

April 17, 2002

Task Force Comments to Revised Draft April 16, 2002

1. Proposed Stipulation No. 1: Air Quality and Meteorology

1.1 Clause 2 (r): Should be revised to state:

- (r) An Environmental Justice (EJ) Analysis will be performed as part of the PSD application. The EJ analysis will be based on requirements of Presidential Order 12898 and on guidelines described in the USEPA Region II Interim Environmental Justice Policy, dated December 2000. The selection of “Communities of Interest” and “Reference Communities” for the purposes of the EJ Air Quality Analysis will be made in consultation with the Task Force. TGE will send a demographic analysis to the Task Force on the definition of these communities before the environmental justice study is undertaken and, subject to a timely response by the Task Force within 10 days of receipt of the analysis via email, consultation will follow. The EJ Air Quality Analysis will be presented in GIS format to the extent practicable.

We insist that the EJ Analysis not be limited to the PSD program.

1.2 Clause 7, should include the following:

- (h) Evaluation of subpopulations particularly susceptible to adverse health impacts from an increase in PM-2.5 in the ambient air in the Greenpoint and Williamsburg communities;
- (i) Ethnicity, age or pre-existing medical conditions determining whether adverse health impacts are the predictable result of exposure to increased PM-2.5 emissions in the ambient air in the Greenpoint and Williamsburg communities;
- (j) An evaluation of subpopulations, particularly those with pre-existing respiratory health conditions and cardiovascular conditions, in the Greenpoint and Williamsburg communities;

1.3. Cumulative source impacts analysis (CSIA).

PSL 168 (2)(b) mandates including in the Application the cumulative effect of air emissions from existing facilities and the potential for significant deterioration in local air quality with particular attention to facilities to be located in areas designated as non-attainment. North Brooklyn is a severe non-attainment area for NOx. Therefore, a cumulative assessment of criteria pollutants of the Project with certified Article X power plants, other proposed Article X power plants and other major emission points, regardless of whether or not Project impacts are below significant impacts, is required to address the requirements of Section 168 (2)(b). See stipulation 1 clause (2) (l) in KPE's stipulations, stipulation 1 clause (2)(t) in KS's stipulations and stipulation 2 clause 4 in ORION's stipulations.

We propose to include the language used in KS and KPE, and either to determine a specified area for the study or the naming of facilities, as follows:

- 7 In order to address Section 168.2(b) of the Public Service Law and the Environmental Justice analysis, the Article X Application and the EJ analysis will include (in addition to the cumulative source impact analysis for any criteria pollutant for which the Project has impacts above Significant Impact Levels as described in clause 2 paragraphs (o) and (p) herein) a study of the cumulative air impacts of the Project and major emission sources (CSIA), using the information provided in the permit conditions, regulatory approvals or regional permit files. ("The CSIA will be limited to the facilities described in clause 8." Or ("The scope of the CSIA will be within two miles from the Project's stack location.").

1.4. Public health

As required by PSL § 164 (1)(c)(v) and PSL § 164 (2)(c)(ii) and 16 NYCRR §§ 1001.3 (a) and (b)(2)(ii), the application must contain studies of the compatibility of the facility with public health and an evaluation of resources affected in relation to any adverse impact on public health that cannot be avoided should the facility be constructed. A baseline or compilation of data is required to evaluate such impacts. Recently, the Siting Board has emphasized the importance of public health by ordering rehearing on these issues for East River Repowering (Consolidated Edison Company of New York, Inc.- Case 99-F-1314 - Order Granting Rehearing in Part, 01/24/2002.).

Stipulations in other cases, such as KPE, have included clauses reflecting the East River Repowering decision, such as the following language in KPE:

6. As requested in public comments, but not required by the NYSDEC's air permitting requirements, an air quality impact assessment for NO2, SO2 and PM10 impacts at all schools, hospitals and senior residences within a 5-mile radius of the Project,

including a map presenting the results of that analysis.

7. As requested in public comments, a compilation and analysis of publicly available statistics on statewide and local (within a 5-mile radius of the Project or such larger local area - zip code, town or county - for which statistics are available) rates for asthma and cancer incidence (total, and by type if available).

See KPE stipulation 1 clauses 6 and 7.

Instead of a 5-miles radius, the scope of the analysis and compilation for this case could be reduced to encompass the Greenpoint and Williamsburg communities (Brooklyn Community Board One). We propose:

9. As requested in public comments, but not required by the NYSDEC's air permitting requirements, an air quality impact assessment for NO₂, SO₂ and PM₁₀ impacts at all schools, hospitals and senior residences within Brooklyn Community Board One, including a map presenting the results of that analysis.
10. As requested in public comments, a compilation and analysis of publicly available statistics on statewide and local (within Brooklyn Community Board One or such larger local area - zip code, town or county - for which statistics are available) rates for asthma, cardiovascular problems and cancer incidence (total, and by type if available).

A new section 12 is required to clarify data sources, as follows:

12. For purposed of clauses 9, 10 and above, the compilation and analysis of available data will be based on, but not limited to data from; NYS Department of Health; American Lung Association of New York State; Center for Disease Control; North Brooklyn Health Network; NYU School of Medicine; local health departments; local organizations; and local hospitals.

2. Proposed Stipulation No. 2: Cultural Resources

Following consultations with the Borough President's Office we recommend changing section 4, as follows:

The analysis of potential impacts to Historic Resources shall include:

- (a) A review of the files maintained by the OPRHP, New York Landmarks Preservation Commission and other appropriate databases to identify any sites, districts or structures listed or determined eligible for listing on the State or National Register of Historic Places within Brooklyn Community Board 1;
- (b) Identification of any locally designated historic sites, districts or structures within Brooklyn Community Board 1;
- (c) Field inspections by an architectural historian and consultation with local historic preservation groups and the Borough President's Office to identify sites or structures (not otherwise identified in paragraph 4(a) and 4(b)) that are potentially eligible for listing on the State or National Register of Historic Places within the Project viewshed and within Brooklyn Community Board 1. For the purpose of this assessment, the Project viewshed will consider the screening effects of topography and vegetation;
- (d) An OPRHP Building Structure Inventory Form, including a photograph, will be completed for each potentially eligible property (as identified in paragraph (c)) and submitted to OPRHP, New York Landmarks Preservation Commission, DPS Staff, the Task Force and the Borough President's Office for review; documentation for individual structures within historic districts identified in paragraph (a) and (b) will not be required. TGE will submit its documentation regarding potentially eligible structures within the viewshed to OPRHP, New York Landmarks Preservation Commission, DPS Staff, the Task Force and the Borough President's Office for their review and determination of eligibility;
- (e) Potential visual impacts to significant historic structures within the Project viewshed that are individually listed or determined eligible for listing on the State or National Register of Historic Places, will be characterized as part of the visual resources study, as described in Stipulation No. 10, entitled "Aesthetics and Visual Resources;" and
- (f) Potential visual impacts to historic districts within the Project viewshed will be based on potential "worst-case" views from within the district and will be characterized as part of the visual resources study, as described in Stipulation No. 10, entitled "Aesthetics and Visual Resources."

3. Proposed Stipulation No. 4: Project and Fuel Reliability and Mitigation Alternatives

3.1 No-action alternative

The language proposed in clause 4 (a) tracks the language in 16 NYCRR § 1001.2 (c). This language is inadequate, since the public and stakeholders have already identified potential alternative uses of the project site. It is premature for TGE to determine at this time that the alternatives proposed by the public are not "likely to occur in the reasonable foreseeable future in the absence of the project". As requested in public comments, the

no-action alternative should consider two alternate possibilities to the project site, which have already been identified by the local community, including local organizations involved in planning and Brooklyn Community Board One, as the two most feasible options. If these alternatives are not included in the application, it would render the public involvement meaningless and, in addition, the application will be incomplete.

The two options identified by the public and stakeholders are based on the recently approved Greenpoint and Williamsburg 197-a plans. See comments by the Task Force on PSS section 3.2. In fact, these two options were initially accepted by TGE and included in proposed stipulations dated 12/31/01. Accordingly the text must be amended to the text we proposed in our comments dated 2/4 (see page 10):

“No-action alternative: The no-action alternative will include two alternative scenarios, one with light industry, open space use and waterfront access and one with residential, open space use and waterfront access on the site, including the costs and benefits of each option. Both the Greenpoint and Williamsburg 197-a plans will serve as guidance for those no-action alternative studies. Studies will include local land use, environmental and socio-economic implications of the no-action scenarios. A quantitative analysis should be provided for the no-action alternatives.”

3.2 Plant Security

Add the following to clause 5: “The study will include:

- (a) A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies and hazardous substance incidents.
- (b) A description of all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident.
- (c) An analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response capacity (this analysis to be made after consultation with the affected local emergency response organizations).

4. Proposed Stipulation No. 5: Land Use And Local Laws

4.1 Population (Environmental Justice)

Impacts from the proposed facility on population are based on section PSL 164 (1). Pursuant to section 164 (1), information and material on the “population” affected by the project must be studied and presented in the Application (See for example sections 5-10 in KPE’s Application and section 12 of KS’s Application). Accordingly, a study of the affected population must be reflected in the stipulations. During the meeting on 4/11 TGE rejected our comment seeking to include an environmental justice study. We demand, at least, the inclusion of language on “population” used in other recent stipulations, such as Kings Park Energy (“KPE”) and Keyspan Spagnoli (“KS”). See stipulation 10 clause 25 in KPE’s stipulations and stipulation 7 clause 21 in KS’s stipulations. In addition, regulations at 16 NYCRR §§ 1001.1 (a) and 1001.7 (d) require studies of the “environmental setting” and “those [impacts] which have been identified previously by stakeholders or the general public.”

We propose to include the language used in KPE, as follows:

A description and map, as appropriate, for each census tract whose geographic center is within a five- mile radius of the Project, the following parameters: population, age distribution, percent minority vs. percent non-Hispanic white, and household income median (based on the latest available sample counts).

See KPE stipulation 10, clause 25.

We also recommend adding the following parameters, as in KS (See stipulation 7 clause 21 in KS’s stipulations): sex, marital status, household type and size, tenure of housing units and persons per occupied housing unit and place of work, educational attainment, household income and a distribution. Instead of 5-miles, the scope of the analysis could be reduced to encompass only the Greenpoint and Williamsburg communities (Brooklyn Community Board One). Therefore, the text should be as follows:

A description and map, as appropriate, for each census tract whose geographic center is within Brooklyn Community Board One, with the following parameters: population, age distribution, sex, marital status, percent minority vs. percent non-Hispanic white, household type and size, tenure of housing units and persons per occupied housing unit (based on the latest available census counts) and place of work, educational attainment, and household income as a distribution and median (based on the latest available sample counts).

(See stipulation 7, clause 21 in KS’s stipulations) This clause must be included either in stipulation 5 or in stipulation 7.

4.2. Impacts of the proposed plant on nearby property values

The impacts of the proposed plant on nearby property values is relevant under Article X as this, among other factors, goes to whether the proposed facility is in the public interest under PSL section 168 (2)(e). This must be reflected in stipulation 5 or stipulation 7.

4.3 Clause 2 (a): The Study area for interconnections should be 1 mile as in other applications. To the extent most of the interconnections should be within the Study area this is not expected to increase the scope of the Study.

4.4 As agreed on April 17, 2002, clause 2 (c) should include consultations with the Borough President's Office, Brooklyn Community Board One, The Brooklyn Development Corporation and the other local sources.

4.5. The near-field impact has not been included. We suggest using the text in KPE stipulation 2, clause 4 (as a new 2(f) or elsewhere):

The land use study in the Application should distinguish the near-field land uses of particular concern to the community, and should address the land use impacts of the Project on nearby residential areas, schools, recreational facilities, and industrial land uses.

TGE should add the following: "churches" and "synagogues".

4.6. As requested by the Borough President's Office we request amending clause 2 (e) to include potential land uses and to specify that the consistency review will include the 197a plans. See KPE stipulation 5, clause 1 (f).

4.7. We agree with comments by the Borough President's Office that clause 5 must be replaced in its entirety by either the clause used in the stipulations for KPE or in the stipulations for KS. The new clause should say:

LOCAL LAWS

5. Prior to submitting the Application, a list of substantive local laws and regulations issued thereunder applicable to the Project concerning, among other matters, the environment, public health and safety, shall be compiled by the Applicant and circulated to NYC, Brooklyn's Borough President, the Task Force, and NYSDPS and NYSDEC Staffs. The Applicant will consult with NYC, Brooklyn's Borough President, the Task Force, and NYSDPS and NYSDEC Staffs prior to submitting the Application to determine whether the Applicant has correctly identified all such substantive local laws and regulations issued thereunder applicable to the Project, and to determine whether any potential request by the Applicant that the Siting Board refuse to apply any such substantive local laws and regulations could be obviated by design changes to the Project. The Application to be submitted will identify and analyze all substantive

local laws and regulations issued thereunder applicable to the Project concerning, among other matters, the environment, public health and safety.

(a) For each substantive provision identified, the Application will include a discussion or other showing demonstrating the degree of compliance with the substantive provision. In addition, the Application will include a summary comparison table in two columns listing the provisions in the first column and the degree of compliance in the second column.

(b) The Application will separately identify each request, if any, being made by the Applicant that the Siting Board refuses to apply a substantive local law or regulation issued thereunder applicable to the Project and its interconnections. For each such request, the Application will identify:

(i) whether the Applicant believes the provision to be unreasonably restrictive in view of the existing technology;

(ii) whether the Applicant believes the provision to be unreasonably restrictive in view of the needs of ratepayers whether located inside or outside of such municipality;

(iii) whether the Applicant believes the provision to be unreasonably restrictive in view of the costs to ratepayers whether located inside or outside of such municipality;

(iv) an explanation of the basis for asserting that the provision is unreasonably restrictive in view of (i) the existing technology, (ii) the needs of the ratepayers whether located inside or outside of the subject municipality, or (iii) the costs to the ratepayers whether located inside or outside of the subject municipality, as the case may be;

(v) a review and analysis of reasonably related local precedents regarding the granting or denial of similar variances or exceptions;

(vi) a demonstration that the request could not be obviated by design changes to the proposed Project and that the request is the minimum necessary; and

(vii) a demonstration that the impacts of granting the request are mitigated to the maximum extent possible.

5. Proposed Stipulation No. 6: Noise

5.1. 2.0 Noise Sensitive Areas in the Community

Include a receptor in the north waterfront (Quay street or Noble street) that will be identified by the Task Force on April 19, 2002.

5.2. 3.0 Noise Monitoring Program

As agreed during the meeting on April 11, 2002, please delete the following sentence (or specify nighttime monitoring for the NYS/NYU park):

“Noise monitoring will be conducted at the locations identified above during the day and late at night. . . .”

6. Proposed Stipulation No. 7: Socioeconomics

6.1 TGE has not included additional clauses included in the most recent Article X stipulations, which are necessary in the stipulations addressing socio-economic impacts, such as KPE and KS. See KPE stipulation 10 clauses 14 – 20 and KS stipulation 7 clauses 10 – 13 and 16 –18.

(j) An identification of all jurisdictions (including benefit assessment districts and user fee jurisdictions) that levy real property taxes or benefit assessments upon the Project site, its improvements and appurtenances.

(k) For each taxing jurisdiction, an identification of the most recent tax rate (user charge or benefit assessment charge), and total tax levy for the jurisdiction.

(l) For each taxing jurisdiction, an identification of the most recent assessed value (or benefit formula) taking into account the user charge assigned to the Project site, its improvements and appurtenances.

(m) For each taxing jurisdiction, an identification of the amount of the most recent annual taxes (user charge or benefit charges) levied against the Project site, its improvements and appurtenances.

(n) For each jurisdiction, an estimate of the projected post-construction assessed value (or benefit formula or user charge) that will be assigned to the Project site, its improvements and appurtenances.

(o) For each jurisdiction, an estimate of the amount of annual taxes (or benefit charges or user charges) it is projected would be levied against the post-construction Project site, its improvements and appurtenances.

(p) For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the Project to the expected tax revenues (or benefit charge revenues or user charge revenues) generated by the Project.

7. Proposed Stipulation No. 10: Aesthetics And Visual Resources

7.1. Methodology

Clause 1: The Task Force insists that the components of the VIA and the methodology are inadequate for this proposal. This is a waterfront location and the

adequate methodology for the cases is the United States Army Corps on Engineers (ACOE) Visual Resource Assessment Procedure (VRAP - Smardon et. al 1988). This methodology has already been used in most Article X proceedings, including Athens, Bowline, Bethlehem Energy Center and Orion. More recent stipulations such as KPE and KS use the DEC program policy to assess visual resources of State concern and VRAP for the Project and landscape similarity zones, etc. See Orion stipulation 8 clause 1, KPE stipulation 3 clause 1 and KS stipulation 11 clause 1. TGE should follow the stipulations used in Orion, KPE and KS. VRAP has a public involvement component, which is needed in this Application, guarantees objectivity and is more comprehensive. Thus, VRAP is the adequate visual assessment methodology for a controversial Project such as TGE's proposal.

DPS staff member Andy Davis has indicated that he would recommend certain changes to how the VRAP could be conducted. We look forward to discuss incorporating modifications that would enhance the VIA for the Project. However, having TGE follow a precise methodology is valuable to develop an adequate visual record.

Change to the following text:

The Application will include a visual impact assessment (VIA) to determine the extent and assess the significance of Project visibility. The components of the VIA will include identification of visually sensitive resources, viewshed mapping, confirmatory visual assessment fieldwork, visual simulations (photographic overlays), cumulative visual impact analysis, and proposed visual impact mitigation.

The methodologies, standards and definitions for assessing visual resources of State concern will follow procedures outlined in the NYSDEC Program Policy: NYSDEC, Assessing and Mitigating Visual Impacts, DEP-00-2, 7/31/2000.

For visual impacts methodology, including identification of landscape similarity zones, management classification rating, public involvement and forecasting, the visual impact assessment will follow procedures outlined in: Smardon, R.C., et al, Visual Resources Assessment Procedure for U.S. Army Corps of Engineers, Instruction Report EL-88-1, prepared by State University of New York, Syracuse, for U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, 1988.

The ACOE procedure is a five step process that includes: identification of viewer groups, definition of landscape similarity zones, selection of representative viewpoints, preparation of computer-assisted simulations of the completed facility, and development of comparative ratings of visual impact quality. The Application will strictly follow the VRAP to ensure an objective assessment, except (subject to discussion with DPS staff).

7.2 Clause 2: Change to:

“The VIA will address, but not be limited to, the following issues:”

7.3 Clause 2: Insert new paragraphs (a) and (b):

“(a) The character and visual quality of the existing landscape using landscape similarity zones;

(b) The visual quality of each similarity zone assessed using district, average and minimal classifications as per Smardon, et al. (1998);”

7.4 The following items should be added as part of the VRAP methodology:

(f) The launching of tethered balloons at the proposed project site to represent the height of the initially proposed stacks and to represent the height of a cooling tower plume;

(g) Selection of representative viewpoints at which either the assumed plume or both the stack and plume would be visible;

(h) Preliminary identification of landscape similarity zones, based on land form, vegetation, water, land use, and user activity;

(i) Five focus groups of randomly selected local residents to rate the landscape similarity zones. A different focus group review the applicant's simulations;

(j) A five-person panel of registered landscape architects selected independently, pursuant to a selection procedure approved by local groups, to rate the simulations and the VIA.

7.5. Clause 4(a), we insist the area must be 2 miles or at least include the whole Brooklyn Community Board 1. The Task Force will comment on the other changes proposed by TGE at our meeting on April 19, 2002.

7.6 Clause 5(b) please add:

Subsequently, TGE will hold public meetings in the Greenpoint and Williamsburg communities to present the proposed architectural design.

7.7. The VIA study area and the study area for stipulation No.2 -Cultural Resources - are cross-referenced. Accordingly, Clauses 4(a) and 4 (b) should be modified to incorporate the changes agreed on for stipulation 10 clause 4 (a).

8. Preamble

Please include the following:

8. TGE's November 18, 2001 PSS responses to comments is incorporated (attached) and the transcripts for the public meetings held October 11, 2001, November 28, 2001 and March 14, 2002 are incorporated by reference. TGE will adhere to the commitments made in such documents and meetings with respect to the content of the Article X application.