate granted to KeySpan for the construction of the Ravenswood Generating Station; Condition II. A of the Certificate granted to Con Edison for the repowering of the East River Generating Station and substantially similar to Condition II.A of the Certificate granted to Astoria Energy.²⁶ Based on Siting Board precedent and the fact that no party has opposed the Certificate Condition or

F-0558, Application of Heritage Power LLC for a Certificate of Environmental Compatibility and Public Need to Construct and Operate an 800 Megawatt Natural Gas-fired Combined Cycle Combustion Turbine Electric Generating Plant in the Town of Scriba, Oswego County, N.Y., Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued January 19, 2001), at App. A (“Heritage Order”); Siting Board Case 97-F-1563, Application by Athens Generating Company, L.P. for a Certificate of Environmental Compatibility and Public Need to Construct and Operate a 1,080 Megawatt Natural Gas-fired Combined Cycle Combustion Turbine Generating Facility, in the Town of Athens, Greene County, Opinion and Order Granting Certificate of Environmental Compatibility and Public Need (issued June 15, 2000), at App. B.

²⁶ Astoria Order, App. B, at 2; Ravenswood Order, App. B, at 1-2; East River Order, App. B, at 1.

recommended a specific change in the wording of the Certificate Condition, the Applicant excepts to the recommendation that the Certificate Condition be modified.

POINT III

THE APPLICANT AGREES TO ADDITIONAL CERTIFICATE CONDITIONS

The Hearing Examiners: (1) asked whether the parties intentionally did not include a proposed condition aimed at maximizing the reuse of excavated materials and balancing cuts and fills (R.D., App. 5 at 13); (2) whether an environmental compliance condition should be included as a Certificate Condition (R.D., App. 5 at 13); and (3) indicated that the Certificate Condition IV.F should specify cost responsibility for the traffic control officer. (R.D., App. 5 at 12) None of the parties to this proceeding have requested any Certificate Conditions addressing these issues. Nonetheless, as set forth below, the Applicant agrees to additional certificate conditions addressing these issues.²⁷

²⁷ The Applicant also consents to the following condition provided on page 20 of the DPS Initial Brief. The proposed condition states:

The Certificate Holder shall obtain the services of an engineer to inspect the project prior to the commencement of operation to ensure that it complies with the New York State Uniform Fire Prevention and Building Code. The Certificate Holder may seek a variance in accordance with § 381 (1) (f) of the Executive Law.

DPS Initial Brief at 20.

First, on the issue of balancing cuts and fills, the stipulation entered into by parties to this proceeding was that “the project will seek to reuse excavated materials on-site, to the extent possible, balancing cuts and fills.”²⁸ Thus, the Applicant has agreed to balance cuts and fills “to the extent possible.” As such, the Applicant does not object to a Certificate Condition that reiterates the language of the Stipulation utilizing excavated materials on-site to the extent possible. However, inasmuch as the word “maximize” is not used in the stipulation, the Applicant requests that it not be included in the Certificate Conditions. Notwithstanding the Applicant’s agreement to include this Certificate Condition, it should be noted that the Siting Board has not imposed a “maximize reuse of cut and fill” Certificate Condition on any other projects.

The second question asked was whether the language set forth in the attachment to Appendix V of the Recommended Decision, entitled “Proposed Certificate Condition for Article X Environmental Compliance” should be included in this case. (R.D., App. 5 at 13) The Applicant does not oppose a certificate condition relating to environmental compliance. However, the environmental compliance provisions of the Public Service Commission’s Hudson Valley Gas Corporation certificate should be included as a Certificate Condition rather than the language set forth in the Attachment to Appendix 5.²⁹ The Commission’s Hudson Valley Gas Corporation order provides that:

²⁸ Exh. 105, Soils, Geology, Seismology and Agricultural Lands Topic Agreement, III.B at 7.

²⁹ Article VII Gas Order at 25-26, ¶ (j).

[The] Applicant shall ensure that a qualified environmental monitor, with stop-work authority, is on site at the start-up of each field operation and at all times during environmentally sensitive phases of construction in areas such as water crossings, wetlands, park lands and near residences. The environmental monitor and construction inspector shall be equipped with sufficient documentation, and transportation and communication equipment to monitor effectively contractor compliance with the provisions of this Order, applicable sections of the Public Service Law and the EM&CS&P. The name and qualifications of the environmental monitor shall be submitted to Staff at least two weeks prior to the start of construction.³⁰

In addition, the Applicant will provide for the deployment of more than one inspector in the event that two or more major field operations are undertaken simultaneously. However, consistent with the certificate conditions in the Con Edison East River and Astoria Energy projects, the Applicant opposes the reporting requirements set forth in Appendix A(d) - A(g) on the grounds they are overburdensome and unnecessary.³¹

Lastly, the Hearing Examiners recommend that the Condition IV.F specify cost responsibility for the traffic control officer. (R.D., App. 5 at 12) The proposed Certificate Condition IV.F reiterates the language of Exhibit 107, the Traffic Topic Agreement, which does not allocate cost responsibility. The Applicant agrees to accept apportioned cost responsibility for the traffic control officer if one is stationed at the intersection of Samsondale Avenue and West Side Avenue/Broadway during the peak hours at the peak of construction phase, provided

³⁰ Id.

³¹ See Astoria Order, App. B, ¶ III.B.; East River Order, App. B, ¶ II.F.

that the Applicant and the Village of Haverstraw agree that the delays are excessive. Thus, the

Applicant agrees to the following modification of Certificate Condition IV.F:

The Certificate Holder shall periodically consult with the Village of Haverstraw about traffic conditions near the Project Site. If, as a result of such consultation, the Village and the Applicant agree that excessive delays are occurring during peak hours during the peak construction phase of the Project, the Applicant will reimburse the Village of Haverstraw for the portion of the salary of a traffic control officer who will be stationed at the intersection of Samsondale Avenue and West Side Avenue/Broadway during peak hours for the time that the traffic control officer is stationed at the intersection.

POINT IV

THE APPLICANT WILL COMPLY WITH THE REVISED ARTICLE V OF THE ROCKLAND COUNTY SANITARY CODE

In the Recommended Decision, the Hearing Examiners directed the Applicant to comment in its Brief on Exceptions about whether and how the revised Article V affects, if at all, the potable water discussion, findings and conclusions. (R.D. at 74) The revised Article V, "Mandatory Water Conservation Measures", does not affect or limit the Project's operations.³² As the Hearing Examiners noted, the Applicant has committed to comply with Article V of the

³² Article V will apply to Project operations only during severe (Stage V) water emergencies. See Rockland County Sanitary Code, § 5.7.2.3. Significantly, the applicable provision is found both in the revised Article V (2001) and the previous Article V (1982). Compare, Rockland County Sanitary Code, Article V, § 5.7.2.3 (2001), with Rockland County Sanitary Code, Article V, § IV.3 (1982).

Rockland County Sanitary Code.³³ (R.D. at 73) This commitment continues under the terms of the revised Article V.

POINT V

**THERE IS NOT AN INCONSISTENCY IN THE RECORD
WITH RESPECT TO THE PHYSICAL CONDITIONS
UNDER WHICH PLUMES WILL OCCUR WITH THE
HYBRID COOLING SYSTEM**

In the Recommended Decision, the Hearing Examiners directed the Applicant to clarify the temperature and relative humidity at which plumes would occur with plume abated hybrid cooling towers. (R.D. at 18, n. 45) The plumes will occur only when the air entering the hybrid cooling system is at or below 20.0°F. dry bulb and the relative humidity is greater than 83.33% as stated in the Visual Topic Agreement.³⁴ This description is consistent with the statement in the Applicant's Initial Brief that plumes will occur only when the relative humidity is greater than 80%.³⁵ However, to avoid confusion, the referenced sentence at 56 of the Applicant's Initial Brief should be corrected to read: "Plumes will occur when the air entering the hybrid cooling system is at or below 18.9°F wet bulb and 20°F dry bulb and the relative humidity is greater than 83.33%."

³³ H. Tr. at 1264 (Schafer at 8).

³⁴ Exh. 108 at 5.

³⁵ Initial Brief at 56.

CONCLUSION

For the reasons set forth herein, the Applicant excepts to the denial of its requested waivers of Section 167-65 and Section 167-40 of the Town of Haverstraw code and requests that the Siting Board grant the requested waivers.

Respectfully Submitted,

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