

**CHICAGO TITLE INSURANCE COMPANY
COMMITMENT
SCHEDULE A – LEGAL DESCRIPTION**

PARCEL 1

The land shown as Lot C (located on the southerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts) on a certain planemoted "Approval Not Required Plan Drawn for Rabin & Dorothy Aghai and James S. Gordon, Trustees" dated October 25, 1990 (herein called the "Survey Plan") prepared by R.A. Cataldo Engineering of 141 Power Road, Pawtucket, Rhode Island, and recorded in said Bristol South District Registry of Deeds in Plan Book 126, Page 70.

Lot C contains 42,461 acres more or less according to said plan.

Excepting and including therefrom a parcel of land containing 10.47 acres being more particularly shown as "Proposed 10 Acre Parcel" on a plan entitled "Project Easement Plan, Dartmouth, Massachusetts" prepared for Dartmouth Power Associates dated October 24, 1990, and recorded with the Bristol South District Registry of Deeds in Plan Book 126 Plan 78 (the "Project Easement Plan").

PARCEL 2:

The land located on the northerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts shown as Lot 2 on a certain plan entitled "Approval Not Required Plan Drawn for Terrance D. LeBege & James Nassiff Located on Old Fall River Road North Dartmouth, Massachusetts Scale: 1"=80' dated November 1989" prepared by Bristol County Engineering, Inc., of Swansea, Massachusetts, and recorded with said Bristol South District Registry of Deeds in Plan Book 124, Plan 116, and more particularly bounded and described as follows:

SOUTHERLY: by Old Fall River Road, as shown on said plan, two hundred and four and 15/100 (204.15) feet;

WESTERLY: by Lot 1 on said plan, one thousand and fifteen and 63/100 (1,015.63) feet;

NORTHERLY: by land now or formerly of Normand F. Smith III, Trustee of the Richard G. Hawes Revocable Trust, two hundred fifty three and 771/100 (253.77) feet;

EASTERLY: by Lot 3 on said plan, One Thousand and Twelve and 25/100 (1,012.25) feet.

PARCEL 3:

The easements and rights under the "Easement and License Agreement Between Rahim Aghai and Dorothy Aghai, Dartmouth Power Associates Limited Partnership, and James S. Gordon, Trustee of Old Fall River Realty Trust dated October 31, 1990 and recorded on November 2, 1990 in Book 2564, Page 20 (herein referred to as the "Aghai Easement Instrument") to use as appurtenant to the parcel insured as Parcel 1 the "Drainage Easement #12" shown on the Project Easement Plan, for the purposes specified in the Agreement, said Drainage Easement 12 is bounded and described as follows:

Beginning at a point on the easterly line of Energy Road, being the northwesterly corner of the described parcel being the point of the beginning, then running;

N 26° 45' 31" E thirty (30') feet by Energy Road; thence turning and running

S 62° 56' 07" E one hundred and twenty eight hundredths (100.28) feet to a point; thence

S 24° 44' 49" E one hundred four and forty two hundredths (104.42) feet to a point; thence

**CHICAGO TITLE INSURANCE COMPANY
COMMITMENT
SCHEDULE A – LEGAL DESCRIPTION**

S 79° 44' 49" E two hundred thirty one and sixty nine hundredths (231.69) feet to a point; thence

S 10° 15' 11" W five hundred twenty (520.00) feet to a point; thence

N 79° 44' 49" W two hundred fifty (250.00) feet to a point; thence

N 10° 15' 11" E four hundred ninety three and eighty five hundredths (439.85) feet to a point; thence

N 24° 44' 49" W one hundred four and ninety five hundredths (104.95) feet to a point; thence

N 62° 56' 07" W two hundred eighty nine and seventy three hundredths (289.73) feet to the point of beginning.

The above described parcel containing 141,751 square feet or 3.25 acres according to said Project Easement Plan.

PARCEL 4:

Easements and grants set forth or contained in the following easements:

(a.) Easement and License Agreement between Rahim Aghai and Dorothy Aghai, Dartmouth Power Associates United Partnership and Trustee of Old Fall River Realty Trust dated October 31, 1990 and recorded in Book 2564, Page 20.

b.) Easement granted to James S. Gordon, as the Trustee of The Old Fall River Realty Trust from Carol Medeiros (a/k/a Carol Smith), Cecil Smith III, Marion E. Smith (a/k/a Marion Luiz Smith), and Ambroso J. Smith dated October 31, 1990 and recorded in Book 2564, Page 46.

c.) Easement granted to James S. Gordon, Trustee of the Old Fall River Realty Trust from James Nassiff and Terrence D. Leberge d/b/a Apache Associates dated October 26, 1990 and recorded in Book 2564, Page 68.

CHICAGO TITLE INSURANCE COMPANY COMMITMENT SCHEDULE B

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

DISPOSITION

- A. Rights of present tenants, lessees or parties in possession not shown by the public records.
- B. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- C. Encroachments, overlaps, easements not shown by the public records and any other state of facts which an accurate survey certified to the Company or an inspection of the premises would disclose.
- D. Taxes or special assessments which are not shown as existing liens by the land records.

1. Real Property Taxes on the Grand List of October 1, 1, 2023 in the total amount of \$0.00

Note: Tax Information not Available.

No Open Mortgage

2. Title to and rights of the public and others entitled thereto in and to so much of the insured Parcel 1 and insured Parcel 2 lying within the bounds of Old Fail River.
3. Terms and provisions of the "Aghal Easement Instrument", the "Smith Easement Instrument", or the "Apache Easement Instrument" as such terms are defined in Parcel 4. (Affects Insured Parcel 3 and 4).
4. Terms and provisions of the following five (5) instruments, each entitled "Grant of Easement" given to Algonquin Gas Transmission Company; (i) from Dorothea M. Reposa dated April 21, 1952 and recorded in Book 1048, Page 459; (ii) From Manuel DeMello dated November 20, 1986 and recorded in Book 1996, Page 370; (iii) from Daniel M. Gifford at ux, dated May 10, 1952 and recorded in Book 1056, Page 159; (iv) from Joseph Furtado, Jr., dated April 21, 1952 and recorded in Book 1048, Page 467; and (v) from Gilbert T. Perry and Huberto Borges dated December 23, 1986 and recoded in Book 2064, Page 310. (Affects Insured Parcel 1. only)
5. Twenty (20') foot wide right of way reserved under deed from Nellie M. Gifford to Wilfred K. Gifford recorded in Book 781, Page 65, affecting the following items shown on the Project Easement Plan, as hereinafter defined; (a) Future Extension A; (b) Drainage Easement #12; (c) Drainage Easement #15; and (d) Berm Easement 0.
6. Terms and provisions contained in two (2) certain easements granted to New Bedford Gas and Electric Light Company by John Rapoza, Rose Rapoza, Manuel M. Rapoza and Emily Rapoza dated June 23, 1960 and recorded in Book 1318, Page 517 and 519.

**CHICAGO TITLE INSURANCE COMPANY
COMMITMENT
SCHEDULE B**

7. Reservation of right of way as set forth in a Deed to James S. Gordon, Trustee of Old Fall River Realty Trust from Rahim Aghai and Dorothy Aghai (alkfa Dorothy Aghai) dated October 31, 1900 and recorded in Book 2564, Page 9.
8. Easement and License Agreement between Rahim Aghai and Dorothy Aghai, Dartmouth Power Associates United Partnership and Trustee of Old Fall River Realty Trust dated October 31, 1990 and recorded in Book 2564, Page 20.
9. Terms and provisions of easement granted to James S. Gordon, as the Trustee of The Old Fall River Realty Trust from Carol Medeiros (a/k/a Carol Smith), Cecil Smith III, Marion E. Smith (a/k/a Marion Luiz Smith), and Ambroso J. Smith dated October 31, 1990 and recorded in Book 2564, Page 46.
10. Easement Agreement by and between James S. Gordon, Trustee of Old Fall River Realty Trust and Carol Medeiros (a/k/a Carol Smith), Cecil Smith III, Marion E. Smith (a/k/a Marion Luis Smith) and Ambrose J. Smith dated October 31, 1990 and recorded in Book 2564, Page 56.
11. Terms and provisions of easement granted to James S. Gordon, Trustee of the Old Fall River Realty Trust from James Nassiff and Terrence D. Leberge d/b/a Apache Associates dated October 26, 1990 and recorded in Book 2564, Page 68.
12. Declaration of Easements, Covenants and Restrictions by Dartmouth Power Associates Limited Partnership dated October 30, 1990 and recorded in Book 2564, Page 87.
13. Accommodation Agreement between Dartmouth Power Associates Limited Partnership, Commonwealth Electric Company. Old Fall River Realty Trust, Westpac Banking Corporation and Trust Company of the West dated October 30, 1990 and recorded in Book 2564, Page 135.
14. Easement granted to Commonwealth Electric Company from James S. Gordon, Trustee of Old Fall River Realty Trust dated March 15, 1991 and recorded in Book 2612, Page 332.
15. Deed Restriction granted to the Town of Dartmouth dated September 16, 1991 and recorded in Book 2808, Page 205.
16. Deed Restriction grunted to the Town of Dartmouth dated September 16, 1991 and recorded at Book 2808, Page 209.
17. Deed Restriction granted to the Town of Dartmouth dated September 16, 1991 and recorded In Book 2808, Page 228.
18. Easements as set forth in a deed to Rahim Aghai and Dorothy E. Aghai from James S. Gordon, Trustee of Old Fall River Realty Trust dated April 27, 1992 and recorded in Book 2808, Page 232.
19. Taking of a Permanent Easement by the Town of Dartmouth recorded in Book 2823, Page 83; as Assigned by Assignment to the Town of Dartmouth recorded in Book 2823, Page 85.

**CHICAGO TITLE INSURANCE COMPANY
COMMITMENT
SCHEDULE B**

20. a.) Order of Conditions under Massachusetts Wetlands Protection Act (DEQE File 15-580) wherein Algonquin Gas Transmission Company is applicant, dated May 5, 1987 and recorded in Book 2024, Page 859; as affected by Certificate of Compliance acknowledged October 29, and recorded in Book 2729, Page 53. (Affects Parcel 1 only)
21. b.) Order of Conditions under Massachusetts Wetlands Protection Act (DEQE File 15-841) Dartmouth Power Associates is applicant dated October 16, 1990 and recorded in Book 2559, Page 327; as amended by Amended Order of Conditions recorded in Book 2604, Page 187, as further amended by Amended Order of Conditions recorded in Book 2610, Page 115; as further affected by Extension Permit recorded in Book 3143 Page 108, as further affected by Partial Certificate of Compliance recorded in Book 3382, Page 94 and Certificate of Compliance recorded in Book 3771, Page 192.
22. c.) Terms, provisions and conditions contained in Special Permit Decision and Approval with Conditions from Dartmouth Selectmen dated October 25, 1990 and recorded In Book 2559, Page 276; as amended by Amended Decision and Approval With Conditions recorded in Book 2808, Page 220.
23. d.) Terms and Provisions contained in Variance Decision of Dartmouth Zoning Board of Appeals dated October 25, 1990 and recorded in Book 2559, Page 317; as amended by Variance Decision for Amendment to Variance and recorded in Book 2808, Page 213.
24. e.) Terms and provisions of Order of Conditions (File No. 15-846) issued by Dartmouth Conservation Commission to Dartmouth Power Associates dated August 22, 1990 and recorded in Book 2552, Page 137; as affected by Certificate of Compliance acknowledged on January 21, 2000 and recorded in Book 4633, Page 266.
25. f.) Covenant naming Dartmouth Power Associates Limited Partnership, as Covenantor dated October 2, 1990 and recorded In Book 2.564, Page 84, as affected by Amendment to Covenant dated September 25, 1999, recorded in Book 3578, Page 201.
26. g.) Order of Conditions by Dartmouth Conservation Commission (File No. 15-792), recorded in Book 2398, page 262, as affected by Amended Order of Conditions recorded in Book 2438, Page 40, as further affected by Certificate of Compliance by the Dartmouth Conservation Commission recorded in Book 2624, Page 180.
27. h.) Order of Conditions (File No. 15-894) by the Dartmouth Conservation Commission to Dartmouth Power Associates dated April 29, 1991 and recorded at Book 2662, Page 230; as affected by Certificate of Compliance acknowledged on January 21, 2000 and recorded in Book 4633, Page 264.
28. i.) Order of Conditions (File No. 15-972) by the Dartmouth Conservation Commission to Old Fall River Road Industrial Development, Dr. Rahim and Dorothy Aghai, Old Fall River Realty Trust and Dartmouth Power Associates Limited Partnership dated August 7, 1992 and recorded in Book 3029, Page 150; as affected by superseding Order of Conditions by the Department of Environmental Protection to Garcia & Galuska, Inc., recorded in Book 3449, Page 203; as affected by Extension Permit acknowledged April 28, 1999; as affected by Extension Permit recorded in Book 4633, Page 268; as affected by Amended Superceding

CHICAGO TITLE INSURANCE COMPANY COMMITMENT SCHEDULE B

Order of Conditions recorded in Book 4635, Page 233, as further affected by Extension Permit recorded in Book 4635, Page 240.

29. J.) Notice of Decision dated October 17, 1995 recorded in Book 3578, Page 177; as affected by Decision granting an Extension dated December 9, 1996 recorded in Book 3783, Page 291.
30. Covenant Regarding Peaking Unit dated December 23, 2008 and recorded January 12, 2009 with the Bristol County South District registry of Deeds in Book 9234, Page 108.
31. Order of Conditions by the Dartmouth Conservation Commission dated January 22, 2009 and recorded January 27, 2009 with the Bristol County South District Registry of Deeds in Book 9246, Page 150, as affected by a Certificate of Compliance dated August 16, 2011 and recorded September 1, 2011 with said Registry in Book 10140, Page 117.
32. Order of Resource Area Delineation by the Dartmouth Conservation Commission recorded September 11, 2009 with the Bristol County South District registry of Deeds in Book 9499, Page 166.

NOTE: A Third Amendment to Special Permit granted by the Town of Dartmouth Select Board recorded January 12, 2009 with said Registry in Book 9234, Page 82, as affected by a Fourth Amendment to Special Permit granted by the Town of Dartmouth Select Board recorded April 2, 2015 with said Registry in Book 11335, Page 27 NOTE: These instruments affect NOTE c.) on Page 7 of the client Provided Prior Report.

NOTE: A Special Permit granted by the town of Dartmouth Board of Appeals recorded January 12, 2009 with said Registry in Book 9234, Page 90.

NOTE: An Amendment to Variance by the Town of Dartmouth Board of Appeals recorded January 12, 2009 with said Registry in Book 9234, Page 96, as affected by an Amendment to Use Variance Decision recorded April 2, 2015 with said Registry in Book 11335, Page 22. NOTE These instruments affect NOTE d.) on Page 7 of the client provided Prior Report.

NOTE: A Second Amendment to Covenant dated February 2, 2015 and recorded April 2, 2015 with said Registry in Book 11335, Page 35. NOTE This instrument affects NOTE f.) on Page 8 of the client provided Prior Report.

NOTE: A Termination of Lease and Notice of Lease recorded January 30, 2008 with said Registry in Book 8931, Page 60. NOTE: This instrument terminates that certain Notice of Lease recorded March 3, 2000 with said Registry in Book 4633, Page 319. Also NOTE: Notice of Lease entered as No. 25 in client provided Prior Report.

NOTE: Copies of the following instruments set forth in the client provided Prior Report are not available online: Book 1048, Page 459, Book 1056, Page 159, Book 1048, Page 467, and Book 781, Page 65.

24 Month Chain of Title

Title vested in Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership by virtue of a Quitclaim Deed from James S. Gordon, Trustee of Old Fall River Realty Trust under

**CHICAGO TITLE INSURANCE COMPANY
COMMITMENT
SCHEDULE B**

Declaration of Trust dated November 29, 1989 dated February 02, 2000 and recorded March 03, 2000 in Book 4633 at Page 277 of the Dartmouth Land Records.

NOTE: Exceptions A, B, and D will be removed upon receipt of a properly executed Chicago Title Insurance Company Affidavit. Exception C can be omitted from the final policies upon proof of compliance with Chicago Title Insurance Company's survey coverage requirements.

NOTE: The nature of the mortgage transaction to be insured herein must be disclosed to this Company prior to closing of title. Title may be subject to such additional exceptions as may be appropriate after disclosure of the type of transaction has been made.

CAVEAT - PROVISIONS OF GOVERNMENTAL REGULATIONS, INCLUDING BUT NOT LIMITED TO WETLANDS, SUBDIVISION, BUILDING AND ZONING REGULATIONS ARE EXCLUDED FROM POLICY COVERAGE. SUCH MATTERS SHOULD BE DISCUSSED WITH AN ATTORNEY.

1 ENERGY RD

Location 1 ENERGY RD

Mblu 67/ 9/ / /

Acct#

Owner DARTMOUTH POWER ASSOC
LTD PTR

Assessment \$3,282,000

Appraisal \$3,282,000

PID 3325

Building Count 2

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2023	\$754,700	\$2,527,300	\$3,282,000
Assessment			
Valuation Year	Improvements	Land	Total
2023	\$754,700	\$2,527,300	\$3,282,000

Owner of Record

Owner DARTMOUTH POWER ASSOC LTD PTR
Co-Owner % TALEN ENERGY SUPPLY LLC
Address 600 HAMILTON ST #600
ALLENTOWN, PA 18101

Sale Price \$1,970,000
Certificate
Book & Page 04633/0277
Sale Date 03/03/2000
Instrument 1G

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
DARTMOUTH POWER ASSOC LTD PTR	\$1,970,000		04633/0277	1G	03/03/2000
GORDON JAMES S TRUSTEE	\$390,000		02564/0001	1O	11/02/1990
DEMELLO MANUEL	\$0		01877/0532		11/08/1983

Building Information

Building 1 : Section 1

Year Built: 1991
Living Area: 23,248

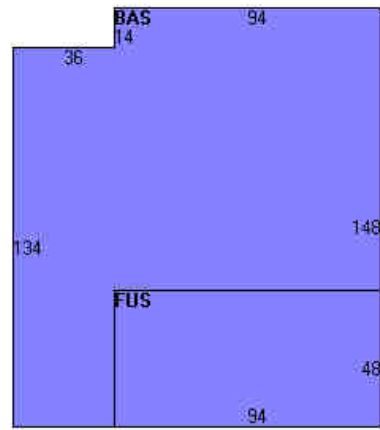
Replacement Cost: \$1,616,354

Building Percent Good: 42

Replacement Cost

Less Depreciation: \$678,900

Building Layout



(https://images.vgsi.com/photos/DartmouthMAPhotos/Sketches/3325_3559.jpg)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	18,736	18,736
FUS	Upper Story, Finished	4,512	4,512
		23,248	23,248

Building 2 : Section 1

Year Built: 1992

Living Area: 10,672

Replacement Cost: \$1,636,062

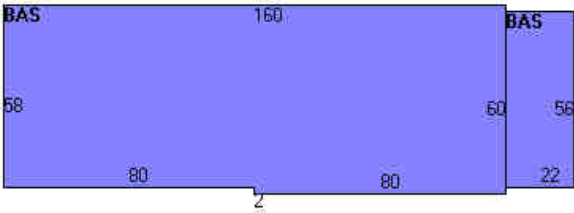
Building Percent Good: 0

Replacement Cost

Less Depreciation: \$0

Building Attributes : Bldg 2 of 2	
Field	Description
Style:	Office Bldg
Model	Commercial
Grade	Excellent +20
Stories:	1
Occupancy	1.00
Exterior Wall 1	Pre-finish Metl
Exterior Wall 2	
Roof Structure	Gable/Hip
Roof Cover	Metal/Tin
Interior Wall 1	Plastered
Interior Wall 2	Cust Wd Panel
Interior Floor 1	Hardwood
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	Central
Struct Class	
Bldg Use	ELEC GEN MDL-94
Total Rooms	
Total Bedrms	00
Total Baths	0
1st Floor Use:	450C
Heat/AC	HEAT/AC PKGS
Frame Type	STEEL
Baths/Plumbing	AVERAGE
Ceiling/Wall	SUS-CEIL & WL
Rooms/Prtns	AVERAGE
Wall Height	12.00
% Comn Wall	0.00

Building Layout



(https://images.vgsi.com/photos/DartmouthMAPhotos//Sketches/3325_3560.jpg)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	10,672	10,672
		10,672	10,672

Extra Features

Extra Features				Legend
Code	Description	Size	Value	Bldg #
SPR1	SPRINKLERS-WET	10672.00 S.F.	\$0	2

Land

Land Use		Land Line Valuation	
Use Code	4500	Size (Acres)	27.49
Description	ELEC GEN MDL-96	Frontage	

Zone

LI

Neighborhood

045

Alt Land Appr

No

Category

Depth

Assessed Value

\$2,527,300

Appraised Value

\$2,527,300

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
STK2	CHIMNEY STK MT			172.00 UNITS	\$52,000	1
FN5	FENCE-10'CHAIN			2400.00 L.F.	\$5,500	2
PAV1	PAVING-ASPHALT			40000.00 S.F.	\$9,000	2
SHD2	W/LIGHTS ETC			348.00 S.F.	\$600	2
SHD2	W/LIGHTS ETC			108.00 S.F.	\$200	2
OIL	OIL TANK			424000.00 GAL.	\$8,500	2

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2024	\$754,700	\$2,527,300	\$3,282,000
2023	\$754,700	\$2,527,300	\$3,282,000
2022	\$754,700	\$2,527,300	\$3,282,000

Assessment			
Valuation Year	Improvements	Land	Total
2024	\$754,700	\$2,527,300	\$3,282,000
2023	\$754,700	\$2,527,300	\$3,282,000
2022	\$754,700	\$2,527,300	\$3,282,000

387 OLD FALL RIVER RD

Location 387 OLD FALL RIVER RD

Mblu 72/ 28/ 1/ /

Acct#

Owner DARTMOUTH POWER ASSOC
LTD PTR

Assessment \$218,600

Appraisal \$218,600

PID 3665

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2023	\$0	\$218,600	\$218,600
Assessment			
Valuation Year	Improvements	Land	Total
2023	\$0	\$218,600	\$218,600

Owner of Record

Owner DARTMOUTH POWER ASSOC LTD PTR
Co-Owner %TALEN ENERGY SUPPLY LLC
Address 2929 ALLEN PARKWAY 22ND FL
HOUSTON, TX 77019

Sale Price \$1,970,000
Certificate
Book & Page 04633/0277
Sale Date 03/03/2000
Instrument 1G

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
DARTMOUTH POWER ASSOC LTD PTR	\$1,970,000		04633/0277	1G	03/03/2000
GORDON JAMES S TRUSTEE	\$100,000		02564/0066	1N	11/02/1990

Building Information

Building 1 : Section 1

Year Built:

Living Area: 0

Replacement Cost: \$0

Building Percent Good:

Building Layout

(https://images.vgsi.com/photos/DartmouthMAPhotos/Sketches/3665_3926.jpg)

Replacement Cost
Less Depreciation: \$0

confidential
Darian King
power-transitions.com
Aug 25, 2025 8:37 PM EDT

Building Sub-Areas (sq ft)	Legend
No Data for Building Sub-Areas	

Building Attributes	
Field	Description
Style:	Vacant Land
Model	
Grade:	
Stories:	
Occupancy	
Exterior Wall 1	
Exterior Wall 2	
Roof Structure:	
Roof Cover	
Interior Wall 1	
Interior Wall 2	
Interior Flr 1	
Interior Flr 2	
Heat Fuel	
Heat Type:	
AC Type:	
Total Bedrooms:	
Total Bthrms:	
Total Half Baths:	
Total Xtra Fixtrs:	
Total Rooms:	
Bath Style:	
Kitchen Style:	
Num Kitchens	
Cndtn	
Num Park	
Fireplaces	
Fndtn Cndtn	
Basement	

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Land Line Valuation

confidential
Darian King
power-transitions.com
Aug 25, 2025 8:37 PM EDT

Use Code	424V	Size (Acres)	5.49
Description	ELECSUBSTA MDL-00	Frontage	
Zone	SRB	Depth	
Neighborhood	040	Assessed Value	\$218,600
Alt Land Appr	No	Appraised Value	\$218,600
Category			

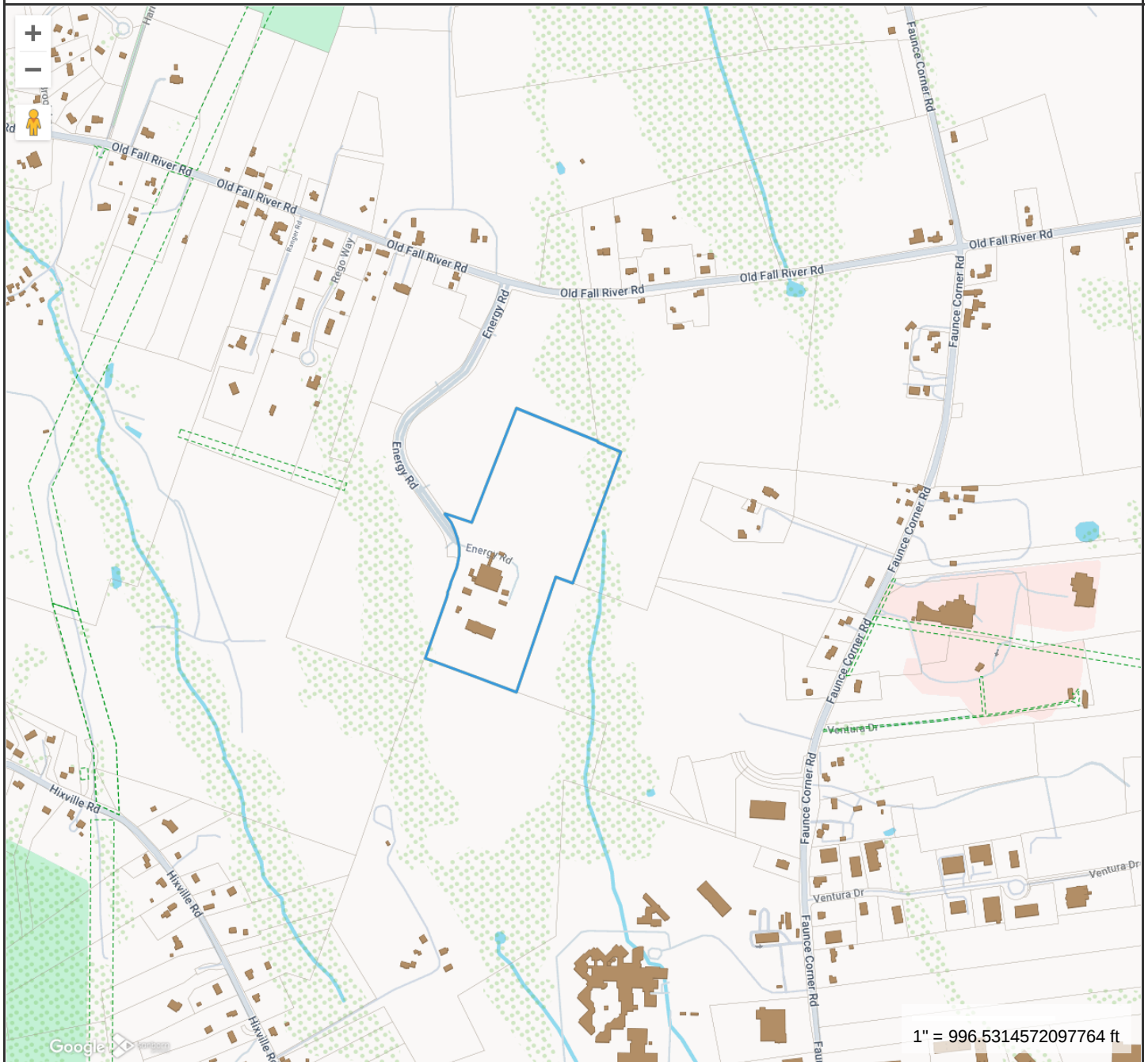
Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2024	\$0	\$218,600	\$218,600
2023	\$0	\$218,600	\$218,600
2022	\$0	\$218,600	\$218,600

Assessment			
Valuation Year	Improvements	Land	Total
2024	\$0	\$218,600	\$218,600
2023	\$0	\$218,600	\$218,600
2022	\$0	\$218,600	\$218,600

**Property Information**

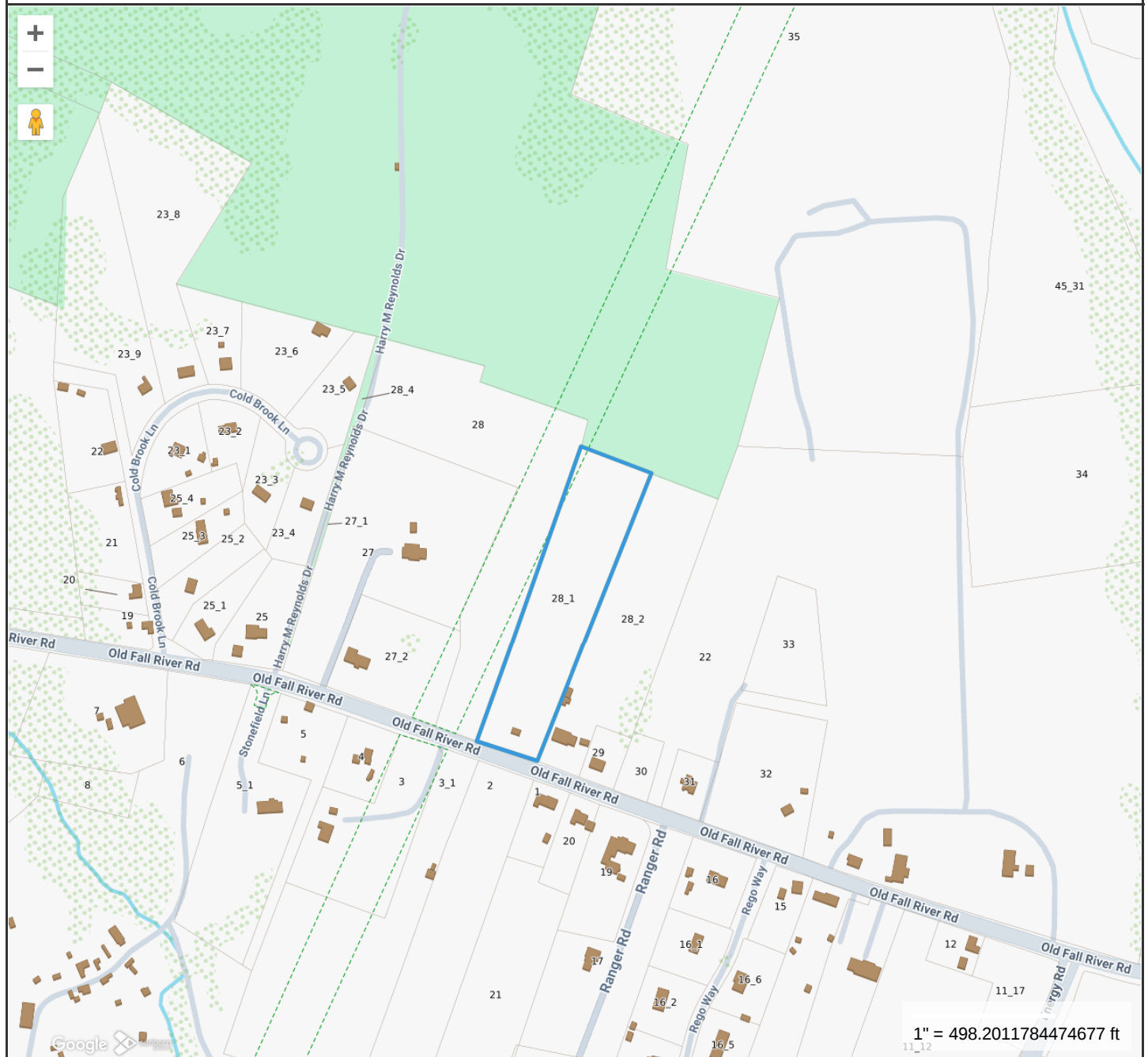
Property ID 67||9|||
Location 1 ENERGY RD
Owner DARTMOUTH POWER ASSOC LTD PTR

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

Town of Dartmouth, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 12/1/2021
Data updated 12/1/2021

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.

**Property Information**

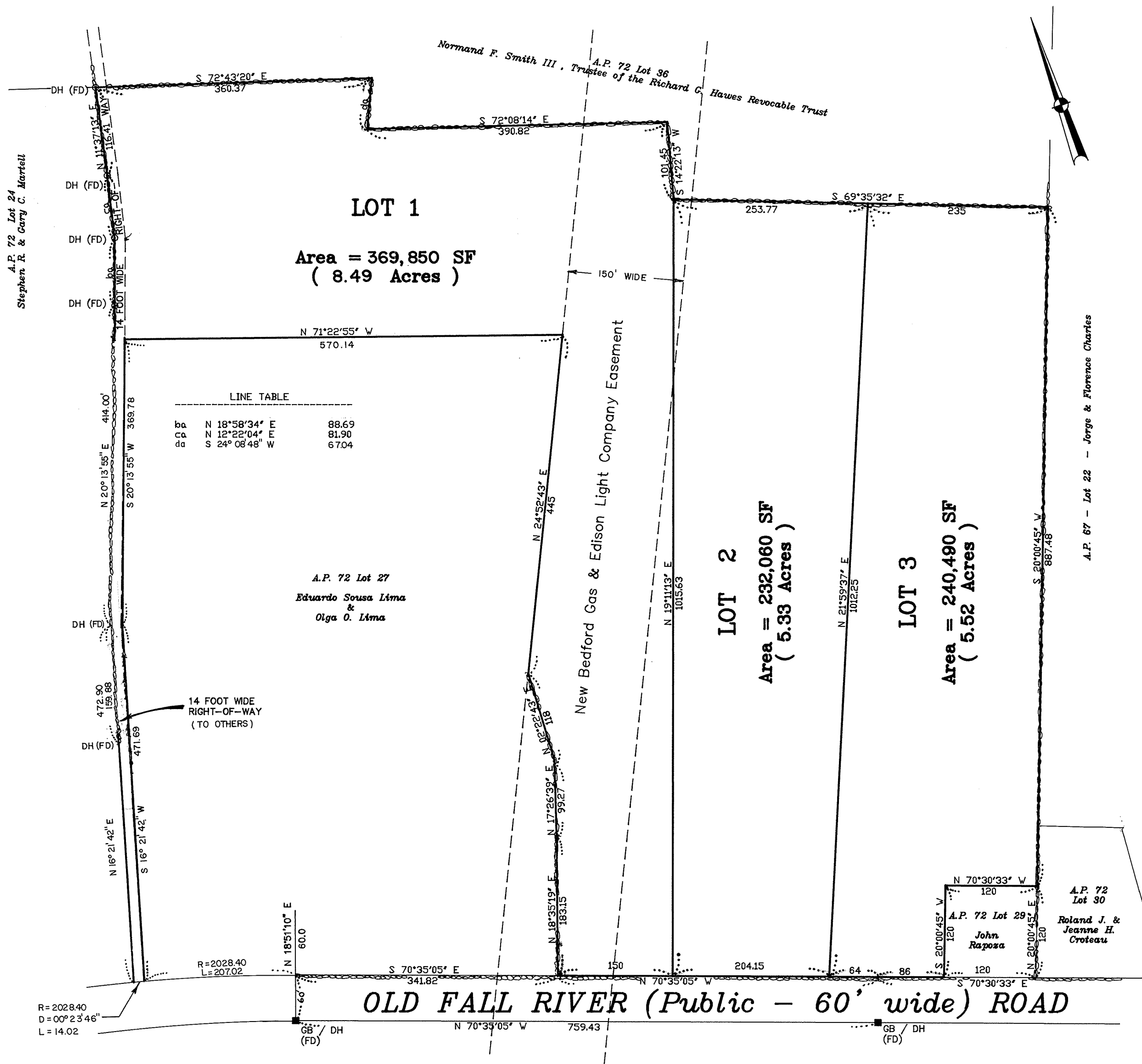
Property ID 72||28||1||
Location 387 OLD FALL RIVER RD
Owner DARTMOUTH POWER ASSOC LTD PTR

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Geometry updated 12/1/2021
Data updated 12/1/2021

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this resource.

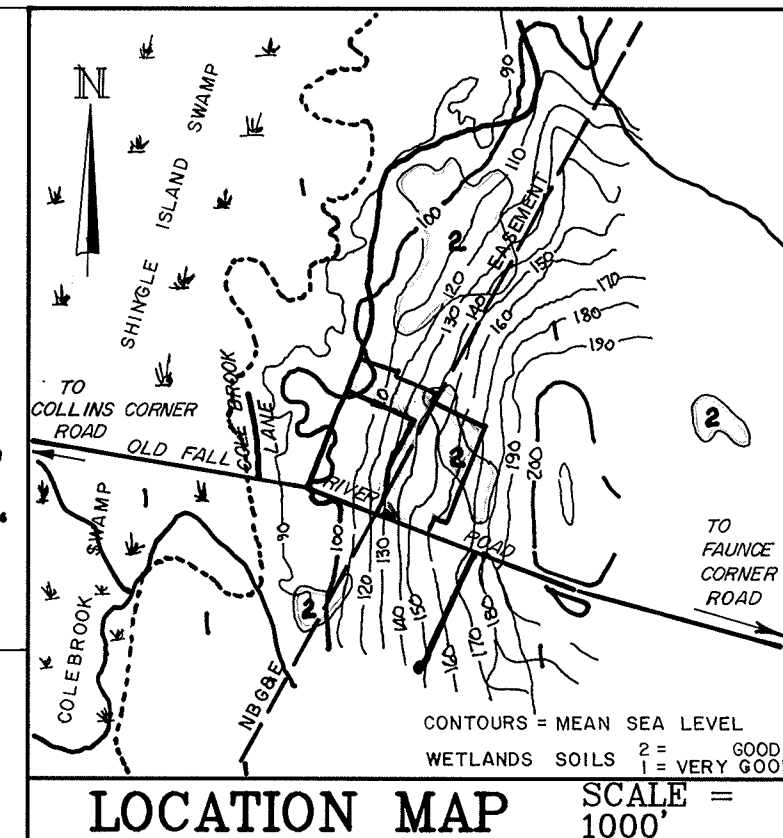


Approval under Subdivision
Control Law not required.

DARTMOUTH PLANNING BOARD

Robert F. Daniels Jr.

DATE: 1-8-90



I CERTIFY THAT THIS PLAN HAS BEEN PREPARED
IN CONFORMITY WITH THE RULES & REGULATIONS
OF THE REGISTERS OF DEEDS OF THE
COMMONWEALTH OF MASSACHUSETTS

Michael E. Zelnor 11/13/89
Preparer Date

NOTES

BEING A DIVISION OF LOT 28 AS SHOWN ON DARTMOUTH ASSESSORS PLAT 72.

PARCEL IS ZONED "SR - A" (SINGLE RESIDENCE A DISTRICT).

THIS PLAN WAS PREPARED FROM AN ACTUAL SURVEY CONDUCTED IN THE FIELD.

APPROVAL NOT REQUIRED PLAN

DRAWN FOR

TERRANCE D. LeBERGE
&
JAMES NASSIFF

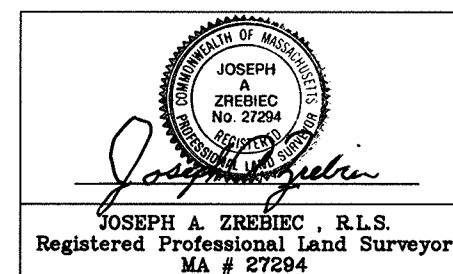
LOCATED ON

OLD FALL RIVER ROAD
NORTH DARTMOUTH, MASSACHUSETTS

SCALE: 1" = 80' DATE: NOVEMBER 1989

BRISTOL COUNTY ENGINEERING, INC.
Swansea Professional Park
1010 Grand Army Highway - Route Six
Swansea, Massachusetts

REC'D & RECORDED
1990 JUN -9 PM 1:52
REGISTER OF DEEDS
SOUTHERN DISTRICT



02-781

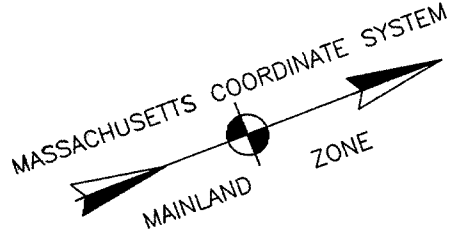
REC'D & RECORDED
1990 NOV -2 AM 4:29
DEPT. OF REVENUE
RECORDS & DEEDS

I HEREBY CERTIFY THAT:
1.) THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH
THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS,
AND
2.) THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES
DIVIDING EXISTING OWNERSHIPS, AND THE LINES OF THE STREETS
AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS
OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR
DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

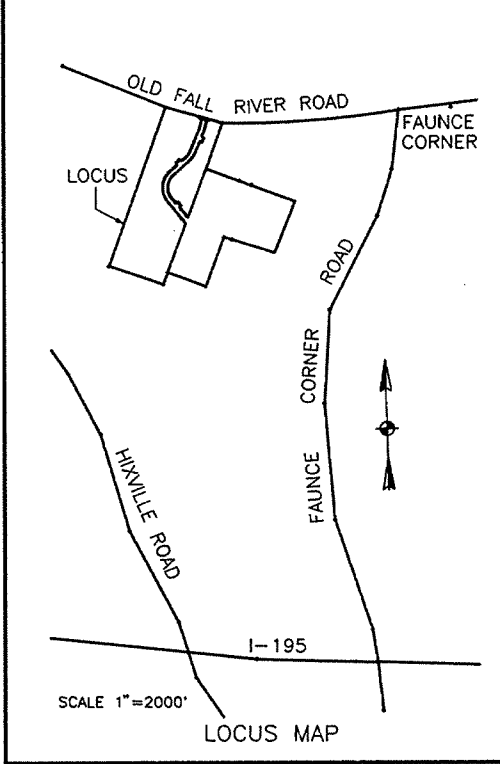
George A. Furtado
DATE: Oct 25, 1990

67/8
N/F
SHINGLE ISLAND INC.

67/13
N/F
HILDA MONIZ



FALL RIVER ROAD (PUBLIC - 60' WIDE - 1955 LAYOUT)



REVISIONS	
NO.	DATE

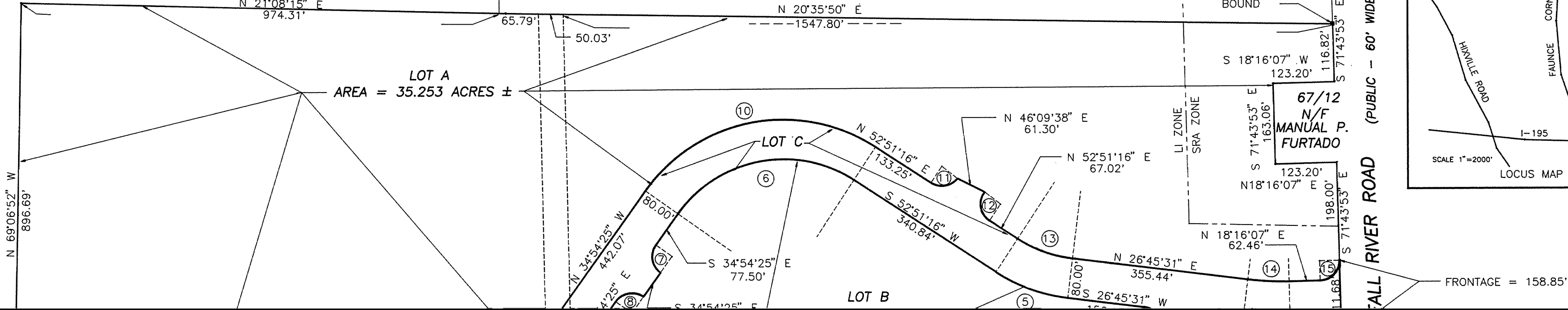
O ENGINEERING
Ralph A. Cataldo
No. 28605
State of Massachusetts
EXPIRY: RI 02860 (401)728-1100

RESERVED FOR REGISTRY USE

DARTMOUTH PLANNING BOARD
Approval Under the Subdivision
Control Law Not Required

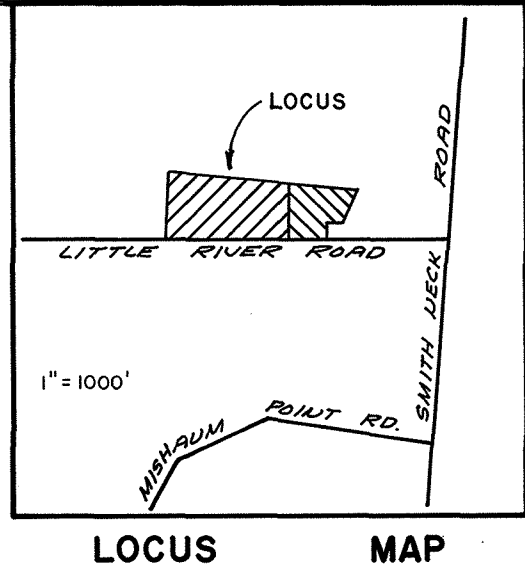
Roland J. Gault

Date 10-29-90



126-70

86-781

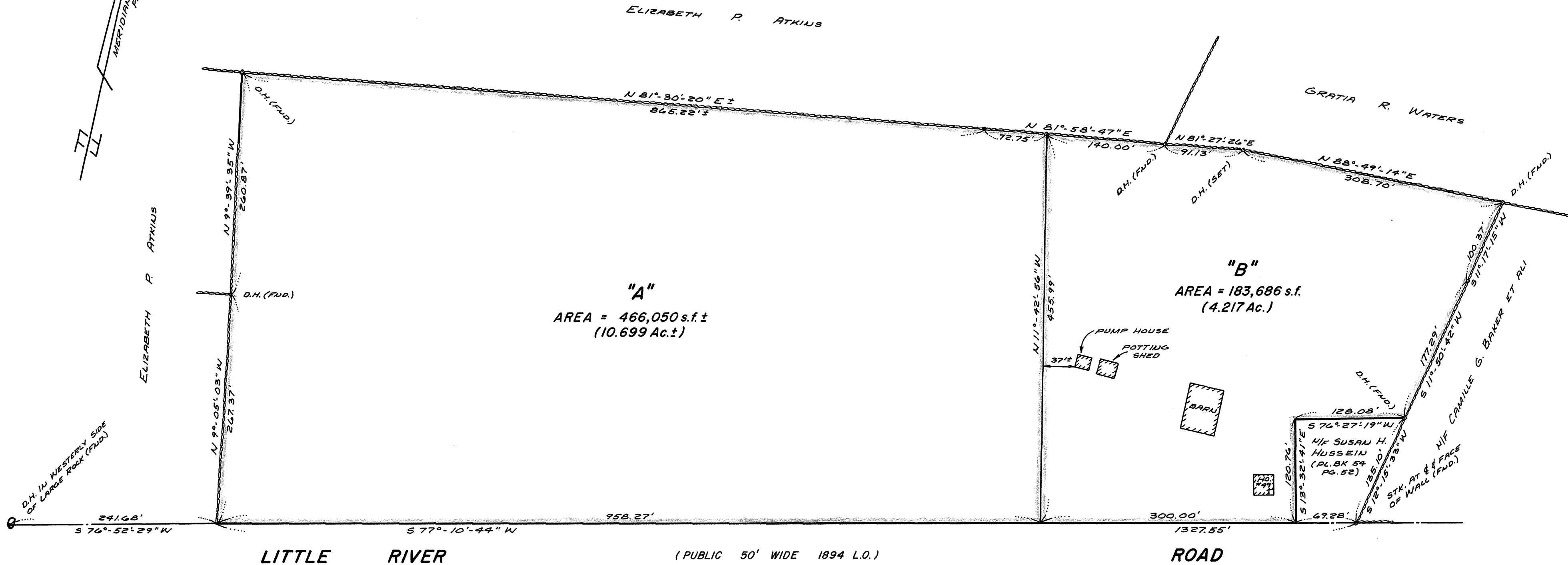


I HEREBY CERTIFY THAT THIS PLAN
HAS BEEN PREPARED IN CONFORMITY WITH
THE RULES AND REGULATIONS OF THE
REGISTERS OF THE COMMONWEALTH OF
MASSACHUSETTS.

OCTOBER 23, 1990
DATE

Allen D. Quintin
P.L.S.

REC'D & RECORDED
1990 NOV 15 PM 12:34
REGISTRY OF DEEDS
SUSSEX COUNTY
SOUTHERN DISTRICT



DARTMOUTH PLANNING BOARD
APPROVAL UNDER THE SUBDIVISION
CONTROL LAW NOT REQUIRED.

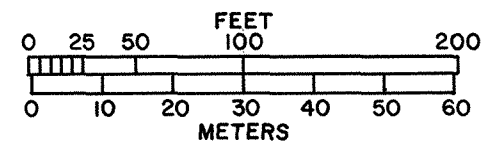
Robert J. Canella



Allen D. Quintin

APPROVAL NOT REQUIRED PLAN
IN
DARTMOUTH, MASS.
OWNED BY
ADELAIDE C. GRISWOLD
SCALE 1"=60' OCT. 23, 1990

ALLEN D. QUINTIN, P.L.S. 28 COSTA STREET
N. DARTMOUTH, MA.



DATE 11-5-90

126-78

QUITCLAIM DEED

James S. Gordon, Trustee of Old Fall River Realty Trust under Declaration of Trust dated November 29, 1989 and recorded with the Bristol South District Registry of Deeds (the "Registry") in Book 2487, Page 23, having a mailing address c/o James S. Gordon, Trustee, One Energy Road, North Dartmouth, Massachusetts 02747 ("Grantor"), for good and valuable consideration paid, and in consideration of One Million Nine Hundred Seventy Thousand Dollars (\$1,970,000), the receipt and sufficiency of which is hereby acknowledged, grants to Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership having a mailing address at 1001 Louisiana, Houston, Texas 77002 Attention Greg Jones, Esq. ("Grantee"), with QUITCLAIM COVENANTS, the following:

Those certain lots or parcels of land with all buildings and improvements located thereon, situated in Dartmouth, Bristol County, Massachusetts more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). The Property is conveyed subject to easements, restrictions and reservations listed in Exhibit B attached hereto and incorporated herein by reference and the Mortgages and security instruments described therein having an outstanding principal balance of \$6,067,400, which Mortgages the Grantee assumes and agrees to pay. As the outstanding balance on the Mortgages exceeds the consideration, no excise stamps need be affixed.

IN WITNESS WHEREOF, the Grantor has executed, acknowledged, and delivered this instrument as of the 3rd day of February, 2000.

In the presence of:

Kevin A. Levens

James S. Gordon
James S. Gordon, as Trustee as aforesaid
and not individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

2/3, 2000

Then personally appeared with above-named James S. Gordon, Trustee of Old Fall River Realty Trust, and acknowledged the foregoing instrument to be his free act and deed in said capacity, before me,

Charlotte Finigan
Notary Public Charlotte Finigan
My commission expires: 1/20/02

Property Address:

Assessor's Plat 72, Lot 2 (Parcel 2)
One Energy Road (Parcel 1)
Dartmouth, Massachusetts 02747

Exhibit A

Parcel 1:

The land shown as Lot C (located on the Southerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts) on a certain plan entitled "Approval Not Required Plan Drawn For Rahim & Dorothy Aghai and James S. Gordon, Trustees" dated October 25, 1990 (herein called the "Survey Plan") prepared by R.A. Cataldo Engineering of 141 Power Road, Pawtucket, Rhode Island, and recorded in said Bristol South District Registry of Deeds in Plan Book 126, Page 70.

Excepting and including therefrom a parcel of land containing 10.47 acres being more particularly shown as "Proposed 10 Acre Parcel" on a plan entitled, "Project Easement Plan, Dartmouth, Massachusetts" prepared for Dartmouth Power Associates dated October 24, 1990, and recorded with the Bristol South District Registry of Deeds in Plan Book 126, Plan 71 (the "Project Easement Plan")

Parcel 2:

The land located on the Northerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts shown as Lot 2 on a certain plan entitled "Approval Not Required Plan Drawn For Terrance D. LeBerge & James Nassiff Located on Old Fall River Road North Dartmouth, Massachusetts Scale: 1"=80' Dated November 1989" prepared by Bristol County Engineering, Inc. of Swansea, Massachusetts, and recorded with said Bristol South District Registry of Deeds in Plan Book 124, Plan 116, and more particularly bounded and described as follows:

SOUTHERLY: by Old Fall River Road, as shown on said plan, two hundred and four and 15/100 (204.15') feet;

WESTERLY: by Lot 1 on said plan, One Thousand and Fifteen and 63/100 (1,015.63') feet;

NORTHERLY: by land now or formerly of Normand F. Smith III, Trustee of the Richard G. Hawes Revocable Trust, two hundred fifty-three and 77/100 (253.77') feet;

EASTERLY: by Lot 3 on said plan, One Thousand and Twelve and 25/100 (1,012.25') feet.

The Property is conveyed together with the following easements and rights:

- (A) "Easement and License Agreement Between Rahim Aghai and Dorothy Aghai, Dartmouth Power Associates Limited Partnership, and James S. Gordon, Trustee of Old Fall River Realty Trust" dated October 31, 1989, and recorded on November 2, 1990 at 4:30 p.m. in Book 2564, Page 20 (herein referred to as the "Aghai Easement Instrument"); and
- (B) "Easement" between the Old Fall River Trustee and Carol Medeiros (a/k/a Carol Smith), Cecil Smith III, Marion E. Smith (a/k/a Marion Luiz Smith), and Ambrose

J. Smith dated October 31, 1990, and recorded on November 2, 1990 at 4:30 p.m. in Book 2564, Page 46 (herein referred to as the "Smith Easement Instrument"); and

- (C) "Easement Grant" from James Nassiff and Terrance LeBerge, individually and as co-partners d/b/a Apache Associates" dated October 31, 1990 and recorded on November 2, 1990 at 4:30 p.m. in Book 2564, page 68, (herein referred to as the "Apache Easement Instrument").

Exhibit B

The Property is conveyed subject to the following easements, restrictions and reservations:

1. Unpaid taxes subsequent to December 31, 1999 which constitute liens but are not yet due and payable.
2. Title to and rights of the public and others entitled thereto in and to so much of Parcel 1 and Parcel 2 lying within the bounds of Old Fall River Road in said Dartmouth, Massachusetts.
3. The terms and provisions of the "Aghai Easement Instrument", the "Smith Easement Instrument", or the "Apache Easement Instrument" as such terms are defined herein.
4. Terms and provisions of the following five (5) instruments, each entitled "Grant of Easement" given to Algonquin Gas Transmission Company": (i) From Dorothea M. Raposa dated April 21, 1952 and recorded with said Deeds at Book 1048, Page 459; (ii) From Manuel DeMello dated November 20, 1986 and recorded with said Deeds at Book 1996, Page 370; (iii) From Daniel M. Gifford, et ux dated May 10, 1952 and recorded with said Deeds at Book 1056, Page 159; (iv) From Joseph Furtado, Jr. dated April 21, 1952 and recorded with said Deeds at Book 1048, Page 457; and (v) From Gilbert T. Perry and Humberto Borges dated December 23, 1986 and recorded with said Deeds at Book 2064, Page 310.
5. Order of Conditions under Massachusetts Wetlands Protection Act (DEQE File 15-580) wherein Algonquin Gas Transmission Company is applicant, dated May 5, 1987 and recorded with said Deeds at Book 2024, Page 659 as affected by Certificate of Compliance acknowledged October 29, 1991 and recorded with said Deeds in Book 2729, Page 53.
6. Order of Conditions under Massachusetts Wetlands Protection Act (DEQE File 15-841) wherein Dartmouth Power Associates is applicant dated October 16, 1990 and recorded with said Deeds at Book 2559, Page 327, as amended by Amended Order of Conditions recorded with said Deeds at Book 2604, Page 187, as further amended by Amended Order of Conditions recorded with said Deeds at Book 2610, Page 115, as further affected by Extension Permit recorded with said Deeds at Book 3143, Page 108, as further affected by Partial Certificate of Compliance recorded with said Deeds at Book 3382, Page 94 and Certificate of Compliance recorded with said Deeds in Book 3771, Page 192.
7. Terms, provisions and conditions contained in Special Permit Decision and Approval with Conditions from Dartmouth Selectmen dated October 25, 1990 and recorded with said Deeds at Book 2559, Page 276, as amended by Amended Decision and Approval with Conditions recorded with said Deeds at Book 2808, Page 220.
8. Terms and Provisions contained in Variance Decision of Dartmouth Zoning Board of Appeals dated October 25, 1990 and recorded with said Deeds at Book 2559, Page 317, as amended by Variance Decision for Amendment to variance and recorded with said Deeds at Book 2808, Page 213.

9. Such state of facts as shown on the following plans:
- a. "As-Built Riser Station and Power Plant Facility in N. Dartmouth, MA prepared for Dartmouth Power Associates Limited Partnership" (the "Project As-Built Plans") dated August 31, 1992, prepared by Olde Boston Land Survey Co. Inc. sheets 1 and 2 of 2, updated and revised by Kenneth R. Ferreira Engineering Inc. as of January 28, 2000.
 - b. "Energy Road As-Built N. Dartmouth, MA prepared for Dartmouth Power Associates;" dated August 31, 1992 prepared by Old Boston Land Survey Co., Inc. (the "Road As-Built Plan") updated and revised by Kenneth R. Ferreira Engineering Inc. as of January 28, 2000.
10. Twenty (20') Foot Wide Right of Way reserved under deed from Nellie M. Gifford to Wilfred K. Gifford recorded with said Deeds at Book 781, Page 85, affecting the following items shown on the Project Easement Plan, as hereinafter defined: (a) Future Extension A; (b) Drainage Easement #12; (c) Drainage Easement #15; and (d) Berm Easement D.
11. Terms and provisions of Order of Conditions (File No. 15-846) issued by Dartmouth Conservation Commission to Dartmouth Power Associates dated August 22, 1990 and recorded with said Deeds at Book 2552, Page 137, as affected by Certificate of Compliance acknowledged on January 21, 2000 and recorded with said Deeds herewith.
12. Terms and provisions contained in two (2) certain easements granted to New Bedford Gas and Electric Light Company by John Rapoza, Rose Rapoza, Manuel M. Rapoza and Emily Rapoza dated June 23, 1960 and recorded with said Deeds at Book 1318, Page 517 and 519.
13. Reservation of right of way as set forth in a Deed to James S. Gordon, Trustee of Old Fall River Realty Trust from Rahim Aghai and Dorothy Aghai (a/k/a Dorothy Aghai) dated October 31, 1990 and recorded with said Deeds at Book 2564, Page 9.
14. Easement and License Agreement between Rahim Aghai and Dorothy Aghai, Dartmouth Power Associates Limited Partnership and Trustee of Old Fall River Realty Trust dated October 31, 1990 and recorded with said Deeds at Book 2564, Page 20.
15. Terms and provisions of easement granted to James S. Gordon, as the Trustee of The Old Fall River Realty Trust from Carol Medeiros (a/k/a Carol Smith), Cecil Smith, III, Marion E. Smith (a/k/a Marion Luiz Smith), and Ambrose J. Smith dated October 31, 1990 and recorded with said Deeds at Book 2564, Page 46.
16. Easement Agreement by and between James S. Gordon, Trustee of Old Fall River Realty Trust and Carol Medeiros (a/k/a Carol Smith), Cecil Smith, III, Marion E. Smith (a/k/a Marion Luiz Smith) and Ambrose J. Smith dated October 31, 1990 and recorded with said Deeds at Book 2564, Page 56.
17. Terms and provisions of easement granted to James S. Gordon, Trustee of The Old Fall River Realty Trust from James Nassiff and Terrance D. Leberge d/b/a Apache Associates dated October 26, 1990 and recorded with said Deeds at Book 2564, Page 68.

18. Covenant naming Dartmouth Power Associates Limited Partnership, as Covenantor dated October 2, 1990 and recorded with said Deeds at Book 2564, Page 84, as affected by Amendment to Covenant dated September 25, 1999, recorded with said Deeds in Book 3578, Page 201.
19. Declaration of Easements, Covenants and Restrictions by Dartmouth Power Associates Limited Partnership dated October 30, 1990 and recorded with said Deeds at Book 2564, Page 87.
20. Accommodation Agreement between Dartmouth Power Associates Limited Partnership, Commonwealth Electric Company, Old Fall River Realty Trust, Westpac Banking Corporation and Trust Company of the West dated October 30, 1990 and recorded with said Deeds at Book 2564, Page 135.
21. Easement granted to Commonwealth Electric Company from James S. Gordon, Trustee of Old Fall River Realty Trust dated March 15, 1991 and recorded with said Deeds at Book 2612, Page 332.
22. Certificate of Compliance (File No. 15-792) by the Dartmouth Conservation Commission recorded with said Deeds at Book 2624, Page 180.
23. Order of Conditions (File No. 15-894) by the Dartmouth Conservation Commission to Dartmouth Power Associates dated April 29, 1991 and recorded with said Deeds at Book 2662, Page 230, as affected by Certificate of Compliance acknowledged on January 21, 2000 and recorded with said Deeds herewith.
24. Deed Restriction granted to the Town of Dartmouth dated September 16, 1991 and recorded with said Deeds at Book 2808, Page 205.
25. Deed Restriction granted to the Town of Dartmouth dated September 16, 1991 and recorded with said Deeds at Book 2808, Page 209.
26. Deed Restriction granted to the Town of Dartmouth dated September 16, 1991 and recorded with said Deeds in Book 2808, Page 228.
27. Easements as set forth in a Deed to Rahim Aghai and Dorothy E. Aghai from James S. Gordon, Trustee of Old Fall River Realty Trust dated April 27, 1992 and recorded with said Deeds at Book 2808, Page 232.
28. Order of Conditions (File No. 15-972) by the Dartmouth Conservation Commission to Old Fall River Road Industrial Development, Dr. Rahim and Dorothy Aghai, Old Fall River Realty Trust and Dartmouth Power Associates Limited Partnership dated August 7, 1992 and recorded with said Deeds at Book 3029, Page 150, as affected by superceding Order of Conditions by the Department of Environmental Protection to Garcia & Galuska, Inc. recorded with said Deeds at Book 3449, Page 203 as affected by Extension Permit dated April 28, 1999 and recorded with said Deeds herewith.
29. Taking of a Permanent Easement by the Town of Dartmouth recorded with said Deeds at Book 2823, Page 83, as Assigned by Assignment to the Town of Dartmouth recorded with said Deeds at Book 2823, Page 85.

30. Notice of Decision of the Dartmouth Board of Appeals granting a Variance (Case No. 1995-35E) recorded with said Deeds in Book 3578, Page 177, as affected by Decision granting an Extension recorded with said Deeds in Book 3783, Page 292.
31. Mortgage from Dartmouth Power Associates Limited Partnership to Toronto Dominion (Texas), Inc. dated December 15, 1995 and recorded with the Bristol South County Registry of Deeds on December 27, 1995 at Book 3588, Page 119.
32. Subordinated Mortgage from Dartmouth Power Associates Limited Partnership to Toronto Dominion (New York), Inc. dated December 15, 1995 and recorded with said Deeds in Book 3588, Page 161.
33. UCC from Dartmouth Power Associates as Debtor to Toronto Dominion (Texas) Inc. as Secured Party dated December 22, 1995 and recorded with said Deeds in Book 3586, Page 1321.
34. UCC from Dartmouth Power Associates as Debtor to Toronto Dominion (New York) Inc. as Secured Party dated December 22, 1995 and recorded with said Deeds in Book 3587, Page 1.
35. Amended and Restated Financing Statement from Dartmouth Power Associates Limited Partnership to Toronto Dominion (Texas), Inc. recorded with said Deeds in Book 3587, Page 23.
36. Mortgage from Dartmouth Power Associates Limited Partnership to Commonwealth Electric Company dated October 30, 1990 and recorded with said Deeds in Book 2570, Page 1.
37. Notice of Lease between Dartmouth Power Associates Limited Partnership and Energy Management, Inc. dated 3/1, 2000 and recorded with said Deeds herewith.

confidential
Darian King

BK 9234 PG 82

01/12/09 11:51 DOC. 707
Bristol Co. S.D.

Ref. 2559-276

January 8, 2009

DARTMOUTH, MASSACHUSETTS

CASE NUMBER SP 2008-01

MAP: 67 LOT: 9

BOOK: 4633 PAGE: 277

I, Lynn M. Medeiros, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning a Third Amendment to Special Permit for Dartmouth Power Associates Limited Partnership for property located at One Energy Road, Dartmouth, MA and filed in the office of the Town Clerk on December 9, 2008.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:

LYNN M. MEDEROS

TOWN CLERK OF DARTMOUTH

confidential
Darian King

power-transitions.com

ETD
NUTTER McLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

Aug 25, 2025 8:37 PM EDT

confidential
 Darian King
 power-transition.com
 Aug 25, 2025 8:37 PM EDT

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

Town of Dartmouth
 Select Board

File No. SP 2008-01
 THIRD AMENDMENT
 TO SPECIAL PERMIT

THIRD AMENDED DECISION AND
 APPROVAL WITH CONDITIONS

DARTMOUTH POWER ASSOCIATES
 LIMITED PARTNERSHIP

ZONING BY-LAW, SECTIONS 14.000, 33.500, 38.302,
 and electric transmission under G.L. c. 166, § 226

DARTMOUTH TOWN CLERK

DEC 9 A 9 35

RECEIVED

I. PROCEDURAL SUMMARY

This application is before the Select Board under Zoning By-Law Section 14.301, which requires a special permit for primary production of electric power in a Limited Industrial District. The application was filed by Dartmouth Power Associates Limited Partnership (the "Applicant") on August 19, 2008 for a special permit on Applicant's land, located at One Energy Road and designated as Assessor's Map 67, Lot 9 (the "Property"). The Property is more particularly described in a deed to the Applicant recorded with the Bristol County (S.D.) Registry of Deeds (the "Registry") in Book 4633, Page 277. The Applicant seeks an amendment to a Special Permit issued by the Select Board on October 2, 1990 and subsequently amended on September 16, 1991 and on September 25, 1995.

The application was noticed by publication in the The Standard Times on September 15 and September 22, 2008, and by mailing to "parties in interest" as that term is defined in M.G.L. c. 40A, § 11. The public hearing thereon commenced on October 1, 2008 and was continued to November 5, 2008 for further testimony, at which date the public hearing was closed. The Select Board deliberated at a public meeting on November 25, 2008. For convenience, both public hearing sessions and the public meeting for deliberations were held jointly by the Select Board and the Zoning Board of Appeals, which heard a request for a special permit for the height of a stack and a request for an amendment to an existing variance, both of which pertain to the Property and the project proposed in the application.

This matter before the Select Board must be decided affirmatively by a vote of at least four members to grant the requested special permit.

power-transitions.com
 Aug 25, 2025 8:37 PM EDT

II. FACTUAL SUMMARY

The Applicant is a Massachusetts limited partnership. Its business address is One Energy Road, Dartmouth, Massachusetts 02747.

The Applicant proposes to construct and install an approximately 25 megawatt peaking unit and associated appurtenances (including an 80-foot stack and a transformer), more particularly shown on the plans and documents submitted, which were incorporated into the record at the public hearing (collectively, the "Peaking Unit"). The Peaking Unit will be located adjacent to an existing nominal 68-megawatt electric power plant (the "Existing Facility"). Energy produced by the Peaking Unit will tie into the interconnect which is part of the Existing Facility.

The Existing Facility was permitted by the Town of Dartmouth pursuant to the following approvals: (i) Decision and Approval with Conditions granted by the Select Board, recorded with the Registry in Book 2559, Page 276, (ii) Variance granted by the Board of Appeals, recorded with the Registry in Book 2559, Page 317, (iii) Amended Decision and Approval with Conditions granted by the Select Board, recorded with the Registry in Book 2808, Page 220, and (iv) Amendment to Variance granted by the Board of Appeals, recorded with the Registry in Book 2808, Page 213. Further amendments to the Special Permit and the Variance were granted by the Select Board and the Board of Appeals, respectively, and recorded with the Registry in Book 3578, Page 188 and in Book 3578, Page 177; however, no substantial use thereof was made by the Applicant, and those amendments have since lapsed.

The Peaking Unit will be fueled by natural gas from the existing pipeline on the Property, with ultra-low sulfur diesel fuel oil used periodically. It will be started and operated from the plant control room in the Existing Facility. Staff at the Existing Facility will provide normal maintenance, repair, management and administrative services. The Peaking Unit will not require any water or generate wastewater in excess of the amounts currently permitted by the Town of Dartmouth. The 80-foot stack that is part of the Peaking Unit requires a special permit from the Board of Appeals pursuant to Section 14.402 of the Zoning By-Law (which special permit application was filed simultaneously with this application), and the Select Board does not have the authority to approve such a height.

The Massachusetts Department of Environmental Protection ("MassDEP") approved the Peaking Unit on May 7, 2008 pursuant to a Conditional Approval of Application for BWP AQ 02 Non-Major Comprehensive Plan Approval (Transmittal No. W113943; Application No. 4B07004; Source No. 120-0025; Facility No. 203295), a copy of which was provided to the Select Board prior to the hearing and incorporated into the record at the hearing (as the same may be amended from time to time by MassDEP, the "MassDEP Approval"). The MassDEP Approval established limitations on the amounts of air pollutant emissions that may be emitted by the Peaking Unit, established monitoring and recording requirements, required the Peaking Unit to comply with MassDEP's noise regulation and policy, and required the Peaking Unit to comply with the "Town of Dartmouth Special Limit for Plant Contribution" contained in the previously approved MassDEP application.

As an additional benefit from the Peaking Unit, and to counteract the potential burdens upon the Town resulting therefrom, Applicant has offered the following additional financial incentives to the Town, all as more particularly set forth in and subject to the terms and conditions of a Covenant Regarding Peaking Unit between the Applicant and the Town of Dartmouth, acting by and through the Select Board: (i) to grant the Town a long-term ground lease on a portion of the Property, adjacent to the Peaking Unit and Existing Facility, for the Town's use to construct wind turbines or an Alternate Use (as such term is defined in the Covenant Regarding Peaking Unit); (ii) to pay, within fiscal year 2009, the full expected amount of personal property taxes (\$87,390), which personal property taxes would otherwise be prorated for fiscal year 2009; and (iii) to pay the Town, by February 28 of each year, an amount equal to \$0.20 per megawatt hour that the Peaking Unit was actually running and the Applicant was receiving payment from ISO New England in the previous calendar year.

III. APPLICABLE PROVISIONS

The following sections of the Zoning By-Law are applicable to this application:

A. Section 14.100 Purpose

"The purpose [of the Limited Industrial District] is to provide for industrial uses that provide employment opportunities and diversify the tax base while not imposing hazards or nuisances on neighboring residential uses, commercial uses, and the environment."

B. Section 14.301

"Other manufacturing processing and primary production of steam and/or electric power shall require a Special Permit from the Board of Selectmen, which may impose reasonable conditions, including that:

- A. The project can reasonably be expected to have adequate water and other required natural resources.
- B. The project includes adequate impact mitigation for noise and other pollutants.
- C. The project includes adequate provisions to minimize traffic and road surface impacts.
- D. The facility's mass and scale is consistent, by siting and design, with neighboring uses.
- E. That the facility be limited to gas fired with fuel oil backup manufacturing and production of steam, hot water and/or electric power.

The foregoing quoted sections shall guide the discretion of the Select Board.

IV. FINDINGS

Based on the documents incorporated into the record and the testimony provided by the Applicant and its representatives and consultants and by others who attended the hearings, the Select Board makes the following findings:

- A. Purpose of Limited Industrial District. Approval of the Peaking Unit will further the purposes of the Limited Industrial District set forth in Section 14.100 as it will diversify the tax base, and subject to the conditions below, will not impose hazards or nuisances on neighboring uses or the environment.
- B. Water Supply and Other Required Natural Resources. The Peaking Unit will not require any increase in water demand than is already permitted for the Existing Facility. Other than water, no natural resources are to be obtained from the Town of Dartmouth, and no natural resources are to be acquired from abutting towns.
- C. Noise and Other Pollutants.
 1. Noise. MassDEP has approved the Peaking Unit subject to certain noise provisions contained in the MassDEP Approval. Subject to Applicant's compliance with the noise provisions in the MassDEP Approval, the Board finds that the Peaking Unit has adequate impact mitigation for noise.
 2. Wastewater Disposal. Wastewater from the Peaking Unit will be disposed in the same manner as it is currently disposed of at the Existing Facility. The Peaking Unit will not result in any increase in wastewater that is currently permitted to be generated by the Existing Facility.
 3. Other Air Pollutants. MassDEP has approved the Peaking Unit subject to certain limitations and conditions contained in the MassDEP Approval. Subject to Applicant's compliance with the provisions in the approval governing air emissions, the Board finds that the Peaking Unit has adequate impact mitigation for other air pollutants.
- D. Traffic and Road Surface Impacts. The Board finds that there will be no permanent impact to traffic from the Peaking Unit. The only traffic associated with the Peaking Unit will be temporary in nature in connection with the construction of the Peaking Unit. The existing public ways are generally adequate to accommodate the temporary traffic during construction, and the temporary traffic will not impact road surfaces in the area. Further, the Board finds that no additional study of traffic is required and no mitigation is necessary for traffic and road surface impacts.

- E. Mass and Scale. Since the Peaking Unit will be smaller in mass and scale than the Existing Facility, and will not significantly increase the mass and scale of the facility as a whole, the Board finds that the Peaking Unit's mass and scale is consistent, by siting and design, with neighboring uses. Moreover, as noted in the Application and during the hearings, the Board finds that there are no neighboring uses in the immediate vicinity of the Property, and that the Property is adequately screened from neighboring uses by existing vegetation.
- F. Fuel Oil Backup. As noted in the application and the testimony of Applicant's consultant, Phil Kuszpa of EBI Consulting, Applicant intends to use fuel oil periodically, but due to reasons of national security, MassDEP did not limit the use of fuel oil to back-up or emergency situations.

V. DECISION

The Select Board, based upon the findings presented above, grants the requested Amendment to the Special Permit for the Peaking Unit, in accordance with Applicant's application and materials submitted in association therewith, and subject to the conditions set forth below.

The grant of the Special Permit is subject to the following conditions:

1. The Peaking Unit and each element thereof shall be constructed substantially in accordance with the plans and information submitted to the Board.
2. The Amendment to the Special Permit is approved subject to the Applicant receiving a Special Permit from the Board of Appeals for the height of the stack, an Amendment to the existing variance from the Board of Appeals, and any and all other required approvals, permits and/or licenses from all applicable regulatory agencies.
3. The Peaking Unit shall comply with the requirements, standards, limitations and conditions contained in the MassDEP Approval.
4. The Applicant shall not draw any water for the Peaking Unit in excess of the water that is already permitted to be used at the Existing Facility, without the express written permission of the Director of Public Works for the Town of Dartmouth.
5. The Applicant shall dispose of wastewater from the Peaking Unit in the same manner as it is currently disposed of at the Existing Facility. The Applicant shall not be permitted to increase the wastewater that is currently permitted to be generated by the Existing Facility, without the express written permission of the Director of Public Works for the Town of Dartmouth.

6. The Applicant shall execute and deliver a Covenant Regarding Peaking Unit (the "Peaking Unit Covenant") in the form agreed to by the parties, which shall be duly recorded by the Applicant at the Registry of Deeds as soon as practicable. The Applicant shall record said Peaking Unit Covenant prior to the recording of any new mortgages or other encumbrances affecting the Property. The anticipated benefits and protection to the Town from full performance of the Peaking Unit Covenant are substantial and have weighed heavily in the decision to grant this Amendment to Special Permit with conditions. Accordingly, full and faithful performance of the terms of the Peaking Unit Covenant is a condition of the operation of the Peaking Unit, and this Third Amendment to Special Permit shall lapse and become null and void should the Applicant or its successors breach the terms of the Peaking Unit Covenant.
7. Prior to issuance of a building permit for the Peaking Unit, the Applicant shall submit to the Town Building Commissioner a site plan meeting the requirements of Section 14.500 of the Zoning By-Law, as amended by the terms of this decision.
8. Special Permit SP-90-1, as amended to date, including all conditions and covenants, shall, except as expressly amended herein, continue in full force and effect.

VI. ORDER

The Select Board at a public meeting on November 25, 2008 unanimously voted to grant the requested Amendment to the Special Permit, and each Select Board member represents that he or she attended the public hearing and heard all relevant testimony. This decision is to be enforced by the Town Building Commissioner in his capacity as zoning enforcement officer. The date of this written decision is November 25, 2008.

VII. NOTICE OF LAPSE

This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen of M.G.L. c. 40A from the grant of this Special Permit, if substantial use thereof has not commenced sooner except for good cause or in the case of a permit for construction, has not begun by such date, except for good cause.

confidential
Darian King

BK 9234 PG 89

SELECT BOARD, TOWN OF BARTMOUTH

power-transitions.com
Aug 25, 2025 8:37 PM EDT


Joe Michaud,
Chairperson


Robert W. Carney,
Vice Chairperson


Diane St. Gilbert


William J. Trimble

[Handwritten notes, mostly illegible]



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Darian King

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Aug 25, 2025 8:37 PM EDT

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Darian King

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01/12/09 11:52 DOC. 708
Bristol Co., S.O.

power-transitions.com

Aug 25, 2025 8:37 PM EDT

January 8, 2009

DARTMOUTH, MASSACHUSETTS

CASE NUMBER 2008-33

MAP: 67 LOT: 9

BOOK: 4633 PAGE: 277

I, Lynn M. Medeiros, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning Special Permit for Dartmouth Power Associates Limited Partnership for property located at One Energy Road, Dartmouth, MA and filed in the office of the Town Clerk on December 9, 2008.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:



LYNN M. MEDEIROS
TOWN CLERK OF DARTMOUTH

confidential
Darian King

power-transitions.com

Aug 25, 2025 8:37 PM EDT



NUTTER MCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
165 SEAPORT BOULEVARD
BOSTON, MA 02210-2804

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

Town of Dartmouth
Board of Appeals
File No. 2008-33
SPECIAL PERMIT

DECISION AND APPROVAL WITH CONDITIONS)

DARTMOUTH POWER ASSOCIATES)
LIMITED PARTNERSHIP)

ZONING BY-LAW, § 14.402)

I. PROCEDURAL SUMMARY

This application is before the Board of Appeals under Zoning By-Law Section 14.402, which requires a special permit for "chimneys, spires, towers, and other projections" located in a Limited Industrial District that extend above 35 feet in height. The application was filed by Dartmouth Power Associates Limited Partnership (the "Applicant") on August 19, 2008 for a special permit for construction of an eighty (80) foot stack on Applicant's land, located at One Energy Road and designated as Assessor's Map 67, Lot 9 (the "Property"). The Property is more particularly described in a deed to the Applicant recorded with the Bristol County (S.D.) Registry of Deeds (the "Registry") in Book 4633, Page 277.

The application was noticed by publication in the The Standard Times on September 15 and September 22, 2008, and by mailing to "parties in interest" as that term is defined in M.G.L. c. 40A, § 11. The public hearing thereon commenced on October 1, 2008 and was continued to November 5, 2008 for further testimony, at which date the public hearing was closed. The Board of Appeals deliberated at a public meeting on November 25, 2008. The Applicant also applied for an amendment to an existing variance, which is addressed in a separate decision of the Board of Appeals. For convenience, both hearing sessions and the public meeting for deliberations were held jointly by the Board of Appeals and the Select Board, which heard a request for a special permit for the addition of a peaking unit as required by Section 14.301 of the Zoning By-Law. All applications pertain to the Property and refer to the same project.

This matter before the Board of Appeals must be decided affirmatively by unanimous vote to grant the requested special permit.

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2008 DEC -9 A 9
DARTMOUTH POWER ASSOCIATES

II. FACTUAL SUMMARY

The Applicant is a Massachusetts limited partnership. Its business address is One Energy Road, Dartmouth, Massachusetts 02747.

The Applicant proposes to construct and install an approximately 25 megawatt peaking unit and associated appurtenances (including the 80-foot stack and a transformer), more particularly shown on the plans and documents submitted, which were incorporated into the record at the public hearing (the "Project"). The Project will be located adjacent to an existing nominal 68 megawatt electric power plant (the "Existing Facility"). Energy produced by the Project will tie into the interconnect which is part of the Existing Facility.

The Existing Facility was permitted by the Town of Dartmouth pursuant to the following approvals: (i) Decision and Approval with Conditions granted by the Select Board, recorded with the Registry in Book 2559, Page 276, (ii) Variance granted by the Board of Appeals, recorded with the Registry in Book 2559, Page 317, (iii) Amended Decision and Approval with Conditions granted by the Select Board, recorded with the Registry in Book 2808, Page 220, and (iv) Amendment to Variance granted by the Board of Appeals, recorded with the Registry in Book 2808, Page 213. Further amendments to the Special Permit from the Select Board and to the Variance were granted and recorded with the Registry in Book 3578, Page 188 and in Book 3578, Page 177, respectively; however, no substantial use thereof was made by the Applicant, and those amendments have since lapsed.

The Project will be fueled by natural gas from the existing pipeline on the Property and with ultra-low sulfur diesel fuel oil used periodically. It will be started and operated from the plant control room in the Existing Facility. Staff at the Existing Facility will provide normal maintenance, repair, management and administrative services. The Project will not require any water or generate wastewater in excess of the amounts currently permitted by the Town of Dartmouth. The Project requires a Special Permit from the Select Board for the use, pursuant to Section 14.301 of the Zoning By-Law, and the Board of Appeals does not have the authority to approve such use.

The Massachusetts Department of Environmental Protection ("MassDEP") approved the Project on May 7, 2008 pursuant to a Conditional Approval of Application for BWP AQ 02 Non-Major Comprehensive Plan Approval (Transmittal No. W113943; Application No. 4B07004; Source No. 120-0025; Facility No. 205295), a copy of which was provided to the Board of Appeals prior to the hearing and incorporated into the record at the hearing (as the same may be amended from time to time by MassDEP, the "MassDEP Approval"). The MassDEP Approval established limitations on the amounts of air pollutant emissions that may be emitted by the Project, established monitoring and recording requirements, required the Project to comply with MassDEP's noise regulation and policy, and required the Project to comply with the "Town of Dartmouth Special Limit for Plant Contribution" contained in the previously approved MassDEP application.

As an additional benefit from the Project, and to counteract the potential burdens upon the Town resulting therefrom, Applicant has offered the following additional financial incentives to the Town, all as more particularly set forth in and subject to the terms and conditions of a Covenant Regarding Peaking Unit between the Applicant and the Town of Dartmouth, acting by and through the Select Board: (i) to grant the Town a long-term ground lease on a portion of the Property, adjacent to the Project and Existing Facility, for the Town's use to construct wind turbines or an Alternate Use (as such term is defined in the Covenant Regarding Peaking Unit); (ii) to pay, within fiscal year 2009, the full expected amount of personal property taxes (\$87,390), which personal property taxes would otherwise be prorated for fiscal year 2009; and (iii) to pay the Town, by February 28 of each year, an amount equal to \$0.20 per megawatt hour that the Project was actually running and the Applicant was receiving payment from ISO New England in the previous calendar year.

III. APPLICABLE PROVISIONS

The following sections of the Zoning By-Law are applicable to this application:

A. Section 14.100 Purpose

"The purpose [of the Limited Industrial District] is to provide for industrial uses that provide employment opportunities and diversify the tax base while not imposing hazards or nuisances on neighboring residential uses, commercial uses, and the environment."

B. SECTION 14.402

"The maximum height of any building shall be 35 feet, as measured from the mean point of grade of foundation. Chimneys, spires, towers, and other projections not used for human occupancy or storage may extend above such height limitation by Special Permit from the Board of Appeals except as otherwise provided by Special Permit or by right, and providing they create no detrimental effects on the surrounding neighborhood."

The foregoing quoted sections shall guide the discretion of the Board of Appeals.

IV. FINDINGS

Based on the documents incorporated into the record and the testimony provided by the Applicant, its representatives and consultants and by others who attended the hearings, the Board of Appeals makes the following findings:

- A. Approval of the Project will further the purposes of the Limited Industrial District set forth in Section 14.100 as it will diversify the tax base, and subject to the conditions below, will not impose hazards or nuisances on neighboring uses or the environment.

- B. MassDEP has approved the Project subject to certain noise and air quality limitations and conditions contained in the MassDEP Approval. Subject to Applicant's compliance with said limitations and conditions in the MassDEP Approval, the Board finds the Project creates no detrimental effects on the surrounding neighborhood from either noise or air pollution.

- C. Although the addition of a new 80-foot stack for the Peaking Unit will create a visual impact, the 80-foot stack will be shorter than the existing 172-foot stack and smaller in diameter; therefore, the visual impact will be less than the existing stack. Moreover, as noted in the Application and during the hearings, there are no neighboring uses in the immediate vicinity of the Property. The Board finds that because the Project will be smaller in mass and scale than the Existing Facility and will not significantly increase the mass and scale of the facility as a whole, and because the Property is adequately screened from neighboring uses by existing vegetation, the Project will not have a detrimental visual effect on the neighborhood.

- D. The Board also finds that there will be no permanent impact to traffic from the Project. The only traffic associated with the site will be temporary in nature in connection with the construction and installation of the Project. The existing public ways are generally adequate to accommodate the temporary traffic during construction and installation, and the temporary traffic will not impact the surface roads in the area. Further, the Board finds that no additional study of traffic is required and no mitigation is necessary for traffic and road surface impacts.

Therefore, the Board finds that, as a whole, the Project creates no detrimental effects on the surrounding neighborhood.

V. DECISION

The Board of Appeals, based upon the findings presented above, grants the requested Special Permit in accordance with Applicant's application and materials submitted in association therewith, and subject to the conditions set forth below.

The grant of the Special Permit is subject to the following conditions:

1. The Project and each element thereof shall be constructed substantially in accordance with the plans and information submitted to this Board.
2. The Special Permit is approved subject to the applicant receiving the necessary Special Permit from the Select Board under Section 14.301 of the Zoning By-Law, an Amendment to the existing variance from the Board of Appeals, and any and all other approvals, permits and/or licenses from all applicable regulatory agencies.

3. The Applicant shall notify the Federal Aviation Administration ("FAA") of the height of the stack and shall comply with any requirements imposed by the FAA.
4. The Project shall comply with the requirements, standards and limitations contained in the MassDEP Approval.
5. The Applicant shall deliver a Covenant Regarding Peaking Unit in the form agreed to by the parties, which shall be duly recorded by the Applicant at the Registry of Deeds as soon as practicable. The Applicant shall record said Covenant Regarding Peaking Unit prior to the recording of any new mortgages or other encumbrances affecting the Property. The anticipated benefits and protection to the Town from full performance of the Covenant are substantial and have weighed heavily in the decision to grant this Special Permit with conditions. Accordingly, full and faithful performance of the terms of the Covenant is a condition of operation of the Project, and this Special Permit shall lapse and become null and void should the Applicant or its successors breach the terms of the Covenant.
6. Prior to issuance of a building permit for the Project, the Applicant shall submit to the Town Building Commissioner a site plan meeting the requirements of Section 14.500 of the Zoning By-Law, as amended by the terms of this decision.

VI. ORDER

The Board of Appeals at a public meeting on November 25, 2008 unanimously voted to grant the requested Special Permit. This decision is to be enforced by the Town Building Commissioner in his capacity as zoning enforcement officer. The date of this written decision is November 25, 2008.

VII. NOTICE OF LAPSE

This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen of M.G.L. c.40A from the grant of this Special Permit, if substantial use thereof has not commenced sooner except for good cause or in the case of a permit for construction, has not begun by such date, except for good cause.

BOARD OF APPEALS, TOWN OF DARTMOUTH

By

Roger Toungs
Roger Toungs, Chairman

Allan Turner
Allan Turner

Michael Travers
Michael Travers

A True Copy,

Attest:

TOWN CLERK

confidential
Darian King

BK 9234 PG 96

01/12/09 11:32 DOC. 709
Bristol Co. S.O.

Ref 2559-317

January 8, 2009

DARTMOUTH, MASSACHUSETTS

CASE NUMBER 2008-33

MAP: 67 LOT: 9

BOOK: 4633 PAGE: 277

I, Lynn M. Medeiros, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning an Amendment to Variance Case#1990-33 and #1991-10 for Dartmouth Power Associates Limited Partnership for property located at One Energy Road, Dartmouth, MA and filed in the office of the Town Clerk on December 9, 2008.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:


LYNN M. MEDEIROS
TOWN CLERK OF DARTMOUTH

confidential
Darian King

power-transitions.com

Aug 25, 2025 8:37 PM EDT

670
NUTTER McLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2804

DECISION TO BOARD OF APPEALS HEARING CASE #2008-33

AMENDMENT TO VARIANCE FOR DARTMOUTH POWER ASSOCIATES CASE #1990-33 & #1991-10

There was a Board of Appeals meeting open to the public held in MEETING ROOM #304, TOWN OFFICE BUILDING, 400 SLOCUM ROAD, NORTH DARTMOUTH, MA, on Tuesday, November 25, 2008 at 6:30 P.M., for the purpose of deliberations after public hearings were held on Wednesday, November 5, 2008 at 7:00 P.M. and Wednesday, October 1, 2008 at 7:00 P.M., on the application of Dartmouth Power Associates Limited Partnership ("Applicant"), who is requesting an amendment of an existing variance from the Zoning By-law of the Town of Dartmouth concerning property located at One Energy Road, North Dartmouth, MA. Permission is requested to allow for the upgrades to the present facility consisting of an additional 25-megawatt gas turbine together with an eighty (80) foot stack and related appurtenances adjacent to the existing power plant ("the Peaking Unit"). The proposed improvements are located on PLAT: 67, LOT: 9.

DECISION

It was the unanimous decision of the Board to grant the requested amended variance to the Applicant.

The following conditions and restrictions shall apply:

1. The Applicant shall be in full compliance with submitted Procedural and Factual Summary, Findings and Decision entitled "Variance Decision For Third Amendment to Variance Granted to Dartmouth Power Associates Limited Partnership, Case Number 2008-33," Page 1 thru 5 and signed by the Board of Appeals. See attached.
2. The Applicant shall deliver a Covenant Regarding Peaking Unit in the form agreed to by the parties, which shall be duly recorded by the Applicant at the Registry of Deeds as soon as practicable. The Applicant shall record said Covenant Regarding Peaking Unit prior to the recording of any new mortgages or other encumbrances affecting the Property. The anticipated benefits and protection to the Town from full performance of the Covenant are substantial and have weighed heavily in the decision to grant this Amendment to Variance with conditions. Accordingly, full and faithful performance of the terms of the Covenant is a condition of operation of the Peaking Unit, and this Third

Amendment to Variance shall lapse and become null and void should the Applicant or its successors breach the terms of the Covenant.

3. Paragraph 1 of the Variance (1990-33) is modified on page 1, in the fourth line from the bottom of the page, by adding at the end of the sentence "The Project is a nominal 68 megawatt electric power plant, fueled by natural gas" the words "and includes a Peaking Unit, 80-foot stack and the associated appurtenances."
4. The Peaking Unit, when operated in conjunction with the existing power plant, shall continue to meet the standards set forth in the original Special Permit issued by the Board of Selectmen (File No. SP 90-1), as amended, including but not limited to the Air Quality Monitoring Standards in section 5.2.1 of the Special Permit, the Noise Monitoring Standards in section 5.2.2, and the Water Limit in section 5.2.10 thereof.
5. Condition 18 of the original Variance (Case #1990-33) is hereby modified to read as follows:
 - 18.) The Project shall be constructed substantially in accord with the plans and information submitted to the Board. Notwithstanding the foregoing:
 - (a) the original nominal 68 megawatt power production facility shall not exceed a nominal 68 megawatt power output;
 - (b) the combined operation of the original power plant and the Peaking Unit shall not exceed 100 megawatts; and
 - (c) the Peaking Unit shall not be operated more than 2500 hours per any twelve (12) month period.

There will be no further expansion of the power production facility or its appurtenances.

6. Condition 19(a) of the original Variance is modified by deleting in line 2 the words "nominal 68 megawatt gas fired power plant" and by inserting in its place the word "Project."
7. Condition 19(c) of the original Variance is modified by deleting in line 4 the words "nominal 68 megawatt plant" and by inserting in its place the word "Project."
8. The following additional language shall be inserted in the original Variance as Condition 19(d): "Any future alterations to the water usage for improvements on the Property shall be approved in advance by the Director of Public Works for the Town of Dartmouth."

9. On November 25, 2008 the Select Board granted a Third Amendment to the Special Permit issued by the Select Board to the Applicant. The Board of Appeals relies upon the conditions and restrictions imposed by the Select Board as providing adequate and appropriate protection for the Town. Accordingly, the conditions and restrictions numbered 1 through 8, inclusive, in said Third Amendment to Special Permit granted by the Select Board on November 25, 2008 (File No. SP 90-1) are hereby incorporated by reference into this Variance.

The original Variance issued in Case #1990-33, and as amended in Case #1991-10, including all conditions and covenants and agreements, except as expressly amended or modified herein, shall continue in full force and effect.

This grant of amendment of variance shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Bristol County (S.D.) Registry of Deeds and indexed in the Grantor Index under the name of the owner of record or is recorded and noted on the Owner's Certificate of Title.

The Applicant shall pay the fee for recording or registering this decision.

Appeals, if any, shall be made pursuant to Chapter 40A, Section 17 of the Massachusetts General Laws, and shall be filed within twenty (20) days after date of filing of this decision in the office of the Town Clerk.

If the rights authorized by the grant of this variance are not exercised within one (1) year of the date of grant, they shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one (1) year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application therefor, and upon the expiration of the original one (1) year period, such rights may be re-established only after notice and a new hearing pursuant to the provisions of M.G.L. Chapter 40A, Section 17.

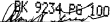
Copies of the complete minutes of this hearing are available, upon request, at the office of the Board of Appeals.

BOARD OF APPEALS, TOWN OF DARTMOUTH

By

Roger Tougas, Chairman

confidential
Darian King

BK 9234 PG 100

Allan Turner

power-transitions.com

Aug 25, 2025 8:37 PM EDT


Michael Travers



confidential
Darian King

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Aug 25, 2025 8:37 PM EDT

VARIANCE DECISION FOR THIRD AMENDMENT TO VARIANCE
 GRANTED TO DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP
 CASE NUMBER 2008-33

1. **PROCEDURAL AND FACTUAL SUMMARY:**

The Town of Dartmouth Zoning Board of Appeals granted a variance to Old Fall River Realty Trust for the use of two parcels of land located at One Energy Road in North Dartmouth, designated as Assessor's Map 67, Lot 9 (the "Property"), as a nominal 68 megawatt power production facility and appurtenant improvements (Case No. 1990-33), which variance was filed with the office of the Town Clerk on October 4, 1990 and recorded with the Bristol County (S.D.) Registry of Deeds (the "Registry") in Book 2559, Page 317. This variance was amended by a decision of the Board of Appeals (Case No. 1991-10) filed with the Town Clerk on September 25, 1991 and recorded with the Registry in Book 2808, Page 213. A second amendment to the variance was granted by the Board of Appeals on September 25, 1995 (Case No. 1995-35) and recorded with the Registry in Book 3578, Page 177. The expansion authorized by the second amendment to the variance was not commenced within the statutory time period, and thus the second amendment has lapsed.

Dartmouth Power Associates Limited Partnership (the "Applicant") is the successor in interest to Old Fall River Realty Trust pursuant to a deed recorded with the Registry in Book 4633, Page 277. Applicant filed the present application with the Board of Appeals on August 19, 2008 to amend said variance a third time to allow the construction and installation of an additional 25-megawatt gas turbine together with an eighty (80) foot stack and related appurtenances adjacent to the existing power plant (the "Peaking Unit"). Applicant has also filed an application with the Board of Appeals to obtain a Special Permit for the height of the stack and an application with the Select Board to obtain a Special Permit for the use, pursuant to the various provisions of the Zoning By-law currently in effect.

Under the provisions of the Zoning By-Law currently in effect, the Applicant would not require any variances from the Board of Appeals to construct the Peaking Unit. However, the original variance issued in Case No. 1990-33 provides, in particular, (i) that there should be no expansion of the power production facility or its appurtenances (Condition 18), (ii) that only the amount of water required to operate and maintain the nominal 68 megawatt gas-fired power plant as set forth in the plans originally submitted to the Town would be utilized by the Applicant (Condition 19(a)); and (iii) that any additional water available to Applicant under its Water Agreement but not actually used for the proposed 68 megawatt nominal plant would not be available for any expansion of the facility (Condition 19(c)). In order to authorize the installation and construction of the Peaking Unit, these provisions will need to be modified.

¹ All capitalized terms used in this Variance Decision that are not otherwise defined shall have the meaning ascribed to such terms, if any, in the prior variance, as previously amended.

The application for amendment was noticed by publication and by mailing to "parties in interest" as the term is defined in M.G.L. c.40A, Section 11 and by publication in The Standard Times on September 15 and September 22, 2008.

The Board of Appeals heard testimony at a public hearing held on October 1, 2008. The hearing was continued to November 5, 2008 for further testimony, at which time the hearing was closed. The Board of Appeals deliberated at a public meeting on November 25, 2008. For convenience, both public hearing sessions and the public meeting for deliberations were held jointly by the Board of Appeals and the Select Board to consider the Applicant's several applications for zoning relief.

The Board also received written materials and plans regarding the proposed amendment, including the submissions from the Applicant of an Application Form with a summary of the proposed amendment, site photographs, plans for the proposed Peaking Unit, copies of existing special permit and variance decisions as well as all previous amendments, and MassDEP Conditional Approval of Application for BWP AQ 02 Non-Major Comprehensive Plan Approval (as the same may be amended from time to time by MassDEP, the "MassDEP Approval").

2. FINDINGS

The Board finds that the development, construction and operation of the Peaking Unit will not affect the Board's original findings in the variance, as amended to date. Additionally, the Board finds as follows:

2.1 With regard to circumstances related to soil conditions, shape or topography and especially affecting such land but not affecting generally the zoning district in which it is located:

2.1.1 The Board reaffirms the findings in Case Nos. 1990-33 and 1991-10. The present power production facility is located on approximately a ten-acre parcel of land west of the wetlands and south of the gas pipeline. The pipeline transects the Applicant's parcel, and the parcel located north of the pipeline is currently proposed to remain vacant, but portions of this vacant area will be provided to the Town for installation of two wind turbines or an Alternate Use as defined in and subject to the terms of a Covenant Regarding Peaking Unit between the Applicant and the Town. Because of the pipeline and the wetlands constraints, and because of the isolated location of the entire parcel of land, the Board finds substantial hardship as explained below.

2.2 With regard to the issue that literal enforcement of the provisions of the Zoning By-law would involve substantial hardship, financial or otherwise:

2.2.1 The hardship with respect to the Property was previously established in Case Nos. 1990-33 and 1991-10. At the present time, the Applicant's land area

surrounding the existing power production facility cannot realistically be utilized for anything other than a power plant or for energy production.

- 2.3 With regard to the granting of desirable relief without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-law:

2.3.1 The relief sought would permit the Applicant to utilize the Property more efficiently and to generate more electric power at peak times, which is in the general public good. Because the power plant, even with the addition of the Peaking Unit will continue to operate within the limits for the Water Agreement and the air and noise environmental standards previously approved, the Board finds that there is no substantial detriment to the public good in allowing the Peaking Unit to be constructed.

Although the height of a new 80-foot stack for the Peaking Unit will exceed the height limit of the Zoning By-Law and therefore requires a Special Permit, the Board notes that it will be shorter than the existing 172-foot high stack and smaller in diameter, and, thus, the visual impact will be less than that of the existing stack. The Board finds that the construction of this smaller stack will not be a substantial detriment to the public good and will not derogate from the intent or purpose of the By-law.

The Applicant has agreed to be bound by the existing, previously approved standards for water, noise and air pollution impacts contained in the MassDEP Approval.

Finally, as an additional benefit from the Peaking Unit, and to counteract the potential burdens upon the Town resulting therefrom, Applicant has offered the following additional financial incentives to the Town, all as more particularly set forth in and subject to the terms and conditions of a Covenant Regarding Peaking Unit between the Applicant and the Town of Dartmouth, acting by and through the Select Board: (i) to grant the Town a long-term ground lease on a portion of the Property adjacent to the Peaking Unit and the Project, for the Town's use to construct wind turbines or an Alternate Use (as such term is defined in the Covenant Regarding Peaking Unit); (ii) to pay, within fiscal year 2009, the full expected amount of personal property taxes (\$87,390), which personal property taxes would otherwise be prorated for fiscal year 2009; and (iii) to pay the Town, by February 28 of each year, an amount equal to \$0.20 per megawatt hour that the Peaking Unit was actually running and the Applicant was receiving payment from ISO New England in the previous calendar year.

Based on the above, the Board finds that there will be no substantial detriment to the public good and the Peaking Unit will not nullify or substantially derogate from the intent or purpose of the Zoning By-Law.

3. DECISION

Based upon the findings presented above, the Zoning Board of Appeals unanimously votes to grant the requested Third Amendment to the Variance as requested by the Applicant to allow the development, construction, and operation of the Peaking Unit, as if the Peaking Unit was included as a part of the original plans. In addition to the modifications discussed below, the existing variance is amended to the extent necessary to allow construction and installation of the Peaking Unit.

The grant of this amendment to the variance is subject to the following specific conditions:

1. The Applicant shall deliver a Covenant Regarding Peaking Unit in the form agreed to by the parties, which shall be duly recorded by the Applicant at the Registry of Deeds as soon as practicable. The Applicant shall record said Covenant Regarding Peaking Unit prior to the recording of any new mortgages or other encumbrances affecting the Property. The anticipated benefits and protection to the Town from full performance of the Covenant are substantial and have weighed heavily in the decision to grant this Amendment to Variance with conditions. Accordingly, full and faithful performance of the terms of the Covenant is a condition of operation of the Peaking Unit, and this Third Amendment to Variance shall lapse and become null and void should the Applicant or its successors breach the terms of the Covenant.
2. Paragraph 1 of the Variance (1990-33) is modified on page 1, in the fourth line from the bottom of the page, by adding at the end of the sentence "The Project is a nominal 68 megawatt electric power plant, fueled by natural gas" the words "and includes a Peaking Unit, 80-foot stack and the associated appurtenances."
3. The Peaking Unit, when operated in conjunction with the existing power plant, shall continue to meet the standards set forth in the original Special Permit issued by the Board of Selectmen (File No. SP 90-1), as amended, including but not limited to the Air Quality Monitoring Standards in section 5.2.1 of the Special Permit, the Noise Monitoring Standards in section 5.2.2, and the Water Limit in section 5.2.10 thereof.
4. Condition 18 of the original Variance (Case #1990-33) is hereby modified to read as follows:

- 18.) The Project shall be constructed substantially in accord with the plans and information submitted to the Board. Notwithstanding the foregoing:

- (a) the original nominal 68-megawatt power production facility shall not exceed a nominal 68 megawatt power output;
- (b) the combined operation of the original power plant and the Peaking Unit shall not exceed 100 megawatts; and
- (c) the Peaking Unit shall not be operated more than 2500 hours per any twelve (12) month period.

There will be no further expansion of the power production facility or its appurtenances.

- 5. Condition 19(a) of the original Variance is modified by deleting in line 2 the words "nominal 68 megawatt gas fired power plant" and by inserting in its place the word "Project."
- 6. Condition 19(c) of the original Variance is modified by deleting in line 4 the words "nominal 68 megawatt plant" and by inserting in its place the word "Project."
- 7. The following additional language shall be inserted in the original Variance as Condition 19(d): "Any future alterations to the water usage for improvements on the Property shall be approved in advance by the Director of Public Works for the Town of Dartmouth."
- 8. On November 25, 2008 the Select Board granted a Third Amendment to the Special Permit issued by the Select Board to the Applicant. The Board of Appeals relies upon the conditions and restrictions imposed by the Select Board as providing adequate and appropriate protection for the Town. Accordingly, the conditions and restrictions numbered 1 through 8, inclusive, in said Third Amendment to Special Permit granted by the Select Board on November 25, 2008 (File No. SP 90-1) are hereby incorporated by reference into this Variance.

Variance 1990-33, as amended by 1991-10, including all conditions and covenants and agreements, except as expressly amended herein, shall continue in full force and effect.

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BK 9234 PG 106

Darian King

BOARD OF APPEALS, TOWN OF DARTMOUTH

power-transitions.com

By Roger Tongas
Roger Tongas, Chairman

Aug 25, 2025 8:37 PM EDT

Allan Turner
Allan Turner

Michael Travers
Michael Travers



A True Copy,
Attest:
[Signature]
TOWN CLERK

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Darian King

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Aug 25, 2025 8:37 PM EDT

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DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP
CERTIFICATE OF THE GENERAL PARTNER

Dartmouth Power Generation, L.L.C., a Delaware limited liability company, the duly appointed general partner (in such capacity, the "General Partner") of Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership (the "Partnership"), hereby certifies as follows:

A. A Certificate of Limited Partnership for the Partnership was filed with the Secretary of the Commonwealth for the Commonwealth of Massachusetts on December 18, 1987, as amended by amendments filed on (i) May 1, 1989, (ii) January 31, 2000, (iii) March 1, 2000, (iv) July 12, 2005, and (v) November 10, 2005.

B. The following resolutions were duly adopted by the General Partner of the Partnership by unanimous written consent, effective as of November 1, 2008, and the same have not been amended or revoked and are in full force and effect as of the date hereof:

VOTED: That the company, as general partner of Dartmouth Power Associates Limited Partnership ("DPA"), execute and deliver to the Town of Dartmouth a Covenant Regarding Peaking Unit in connection with a Special Permit application to the Board of Selectmen, Special Permit application to the Board of Appeals, and Amendment to Variance application to the Board of Appeals, for the construction of a Peaking Unit, which Covenant will obligate DPA to make certain payments and lease certain property to the Town, all as more particularly set forth in the Covenant.

VOTED: That David Brauer, Dennis Clarke, David Hughes, or Timothy Fagan, each acting individually, are hereby, authorized and directed, in the name of and on behalf of the company, as general partner of DPA, to execute and deliver the Covenant Regarding Peaking Unit and any other certificates, approvals, undertakings, amendments, instruments and assurances as each of the above-named individuals deems necessary or desirable or convenient and proper in connection with the execution, delivery and performance of the Covenant Regarding Peaking Unit.

EXECUTED under seal as of the 23 day of December, 2008.

DARTMOUTH POWER GENERATION, L.L.C.

By: 

Name:

Title:

KATHARINE A. BRAUER
NOTARY PUBLIC STATE OF NEW JERSEY
MY COMMISSION EXPIRES JULY 19, 2012



57)
NUTTER MCLENNEN
WORLD TRADE CENTER
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2904

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Darian King

BK 9234 PG 108
01/12/09 11:54 DOC. 711
Bristol Co. S.D.

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Aug 25, 2025 8:37 PM EDT

COVENANT
REGARDING PEAKING UNIT

One Energy Road, North Dartmouth, Mass

The undersigned Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership with its principal place of business at One Energy Road, North Dartmouth, Massachusetts (hereinafter "DPA" or "Covenantor"), having applied to the Select Board and the Zoning Board of Appeals of the Town of Dartmouth for permission to construct a Peaking Unit on property located at One Energy Road in North Dartmouth and more particularly described in a deed recorded with the Bristol County (S.D.) Registry of Deeds in Book 4633, Page 277 (the "Property"), does hereby covenant and agree with the said Town of Dartmouth, a municipal corporation having its usual place of business at 400 Slocum Road, North Dartmouth, Massachusetts (hereinafter the "Town"), that the Property shall be encumbered as follows:

WHEREAS, DPA currently operates a nominal 68-megawatt power production facility at the Property, which was previously permitted by various boards and commissions of the Town (the "Existing Facility");

WHEREAS, DPA is seeking permission from the Town to construct a 25-megawatt peaking unit and associated appurtenances on the Property adjacent to and connecting with the Existing Facility (the "Project"), and has applied for a Special Permit from the Select Board under Section 14.301 of the Zoning By-Law, a Special Permit from the Board of Appeals under Section 14.402 of the Zoning By-Law, and an Amendment to an existing Variance from the Board of Appeals, as more particularly described in the Application and supporting documents filed with the Select Board and Board of Appeals on August 19, 2008 (collectively, the "Permits");

WHEREAS, in addition to the increase in personal property taxes that will result from the Project, DPA wishes to give the Town additional economic incentives in connection with the Project as more particularly set forth herein, to counteract the potential burdens upon the Town resulting therefrom.

NOW THEREFORE, for consideration of Ten Dollars paid and the mutual covenants contained herein, DPA and the Town hereby agree as follows:

1. Payment of Personal Property Taxes for FY 2009 - DPA estimates that the assessed value of the Project at completion will be \$9,000,000. The Town's current tax rate for personal property is \$9.71 per \$1,000, which would result in

an estimated personal property tax of \$87,390. Since the Project will not be completed until the middle to end of FY 2009, DPA is only required to pay a prorated portion of the personal property taxes due in FY 2009. Nonetheless, DPA has agreed, subject to the provisions of Section 4 and 5 below, to pay the full amount of estimated taxes (\$87,390) in FY 2009 in two equal installments, due on December 15, 2008 and February 1, 2009.

2. Payment Per Megawatt Hour. DPA agrees to pay the Town, by February 28 of each year, an amount equal to \$0.20 per megawatt hour that the Project was actually running and DPA was receiving payment from ISO New England in the previous year.
3. Ground Lease to Town. Upon the Town's obtaining of the necessary permits and approvals to construct up to two wind turbines on the Property or to construct an Alternate Use (as hereinafter defined), DPA will enter into a long-term ground lease (the "Lease") with the Town for a portion of the Property. The parties shall agree upon the terms of the Lease at the time of execution of the Lease. At a minimum, the Lease shall contain the following terms:
 - a. Leased Premises: The Leased Premises shall include the area necessary for the Town to construct and maintain two wind turbines, including the footprint of the turbines and the drop zone area required under the Dartmouth Zoning By-Law, or the mutually-agreed upon area necessary for the Town to operate an Alternate Use (as hereinafter defined). The parties agree that the Leased Premises shall be located outside of the fence that currently surrounds the Existing Facility, and shall be at a location that does not materially interfere with the Existing Facility or the Project. The Leased Premises shall include rights to access the Leased Premises over the Property, and rights to install the necessary infrastructure from the Leased Premises to interconnect. The Town shall have the right to tie into one of DPA's transformers on the Property, if DPA, in its sole discretion, determines that such a tie-in is technologically feasible. If such a tie-in is not feasible, the Leased Premises shall include the right to locate a transformer adjacent to DPA's transformers on the Property.
 - b. Use. As of the date of this Covenant, the parties acknowledge that the Town intends to use the Leased Premises for the site of two wind turbines. However, notwithstanding anything to the contrary in this Covenant, the Town may alternatively use the Leased Premises for any other energy generation use that is less than five (5) megawatts (collectively, an "Alternate Use").
 - c. Term: Initial term of 20 years with two (2) ten-year options to extend.

- d. Rent: \$1.00 per year. The Lease shall be a triple net lease and the Town shall be responsible for all utilities and taxes (to the extent such personal or real property taxes are not abated by the Town for the Leased Premises) attributable to the Leased Premises, and shall be responsible for the maintenance of the Leased Premises.
- e. Supervision/Access: DPA will have the right to supervise the Town's construction activities during the period in which the Town is tying into DPA's transformer or the interconnect. The Town will provide DPA with twenty (20) days advance notice prior to the time the Town wishes to construct the appurtenances necessary to tie into the transformer or interconnect, and the parties shall mutually agree upon the day or days when such activities are permitted to occur.
- DPA shall retain rights of access to the Leased Premises to maintain any easements that exist on the Leased Premises.
- f. Construction/Permitting. The Town shall be responsible for the costs of designing, constructing, permitting and maintaining the turbines on the Leased Premises. DPA agrees to use good faith efforts to cooperate with the Town as necessary to facilitate permitting of the turbines.
- g. Insurance/Indemnity. The Town shall maintain adequate insurance on the Leased Premises. In addition, the Town shall indemnify and hold harmless DPA for any and all loss, injury or damage on the Leased Premises arising from any negligent act or omission, misconduct, or fault on the part of the Town or any of its agents or invitees, and shall indemnify and defend DPA in any lawsuit brought by a third party arising from or brought as a result of any negligent act or omission, misconduct, or fault on the part of the Town or any of its agents or invitees in connection with the Leased Premises.
- h. Termination. The Lease shall terminate if the Town does not commence construction of the turbines within three years after the date of execution of the Lease, or if after commencement of construction, such construction is not diligently pursued to completion.
- i. Assignment. Notwithstanding anything to the contrary in this Covenant, the Town shall be permitted to assign its rights and obligations under the Lease to a joint venture, partnership or similar entity provided the Town maintains an active role in the management and operations of such an entity.

4. Conditions Precedent. Notwithstanding anything to the contrary in this Covenant, DPA's obligation to perform under this Covenant shall be

conditioned on the Permits being issued, with no appeals being filed, or if an appeal is filed, the successful resolution of any appeal.

5. Termination. This Covenant shall automatically terminate and become null and void if the Permits are not issued. Section 3 of this Covenant shall be deleted if the Town does not obtain, within five (5) years of the date of this Covenant, the permits necessary to construct the turbines on the Alternate Use.
6. Governing Law. This Covenant and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.
7. Severability. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Covenant, or that would cause one or both of the parties to be in violation of that law, shall be deemed to have superseded the terms of this Covenant. Notwithstanding such invalidity or illegality, the remaining terms and provisions of this Covenant shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.
8. Further Actions. Each of the parties agrees that it shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Covenant and as are consistent with the terms hereof.
9. Changes to Covenant. This Covenant shall not be amended or altered unless said amendment or alteration is agreed to in writing by the Select Board of the Town.
10. Binding on Successors and Assigns. This Covenant shall run with the land, shall inure to the benefit of the Town, and shall be binding upon the Town, DPA, and each of their respective agents, successors and assigns. DPA may assign, convey or transfer its rights and duties under this Covenant to any entity which is successor to DPA, or to any bank or financial institution which finances the Project.

This Covenant Regarding Peaking Unit shall not be construed to supersede, waive, modify or otherwise alter the terms of an existing Covenant dated October 2, 1990 and recorded in the Bristol County (S.D.) Registry of Deeds in Book 2564, Page 84, which said Covenant shall continue in full force and effect.

IN WITNESS WHEREOF, Dartmouth Power Associates Limited Partnership has caused this Covenant Regarding Peaking Unit to be executed as a sealed instrument by the following duly authorized person on this 23 day of December, 2008.

COVENANTOR

Dartmouth Power Associates Limited Partnership

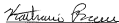
By: Dartmouth Power Generation, L.L.C., its
general partner

By: Name: DAVID P. HUGHESTitle: VICE PRESIDENT

STATE OF NEW JERSEY

COUNTY OF OceanDecember 23, 2008

Before me personally appeared the above-named David Hughes, proved to me by satisfactory evidence of identification, which was personal knowledge or state issued driver's license, to be the person whose name is signed on the pre-ceding document, and who swore to me that the foregoing is his free act and deed, as VICE PRESIDENT Dartmouth Power Generation, L.L.C., the general partner of Dartmouth Power Associates Limited Partnership.



Notary Public

My Commission Expires: July 19, 2012

TOWN OF DARTMOUTH

By: Michael J. GagneName: Michael J. GagneTitle: Chief Admin. Officer

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

12/03, 2008

Before me personally appeared the above-named Michael J. Gagne,
 proved to me by satisfactory evidence of identification, which was None,
 to be the person whose name is signed on the preceding
 document, and who swore to me that the foregoing is his/her free act and deed.

David A. Fenn
 Notary Public

My Commission Expires: October 26, 2012

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 Darian King

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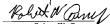
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SELECT BOARD, TOWN OF DARTMOUTH

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Joe Michael,
Chairperson



Robert W. Carney,
Vice Chairperson



Nathalie L. Dias



Diane M. Gilbert



William J. Trimble

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Page 5

Commonwealth
of Massachusetts

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15-792

Form printed in 2007

City/Town: Dartmouth

Applicant: Dartmouth Power Assoc.

A. M. R. D. R. S.

Order of Conditions

Massachusetts Wetlands Protection Act

C.M.R. 131.040 and

Article 13, the Dartmouth Wetlands Bylaw

From the Dartmouth Conservation Commission

To: Dartmouth Power Associates c/o DMF

111 Francis

(Name of Applicant)

(Name of property owner)

8 Newbury St.

564 Fisher Rd.

Address: Boston, MA 02116

Address: No. Dartmouth, MA 01947

The Order is issued and delivered as follows:

☒ by hand delivery to applicant or representative on January 10, 1989 (date)☐ by certified mail, return receipt requested on (date)

This project is located at Plots 44, 45, 46, 47, Old Westport Rd.

The property is recorded at the Registry of Deeds

Book 1715 Page 331

Certificate of registration

The Notice of Intent for this project was filed on September 12, 1989 (date)

The public hearing was closed on October 17, 1989 (date)

Findings

The Dartmouth Conservation Commission has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the Commission has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (check as appropriate):

- | | | |
|--|---|--|
| ☒ Public water supply | ☒ Flood control | ☐ Land containing shellfish |
| ☒ Private water supply | ☒ Storm damage prevention | ☒ Fisheries |
| ☒ Ground water supply | ☒ Prevention of pollution | ☒ Protection of wildlife habitat |

Total Filing Fee Submitted: \$400.00

Date Shown

City/Town Share

(No fee in excess of \$25)

Total Refund Due \$

City/Town Portion \$

State Portion \$

(No total)

(No total)

Effective 11/10/89

5-1

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Aug 25, 2025 8:37 PM EDT

Off. of
Compliance
4-17-91
2624-180

Therefore, the Dartmouth Conservation Commission hereby finds that the following conditions are necessary, in accordance with the Permitting Standards set forth in the regulations, to protect those interests checked above. The Conservation Commission orders that all work shall be performed in accordance with said conditions and with the Permitting Standard referenced above. To the extent that the following conditions modify or differ from the permit, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

General Conditions

1. Permittee comply with all conditions stated herein, and with all related statutes and other regulatory requirements, shall be deemed to be in compliance with this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, bylaws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, latex, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Geospatial Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Commission on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number 15-192".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superficial Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request, in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

13. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals, and until copies of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Dutchess Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Contours shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris, and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, groundcover or shrubs so as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owners shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the state building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. The design engineer will certify, in writing, that this project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continually operated and maintained so as to comply with this Order of Conditions and N.G.S., § 131, § 40, the Wetlands Protection Act.
29. Certain conditions, such as maintenance or monitoring are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest or successor in control.

Dartmouth Power Association, O/D RM
ORDER OF CONDITIONS CONTRACT

FILE NO. 15-752

Plan:

Title	Date	Signed and Stamped by:	On File with:
"Dartmouth Power Association Municipal Mill Water Development Supplemental West Mill License"	12/10/99	Daniel W. Schull Co.	Dartmouth Conservation Commission

Special Conditions (Use additional paper if necessary)

31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Waterways
33. The Conservation Commission and/or the Town of Dartmouth shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to resource areas.
35. All siltation measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. All mitigation and resource protection devices and measures, e.g. hay bales, siltation fences, etc., are to be installed prior to initiation of any work under this Order of Conditions. The Conservation Agent shall be notified when in place for inspection and verification. No work to be undertaken under the Order of Conditions until written approval is received from the Conservation Commission or its Agent.
38. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.
39. In accordance with Condition number thirteen (13), no activity shall take place until the applicant has furnished written documentation that the plans on file with the Conservation Commission are consistent with permits and approvals of other Town Boards.

40. This Order of Conditions shall be executed within fifteen (15) days of receipt in accordance with Condition #8.
41. Prior to any construction the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
42. No activity will take place without the consent of the Conservation Inspector. The Conservation Inspector will be notified before any access to the property is constructed.

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 Darian King

power-transitions.com
 Aug 25, 2025 8:37 PM EDT


Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Dartmouth Wetlands Protection Bylaw

MassDEP File Number:

15-2034

Dartmouth Power Assoc

A. General Information

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. From: Dartmouth Conservation Commission
Conservation Commission
2. This issuance is for (check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:
Timothy
Fagan

a. First Name

b. Last Name

Dartmouth Power Associates LP

c. Organization

One Energy Rd

d. Mailing Address

Dartmouth
MA
02747

e. City/Town

f. State

g. Zip Code

4. Property Owner (if different from applicant):

a. First Name

b. Last Name

c. Organization

d. Mailing Address

e. City/Town

f. State

g. Zip Code

5. Project Location:
One Energy Rd
Dartmouth

a. Street Address

b. City/Town

Map 67
Lot 9

c. Assessment Map/Plot Number

d. Parcel/Lot Number

Latitude and Longitude, if known:
41 41' 42.8856"
70 26' 55.2222"

e. Latitude

f. Longitude

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Bristol

a. County

b. Certificate Number (if registered land)

4633
377

c. Book

d. Page

7. Dates:
1/8/09
1/20/09
1/22/2009

a. Date Notice of Intent Filed

b. Date Public Hearing Closed

c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Index of drawings; Erosion Control Plan; Site Plan Details; Plan to accompany Notice of Intent; General arrangement LMI 2500 Generator set Plan

a. Plan Title

BSC Group
David J Crispin

b. Prepared by

c. Signed and Stamped by

d. Final Revision Date

e. Scale

Filing Complete Wetland Buffer Yard Planting Plans Site Power & Lighting Wetland Buffer Plans

1/8/09

f. Additional Plan or Document Title - Stormwater Management Plan Erosion and Proposed Conditions

g. Date



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2034

Dartmouth Power Assoc

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Dartmouth Wetlands Protection Bylaw

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act

Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- a. ☒ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution
d. ☒ Private Water Supply e. ☒ Fisheries f. ☒ Protection of Wildlife Habitat
g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- a. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetlands regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. A description of the performance standards which the proposed work cannot meet is attached to this Order.
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.06(b)(5).

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available)

Resource Area

4. ☐ Bank

5. ☐ Bordering Vegetated Wetland

6. ☐ Land Under Waterbodies and Waterways

Proposed Alteration

Permitted Alteration

Proposed Replacement

Permitted Replacement

a. linear feet

b. linear feet

c. linear feet

d. linear feet

a. square feet

b. square feet

c. square feet

d. square feet

a. square feet

b. square feet

c. square feet

d. square feet

a. dry dredged

f. dry dredged



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2034

Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40
 Dartmouth Wetlands Protection Bylaw

Dartmouth Power Assoc

B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. ☐ Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. ☐ Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. ☐ Riverfront area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

10. ☐ Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. ☐ Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. ☐ Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. ☐ Coastal Beaches	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
14. ☐ Coastal Dunes	a. square feet	b. square feet	c. c/y nourishment	d. c/y nourishment
15. ☐ Coastal Banks	a. linear feet	b. linear feet		
16. ☐ Rocky Intertidal Shores	a. square feet	b. square feet		
17. ☐ Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. ☐ Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. ☐ Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. ☐ Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or Inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. ☐ Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2034

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Dartmouth Wetlands Protection Bylaw

Dartmouth Power Assoc

C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
7. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to this Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" (or, "MassDEP")

File Number: 15-2034

Darian King

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Aug 25, 2025 8:37 PM EDT



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 – Order of Conditions

15-2034

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Dartmouth Power Assoc

Dartmouth Wetlands Protection Bylaw

C. General Conditions Under Massachusetts Wetlands Protection Act

10. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
11. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
12. The work shall conform to the plans and special conditions referenced in this order.
13. Any change to the plans identified in Condition #12 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
14. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
15. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
16. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
17. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
18. The work associated with this Order is ☒ is not ☐ subject to the Massachusetts Stormwater Policy Standards. If the work is subject to the Stormwater Policy, the following conditions apply to this work and are incorporated into this Order:
 - a) No work, including site preparation, land disturbance, construction and redevelopment, shall commence unless and until the construction period pollution prevention and erosion and sedimentation control plan required by Stormwater Standard 8 is approved in writing by the issuing authority. Until the site is fully stabilized, construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan, and if applicable, the Stormwater Pollution Plan required by the National Discharge Elimination System Construction General Permit.

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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2034

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Dartmouth Power Assoc

Dartmouth Wetlands Protection Bylaw

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs until written approval is received from the issuing authority. To request written approval, the following must be submitted: illicot discharge compliance statement required by Stormwater Standard 10 and as-built plans signed and stamped by a registered professional engineer certifying the site is fully stabilized; all construction period stormwater BMPs and any illicot discharges to the stormwater management system have been removed; and all post-construction stormwater BMPs were installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure they are not damaged and will function properly.
- c) Prior to requesting a Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall submit to the issuing authority an Operation and Maintenance (O & M) Compliance Statement for the Stormwater BMPs. This Statement shall identify the responsible party for implementing the Operation and Maintenance Plan and also state that: 1. "Future responsible parties shall be notified in writing of their continuing legal responsibility to operate and maintain the stormwater management BMPs and implement the Pollution Prevention Plan; and 2. The Operation and Maintenance Plan for the stormwater BMPs is complete and will be implemented upon receipt of the Certificate."
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the issuing authority shall presume that the responsible party for maintaining each BMP is the landowner of the property on which the BMP is located. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement acceptable to the issuing authority evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the Operation and Maintenance Plan section of the approved Stormwater Report, and the Massachusetts Stormwater Handbook.
- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three years including inspections, repairs, replacement and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make this log available to MassDEP and the Conservation Commission upon request; and
 3. Allow members and agents of the MassDEP and the Conservation Commission to enter and inspect the premises to evaluate and ensure that the responsible party complies with the Operation and Maintenance requirements for each BMP set forth in the Operations and Maintenance Plan approved by the issuing authority.
- h) All sediments or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicot discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.

**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

BK 9246 PG 156

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2034

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Dartmouth Power Assoc

Dartmouth Wetlands Protection Bylaw

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

j) The stormwater management system approved in the Final Order of Conditions shall not be changed without the prior written approval of the issuing authority. Areas designated as qualifying previous areas for purpose of the Low Impact Site Design Credit shall not be altered without the prior written approval of the issuing authority.

k) Access for maintenance of stormwater BMPs shall not be obstructed or blocked. Any fencing constructed around stormwater BMPs shall include access gates. Fence(s) shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (If you need more space for additional conditions, please attach a text document):

***see attached documents for Section C (continued)**

D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☐ Yes ☐ No
2. The Dartmouth Conservation Commission hereby finds (check one that applies):
Conservation Commission
 - a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw specifically:
the Dartmouth Wetland Protection Bylaw
 1. Municipal Ordinance or Bylaw
 2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.
 - b. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:
the Dartmouth Wetlands Protection Bylaw
 1. Municipal Ordinance or Bylaw
 2. Citation
3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

Darian King
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Aug 25, 2025 8:37 PM EDT



WPA Form 5 - Order of Conditions

Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40

Dartmouth Wetlands Protection Bylaw

C. General Conditions Under Massachusetts Wetlands Protection Act (Cont.)

19. Prior to the start of construction the following must occur:

- a- The holder(s) of the order of conditions or their representative shall notify the Conservation Commission office of the starting date of construction. Unless specifically indicated to the contrary by the Commission or its agent, an on-site meeting between the conservation officer, the constructor, and the holder of this Order of Conditions, shall take place on site prior to the start of work.
 - b- All siltation control measures shall be installed prior to any excavation or tree stump removal. The siltation control measures shall be approved by the conservation officer prior to any other activity on site.
 - c- When deemed necessary by the Conservation Commission or its agent, the applicant shall have on hand, at the start of any soil disturbance, removal, or stock-piling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.
 - d- This Order of Conditions Shall be installed prior to any excavation or tree stump removal. The siltation control measures shall be approved by the conservation officer prior to any other activity on site.
 - e- The name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
20. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals.
21. Any design modifications, alterations, amendments, or additions to the approved Plan of Record, which fall within the jurisdiction of the Conservation Commission, or affect the stormwater management system, shall be subject to the approval of the Commission. Requests for any changes shall be made in writing, and shall be accompanied by two (2) revised plans and the appropriate fees.
22. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
23. Contours shall remain unchanged except as permitted by this Order of Conditions.
24. There shall be no construction within the jurisdiction of the Conservation Commission other than as shown on the approved plan of record as referenced in the final Order of Conditions.
25. All wetlands and buffer zone areas shall be kept clear of rubbish, debris and construction material.
26. No runoff shall be caused to drain onto adjoining property or upon any public way.
27. The inspector and/or the commission members shall, at a reasonable time, have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures.
28. When the plan of Record has been prepared and stamped by a Registered Engineer, a Registered engineer shall certify, in writing, that the project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
29. Certain conditions, such as maintenance or monitoring, are on-going and do not expire at the end of three years, or with the issuance of a Certification of Compliance.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2024

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Dartmouth Power Assoc

Dartmouth Wetlands Protection Bylaw

Important:
When filing
out forms on
the computer,
use only the
tab key to
move your
cursor - do not
use the return
key.



C. General Conditions Under Massachusetts Wetlands Protection Act (Cont)

30. This Order of Conditions shall apply to any successor in interest of the applicant, or successor in control of the property. The applicant shall furnish a copy of this order to any subsequent owner at the time that ownership is transferred.

31. The Conservation Commission and/or the Town of Dartmouth shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project, and does not warrant the safety of the same.
32. During construction, any fill and/or construction materials shall be stored in upland areas.
33. Any construction to the flood plain shall conform to the Massachusetts Building Code, 780 C.M.R., §3107, the Design Requirements for construction in Floodplain.
34. Unless alternate erosion/siltation control measures have been approved by the Conservation Commission or its agent, all exposed soils exceeding a 4:1 (horizontal to vertical) slope, all swales for conveyance of roadway or stormwater runoff, detention or retention pond slopes exceeding 4:1, or other areas as required by the Conservation Commission or its agent shall be protected from erosion using best available erosion control technology (e.g. erosion control blankets, geo-textile fabric, bonded fiber matrix, pre-seeded matting, jute netting, etc.). The appropriate erosion control technology shall be installed per the recommendations of the manufacturer within 48 hours of the establishment of the finished grade of the soils, or sooner as weather conditions dictate. Where finished grade is not established, any exposed soils meeting the above conditions must be appropriately protected. Any swale longer than 50 feet shall have transverse hay bale check dam(s) installed a minimum of every 50 feet along the entire length of the swale. The check dam(s) shall extend from the top of the swale, to top of swale. All erosion control measures shall remain in place, and be maintained in good working order, for the duration of the project, or until vegetation has been re-established.
35. Except as required by condition # 33, any soils exposed by construction activity or disturbed in any other manner shall be, upon completion of construction, immediately stabilized with indigenous vegetation. Plantings may include, but not limited to grass seed mixture for approved lawn areas, indigenous shrub and tree species, or indigenous herbaceous cover species. The Dartmouth Conservation Officer shall approve all plantings.
36. Once plantings become established all hay bales, silt fencing, or any combination thereof required by this Order of Conditions shall be removed upon approval of the Conservation Officer.
37. The Commission reserves the right to require additional protective measures for the resource areas should a site visit indicate the necessity for those additional measures.
38. All previous no activity zones and demarcation lines and zones as set forth in earlier and prior filings and Orders of Conditions shall remain in full force and effect, and such zones and lines shall be marked by appropriate vegetation, fences or any other means of demarcation as determined by the Conservation Commission, at its discretion.
39. For projects that include wetland alteration, when the approved wetland alteration occurs between April 1st and November 1st of any calendar year, the wetland replication area shall be complete within six (6) weeks of the date of wetland alteration. If the wetland alteration occurs after November 1st, the wetland replication area shall be completed by November 15th, or if completion by November 15th is not possible, the replication area shall be completed by May 1st of the following calendar year. Compensatory storage areas shall be completed within six (6) weeks of fill being placed in the flood plain.



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
 Massachusetts Wetlands Protection Act M.G.L. c. 131 §40
 Dartmouth Wetlands Protection Bylaw

MassDEP File Number:

15-2034

Dartmouth Power Assoc

E. Issuance

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form:

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

1/22/09

1. Date of Issuance

5

2. Number of Signers

Signatures:

Jacquelyn E. McDonald, Chair

Patricia Sveriduk

Richard F. Golen

Margaret A. Kehring, Vice-Chair

Richard T. Miller

Jennifer Bonds

Notary Acknowledgement

Commonwealth of Massachusetts County of

Bristol

On this 20th Day of

January

2009

Month

Year

Before me, the undersigned Notary Public,
 personally appeared

Patricia Sveriduk

Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

personal knowledge of identity

Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

As member of

Dartmouth

Conservation Commission

City/Town



DONNA M. FARIAS
 Notary Public
 Commonwealth of Massachusetts
 Commission Expires
 June 25, 2010

Signature of Notary Public

Donna M. Farias

Printed Name of Notary Public

June 25, 2010

My Commission Expires (Date)

Place notary seal and/or any stamp above

This Order is issued to the applicant as follows:

☐ by hand delivery on

☒ by certified mail, return receipt requested, on

Date

1/22/09

Date

Aug 25, 2025 8:33 PM EDT



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

MassDEP File Number:

WPA Form 5 - Order of Conditions

15-2034

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Dartmouth Power Assoc

Dartmouth Wetlands Protection Bylaw

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant. Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order or Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.

Section G, Recording information is available on the following page.

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Darian King
power-transitions.com
Aug 25, 2025 8:37 PM EDT

confidential
Darian King

BK 8931 PG 60
01/30/08 11:29 Doc. 2333
Bristol Co. S.D.

power-transitions.com
Aug 25, 2025 8:37 PM EDT

TERMINATION OF LEASE AND NOTICE OF LEASE

The undersigned hereby certifies that the Lease by and between Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership, as Landlord, and Energy Management, Inc., a Massachusetts corporation, as Tenant, dated February 3, 2000, a Notice of Lease being recorded with the Bristol South District Registry of Deeds in Book 4633, Page 319, has been terminated and both the Lease and Notice of Lease are no longer in force and effect.

Witness the execution hereof under seal as of the 28 day of January, 2008.

LANDLORD:

**DARTMOUTH POWER ASSOCIATES
LIMITED PARTNERSHIP**

By: 

Name:

Title:

David Brauer
Vice President

State of New Jersey)
) ss.
County of Ocean)

On this 28 day of January, 2008, before me, the undersigned notary public, personally appeared David Brauer, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Vice President for Dartmouth Power Associates Limited Partnership.


Notary Public

My commission expires: July 19, 2012



KATHLEEN A. BRAUER
NOTARY PUBLIC STATE OF NEW JERSEY
COMMISSION EXPIRES JULY 19, 2012

confidential

Darian King

2604400187

33 CMR 10.00

Page 3



Commonwealth
of Massachusetts

3010

DP Form

15-04

Revised 10/97

Copies

1 - Applicant

1 - Department of Environmental Protection

Copy of
Compliance
11-19-96
3771-192

Re: 24 AUG 96
P. 3

AR2000

Order of Conditions
Massachusetts Wetlands Protection Act
G.L. c. 131, §40 and
the Departmental Protection Rules

From, the Dartmouth Conservation Commission

Dartmouth Police Association
c/o Security Management, Inc.

Dartmouth Police Association and
Police Dept.

Name of Applicant
10 Academy St.,
Newbury, MA 02459

Name of property owner
23 Merrymount Drive
NO. DARTMOUTH, MA 02717

The Order is issued and delivered as follows:

☒ by hand delivery to applicant or representative on February 22, 1991 (date)

☐ by certified mail, return receipt requested on _____ (date)

The project is located at Sections 87-8, 10, 15, 48-13, Old Fall River Road

The property is recorded at the Registry at Winted

Book 1819 Page 532
2563 302

Certificate of registration _____

The notice of intent for this project was filed on June 22, 1990 (date)

The public hearing was held on February 19, 1991 (date)

Findings

The Dartmouth Conservation Commission has reviewed the above-referenced notice of intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the Commission has determined that the area in which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection under the Act (check as appropriate):

- | | | |
|--|---|--|
| ☒ Public water supply | ☒ Flood control | ☐ Land containing shellfish |
| ☒ Potable water supply | ☒ Storm damage prevention | ☒ Fisheries |
| ☒ Ground water supply | ☒ Prevention of pollution | ☒ Protection of wildlife habitat |

Total Filing Fee Submitted 30 Date Shown 30
City/Town Share 30 (% fee in excess of \$20)
Total Refund Due \$ 30 City/Town Portion \$ 30 State Portion \$ 30
(% total) (% total) (% total)

Effective 1/1/98

8-1

confidential

Darian King

power-transitions.com

Aug 25, 2025 8:37 PM EDT

Barnstable Power Association
 JAMES
 Office of Conservation - Confidential

DATE: 02-15-01

Therefore, the Barnstable Conservation Commission hereby states that the following conditions are necessary, in accordance with the Performance Standards set forth in the Regulations, to protect those river fish attached to the Conservation Order. Orders that at least shall be performed in accordance with said conditions and with the notice of intent referenced above. To the extent that the following conditions modify or differ from the permit, specifications or other provisions submitted with the Notice of Intent, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and without related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges. It does not authorize any injury to private property or violation of public rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless within of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 60 days prior to the expiration date of the Order.
6. Any fit used in connection with this project shall be clear of, containing no mud, refuse, material or debris, including but not limited to lumber, bricks, plaster, wire, rock, paper, cardboard, steel, tires, ashes, rebar, iron, metal vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative action pending from this Order have expired or, if such an action has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the time of the effect of property. In the case of registered land, the Final Order shall also be recorded in the Registry of Deeds under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Commission on the 15th of the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than one square foot or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number: 02-001".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Subsequent Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

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260410189

Dartmouth Trust Association
c/o George Macgregor, Inc.
ORDER OF CONDITIONS - CONTINUED

FILE NO. 22-511

13. All activities shall conform prior to obtaining all necessary and required permits, licenses, and approvals, and shall conform to the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Dartmouth Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Contours shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, ground cover or shrubs so as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owner shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the State Building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. The design engineer will certify, in writing, that this project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continually operated and maintained so as to comply with this Order of Conditions and N.G.S., C 231, § 40, the Wetlands Protection Act.

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Aug 25, 2025 8:37 PM EDT

260470190

Berkshire Power Association
c/o Energy Management, LLC

AMEND

ORDER OF CONDITIONS CONTINUED

FILE NO. 15-241

Page	Title	Date	Signed and Stamped by	On File with
1	See sheets 1-4 & 5-7			Berkshire Power Association

Special Conditions (Use additional paper if necessary)

29. Certain conditions, such as maintenance or monitoring, are on-going and do not expire at the end of three years as with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest of the applicant, or successor in control of the property. The applicant shall furnish a copy of this Order to any subsequent owner at the time that ownership is transferred.
31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Divisions of Motorways.
33. The Conservation Commission and/or the Town of Berkshire shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to the resource areas.
35. All erosion control measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) bag holes and sufficient stakes for securing these holes. Said holes shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.

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Darian King

2601-0191

AMENDED

BERTHOUD POWER ASSOCIATES
c/o Energy Management, Inc.
ORDER OF CONDITIONS - CONTINUATION

FILE NO. 15-161

28. If changes to the approved plan-of-record on file with the Berthoud Conservation Commission are required by other regulatory agencies, any such changes shall be submitted for approval in accordance with condition #54 of this Order of Conditions.
29. This Order of Conditions shall be recorded within fifteen (15) days of receipt in accordance with Conditions #5.
40. Prior to any construction, the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
41. Any construction in the flood plain shall conform to 700 C.M.S., section 3a, the Design Requirements for Construction in Floodplains.
42. It shall be the responsibility of the applicant or the applicant's representative to continuously maintain all mitigation barriers required by this Order of Conditions until the Commission approves or requires their removal.
43. Unless alternate erosion/sediment control measures have been approved by the Conservation Commission or its agent, all exposed soils exceeding a 4:1 slope shall be stabilized using erosion control blankets/soil within 48 hours of soil disturbance and shall remain in place for the duration of the project, or until vegetation has been re-established.
44. All clearing and grubbing operations within the jurisdiction of the Conservation Commission shall be subject to approval of the Commission or its agent.
45. If current approval is not modified by future subdivision submissions, the storm water management system shall be completed as proposed prior to the power plant start-up. If the plan-of-record affirmed by this Order is modified in any way by future subdivision submissions, the applicant remains responsible, prior to power plant start-up, for the physical completion of the revised plan to the extent necessary to provide performance equivalent to that required by this Order.
46. All snow fencing noted as "Detail of 20th Fence" as noted on Drawing Number 6, Titled "Notice of Intent Power Plant Roadway & Utilities (Detail Sheet A), dated 10/10/90, shall be high visibility orange fencing subject to the approval of the Conservation Officer.

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Dartmouth Power Plant Site
Order of Conditions - Confidential

FILE NO. 15-841

47. "Tiled by Elastic Check", as shown on Drawing Number 1, Titled "Notice of Intent Power Plant Roadway & Utilities (Detail Sheet A)", dated 10/10/90, shall be amended to include a layer of filter fabric to be placed under the inlet grate in a manner which will isolate runoff basin ramps from filtration. All catch basins shall be installed in this manner and remain this way throughout construction and until all soils have been stabilized.
48. All general notes, erosion control and soil stabilization program, and sedimentation control measures, as outlined on Drawing Number 1, Titled "Notice of Intent Power Plant, Roadway & Utilities (General Notes & Legend)", of the approved plan-of-record shall be part of this Order of Conditions and shall be required where appropriate.

TABLE Signed by Ralph A. Cataldo, R.A. Cataldo Engineering

- Dep. #1 - Notice of Intent Power Plant, Roadway & Utilities
(General Site Plan), dated Revised 10/10/90
- Dep. #2 - Notice of Intent Power Plant, Roadway & Utilities
(General Notes & Legend), dated Revised 10/10/90
- Dep. #3 - Notice of Intent Power Plant, Roadway & Utilities
(Power Plan & Profile Sta. 62+581 to Sta. 70+761), dated Revised 10/10/90
- Dep. #4 - Notice of Intent Power Plant, Roadway & Utilities
(Power Plan & Profile Sta. 70+761 to Sta. 78+011), dated Revised 10/10/90
- Dep. #5 - Notice of Intent Power Plant, Roadway & Utilities
(Energy Road Sta. 8+60 to Sta. 18+001), dated Revised 10/10/90
- Dep. #6 - Notice of Intent Power Plant, Roadway & Utilities
(Energy Road Sta. 18+001 to Old Fall River Road), dated Revised 10/10/90
- Dep. #7 - Notice of Intent Power Plant, Roadway & Utilities
(Development Square), dated Revised 10/10/90
- Dep. #8 - Notice of Intent Power Plant, Roadway & Utilities
(Detail Sheet A), dated Revised 10/10/90
- Dep. #9 - Notice of Intent Power Plant, Roadway & Utilities
(Detail Sheet B), dated Revised 10/10/90
- Dep. #10 - Notice of Intent Power Plant, Roadway & Utilities
(Detail Sheet C), dated Revised 10/10/90
- Dep. #11 - Notice of Intent Power Plant, Roadway & Utilities
(Detail Sheet D), dated Revised 10/10/90
- Dep. #12 - Notice of Intent Power Plant, Roadway & Utilities
(Unearthed Analysis Plan), dated Revised 10/10/90

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260400199

Dartmouth Power Associates

SENDER: 0048 OF 00017001 - CONTINUED

FILE NO. 15-861

PLANS - Continued

Plans signed and stamped by D.R. Wadits

Dep. 84420-1-C-01, "Pile Plan", dated Revised 1/21/91

Dep. 84420-1-C-02, "Driving and Grouting Plan", dated Revised 1/21/91

Dep. 84420-1-C-03, "Overseer and Underground Piping", dated Revised 1/21/91

Dep. 84420-1-C-04, "Grouting and Sealage Sections and Details",
dated Revised 1/21/91

Dep. 84420-1-C-05, "Detention Basin and Miscellaneous Details",
dated Revised 1/21/91

Received & Reviewed

Thurgood 25, 1991 at 2 hrs. 16 min. Pm

Attest:

John Edward Register

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00261000115

200 DMR 1036

Form 5

SEP Form 15- 841

Revised 10/80

4047

Commonwealth
of Massachusetts

City/Town: Dorchester

Account: Dorchester Power
Associates

Received

R-9, Book K: 2556
Page: 147

Order of Conditions
Massachusetts Wetlands Protection Act
G.L.c. 131, §40 and
the Dorchester Wetlands Protection Bylaw

File: the Dorchester Conservation Commission

Dorchester Water Associates

To: c/o Dorchester Newspaper, Inc.

Dorchester Water Associates and

(Name of Applicant)

(Name of property owner)

8 Newbury St.

Dorchester, MA 02122

Address: Dorchester, MA 02122

Address: 8 Newbury St., Dorchester, MA 02122

The Order is issued and delivered as follows:

It is hereby declared to be an application or representative of March 6, 1991 issued

by certified map, which record requested on 1988

The project is located at lots 67-9, 18, 51, 48-11, Old Fall River Rd.

The property is recorded in the Registry of Writed

Book 2556 Page 147

1817 532

Certificate of registration

The notice of intent for this project was filed on June 22, 1990 with

The public hearing was held on March 7, 1991 issued

Findings

The Dorchester Conservation Commission has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the Commission has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Provisions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (check as appropriate):

☒ Public water supply
☒ Private water supply
☒ Ground water supply

☒ Flood control
☒ Storm damage prevention
☒ Prevention of pollution

☐ Lead containing material
☒ Fisheries
☒ Protection of wildlife habitat

Total Filing Fee Submitted \$0 State Share

City/Town Share (No fee in excess of \$25)

Total Refund Due \$ 0 City/Town Portion \$ 0 State Portion \$ 0

(No fee)

(No fee)

Effective 1/1/1988

2-1

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Aug 25, 2025 8:37 PM EDT

Therefore, the Dorchester Conservation Commission hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect these resources described above. The Conservation Commission orders that all work shall be performed in accordance with said conditions and with the Notice of Intent referenced above. To the extent that the following conditions, if not followed, the project is subject to be held in violation with the Notice of Intent, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance (repeating) project as provided for in the Act; or
 - (b) the date for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and such that said entire period of extension exceeding the specified time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any filings in connection with this project shall be given 15, containing no trash, refuse, rubbish or debris, including but not limited to lumber, debris, blocks, wire, steel, paper, cardboard, plastic, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until a minimum of 30 days prior to the Order have elapsed or, if such an interval has been waived, until all proceedings before the Determinative Board completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds of the Land Court for the district in which the land is located, within the cleared title of the affected property. In the case of repeated land, the Final Order shall also be placed in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of repeated land, the Final Order shall also be placed in the Land Court Certificate of Title at the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number 25-141".
10. Where the Department of Environmental Protection is required to make a determination and to issue a Subsequent Order, the Conservation Commission shall be a party to all Agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

12. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals, and until copies of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Seawatch Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Contours shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris and construction material.
20. All exposed soil or sandfill shall be replanted with vegetation such as grass, ground cover or shrubs so as to minimize erosion and siltation.
21. There shall be no/minor disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owner shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the State building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the testing of portions. Times for the same shall be at the discretion of the Commission.
27. The design engineer will certify, in writing, that this project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continually operated and maintained as to comply with this Order of Conditions and N.G.L., C 121, § 40, the Wetlands Protection Act.

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Dartmouth Power Association
 AGREED
ORDER OF CONDITIONS CONTINUED

FILE NO. 15-881

Place:

Title:

Dated:

Drawn and Shaded by:

On File with:

Dartmouth Conservation
 Commission

Special Conditions (Use additional paper if necessary)

29. Certain conditions, such as maintenance or monitoring, are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest of the applicant, or successor in control of the property. The applicant shall furnish a copy of this Order to any subsequent owner at the time that ownership is transferred.
31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
 The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Motorways.
33. The Conservation Commission and/or the Town of Dartmouth shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify wet that will be shown and adjacent to the resource areas.
35. All mitigation control measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and hurricane stakes for securing those bales. Hay bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.

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ORDER OF CONDITIONS - ADDENDUM2310-119
FILE NO. 12-843

38. If changes to the approved plan-of-record on file with the Dartmouth Conservation Commission are required by other regulatory agencies, any such changes shall be submitted for approval in accordance with conditions A1 of this Order of Conditions.
39. This Order of Conditions shall be recorded within fifteen (15) days of receipt in accordance with Conditions A6.
40. Prior to any construction, the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
41. Any construction in the flood plain shall conform to 700 C.M.R., section 744, the Design Requirements for Construction in Floodplains.
42. It shall be the responsibility of the applicant or the applicant's representative to continuously maintain all erosion barriers required by this Order of Conditions until the Commission approves or requires their removal.
43. Unless alternate erosion/sediment control measures have been approved by the Conservation Commission or its agent, all exposed soils exceeding a 4:1 slope shall be stabilized using erosion control blankets/netting within 48 hours of soil disturbance and shall remain in place for the duration of the project, or until vegetation has been re-established.
44. All clearing and grubbing operations within the jurisdiction of the Conservation Commission shall be subject to approval of the Commission or its agent.
45. If current approval is not modified by future subdivision submissions, the storm water management system shall be completed as proposed prior to the power plant start-up. If the plan-of-record affixed by this Order is modified in any way by future subdivision submissions, the applicant assumes responsibility, prior to power plant start-up, for the physical completion of the revised plan to the extent necessary to provide performance equivalent to that required by this Order.
46. All new fencing noted as "Detail of Silt Fence" as noted on Drawing Number 8, Titled "Section of Intake Power Plant Building & Utilities (Detail Sheet A)", dated 10/20/90, shall be high visibility orange fencing subject to the approval of the Conservation Officer.

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Dartmouth Power Associates

ORDER OF CONDITIONS - Continued

FILE NO. 15-041

47. "Baldy Bay Pipeline Check", as shown on Drawing Number 8, titled "Notice of Intent Power Plant Roadway & Utilities (Detail Sheet A), dated 10/10/90, shall be amended to include a layer of 18" pipe (18" to 20" pipe) over the 18" pipe in a trench which will support catch basins from future alignment. All catch basins shall be installed in this manner and remain this way throughout construction and until all catch basins have been stabilized.
48. All general notes, section control and soil stabilization program, and construction detail notations as outlined on Drawing Number 2, titled "Notice of Intent Power Plant, Roadway & Utilities (General Notes & Legend), or the approved plan-of-record shall be part of this Order of Conditions and shall be required where appropriate.

ENVS:

Signed by Ralph A. Cavaldo, R.A. Cavaldo Engineering

- Dep. #1 - Notice of Intent Power Plant, Roadway & Utilities (General Site Plan), dated Revised 10/10/90
- Dep. #2 - Notice of Intent Power Plant, Roadway & Utilities (General Notes & Legend), dated Revised 10/10/90
- Dep. #3 - Notice of Intent Power Plant, Roadway & Utilities (General Plan & Profile Sta. 62+00 to Sta. 70+75), dated Revised 10/10/90
- Dep. #4 - Notice of Intent Power Plant, Roadway & Utilities (General Plan & Profile Sta. 70+75 to Sta. 78+00), dated Revised 10/10/90
- Dep. #5 - Notice of Intent Power Plant, Roadway & Utilities (Energy Road Sta. 8+00 to Sta. 18+00), dated Revised 10/10/90
- Dep. #6 - Notice of Intent Power Plant, Roadway & Utilities (Energy Road Sta. 18+00 to Old Fall River Road), dated Revised 10/10/90
- Dep. #7 - Notice of Intent Power Plant, Roadway & Utilities (Development Square), dated Revised 10/10/90
- Dep. #8 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet A), dated Revised 10/10/90
- Dep. #9 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet B), dated Revised 10/10/90
- Dep. #10 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet C), dated Revised 10/10/90
- Dep. #11 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet D), dated Revised 10/10/90
- Dep. #12 - Notice of Intent Power Plant, Roadway & Utilities (Waterbody Analysis Plan), dated Revised 10/10/90

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2610-0121

Dartmouth Power Associates

PROPOSED CHINA CO. CONTRACTS - Continued

FILE NO. 15-041

PLANS - Continued

Plans signed and stamped by: D.A. Hardin

Dep. 44429-1-C-01, "Plot Plan", dated Revised 2/21/91

Dep. 44429-1-C-02, "Reaving and Grading Plan", dated Revised 2/21/91

Dep. 44429-1-C-03, "Drainage and Underground Piping", dated Revised 2/21/91

Dep. 44429-1-C-04, "Grading and Drainage Sections and Details",
dated Revised 2/21/91

Dep. 44429-1-C-05, "Detention Basin and Miscellaneous Details",
dated Revised 2/21/91

Templecity Access Road, dated March 5, 1991

5-7

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4519
GRANT OF EASEMENT

I, JAMES S. GORDON of 8 Newbury Street, Boston, Suffolk County, Commonwealth of Massachusetts, as Trustee of OLD HILL RIVER REALTY TRUST under a Declaration of Trust dated November 28, 1980 and recorded in Bristol County (D.C.) Registry of Deeds in Book 3487, Page 25 (hereinafter called the GRANTOR), in consideration of the mutual covenants herein contained, grants to COMMUNITYWALTH ELECTRIC COMPANY, a Massachusetts corporation, with a principal place of business at One Main Street, Cambridge, Middlesex County, Massachusetts, its successors and assigns (hereinafter called the GRANTEE), with certain covenants, the perpetual right and easement to enter upon, to install, operate, maintain, test, inspect, replace or remove underground electric cables, conductors, and electrical equipment located in underground manholes, handholes and conduits owned and maintained by the GRANTOR, together with the right and easement to install, erect, operate, maintain, test, inspect, replace or remove electric transformers, and other electric equipment located on concrete foundations owned and maintained by the GRANTOR, all of which is used or useful in supplying electricity to the GRANTOR, its tenants and others, who, in the judgement of the GRANTEE, may be conveniently and occasionally served therefrom, on, under, across and along the GRANTOR'S premises situated in the Town of Dartmouth, Bristol County, Commonwealth of Massachusetts and being Lot C on a plan and lot:

*Approval Not Required Plan Drawn For Ralph and Dorothy Aguil and James S. Gordon, Trustee, dated October 28, 1980, M.A. Cataldo Engineering, Pawtucket, R.I. and recorded in Bristol County (D.C.) Registry of Deeds at Map Book 126, Page 76.

For title wherein see the following deeds recorded in Bristol County (D.C.) Registry of Deeds: Book 2584, Page 1, dated October 28, 1980 from Manuel DeLuca;

Book 2584, Page 3, dated October 31, 1980 from Ralph and Dorothy Aguil.

It is agreed that the location of said easement shall be established by the installation of the GRANTOR'S manholes, handholes, conduits, and transformer foundations. Said easement shall be fifteen (15) feet in width, lying seven and one half (7.5) feet either side of the center line of the GRANTOR'S manholes, handholes, conduits, and transformer foundations.

Together with the right to install temporary overhead line or lines whenever in the judgement of the GRANTEE, it is required for the emergency maintenance of service. In all cases the making of repairs or improvements shall be completed and the temporary overhead line or lines removed as soon as practical.

It is understood that said transformers, cables, wires, conductors and other electrical equipment installed by the GRANTEE, whether affixed to the realty or not, shall be and remain the property of the GRANTEE, its successors and assigns, at their interest may appear.

The GRANTEE shall have other rights and benefits for the full use of the rights herein granted, including, but not limited to, the right to remove and clear all rocks, trees, brush and other obstructions which interfere with the right herein granted, together with the right to enter on the above described land and to permit access thereto at all times with personnel, vehicles and other necessary equipment to install, erect, operate, maintain, test, inspect, replace or remove electric transformers, yardgear, cables, wires, and other electrical equipment thereto belonging.

The GRANTEE reserves the right after due notice to the GRANTOR, to enter upon the GRANTOR'S premises to repair or maintain the GRANTOR'S manholes, handholes, conduits, and transformer foundations, if in the judgement of the GRANTEE, the failure of the GRANTOR to perform such repair or maintenance, jeopardizes the rights of the GRANTEE. It being understood that the real of such

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Aug 25, 2025 8:37 PM EDT

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2012 Nov 333

in place of a quit, whether performed by the GRANTEE or the GRANTOR, will be assumed by the GRANTOR.

The GRANTOR reserves the right to use the land over, under and across said facilities provided such use does not jeopardize the right herein granted.

WITNESSED my hand and seal this 15th day of March, 1991.

OLD FALL RIVER REALTY TRUST

James S. Gordon

TRUSTEE

THE COMMONWEALTH OF MASSACHUSETTS

S. 1529. 08.

PL. 16 1991.

Then personally appeared the above-named James S. Gordon, Trustee of Old Fall River Realty Trust and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of Old Fall River Realty Trust, before me.

[Signature]

Notary Public in and for the State of Massachusetts

12/31/91

My Commission Expires:

Received & Recorded Nov. 21, 1991 at 10 hrs. 55 min. A. M.

Attest: *John Thomas* Register

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Darian King

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Aug 25, 2025 8:37 PM EDT

310 CMR 10.99

DEP File No.

15-894

Form 8

(To be provided by DEP)

City/Town Dartmouth

Applicant Robert E. Donahoe

**Commonwealth
of Massachusetts**

**Certificate of Compliance
Massachusetts Wetlands Protection Act, G.L. c. 131, §40 &
the Dartmouth Wetlands Protection Bylaw**

From Dartmouth Conservation Commission Issuing Authority

To Robert E. Donahoe One Energy Road
Energy Management, Inc. Dartmouth, MA 02747
(Name) (Address)

Date of Issuance January 21, 2000

This Certificate is issued for work regulated by an Order of Conditions issued
to Dartmouth Power Associates dated June 26, 1991

and issued by the Dartmouth Conservation Commission

LOCATION: Plat 48, Lot 1, Plat 44, Lots 45, 47, 48, Old Westport Road

1. ☒ It is hereby certified that the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.
2. ☐ It is hereby certified that only the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed: (If the Certificate of Compliance does not include the entire project, specify what portions are included.)
3. ☐ It is hereby certified that the work regulated by the above-referenced Order of Conditions was never commenced. The Order of Conditions has lapsed and is therefore no longer valid. No future work subject to regulation under the Act may be commenced without filing a new Notice of Intent and receiving a new Order of Conditions.

.....
(Leave Space Blank)

Effective 11/10/89

8-1

Robert E. Donahoe

CERTIFICATE OF COMPLIANCE

FILE NO. 15-894

4. ☒ This certificate shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located. The Order was originally recorded on July 2, 1991 (date) at the

Registry of Bristol, in Book 2662, Page 230

5. ☐ Ongoing Conditions: The following conditions of the Order shall continue: (set forth any conditions contained the Final Order, such as maintenance or monitoring which are to continue for a longer period.) Condition(s) Number(s): _____

This Certificate of Compliance is issued by **the Dartmouth Conservation Commission**

Signatures:

Gerald Franklin, Chairman

George Levesque
George Levesque, Vice-Chairman

Jacquelyn E. McDonald
Jacquelyn McDonald

David Bolton
David Bolton

Daria Koderick
Daria Koderick

Paul Faria

Lawrence Mastera
Lawrence Mastera

When issued by the Conservation Commission, this Certificate must be signed by a majority of its members.

On this 21st day of January, 2000, before me appeared **the above named persons**, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Notary Public

Rita Costa
Rita Costa

6/12/2003

My Commission expires

Fill in the form below, detach on dotted line and submit to the:
Dartmouth Conservation Commission, P.O. Box 79399, Dartmouth, MA 02747

.....
Please be advised that the Certificate of Compliance for the project at: _____, File Number 15-894 has been recorded at the Registry of Bristol in Book _____, Page _____, and has been noted in the chain of title of the affected property on (date) _____, 2000

If recorded land, the instrument number which identifies this transaction is _____.

If registered land, the document number which identified this transaction is _____.

Signature of applicant: _____

310 CMR 10.99

DEP File No.

15- 846

Form 8

(To be provided by DEP)

City/Town Dartmouth

Applicant Robert E. Donahoe

Commonwealth
of Massachusetts

Certificate of Compliance
Massachusetts Wetlands Protection Act, G.L. c. 131, §40 &
the Dartmouth Wetlands Protection Bylaw

From Dartmouth Conservation Commission Issuing Authority

To Robert E. Donahoe One Energy Road
Energy Management, Inc. Dartmouth, MA 02747
(Name) (Address)

Date of Issuance January 21, 2000

This Certificate is issued for work regulated by an Order of Conditions issued
to Dartmouth Power Associates INC. dated 8/22/90

and issued by the Dartmouth Conservation Commission

LOCATION: Lots 62-30 & 63-7, between Hixville Road & Faunce Corner Road

1. ☒ It is hereby certified that the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.
2. ☐ It is hereby certified that only the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed: (If the Certificate of Compliance does not include the entire project, specify what portions are included.)
3. ☐ It is hereby certified that the work regulated by the above-referenced Order of Conditions was never commenced. The Order of Conditions has lapsed and is therefore no longer valid. No future work subject to regulation under the Act may be commenced without filing a new Notice of Intent and receiving a new Order of Conditions.

.....
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Effective 11/10/89

8-1

Robert E. Donahoe

CERTIFICATE OF COMPLIANCE

FILE NO. 15-846

4. ☒ This certificate shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located. The Order was originally recorded on **October 5, 1990** (date) at the

Registry of **Bristol**, in Book **2552**, Page **137**

5. ☐ Ongoing Conditions: The following conditions of the Order shall continue: (set forth any conditions contained the Final Order, such as maintenance or monitoring which are to continue for a longer period.) Condition(s) Number(s): _____

This Certificate of Compliance is issued by **the Dartmouth Conservation Commission**

Signatures:

Gerald Franklin, Chairman

George Lovesque, Vice-Chairman

Jacquelyn McDonald

David Bolton

David Roderick

Paul Faria

Lawrence Mastera

When issued by the Conservation Commission, this Certificate must be signed by a majority of its members.

On this 21st day of January, 2000, before me appeared **the above named persons**, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Notary Public Rita Costa

6/12/2003

My Commission expires

Fill in the form below, detach on dotted line and submit to the:
Dartmouth Conservation Commission, P.O. Box 79399, Dartmouth, MA 02747

.....
Please be advised that the Certificate of Compliance for the project at: _____, File Number **15-846** has been recorded at the Registry of Bristol in Book _____, Page _____, and has been noted in the chain of title of the affected property on _____, **2000**.

If recorded land, the instrument number which identifies this transaction is _____.

If registered land, the document number which identified this transaction is _____.

Signature of applicant: _____

310 CMR 10.99

Form 7

DEP File No. SE 15-972

(To be provided by DEP)

City/Town DARTMOUTH

Applicant Old Fall River Road Industrial Development

Commonwealth
of Massachusetts

Ref. Bk 3449 9203 EXTENSION PERMIT
MASSACHUSETTS WETLANDS PROTECTION ACT
G.L. c. 131, §40

From: Department of Environmental Protection Issuing Authority

To: Old Fall River Road Industrial Development Garcia & Galuska, Inc.
c/o Manuel B. Garcia, P.E. 609 County Street
(Name) New Bedford, Massachusetts 02740*
(Address)

The Order of Conditions (or Extension Permit) issued on February 24, 1995 (date)

to Old Fall River Road Industrial Development (name) for work at Faunce Corner Road and Old Fall River Road (address) is hereby extended for a period of three (3)

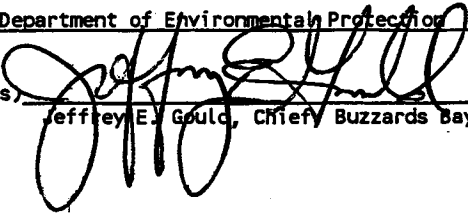
years(s) from the date it expires.

This Extension Permit will expire on February 24, 2002 (date)

This document shall be recorded in accordance with General Condition 8 of the
Order of Conditions.

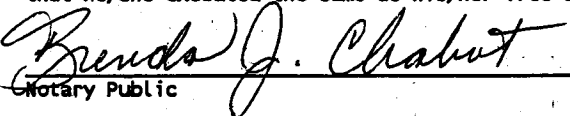
.....
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Issued by Department of Environmental Protection

Signature(s) 
Jeffrey E. Gould, Chief Buzzards Bay Watershed

When issued by the Conservation Commission this Extension Permit must be
signed by a majority of its members.

On this 28th day of April 19 99, before me
personally appeared Jeffrey E. Gould, to me known to be the
person described in and who executed the foregoing instrument and acknowledged
that he/she executed the same as his/her free act and deed.

 9-13-02
Notary Public My commission expires

Detach on dotted line and submit to the _____ prior to commencement of work.

To _____ Issuing Authority

Please be advised that the Extension Permit to the Order of Conditions for the project at _____
File Number _____ has been recorded at the Registry of _____ and
has been noted in the chain of title of the affected property in accordance with General Condition 8 of the
original order of conditions on _____, 19 _____.

If recorded land, the instrument number which identifies this transaction is _____

If registered land, the document number which identifies this Transaction is _____

Signature _____ Applicant

G/GJM/gjm

cc: Dartmouth Conservation Commission

Dr. Rahin and Dorothy Aghai
23 Merrymount Drive
North Dartmouth, MA 02747



Commonwealth of Massachusetts
Executive Office of Environmental Affairs

**Department of
Environmental Protection**
Southeast Regional Office

William F. Weld
Governor

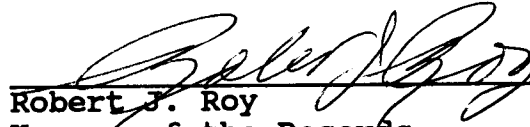
Trudy Coxe
Secretary, EOE

David B. Struhs
Commissioner

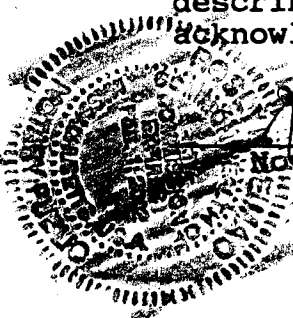
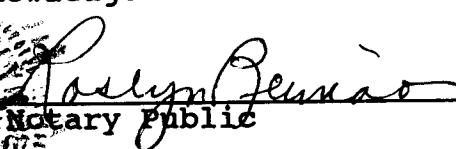
RECORD CUSTODIAN CERTIFICATION

I, Robert J. Roy, Record Custodian in the Department of Environmental Protection, do hereby certify the annexed documents to be a true and exact copy of the original documents maintained in my office. WETLANDS DEP FILE SE 15-972

Witness my official signature this 26TH day of JANUARY, ~~1999~~ 2000


Robert J. Roy
Keeper of the Records

On this 26th day of January, 2000, before me personally appeared Robert J. Roy, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.



Notary Public

2/1/2002
My Commission Expires

BK 4633 PG 319
03/03/00 03:04 DOC. 5093
Bristol Co. S.D.

NOTICE OF LEASE

Notice is hereby given of a Lease between the Lessor and the Lessee described hereinbelow:

Lessor:

Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership with a mailing address at 1001 Louisiana, Houston, Texas 77002, Attention Greg Jones, Esq.

Lessee:

Energy Management, Inc., a Massachusetts corporation with a mailing address at One Energy Road, North Dartmouth, Massachusetts 02747

Date of Lease:

February 3, 2000

Description of the Premises:

The building located at One Energy Road, North Dartmouth, Massachusetts 02747, including all other rights and appurtenances associated therewith (including the nonexclusive right to park in the Premises parking facilities in common with Lessor, accessways, loading areas, dumpster locations and the like) located on a portion of the land more particularly shown and described on Exhibit A attached hereto and incorporated herein by reference.

Commencement and Termination:

The Lease term shall commence on March 1, 2000 and end three (3) Lease Years (as such term is defined in the Lease) thereafter at midnight (the "Initial Term").

Rights of Termination, Extension or Renewal:

The term of the Lease shall automatically renew for an additional Lease Year (a) at the end of the Initial Term or (b) at the end of each additional Lease Year thereafter unless either the Lessor or Lessee gives notice to the other party of an election to terminate at least 180 days prior to the expiration of the Initial Term or the succeeding Lease Year, as the case may be.

Lessee shall have the right to terminate the Lease during the Initial Term on ninety (90) days written notice to Lessor.

Additional Provisions:

Lessor and Lessee agree to execute a recordable form of notice of termination of the Lease within thirty (30) days after the termination thereof. Notwithstanding anything to the contrary contained herein, nothing in this Notice of Lease shall affect, modify or vary the terms of the Lease and in the event of a conflict between this Notice and the Lease, the terms of the Lease shall govern in all respects.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date first above written.

Lessor:

Dartmouth Power Associates Limited
Partnership

By: EMI Dartmouth, Inc., its General Partner

By: James L. Gordon
Its duly authorized: President

Lessee:

Energy Management, Inc.

By: James L. Gordon
Its duly authorized: President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

2/1, 2000

Then personally appeared the above-named James L. Gordon, President of EMI Dartmouth, Inc., the General Partner of Dartmouth Power Associates Limited Partnership, the party signing this instrument and he acknowledged said instrument so executed by him to be his free act and deed in said capacity, the free act and deed of EMI Dartmouth, Inc. and the free act and deed of Dartmouth Power Associates Limited Partnership, before me,

Charlotte J. Jurek
Notary Public

My Commission expires: 1/20/06

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

2/1, 2000

Then personally appeared the above-named James L. Gordon, President of Energy Management, Inc., the party signing this instrument, and he acknowledged said instrument so executed by him to be his free act and deed in said capacity and the free act and deed of Energy Management, Inc., before me,

Charlotte J. Jurek
Notary Public

My Commission expires: 1/20/06

Exhibit A

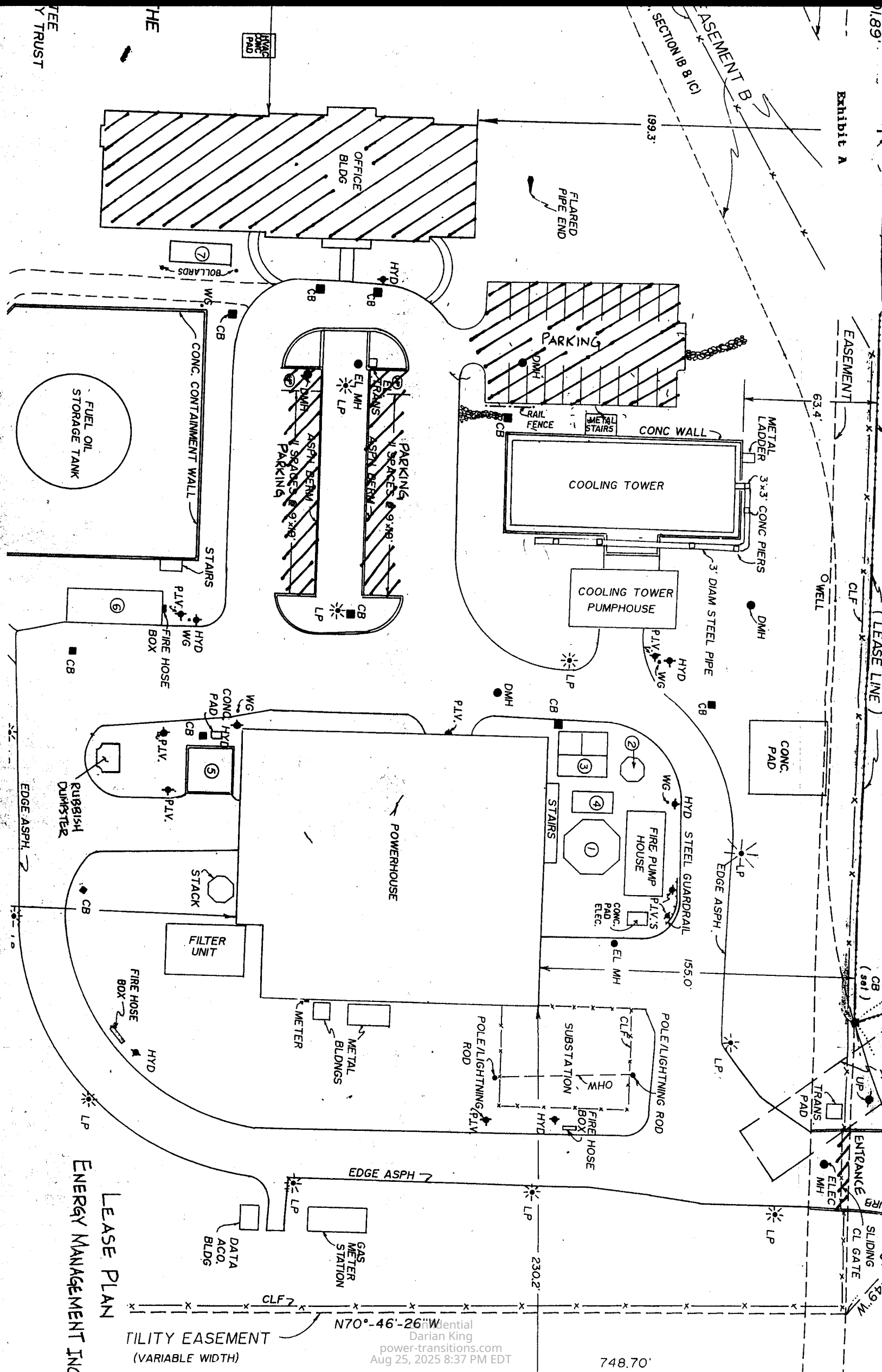
Parcel 1:

The land shown as Lot C (located on the Southerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts) on a certain plan entitled "Approval Not Required Plan Drawn For Rahim & Dorothy Aghai and James S. Gordon, Trustees" dated October 25, 1990 (herein called the "Survey Plan") prepared by R.A. Cataldo Engineering of 141 Power Road, Pawtucket, Rhode Island, and recorded in said Bristol South District Registry of Deeds in Plan Book 126, Page 70.

Excepting and including therefrom a parcel of land containing 10.47 acres being more particularly shown as "Proposed 10 Acre Parcel" on a plan entitled, "Project Easement Plan, Dartmouth, Massachusetts" prepared for Dartmouth Power Associates dated October 24, 1990, and recorded with the Bristol South District Registry of Deeds in Plan Book 126, Plan 71 (the "Project Easement Plan")

The Premises includes the following easements and rights:

- (A) "Easement and License Agreement Between Rahim Aghai and Dorothy Aghai, Dartmouth Power Associates Limited Partnership, and James S. Gordon, Trustee of Old Fall River Realty Trust" dated October 31, 1989, and recorded on November 2, 1990 at 4:30 p.m. in Book 2564, Page 20 (herein referred to as the "Aghai Easement Instrument"); and
- (B) "Easement" between the Old Fall River Trustee and Carol Medeiros (a/k/a Carol Smith), Cecil Smith III, Marion E. Smith (a/k/a Marion Luiz Smith), and Ambrose J. Smith dated October 31, 1990, and recorded on November 2, 1990 at 4:30 p.m. in Book 2564, Page 46 (herein referred to as the "Smith Easement Instrument"); and
- (C) "Easement Grant" from James Nassiff and Terrance LeBerge, individually and as co-partners d/b/a Apache Associates" dated October 31, 1990 and recorded on November 2, 1990 at 4:30 p.m. in Book 2564, page 68, (herein referred to as the "Apache Easement Instrument").



310 CMR 10.99
Form 5

DEP File No. SE 15-972
(To be provided by DEP)

City/Town Dartmouth

Applicant Old Fall River Road
Industrial Development c/o
Garcia & Galuska, Inc.

AMENDED

Superseding Order of Conditions
Massachusetts Wetlands Protection Act
G.L. c.131, §40

From Department of Environmental Protection

To Old Fall River Road Industrial Development (Name of Applicant)

Address 609 County Street, New Bedford, Massachusetts 02740 (applicant)

To Dr. Rahim and Dorothy Aghai, Old Fall River Realty Trust and Dartmouth Power Associates Limited Partnership (Name of Property Owner)

Address 23 Merrymount Drive, North Dartmouth, Massachusetts 02747 c/o Energy Management, Inc., 8 Newbury Street, Boston, Massachusetts 02116 (owner)

This Order is issued and delivered as follows:

- ☐ by hand delivery to applicant or representative on _____ (date)
☒ by certified mail, return receipt requested on January 25, 1999 (date)

Certified Mail # Z 539 133 596

This project is located at Plat 67, Lots 9, 10, 11; Plat 68, Lot 13; Faunce Corner Road and Old Fall River Road

The property is recorded at the Registry of Deeds, Bristol County

Book 2564,2259

Page 1, 345

Certificate (if registered) _____

The Notice of Intent for this project was filed on August 7, 1992 (date)

The public hearing was closed on March 16, 1993 (date)

Findings

The Department of Environmental Protection has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Department of Environmental Protection at this time, the Department of Environmental Protection has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (check as appropriate):

- | | | |
|--|---|--|
| ☒ Public water supply | ☒ Flood control | ☐ Land containing shellfish |
| ☒ Private water supply | ☒ Storm damage prevention | ☒ Fisheries |
| ☒ Ground water supply | ☒ Prevention of pollution | ☒ Protection of wildlife habitat |

Total Filing Fee Submitted \$9,600 State Share \$4,787.50

City/Town Share \$4,812.50 (½ fee in excess of \$25)

Total Refund Due \$ _____ City/Town Portion \$ _____ State Portion \$ _____

(½ total)

(½ total)

Effective 11/20/92

Therefore, the Department of Environmental Protection hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests checked above. The Department of Environmental Protection orders that all work shall be performed in accordance with said conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the Notice of Intent, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Department of Environmental Protection on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number SE 15-972".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.

11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.

12. The work shall conform to the following plans and special conditions:

Plans:

Title: Overall Future Lot Development Plan; Dartmouth Heritage Industrial Park

Dated: Revised October 19, 1997

Signed & Stamped by: Prepared by Garcia Engineering, Inc.

On File With: Department of Environmental Protection

Title: Dartmouth Heritage Industrial Park, Dartmouth, Massachusetts, Definitive Subdivision, Section I; [Sheets 1 - 34; Drawing Nos. R1 - R10, P1, G1 - G3, U1 - U6, S1 - S6, D1 - D5, W1, W2]; Drawings B1 and B2

Dated: Sheets 1 - 34 dated April 6, 1993; Drawings B1 and B2 dated October 15, 1997 and September 24, 1997.

Signed & Stamped by: Ralph A. Cataldo, Registered Professional Engineer;
Drawings B1 and B2 by Manuel B. Garcia, Registered Professional Engineer

On File With: Department of Environmental Protection

Title: Definitive Subdivision Plan, Dartmouth Heritage Industrial Park, Section Two, Dartmouth - Massachusetts

Dated: Revised, September 13, 1991

Signed and Stamped by: Grete M. Bohannon, Registered Professional Land Surveyor

On File With: Department of Environmental Protection

Title: Roadway and Utility Construction Plans For the Definitive Subdivision Entitled Dartmouth Heritage Industrial Park - Section Two, North Dartmouth, Massachusetts [Sheets T-1, 1, 1-A, 1-B, 2 - 15]

Dated: Sheets T-1, 1, 1A, 1B, 2, 3, 6, 9, 11, 12, 13, and 14 dated April 6, 1993; Sheets 4, 5, 7, and 8 dated October 15, 1997; Sheet 10 dated September 24, 1997.

Signed & Stamped by: Manuel B. Garcia, Registered Professional Engineer

On File With: Department of Environmental Protection

Title: Flood Control Calculations for Southwest and Central Basins, Dartmouth Heritage Industrial Park (Third Revision)

Dated: Dated October 15, 1997

Signed & Stamped by: Desheng Wang, Ph.D., Registered Professional Engineer and Jerome B. Carr, Ph.D.

On File With: Department of Environmental Protection

Amended Superseding Order of Conditions for Old Fall River Road Industrial Development, SE 15-972

Special Conditions (Use additional paper if necessary)

1. Prior to the commencement of construction, General Condition No. 8, above, must be complied with.
2. All construction must comply with the above-referenced plans and the conditions of this Order. For any proposed change in the approved plans or in the work, the applicant shall file a new Notice of Intent or inquire, in writing, of the Department whether the change is substantial enough to require a new Notice of Intent. No change in plan, under this filing, is permissible without prior written approval from the Department allowing this change.
3. It is the responsibility of the applicant, owner and/or successor(s) to ensure that all conditions of this Order are complied with. The project engineer and contractors are to be provided with a copy of this Order and referenced documents before commencement of construction.
4. Members and agents of the local Conservation Commission and the Department shall have the right to enter and inspect the property at all reasonable times to evaluate compliance with the conditions stated in this Superseding Order, and may require the submittal of any data deemed necessary by this Department for that submittal.

PRIOR TO COMMENCEMENT OF ANY WORK, THE FOLLOWING SPECIAL CONDITIONS SHALL APPLY

5. PRIOR TO COMMENCEMENT OF ANY WORK AT THIS SITE, proof of the recording of this Superseding Order of Conditions at the Registry of Deeds shall be done using the form provided on the last page of this Order. This form shall be completed and submitted to this Office by Registered or Certified Mail.

MAINTENANCE AND EROSION CONTROL

6. Any herbaceous wetland plant growth within the proposed detention basins shall be allowed to propagate undisturbed. Any growth of shrubs or trees within the detention basin, or removal of any accumulated silt and/or debris may be done by machinery, with every effort to maintain any herbaceous wetland plant growth within said basin.
7. Prior to commencement of any work at the site, an erosion control barrier [hay bales staked end to end anchored with six (6) inches of soil on the uphill side] shall be emplaced, as shown on above-referenced plans, between the wetlands and any work which is to be done. The erosion control barriers shall be maintained until all disturbed areas have been stabilized.
8. In addition to this hay bale barrier, orange construction fencing shall be erected at this site which shall serve to delineate the work limit line. No equipment, vehicles or activity are allowed on the wetlands side of the construction fencing and erosion control barrier.
9. Bare soil areas shall be mulched within 24 hours and revegetated where practicable within 6 months.
10. All debris, fill and excavated material shall be stockpiled at least fifty (50) feet from designated wetlands and at a location to prevent sediment from surface runoff entering the wetlands. At no time shall any debris or other material be buried or disposed of within those areas subject to protection under the Wetlands Protection Act.

See the attached sheet for additional conditions numbered 11 through 19.

Issued by the Department of Environmental Protection

Signature _____

Jeffrey E. Gould, Chief, Buzzards Bay Watershed

On this 25th day of January, 1999, before me
personally appeared Jeffrey E. Gould

to me known to be the person described in and who executed the foregoing
instrument and acknowledged that he/she executed the same as his/her free act and
deed.

Brenda Chisot
Notary Public

9-13-02
My commission expires

The applicant, the owner, any person aggrieved by the Superseding Order, any
owner of land abutting the land upon which the proposed work is to be done, or
any ten persons pursuant to G.L. c.30A §10A, are hereby notified of their right
to request an adjudicatory hearing pursuant to G.L. c.30A, §10, providing the
request is made by certified mail or hand delivery to the Department, with the
appropriate filing fee and Fee Transmittal Form as provided in 310 CMR 10.03(7),
within ten days from the date of issuance of this Superseding Order, and is
addressed to: Docket Clerk, Office of General Counsel, Department of
Environmental Protection, One Winter Street, Boston, MA 02108. A copy of the
request shall at the same time be sent by certified mail or hand delivery to the
Conservation Commission, the applicant, and any other party.

A Notice of Claim for an Adjudicatory Hearing shall comply with the Department's
Rules for Adjudicatory Proceedings. 310 CMR 1.01(6), and shall contain the
following information:

- (a) the DEP Wetlands File Number, name of the applicant and address of the project.
- (b) the complete name, address and telephone number of the party filing the request, and, if represented by counsel, the name and address of the attorney;
- (c) the names and addresses of all other parties, if known;
- (d) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Superseding Order, including specifically the manner in which it is alleged to be inconsistent with the Department's Wetlands Regulations (310 CMR 10.00) and does not contribute to the protection of the interests identified in the Act, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the Superseding Order;
- (e) a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known.

Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing.

**Detach on dotted line and submit to the Department of Environmental Protection
prior to commencement of work.**

Amended Superseding Order of Conditions for Old Fall River Road Industrial Development, SE 15-972

Special conditions (continued) :

11. All catch basins shall be cleaned on an annual basis. The property owner and/or applicant shall be responsible for regular maintenance of all drainage structures proposed for this site.
12. During construction periods, hay bales shall be placed along the perimeter of all catch basin inlet grates. These hay bales shall be tightly abutting and be maintained until all disturbed areas have been stabilized.

WETLANDS REPLICATION

13. PRIOR TO/OR CONCURRENT WITH PROPOSED WETLAND ALTERATIONS AT THIS SITE, the base grade of the wetland replication area shall be established and certified in writing by either a Professional Land Surveyor or Engineer registered with the Commonwealth of Massachusetts. This wetland replication area shall conform to an area identified on referenced plans as "Wetland Replication Area".
14. In addition to the staked haybale/siltation control barrier as required by special condition #7 above, a second staked haybale/ siltation control barrier shall be utilized along the edge of the newly established wetland replication area. The erosion control barriers shall be maintained until all disturbed areas have been stabilized.
15. Upon establishment of a suitable base grade within the wetland replication area, this proposed wetland replication area shall be planted with wetland plant species such as red maple, sweet pepperbush, high bush blueberry, cinnamon fern or other suitable wetland plant species either listed under the Wetlands Protection Act or as either Facultative (+) [FAC+], Facultative Wetland (+ or -) [FACW+/-], or Obligate [OBL] wetland plants as identified by the U.S. Fish and Wildlife Service under the "National List of Plant Species that Occur in Wetlands". NO TRANSLOCATION OF THESE SPECIES WILL BE ALLOWED, EXCEPTING THE WETLAND AREA PROPOSED FOR ALTERATION, FROM ANY ADJACENT WETLAND AREA OR ANY OTHER JURISDICTIONAL WETLAND AREA WITHOUT PRIOR CONSENT OF THE DEPARTMENT.
16. At the end of each growing season, a progress report of the relative success or failure of the replication effort shall be submitted to the local Commission and this office. The report shall include percent of vegetation cover, a list of the type of plants growing in the replication area, coverage of wetland plants as a percentage of all plants and relative vigor of the plants. The report shall also include recommendations for improvement of poorly established wetland areas.
17. The wetland replication area shall be 75% established within two growing seasons [310 CMR 10.55(b)(6)]. Should the replication area fail to meet this standard, the Department may require additional measures necessary to achieve compliance.

Effective 11/20/92

Amended Superseding Order of Conditions for Old Fall River Road Industrial Development, SE 15-972

Special conditions (continued) :

ADMINISTRATION

18. Upon completion of the project, a Certificate of Compliance shall be requested in accordance with General Condition No. 11, and under the provisions of 310 CMR 10.05 (9)(d). An "AS- BUILT" plan and a statement from a Registered Professional Engineer certifying compliance with the conditions of this Order shall accompany the request for a Certificate of Compliance.
19. Any additional work not proposed by this application and shown on referenced plans or required by the Superseding Order of Conditions and subject to jurisdiction under the Wetlands Protection Act shall require the filing of a Request for a Determination of Applicability or a Notice of Intent application.

Effective 11/20/92

RECEIVED

APR 29 1999

310 CMR 10.99

Form 7

DEP File No. SE 15-972 GARCIA & GALUSKA, INC.
CONSULTING ENGINEERS
(To be provided by DEP)

City/Town DARTMOUTH

Applicant Old Fall River Road Industrial
Development

*Commonwealth
of Massachusetts*

EXTENSION PERMIT
MASSACHUSETTS WETLANDS PROTECTION ACT
G.L. c. 131, §40

BK 4635 PG 240
03/08/00 10:55 DOC. 5331
Bristol Co. S.D.

From: Department of Environmental Protection Issuing Authority
To: Old Fall River Road Industrial Development Garcia & Galuska, Inc.
c/o Manuel B. Garcia, P.E. 609 County Street
New Bedford, Massachusetts 02740
(Name) (Address)

The Order of Conditions(or Extension Permit) issued on February 24, 1995 (date)

to Old Fall River Road Industrial Development (name) for work at Faunce Corner Road and Old Fall River
Road (address) is hereby extended for a period of three (3)

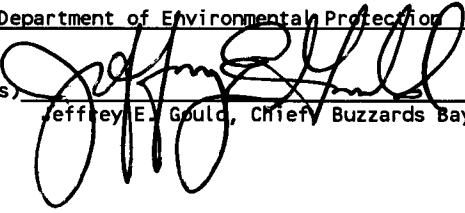
years(s) from the date it expires.

This Extension Permit will expire on February 24, 2002 (date)

This document shall be recorded in accordance with General Condition 8 of the
Order of Conditions.

.....
(Leave Space Blank)

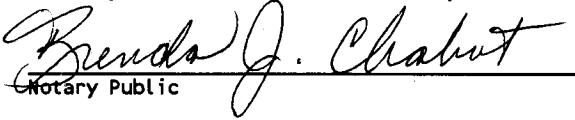
Issued by Department of Environmental Protection

Signature(s) 

Jeffrey E. Gould, Chief, Buzzards Bay Watershed

When issued by the Conservation Commission this Extension Permit must be
signed by a majority of its members.

On this 28th day of April 19 99, before me
personally appeared Jeffrey E. Gould, to me known to be the
person described in and who executed the foregoing instrument and acknowledged
that he/she executed the same as his/her free act and deed.


Notary Public

9-13-02
My commission expires

5722

BOOK 1318 PAGE 517

I-We John M. Rapoza and Rose Rapoza
John M. Rapoza and Manuel M. Rapoza, Jr., and Emily Rapoza
also known as Emily A. Rapoza

of Dartmouth Bristol County, Massachusetts,
being married ~~hereinafter~~ (hereinafter called the Grantor(s), for consideration paid, grant(s) to New Bedford Gas and Edison Light Company
a Massachusetts corporation, its successors and assigns (hereinafter called the Grantee), with quitclaim covenants, the perpetual and
exclusive right and easement to enter upon to survey and to construct, reconstruct, repair, replace, maintain, operate, inspect, patrol,
and remove a line or lines of poles, H-Frames, towers and combinations thereof, with wires and cables above and underground, and
all foundations, anchors, guys and other usual fixtures, equipment and appurtenances deemed necessary for the transmission and the dis-
tribution supply of electric energy for light, heat, power, telephone, telegraph, or any other purpose (which line or lines may be erected
at the same or different times) over, across, under and upon a strip of land 150 feet in width, said strip being a part of the
premises of the Grantor(s), situated in the Town of Dartmouth County of Bristol
Massachusetts, described as follows: in a

Deed of Manuel M. Rapoza dated April 26, 1944
recorded in Bristol County S. D. Registry of Deeds
book 881, page 213

said strip of land and right of way to extend from land now or formerly of Acushnet Saw Mills Company
across said premises of said Grantor(s) to land now or formerly of Old Fall River Road

The location of said strip and right of way is to be selected by the Grantee, and shall become established and determined by and
upon the recording of a plan showing the center line or the side lines thereof in accordance with the final survey of the Grantee;

Also the perpetual right and easement, at any time and from time to time, and without further payment therefor, to clear and
keep cleared said strip, or any part thereof, of trees, underbrush, buildings and other structures (the first clearing may be for less
than the full width and may be widened from time to time to the full width) and to add to and otherwise change the line or lines
and each and every part thereof, and the location thereof within said strip, and to pass along said strip to and from the adjoining
lands for all of the above purposes, and the removal of said line or lines, and to pass over the Grantor's premises to and from said
strip as reasonably required.

RESERVING, however, to the Grantor(s) the right to cultivate the ground between said poles and towers, and beneath said wires,
provided that such use shall not interfere with or obstruct the rights herein granted.

This conveyance is made upon the express condition that upon final acceptance of the foregoing grant evidenced either by the
erection of poles, H-Frames or towers and wires on said strip of land or right of way, or by a written acceptance thereof, the further
sum of Fourteen Hundred Seventy Five dollars (\$ 1475.66 and 66/100) shall be forthwith due and payable to the Grantor(s), which
payments shall be accepted by the Grantor(s) in full satisfaction for the rights hereunder granted; that unless poles, H-Frames or
towers and wires shall be so erected or payment therefor is made within 2 years from the date of this instrument, this grant
shall cease and determine and become null and void; otherwise it shall constitute a complete and effective grant of said right and
easement and right of way.

It is agreed that said line or lines and each and every part thereof, whether fixed to the realty or not, shall be and remain the
property of the Grantee, its successors and assigns.

This instrument is given also in release of any and all dower, curtesy and homestead interests and all other interests by statute
or otherwise of the Grantor(s) hereto.

WITNESS OUR hands and seal this 23rd day of

June 19 1960

Signed, sealed and delivered in the presence of

Kenneth J. Wendell
Kenneth J. Wendell
FOR All Four

John M. Rapoza
John M. Rapoza
Rose Rapoza
Rose Rapoza
Manuel M. Rapoza, Jr.
Manuel M. Rapoza, Jr.
Emily A. Rapoza
Emily Rapoza

BOOK 1318 PAGE 518

THE COMMONWEALTH OF MASSACHUSETTS

Bristol ss

June 30 1960

Then personally appeared the above named John M. Rapoza

and acknowledged the foregoing instrument to be his free act and deed, before me

Priscilla L. Perry

Notary Public — Justice of the Peace

My commission expires Dec 2, 1961

Received & recorded Aug. 1, 1960 at 11 hrs. 44 min. A.M.

BOOK 1318 PAGE 518

5721

Know all Men by these Presents

The New Bedford Institution for Savings, holder of a mortgage
from Donald Francis Luckey et al
to said Institution
dated April 2nd 1957 recorded with Bristol County (S.D.) Registry
of Deeds, Book 1211, Page 495
acknowledges satisfaction of the same.

In Witness Whereof said New Bedford Institution for Savings has caused its
corporate seal to be affixed and this instrument to be signed in its name and behalf by its Assistant
Treasurer, hereunto duly authorized, this 1st day of August 1960.

New Bedford Institution for Savings,

By Frank P. King Assistant Treasurer.

Commonwealth of Massachusetts

Bristol, ss. Aug. 1, 1960. Personally appeared the above-named officer of
said Institution and acknowledged the foregoing instrument to be the free act and deed of said
New Bedford Institution for Savings, before me,

Notary Public.

My commission expires 7/2/1965

Received & recorded Aug. 1, 1960, at 11 hrs. 38 min. A.M.

X-We ^{KFW} ⁵⁷²³ John M. Rapoza and Rose Rapoza
and Manuel M. Rapoza, Jr. and Emily Rapoza also known
as Emily A. Rapoza

BOOK 1318 PAGE 519

of Dartmouth Bristol County, Massachusetts,
being married ~~husband~~ (hereinafter called the Grantor(s), for consideration paid, grant(s) to New Bedford Gas and Edison Light Company
a Massachusetts corporation, its successors and assigns (hereinafter called the Grantee), with quitclaim covenants, the perpetual and
exclusive right and easement to enter upon to survey and to construct, reconstruct, repair, replace, maintain, operate, inspect, patrol,
and remove a line or lines of poles, H-Frames, towers and combinations thereof, with wires and cables above and underground, and
all foundations, anchors, guys and other usual fixtures, equipment and appurtenances deemed necessary for the transmission and the dis-
tribution supply of electric energy for light, heat, power, telephone, telegraph, or any other purpose (which line or lines may be erected
at the same or different times) over, across, under and upon a strip of land 150 feet in width, said strip being a part of the
premises of the Grantor(s), situated in the TOWN of Dartmouth County of Bristol
Massachusetts, described as follows: in a

Deed of Manuel M. Rapoza dated April 26, 1944 and
recorded in Bristol County S. D. Registry of Deeds
in book 881, page 213,

said strip of land and right of way to extend from land now or formerly of Old Fall River Road
across said premises of said Grantor(s) to land now or formerly of Cecil Smith

The location of said strip and right of way is to be selected by the Grantee, and shall become established and determined by and
upon the recording of a plan showing the center line or the side lines thereof in accordance with the final survey of the Grantee;

Also the perpetual right and easement, at any time and from time to time, and without further payment therefor, to clear and
keep cleared said strip, or any part thereof, of trees, underbrush, buildings and other structures (the first clearing may be for less
than the full width and may be widened from time to time to the full width) and to add to and otherwise change the line or lines
and each and every part thereof, and the location thereof within said strip, and to pass along said strip to and from the adjoining
lands for all of the above purposes, and the removal of said line or lines, and to pass over the Grantor's premises to and from said
strip as reasonably required.

RESERVING, however, to the Grantor(s) the right to cultivate the ground between said poles and towers, and beneath said wires,
provided that such use shall not interfere with or obstruct the rights herein granted.

This conveyance is made upon the express condition that upon final acceptance of the foregoing grant evidenced either by the
erection of poles, H-Frames or towers and wires on said strip of land or right of way, or by a written acceptance thereof, the further
sum of Fifteen Hundred Twenty Two and 34/100 dollars (\$ 1522.34) shall be forthwith due and payable to the Grantor(s), which
payments shall be accepted by the Grantor(s) in full satisfaction for the rights hereunder granted; that unless poles, H-Frames or
towers and wires shall be so erected or payment therefor is made within 2 years from the date of this instrument, this grant
shall cease and determine and become null and void; otherwise it shall constitute a complete and effective grant of said right and
easement and right of way.

It is agreed that said line or lines and each and every part thereof, whether fixed to the realty or not, shall be and remain the
property of the Grantee, its successors and assigns.

This instrument is given also in release of any and all dower, curtesy and homestead interests and all other interests by statute
or otherwise of the Grantor(s) hereto.

WITNESS OUR hands and seal this 23rd day of
June 1960

Signed, sealed and delivered in the presence of

Kenneth J. Wendell
Kenneth J. Wendell
FOR All Four

John M. Rapoza
John M. Rapoza
Rose Rapoza
Rose Rapoza
Manuel M. Rapoza, Jr.
Manuel M. Rapoza, Jr.
Emily Rapoza
Emily Rapoza

BOOK 1318 PAGE 520

THE COMMONWEALTH OF MASSACHUSETTS

Bristol ss

Then personally appeared the above named John M. Rapoza

June 30 19 1960

and acknowledged the foregoing instrument to be his free act and deed, before me

Thissilla L. Perry

Notary Public — Justice of the Peace

My commission expires Dec 2, 1961

Received & recorded

Aug 1,

1960, at 11 hrs. 45 min. A. M.

BOOK 1318 PAGE 520

Mildred H. Hambly, a widow

386 Hixville Road

Dartmouth

Bristol

County, Massachusetts,

being married—unmarried (hereinafter called the Grantor), for consideration paid, grant(s) to New Bedford Gas and Edison Light Company a Massachusetts corporation, its successors and assigns (hereinafter called the Grantee), with quitclaim covenants, the perpetual and exclusive right and easement to enter upon to survey and to construct, reconstruct, repair, replace, maintain, operate, inspect, patrol, and remove a line or lines of poles, H-Frames, towers and combinations thereof, with wires and cables above and underground, and all foundations, anchors, guys and other usual fixtures, equipment and appurtenances deemed necessary for the transmission and the distribution supply of electric energy for light, heat, power, telephone, telegraph, or any other purpose (which line or lines may be erected at the same or different times) over, across, under and upon a strip of land 150 feet in width, said strip being a part of the premises of the Grantor, situated in the TOWN of Dartmouth County of Bristol Massachusetts, described as follows in a

Deed of John Mendoza dated October 3, 1935,
recorded in Bristol County, S. D. Registry
of Deeds, Book 773, Page 513.

said strip of land and right of way to extend from land now or formerly of Manuel S. Silva
across said premises of said Grantor to land now or formerly of Marinus Vanderpol

The location of said strip and right of way is to be selected by the Grantee, and shall become established and determined by and upon the recording of a plan showing the center line or the side lines thereof in accordance with the final survey of the Grantee;

Also the perpetual right and easement, at any time and from time to time, and without further payment therefor, to clear and keep cleared said strip, or any part thereof, of trees, underbrush, buildings and other structures (the first clearing may be for less than the full width and may be widened from time to time to the full width) and to add to and otherwise change the line or lines and each and every part thereof, and the location thereof within said strip, and to pass along said strip to and from the adjoining lands for all of the above purposes, and the removal of said line or lines, and to pass over the Grantor's premises to and from said strip as reasonably required.

RESERVING, however, to the Grantor the right to cultivate the ground between said poles and towers, and beneath said wires, provided that such use shall not interfere with or obstruct the rights herein granted.

This conveyance is made upon the express condition that upon final acceptance of the foregoing grant evidenced either by the erection of poles, H-Frames or towers and wires on said strip of land or right of way, or by a written acceptance thereof, the further sum of One Hundred Thirty Four dollars (\$ 134.00) shall be forthwith due and payable to the Grantor, which payments shall be accepted by the Grantor in full satisfaction for the rights hereunder granted; that unless poles, H-Frames or towers and wires shall be so erected or payment therefor is made within 2 years from the date of this instrument, this grant shall cease and determine and become null and void; otherwise it shall constitute a complete and effective grant of said right and easement and right of way.

It is agreed that said line or lines and each and every part thereof, whether fixed to the realty or not, shall be and remain the property of the Grantee, its successors and assigns.

This instrument is given also in release of any and all dower, curtesy and homestead interests and all other interests by statute or otherwise of the Grantor hereto.

WITNESS me BY hand and seal this 29th day of June 19 1960

Signed, sealed and delivered in the presence of

Mildred H. Hambly
Mildred H. Hambly

Kenneth J. Wendell

confidential
Darian King

BK 3449 PG 203

05/29/90 (2nd) (04/ 20)

310 CHS 20.00

Form 5

DEP File No.

EE 15-972

(To be provided by DEP)

Project Description

Reclaim old rail river and
Industrial development site
within a public area

Superseding Order of Conditions
Massachusetts Wetlands Protection Act
4.5. c. 261, §40

From: DEPARTMENT OF Environmental Protection

To: Charles A. Gagnon, Inc. (Name of Applicant)

Address: 489 COUNTY STREET New Bedford, MA 01740 (Address)

To: Mr. Philip and Dorothy Aguil. Old Rail River Reclaim and Industrial Development (Name of Property Owner)

Associated Limited Partnership (Name of Property Owner)

Address: 222 Baymont Dr. W. Hingham, MA 02043 (Address)

2 Hooker St. Boston, MA 02135 (Address)

This order is issued and delivered as follows:

☐ By hand delivery to applicant or representative on (Date)

☒ By certified mail, return receipt requested on February 24, 1990 (Date)

Where project is located at PLAT 41, 102A, 2, 22, 11, 210A, 22, 102 11, 210B

County Road and Old Rail River Road

The property is recorded at the Registry of Deeds

Book 2142, 2175

Page 1, 28

Surveys (if applicable)

The Notice of Intent for this project was filed on March 7, 1990 (Date)

The public hearing was closed on March 18, 1990 (Date)

Findings

The Department of Environmental Protection has reviewed the above-referenced

Notice of Intent and plans and has held a public hearing on the project. Based on

the information available to the Department of Environmental Protection, at

this time, the Department of Environmental Protection has determined that the

area on which the proposed work is to be done is significant to the following

interests in accordance with the Prescriptions of Significant Wetlands in the

regulations for each Area Subject to Protection Under the Act (check as

appropriate):

☒ Public water supply ☒ Flood control ☒ Land containing shellfish

☒ Private water supply ☒ Down stream preservation ☒ Fisheries

☒ Ground water supply ☒ Prevention of pollution ☒ Preservation of wildlife

☒ Habitat

Total Filing Fee Submitted \$2,500 State Share \$4,187.50

City/Town Share \$6,812.50 (4 fee in excess of \$25)

Total Refund Fee \$0 City/Town Portion \$0 State Portion \$0

(% Total) (% Total)

Effective 11/20/92

5-1

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Therefore, the Department of Environmental Protection hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in this regulation, to protect those interests recited above. The Department of Environmental Protection hereby orders that all work shall be performed in accordance with said conditions and with the notice of intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the notice of intent, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable Federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) The work is a maintenance/developing project as provided for in the Rule; or
 - (b) The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the final order shall also be noted in the Registry's fraction index under the name of the owner of the land upon which the proposed work is to be done. In the case of unrecorded land, the final order shall also be noted on the land court certificate of title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Department of Environmental Protection on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File number 22-18-072".
10. Where the department of Environmental Protection is requested to make a determination and to issue a Superwarranty Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.

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11. Upon completion of the work described herein, the applicant shall forthwith request the writing of a Certificate of Compliance be issued stating that the work has been satisfactorily completed.

12. The work shall conform to the following plans and special conditions:
Plans:

Notes: SEE ADDITIONAL SHEETS ATTACHED TO THIS ORDER

Dated:

Signed & stamped by:

On file with:

Special Conditions (See additional paper if necessary):

1. PRIOR TO the commencement of construction, General Condition No. 2, above, must be complied with.
2. All construction must comply with the above-referenced plans and the conditions of this order. For any proposed change on the approved plans as in the work, the applicant shall file a NEW NOTICE of Intent or Request, in writing, of the Department whether the change is substantial enough to require a new Notice of Intent. No change in plan, under this filing, is permissible without prior written approval from the Department allowing this change.
3. It is the responsibility of the applicant, owner and/or successors to ensure that all conditions of this Order are complied with. The project engineer, foreman and contractors are to be provided with a copy of this Order and referenced documents before commencement of construction.
4. Members and Agents of the local conservation Commission and the Department shall have the right to enter and inspect the property at all reasonable times to evaluate compliance with the conditions stated in this Supervising Order, and may require the submittal of any data deemed necessary by this Department for that submittal.

See the attached sheet for additional conditions numbered 1 through 10.

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EX 3449 PG 206

Issued by the Department of Environmental Protection

Signature: Elizabeth A. Kuhlmann

on this 20th day of June, 1976, before me

personally appeared Elizabeth A. Kuhlmann

to me known to be the person described in and who executed the foregoing
instrument and acknowledged that he/she executed the same as his/her free act and
deed.

Doris I. Peterson
Notary Public

D-31-A
My commission expires

the applicant, the owner, any person approved by the superseding order, any
owner of land abutting the land upon which the proposed work is to be done, or
any two persons pursuant to G.L. c.28A §16, are hereby notified of their right
to request an adjudicatory hearing pursuant to G.L. c.28A, §16, providing the
request is made by certified mail or hand delivery to the Department, with the
appropriate filing fee and two TRANSMITTAL FORMS as provided in 816 CMR 10.01(7),
within ten days from the date of issuance of this superseding order, and is
addressed to: Doctort Clerk, Office of General Counsel, Department of
Environmental Protection, One Market District, Boston, MA 02108. A copy of the
request shall at the same time be sent by certified mail or hand delivery to the
Construction Commission, the applicant, and any other party.

A notice of claim for an Adjudicatory hearing shall comply with the Department's
rules for Adjudicatory Proceedings, 816 CMR 1.01(4), and shall contain the
following information:

- (a) the new wetlands file number, name of the applicant and address of the
project;
- (b) the complete name, address and telephone number of the party filing the
request, and, if represented by counsel, the name and address of the
attorney;
- (c) the names and addresses of all other parties, if known;
- (d) a clear and concise statement of (1) the facts which are grounds for the
proceedings, (2) the objections to this superseding order, including
specifically the manner in which it is alleged to be inconsistent with the
Department's Wetlands Regulations (816 cmr 14.01) and does not contribute to
the protection of the wetlands identified in the Act, and (3) the relief
sought through the adjudicatory hearing, including specifically the changes
desired in the superseding order;
- (e) a statement that a copy of the request has been sent to the applicant, the
Construction Commission and each other party or representative of each
party, if known.

Failure to submit all necessary information may result in a dismissal by the
Department of the notice of claim for an Adjudicatory hearing.

Detach on dotted line and submit to the Department of Environmental Protection
prior to commencement of work.

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Darlan King

BK 3449 PG 207

List of Plans

Dartmouth Heritage Industrial Park
Definitive Subdivision - Section One

By: Ralph Cataldo, R.P.L.

Sheets R1 through R10, revised as of April 4, 1993

Sheet P1 revised April 4, 1993

Sheets G1 through G3, revised as of April 4, 1993

Sheets U1 through U6, revised as of April 4, 1993

Sheets S1 through S6, revised as of April 4, 1993

Dartmouth Heritage Industrial Park
Definitive Subdivision Plan - Section 2

By: Grote Schanne, R.P.L.S.

Sheets 1 through 5, dated September 31, 1991

Dartmouth Heritage Industrial Park
Definitive Subdivision Plan - Section 2

By: Manuel Garcia, R.P.L.

Sheet 1A revised April 6, 1993

Sheet 1B revised April 6, 1993

Sheets 1 through 15 revised April 6, 1993

All of the above cited plans are on file with the DEP.

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Special Conditions for Old Fall River Industrial Development c/o Garcia & Galea, Inc., Pile No. SE 15-972 continued:

WETLANDS REPLICATION

5. Prior to the commencement of construction, the plan titled: "Water and Utility Plan (shown details located in Dartmouth Heritage Industrial Park, 1994, MD, 12, Revised 4-6-93," and submitted to the Department August 18, 1994, showing the gabion structures with 8 inch pipes and reasonable plugs shall be resubmitted to the Department and the Dartmouth Conservation Commission with an appropriate revision date, signed and stamped by a Massachusetts Registered Professional Engineer.
6. An encroachment limit line shall be delineated, using flagging and/or staking of the site for wetland areas proposed to be altered, and upland areas where wetland replacement will occur. This is designed to give the construction workers and the Dartmouth Conservation Commission a clear delineation of the work area during construction and through the following growing seasons.
7. The proposed elevation of groundwater should be verified in the wetland replication area once the proposed replication area has been excavated to near final grade. If seasonal high groundwater is not present at or within sufficient depth to support wetland vegetation, then the applicant will be required to create a perched condition or substantiate the groundwater elevation at another location where the wetland replacement is to be relocated. In addition, the wetland replication area, elevation, and slope shall be certified by a Massachusetts Registered Professional Engineer or Land Surveyor. An As-Built plan shall be submitted for field verification and approved by this office prior to destruction of the existing wetland.
8. The surface layer of organic soils, rock and peat containing wetland vegetation, leaf, stem and root biomass within the wetland to be filled is to be excavated and stockpiled in a moist area. The one foot deep layer of vegetation and root biomass is to be kept separate from the deeper peat and rock layers in order to facilitate the transplanting and re-establishment of the proposed wetland replication area.
9. The wetland replication area shall be graded down to the appropriate depth and the organic soils excavated from the wetland area to be filled, shall be back filled onto this area to achieve a finished surface area as proposed in the referenced plans.
10. The wetland replication area is to be reseeded using the previously excavated stock taken from the filled area. Supplemental plantings of the following species shall be used where appropriate: Scirpus rubrum, Cladonia aluticola, Wetzelia corniculata, Rhododendron virginicum and Geranium maculatum. They shall be planted in a manner consistent with the adjacent wetland in terms of species and density.

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BK 3449 PG 209

11. Exposed substrate should be protected against erosion until re-establishment of the wetland/vegetation occurs.
12. At the end of each growing season, a progress report of the relative success or failure of the replication effort shall be submitted and submitted to the local Commission and to this office. The inspection report shall include percent of vegetation cover, a list of the type of plants growing in the replication area, coverage of wetland plants as a percentage of all plants, relative vigor of the plants, etc. The report shall also include recommendations for improvement of poorly established wetland areas.
13. The Department may impose additional conditions to insure the success of the replicated wetlands.
14. The wetlands replication area must be 75% established within two (2) growing seasons as per 319 CMR 10.55 (4) (b) 4.

UTILITY INSTALLATION

15. The silt barrier as shown on the plan of record shall be installed prior to any work. It shall be maintained and replaced, as necessary, until all bare areas are revegetated.
16. All work for utility installation within the wetlands shall take place when the soil is sufficiently frozen, dry or otherwise stable to prevent soil compaction.
17. Vehicular access over the wetland will be limited to within the 30 foot easement, and upon swamp mats, which will be removed as soon as the tasks requiring heavy equipment have been completed.
18. Wetland soil which is excavated during the installation process shall be kept moist and used to backfill the trenches once installation has been completed.
19. Once the trench has been back filled, the ground surface will be regraded to its pre-construction contours and elevation. Clean soil of a similar grain size and composition may be used if additional fill is necessary. Any excess excavated material or fill is to be removed from the wetland.
20. The area disturbed during installation, including the trenches shall be revegetated with indigenous wetland vegetation listed in special condition number 4 and planted at the same density as the adjacent wetlands.
21. The wetland areas within the utility installation zone shall be monitored for two growing seasons to ensure that healthy vegetation is re-established, per 319 CMR 10.55 (4) (b) 4.

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BK 3449 PG 210

WETLAND DEVELOPMENT

22. All areas within the wetlands and 100 foot buffer zone stripped of vegetation during construction are to be immediately stabilized and protected against erosion by the use of mulch or similar material. These areas must be revegetated within 30 days of completion of final grading, or as soon thereafter as the growing season commences with appropriate ground cover or erosion control species.
23. Each lot shall be equipped with its own detention pond as shown on the plan of record. The pond shall be constructed prior to lot development. This condition shall run with the deed for each lot.
24. All equipment shall be stored in such a manner so as to not introduce any pollutants into any wetlands, and in no event shall there be any discharge or spillage of fuel, oil or other pollutants into the wetland.
25. Trap rock shall be placed at all drainage structure outlets that discharge within the buffer zone and/or wetlands prior to the drainage structure being made functional.
26. All detention ponds and basins shall be kept in good working order so that the system functions to the design standards at all times. Frequent and regular inspections of the drainage system are to be conducted, especially in the fall and winter to ensure that the structures are kept free of leaves, ice and other obstructions.
27. The owners of this property covered by this Superimposed Order of Conditions or their successors in title shall be responsible for the maintenance of all drainage structures (including the gabions) on this property. This condition shall not expire with the issuance of a Certificate of Compliance.
28. This Order does not relieve the permittee or any other person of the necessity of receiving approval of the proposed project under the town of Dartmouth's Wetland By-law.

WETLANDS MONITORING PROGRAM

29. Prior to the commencement of any construction the applicant shall hire a consultant as defined herein, who will coordinate and conduct the Wetlands Monitoring Program and submit all required reports. The consultant shall be a scientist with a graduate education in wetlands biology and function or related field. Before construction commences the name and qualifications of the selected consultant must be submitted in writing to the Southeast Regional Office, Division of Wetlands-Materways and receive prior written approval of DEP. DEP shall act on such request within 30 days of submission. Although the design and supervision of the Wetlands Monitoring Program shall be coordinated by the Consultant, the Applicant is responsible for ensuring that the Wetlands Monitoring Program is accomplished.

S-10

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BK 3449 PG 211

30. Prior to construction of the gabion structures a survey, and site evaluation of existing conditions at the study area shall be conducted, by the Consultant and submitted to the DEP and the Dartmouth Conservation Commission within four (4) weeks of site evaluation. These will provide the applicant, DEP and the Conservation Commission with a description of existing conditions from which subsequent comparisons can be made.

31. For the purpose of the required Wetlands Monitoring Program (the "Program") the study area is defined as follows:

At a minimum the study area shall include all bordering wetland areas up to the projected 95 year flood elevation (elevation 131 for the central basin and elevation 131 for the southwest basin), and the respective 138 foot buffer zones on the upstream side of the gabions. The wetland areas within 100 feet downstream from the gabions shall also be evaluated and included in the study area.

32. The initial preconstruction survey and evaluation shall include at a minimum a delineation of the extent, species composition and diversity of bordering vegetated wetlands (BWW) in the study area. The area delineation shall be shown and submitted on a plan signed and stamped by a Massachusetts Registered Land Surveyor. The general health of the predominant wetland plant species present shall be reported and as well as the presence, identification and extent of any opportunistic or exotic plant species. In addition any evidence and location of erosion or gullying, sedimentation or debris deposition and wildlife habitat shall also be reported. Supplementing the evaluation with photographs is advisable.

33. Once the gabion structures are installed and become operational, the applicant/consultant shall monitor rainfall amounts and immediately report the rainfall amount to the Department and the local Conservation Commission whenever rainfall amounts equal or exceed 6.3 inches in 24 hours (statistical 50 year event). Alternatively, the applicant/consultant may identify and use another rainfall gauging station currently being maintained in the area.

34. Whenever a 50 year rainfall event occurs, the applicant/consultant shall conduct an on-site survey of the study area described above within 2 weeks of the rainfall event. The survey shall be for the purpose of evaluating the impacts of the storm event on the wetlands and regulatory buffer zone. A report of the findings shall be submitted to the DEP and the Commission within 4 weeks of the survey date. At a minimum, adverse effects shall be considered to have occurred when there is evidence of defoliation, leaf wilting, chlorosis, spindly shoots, poor bud set and dead vegetation. Loss of vegetative diversity shall also be considered an indicator of adverse conditions. The occurrence of a predominance (50%) of opportunistic species including, but not limited to phragmites, reed canary grass and willows shall indicate a loss of diversity.

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Aug 25, 2025 8:37 PM EDT

35. During the survey, the applicant/consultant shall monitor the area described above for any other adverse conditions and report these. These include, but are not limited to: evidence of erosion or gulching, sedimentation and/or debris deposition and any loss of wildlife and/or wildlife habitat.
36. The applicant/consultant shall also evaluate the site on an annual basis since some of the above noted conditions may not develop immediately after a storm event. An annual site evaluation of the above described areas shall be conducted following the growing season (approximately June 1) and a report shall be prepared and submitted by July 1. The report shall describe the site conditions and any adverse conditions which have developed. The Annual Report shall include conclusions and recommendations of the Consultant regarding the success of the Program.
37. The judgement of whether or not the wetlands have been adversely effected by the project shall rest with the DEP. Should the DEP determine at any time that adverse effects have occurred, the additional pipes added into the gabions shall be unplugged. If and when these additional pipes are unplugged, the applicant shall continue with the above described wetlands monitoring program. The applicant/consultant shall establish new baseline conditions and continue the reporting requirements described above. Should additional adverse effects occur as determined by the DEP, the applicant/consultant shall provide a plan to the DEP to further reduce flooding within the wetlands and to mitigate for any documented adverse impacts to wetlands. Said plan shall be submitted with 90 days of the DEP's determination and once approved by the DEP, plan implementation shall commence within 30 days.
38. At the end of six (6) years (the "Initial Period"), the Consultant shall provide a comprehensive final report to DEP. At that time, and, based on documented rainfall events, the wetlands monitoring program evaluations submitted and whether the gabion structure is causing an adverse effect on the adjacent or downstream SWW's, DEP, in its discretion, may either:
- Extend the Monitoring Program for an additional period of three (3) years (the "Extension Period") in order to continue the evaluation of the effects of the gabion structure;
 - Order the removal or modification of the gabion structure;
 - Modify the evaluations and reporting requirements; or
 - Make final the Applicants' right to maintain and operate the structure.

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BK 3449 PG 213

19. If, at the end of the Initial Period, SSP elects to extend the term of this order pursuant to 18 (a), above, then at the end of the Extension Period the SSP shall once again exercise one of the options in 18 (a), (b) (i) or (4) of the preceding paragraph.

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DARTMOUTH MASSACHUSETTS

OFFICE OF THE TOWN CLERK

400 SOUTH ROAD
DARTMOUTH, MA 02747



TOWN CLERK

LYNN M. MEDEIROS

TEL: 508 910-1800 • FAX: 508 910-1894
lmedeiros@town.dartmouth.ma.us

BK 11335 PG 22

MA-12/15/2014 DOC. 6231
Bristol CO. S.D.

December 24, 2014

DARTMOUTH, MASSACHUSETTS
Amendment to Use Variance Decision
Case #2014-33

Petitioner: Dartmouth Power Associates Limited Partnership
Owner: Dartmouth Power Associates Limited Partnership
1 Energy Road and 387 Old Fall River Road, Dartmouth, MA 02747

Map: 67 Lot: 9
72 28-1

Book: 4833 Page: 277

Date Decision filed: December 3, 2014 @ 1:43 PM

20 Day Appeal period ends @ 11:59 PM on: December 23, 2014

Decision available for recording at the Registry of Deeds starting on: December 24, 2014

I, Lynn M. Medeiros, Town Clerk of the Town of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning a Amendment to Use Variance Decision for property located on: 1 Energy Road and 387 Old Fall River Road, Dartmouth, MA 02747 and filed in the office of the Town Clerk on December 3, 2014.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:

Lynn M. Medeiros
Lynn M. Medeiros
Town Clerk

By: *[Signature]*
NUTTER McLENNEN & FISH LLP
SEAPORT WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2804

Attn: SHM

DECISION-AMENDMENT TO USE VARIANCE



TOWN OF DARTMOUTH

Office of the Zoning Board of Appeals
400 Stocum Road, Town Office Building, Dartmouth, MA 02747
Tel. No. 508-910-1868

Board Members*Jacqueline Figueiredo, Chairman**Halim Choubah, P.E., Clerk**Robert Gardner, Member***DECISION: APPROVAL OF AMENDMENT TO USE VARIANCE**

DATE DECISION RECEIVED FOR FILING BY TOWN CLERK: December 3, 2014

DATE OF HEARING:	November 17, 2014
CASE:	AMENDMENT TO USE VARIANCE
CASE NO:	2014-33
Petitioner/Applicant:	Dartmouth Power Associates Limited Partnership
Property Owner(s):	SAME
Representative:	Brent McDonald
Subject Property:	1 Energy Road and 387 Old Fall River Road
MAP: LOT(S): Districts	Map 67 Lot 9 & Map 72 Lot 28-1
District:	Limited Industrial
Registry of Deeds Book:	Book 4633 Page 277

RECEIVED
2014 DEC 3 PM 1:44
DARTMOUTH TOWN CLERK

The Petitioner was seeking an **AMENDMENT** (Case 2014-33) to **USE VARIANCE** (Case #1990-33) to **amend** modify the covenant for the main facility associated with Special Permit from the Select Board (File No. 90-1) and to extend the term of said Special Permit. The covenant and terms are referenced in the Zoning Board of Appeals Use Variance Case #1990-33 as Condition A #6 and #13, respectively.

PRESENT: The Board: Chairman Jacqueline Figueiredo, Halim Choubah and Robert Gardner, Associate Board Members Michael Medeiros and Rahim Aghai, and Director of Development Deborah Melino-Wender

Abstain: Associate Member Rahim Aghai

Absent: Associate Member David Dare

ALSO PRESENT: Brent McDonald, Esp. of Nutter McClennen & Fish LLP, Dale Lehsack, Asset Manager for Dartmouth Power Associates Limited Partnership, (Members of the Dartmouth Select Board: Michael Watron, Chair, Lara Stone, Shawn McDonald, John George, and Stanley Mickelson, Town Administrator David Cressman, Town Treasurer Greg Barnes.

DECISION

It was the unanimous decision of the Board of Appeals to **GRANT** the requested **AMENDMENT** (Case #2014-33) to allow modifications to be made to the Covenant and to extend the term of the Covenant for Special Permit (Select Board File No. 90-1) as referenced in the Zoning Board Use Variance Case #1990-33.

DECISION-AMENDMENT TO USE VARIANCE

The Board determined the following:

1. Locus property at 1 Energy Road and 387 Old Fall River Road is identified on maps 67 and 72, Lots 9 and 28-1, and is located in the Limited Industrial District and Flood Zone-C.
2. Dartmouth Power Associates Limited Partnership has owned the subject property since March, 2000.
3. The Petitioner had previously been granted 3 amendments to the Special Permit (Select Board File No. 90-1) and to the Use Variance (Zoning Board of Appeals Case #1990-33) on September 16, 1991 (Use Variance Amendment Case #1991-10), September 25, 1995 (Use Variance Amendment Case #1995-35) and November 25, 2008 (Use Variance Amendment Case #2008-33).
4. The Petitioner is proposing to amend the Covenant to defer the timing of a portion of gift payments to the Town of Dartmouth and to extend the term of the Covenant from thirty-five to forty years to ensure that the town receives the same amount of money under the proposed amendment as it would under the existing Covenant. The Petitioner is proposing a level payment structure, and as a result of the term extension, deletion of subsection 5.2.13 of the Special Permit (Select Board File No. 90-1) is requested. Since the Covenant and its term is referenced in the Use Variance that was granted by the Zoning Board of Appeals (Case #1990-33), an Amendment to that Use Variance is also sought (Case 2014-33).
5. Approval of the Amendment to Use Variance (Case #2014-33) will not increase, alter, extend, or modify the physical size, or the intensity of operations of the existing 68 megawatt electrical power plant ("Existing Facility") or 25 megawatt peaking unit ("Peaking Unit") that are operating on the site pursuant to Use Variance Case #1990-33 and the amendments thereto.
6. Approval of the Amendment (Case #2014-33) will not undermine or contradict the factual findings and legal conclusions that were made by the Board in Use Variance Case #1990-33 and the amendments thereto.
7. Approval of the Amendment (Case #2014-33) will ensure that certain conditions that were imposed by the Board in Use Variance Case #1990-33 will continue to track with the conditions that are imposed by the Select Board through Special Permit No.90-1 and the amendments thereto.
8. Approval of the Amendment (Case #2014-33) will effectuate the original intent of the Board that certain conditions of Special Permit (Select Board File No. 90-1) be incorporated by reference into Use Variance Case #1990-33.
9. The findings and conditions of the original Use Variance, except as previously amended or amended herein, remain in full force and effect.

DECISION-AMENDMENT TO USE VARIANCE

CONDITIONS

**THE BOARD'S APPROVAL SHALL BE SPECIFICALLY CONDITIONED
UPON COMPLIANCE WITH THE FOLLOWING:**

1. The Existing Facility and Peaking Unit shall continue to comply with the requirements, standards, limitations and conditions contained in the approvals from MassDEP.
2. Variance Case No. 1990-33, as amended to date, including all conditions and covenants, shall, except as expressly amended herein, continue in full force and effect.

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DECISION-AMENDMENT TO USE VARIANCE

Notice of Appellate Rights

No special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of this city or town clerk that twenty (20) days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

The owner or applicant shall pay the fee for recording or registering.

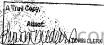
Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Town Clerk.

If the rights authorized by a Special Permit are not exercised within two years of the date of grant of such Special Permit such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such two year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefore, and upon the expiration of the original two year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of Massachusetts General Laws Chapter 40A, Section 9.

Copies of the minutes of this hearing are available on the Town's Website page or, upon request, in the Office of the Board of Appeals.

TOWN OF DARTMOUTH ZONING BOARD OF APPEALS


Jacqueline Figueroa, Chair



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 Darian King
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 Aug 25, 2025 8:37 PM EDT



OFFICE OF THE TOWN CLERK

400 Slocum Road
Dartmouth, MA 02747

TOWN CLERK

LYNN M. MEDEIROS

TEL: 508 910-1800 • FAX: 508 910-1894
lmedeiros@town.dartmouth.ma.us

BK 11335 PG 27

04/02/15 02:46 DOC. 6232
Bristol Co., S.D.

March 24, 2015

DARTMOUTH, MASSACHUSETTS

Special Permit
Case #SP-90-1**Petitioner:** Dartmouth Power Associates Limited Partnership
1 Energy Road and 387 Old Fall River Road**Owner:** Same as aboveMap: 67 Lot: 9
72 28-1
Book: 4633 Page: 277

Date Decision filed: February 13, 2015 @ 9:12 AM

20 Day Appeal period ends @ 11:59 PM on: March 5, 2015

Decision available for recording at the Registry of Deeds starting on: March 6, 2015

I, Lynn M. Medeiros, Town Clerk of the Town of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Select Board concerning a Special Permit Decision for property located on: One Energy Road and 387 Old Fall River Road, Dartmouth, MA 02747 and filed in the office of the Town Clerk on February 13, 2015.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:

Lynn M. Medeiros
Town ClerkNUTTER MCLENNEN & FISH LLP
SEAPORT WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2904

Attn: BMM

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2015 FEB 13 PM 9 12

Bristol, ss.

DARTMOUTH TOWN CLERK

Town of Dartmouth

Select Board

File No. SP 90-1

FOURTH AMENDMENT
TO SPECIAL PERMIT

FOURTH AMENDED DECISION AND
APPROVAL WITH CONDITIONS

DARTMOUTH POWER ASSOCIATES
LIMITED PARTNERSHIP

I. PROCEDURAL SUMMARY

This application is before the Select Board under Zoning By-Law Section 14.301, which requires a special permit for primary production of electric power in a Limited Industrial District. The application was filed by Dartmouth Power Associates Limited Partnership (the "Applicant") on September 18, 2014 for a special permit on Applicant's land, located at One Energy Road and 387 Old Fall River Road and designated as Assessor's Map 67, Lot 9 and Assessor's Map 72, Lot 28-1 (collectively, the "Property"). The Property is more particularly described in a deed to the Applicant recorded with the Bristol County (S.D.) Registry of Deeds (the "Registry") in Book 4633, Page 277. The Applicant seeks an amendment to a Special Permit issued by the Select Board on October 2, 1990 and subsequently amended on September 16, 1991, September 25, 1995 and on November 25, 2008.

The application was noticed by publication in the Dartmouth Chronicle on October 29 and November 5, 2014, and by mailing to "parties in interest" as that term is defined in M.G.L. c. 40A, § 11. The public hearing was held on November 17, 2014. For convenience, the public hearing session was held jointly by the Select Board and the Board of Appeals, which heard a request for an amendment to an existing variance, which pertains to the Property and the amendments proposed in the application.

This matter before the Select Board must be decided affirmatively by a vote of at least four members to grant the requested special permit.

II. FACTUAL SUMMARY

The Applicant is a Massachusetts limited partnership. Its business address is One Energy Road, Dartmouth, Massachusetts 02747.

The Applicant proposes to modify the existing Special Permit for the facility issued by the Select Board in order to amend a covenant given by the Applicant to the Town of Dartmouth,

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which was incorporated by reference into the Special Permit. In addition, the Applicant proposes to modify the term of the existing Special Permit so that it is coterminous with the term of the covenant, as it may be modified from time to time by the Applicant and the Town of Dartmouth, acting by and through its Select Board.

As part of this application, the Applicant is not proposing to increase, alter, extend or modify the physical size, or intensity of operations, of the existing nominal 68 megawatt electrical power plant (the "Existing Facility") or the approximately 25 megawatt peaking unit (the "Peaking Unit") that are operating on the Property. The Existing Facility and Peaking Unit were permitted by the Town of Dartmouth pursuant to the following approvals: (i) Decision and Approval with Conditions granted by the Select Board, recorded with the Registry in Book 2559, Page 276, as amended by Amended Decision and Approval with Conditions recorded with the Registry in Book 2808, Page 276, Second Amended Decision and Approval with Conditions recorded with the Registry in Book 3578, Page 188, and Third Amended Decision and Approval with Conditions recorded with the Registry in Book 9234, Page 82, (ii) Variance granted by the Board of Appeals recorded with the Registry in Book 2559, Page 317, as amended by Amendment to Variance recorded with the Registry in Book 2808, Page 213, Second Amendment to Variance recorded with the Registry in Book 3578, Page 177, Extension recorded with the Registry in Book 3783, Page 291, and Amendment to Variance recorded with the Registry in Book 9234, Page 96, and (iii) Decision and Approval with Conditions granted by the Board of Appeals recorded with the Registry in Book 9234, Page 90.

III. APPLICABLE PROVISIONS

The following sections of the Zoning By-Law are applicable to this application:

A. Section 14.100 Purpose

"The purpose [of the Limited Industrial District] is to provide for industrial uses that provide employment opportunities and diversify the tax base while not imposing hazards or nuisances on neighboring residential uses, commercial uses, and the environment."

B. Section 14.301

"Other manufacturing processing and primary production of steam and/or electric power shall require a Special Permit from the Board of Selectmen, which may impose reasonable conditions, including that:

- A. The project can reasonably be expected to have adequate water and other required natural resources.
- B. The project includes adequate impact mitigation for noise and other pollutants.
- C. The project includes adequate provisions to minimize traffic and road surface impacts.

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- D. The facility's mass and scale is consistent, by siting and design, with neighboring uses;
- E. That the facility be limited to gas fired with fuel oil backup manufacturing and production of steam, hot water and/or electric power.

The foregoing quoted sections shall guide the discretion of the Select Board.

IV. FINDINGS

Based on the documents incorporated into the record and the testimony provided by the Applicant and its representatives and consultants and by others who attended the hearings, the Select Board makes the following findings with respect to the use by the Applicant of the following parcels: Assessor's Map 67, Lot 9 and Map 72, Lot 28-1:

- A. Purpose of Limited Industrial District. Approval of the Amendment (as defined in the Decision below) will further the purposes of the Limited Industrial District set forth in Section 14.100; will not increase, alter, extend or modify the physical size, or intensity of operations, of the Existing Facility or Peaking Unit that are operating on the Property pursuant to Special Permit SP-90-1, and the amendments thereto; and will not impose hazards or nuisances on neighboring uses or the environment.
- B. Water Supply and Other Required Natural Resources. The Amendment will not require any increase in water demand than is already permitted for the Existing Facility and Peaking Unit. Other than water, no natural resources are to be obtained from the Town of Dartmouth, and no natural resources are to be acquired from abutting towns.
- C. Noise and Other Pollutants
1. Noise. The Amendment will not increase or change noise generated by the Existing Facility and Peaking Unit.
 2. Wastewater Disposal. The Amendment will not result in any increase in wastewater that is currently permitted by the Existing Facility and Peaking Unit.
 3. Other Air Pollutants. The Amendment will not result in any increase or change in air pollutants from the Existing Facility and Peaking Unit.
- D. Traffic and Road Surface Impacts. The Board finds that there will be no impact to traffic from this Amendment. Further, the Board finds that no additional study of traffic is required and no mitigation is necessary for traffic and road surface impacts with respect to this Amendment.
- E. Mass and Scale. The Amendment will not increase or change the mass and scale of the Existing Facility and Peaking Unit.

F. Fuel Oil Backup. The Board finds that there will be no change in the use of fuel oil backup at the Existing Facility and Peaking Unit as a result of this Amendment.

V. DECISION

The Select Board, based upon the findings presented above, hereby grants the following amendments to Special Permit SP-90-1 ("Amendment"): (i) the Covenant that is referenced in Section 5.2.6 of said Special Permit may be modified by the parties thereto from time to time as they may determine is necessary in order to ensure the continued financial viability and solvency of the Existing Facility and Peaking Unit, without such modification constituting an amendment to Special Permit SP-90-1 that requires further approval under Chapter 40A; and (ii) Section 5.2.13 of said Special Permit is amended such that the term of said Special Permit shall be coterminous with the term of the Covenant as it may be modified from time to time by the parties thereto.

The grant of this Amendment is subject to the following conditions:

1. The Amendment shall be valid only and unless the Board of Appeals modifies Variance Case No. 1990-33 by incorporating the provisions of said Amendment by reference into that Variance.
2. The Existing Facility and Peaking Unit shall continue to comply with the requirements, standards, limitations and conditions contained in the approvals from MassDEP.
3. Special Permit SP-90-1, as amended to date, including all conditions and covenants, shall, except as expressly amended herein, continue in full force and effect.

VI. ORDER

The Select Board at a public meeting on November 17, 2014 unanimously voted to grant the requested Amendment to the Special Permit, and each Select Board member represents that he or she attended the public hearing and heard all relevant testimony. This decision is to be enforced by the Town Building Commissioner in his capacity as zoning enforcement officer. The date of this written decision is November 17, 2014.

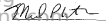
VII. NOTICE OF LAPSE

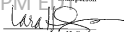
This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen of M.G.L. c. 40A from the grant of this Special Permit, if substantial use thereof has not commenced sooner except for good cause or in the case of a permit for construction, has not begun by such date, except for good cause.

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Darian King

SELECT BOARD, TOWN OF DARTMOUTH

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Michael P. Watson,
Chairperson


Lisa H. Steffe,
Vice-Chairperson


John George Jr.


Shawn D. McDonald


Stanley L. Mickelson



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BK 11335 PG 35

04/02/15 02:47 Doc. 6235
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Aug 25, 2025 8:37 PM EDT

SECOND AMENDMENT TO COVENANT

This Second Amendment to Covenant (the "Amendment") is made this 2nd day of February, 2015, by and between Dartmouth Power Associates Limited Partnership ("DPA"), a Massachusetts limited partnership having its principal offices at 2901 Via Fortuna Drive, Building 6, Suite 650, Austin, TX 78746 and the Town of Dartmouth, a municipal corporation within the County of Bristol and Commonwealth of Massachusetts, acting by and through its Select Board (the "Town"), with a usual place of business at 400 Slocum Road, North Dartmouth, MA 02748.

WITNESSETH

WHEREAS, the Select Board granted a special permit to DPA dated October 2, 1990, recorded in the Bristol South District Registry of Deeds (the "Registry") in Book 2559, Page 276, as amended by Amended Decision and Approval with Conditions dated September 16, 1991, recorded with the Registry in Book 2808, Page 220, as further amended by Decision and Approval with Conditions, Second Amendment to Special Permit dated September 25, 1995 (the "Special Permit"), to construct a power generating facility (the "Facility") on land at 1 Energy Road and 387 Old Fall River Road (collectively, the "Property") in Dartmouth, Bristol County, Massachusetts;

WHEREAS, the Board of Appeals granted a variance to DPA for the Property recorded with the Registry in Book 2559, Page 317, as amended by amendments recorded with the Registry in Book 2808, Page 213, Book 3578, Page 177 and Book 9234, Page 96 (the "Variance");

WHEREAS, DPA executed a Covenant in favor of the Town dated October 2, 1990, recorded with the Registry in Book 2564, Page 84, as amended by Amendment to Covenant dated September 25, 1995, recorded with the Registry in Book 3578, Page 201 (as amended, the "Covenant"), whereby DPA agreed to make an annual gift to the Town;

WHEREAS, the Covenant was incorporated by reference into the Special Permit and Variance;

WHEREAS, Section 5 of the Covenant contemplates that the annual gift may be abated when there has been a decrease in the net income of the Facility;

WHEREAS, due to the deregulation of the electric generation industry and the subsequent sale of the power purchase agreement for the Facility, and the relatively low electric

Return to:
NUTTER McLENNEN & FISH LLP
SEAPORT WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2804
Attn: EMM

generating efficiency of the Facility, the Facility no longer generates significant electricity for sale to the regional distribution system and its value has diminished substantially;

WHEREAS, pursuant to Section 5 of the Covenant, DPA timely requested an abatement of the annual gift for Fiscal Year 2013;

WHEREAS, in lieu of granting an abatement of taxes for Fiscal Year 2013 and in recognition of the changing nature of the electric generation industry, the parties wish to settle all outstanding disputes by adjusting the timing of various payments due under the Covenant, by deferring a portion of the payments due, and by extending the term of the Covenant by five (5) years, all upon the terms and conditions set forth herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. Capitalized Terms. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Covenant.

2. Amendments. As of the date of this Amendment, the Covenant is hereby amended as follows:

a. Section 2 is amended by adding the following sentence at the end of Section 2:

"The parties acknowledge and agree that the Commercial Date occurred during the Town's Fiscal Year 1992."

b. Section 4 is deleted in its entirety and replaced with the following:

"4. Annual Gift

For purposes of this Agreement, the Annual Gift shall be equal to the Gift amounts set forth in the "Gift" column in Exhibit A attached hereto and incorporated herein less the excess of Annual Taxes for the preceding fiscal year over the abatements of Annual Taxes received during the preceding fiscal year.

For Fiscal Years 1993 through 2012, the Annual Gift will be made within thirty days of the end of each of the Town's fiscal years. The Annual Gift for Fiscal Years 2013 and 2014 will be made on the following payment schedule:

\$131,499.85 on the later of October 1, 2014 or the fifteenth (15th) day after the recording of the amendments to the Special Permit and Variance incorporating the terms of the Second Amendment to Covenant (the "Recording Date") for FY2013.

\$131,499.84 on the later of December 1, 2014 or the forty-fifth day after the Recording Date for FY2013

\$177,988.60 on February 1, 2015 for FY2014

\$177,988.59 on May 1, 2015 for FY2014

For Fiscal Years 2015 through 2032, the Annual Gift shall be paid quarterly on August 1, November 1, February 1 and May 1 of the Town's following fiscal year. For example, the Annual Gift for Fiscal Year 2015 shall be due and payable in quarterly installments on August 1, 2015, November 1, 2015, February 1, 2016 and May 1, 2016.

- c. Section 7 (Termination) is deleted in its entirety and replaced with the following:

"6. Termination

This Covenant shall terminate upon the earlier of (i) the fortieth (40th) annual gift or (ii) on the date the Project permanently ceases to operate. Notwithstanding the foregoing, in the event that the Project permanently ceases to operate, the Town shall be entitled to recover from DPA the amount identified in Exhibit A as the "Deferred Amount" for the fiscal year in which the Project permanently ceases to operate.

3. Confirmation and Ratification. As amended hereby, the Covenant is hereby ratified and confirmed in its entirety, and all terms and provisions not amended hereby remain in full force and effect, and are incorporated herein by this reference.

4. Entire Amendment. This Amendment contains all the agreements of the parties with respect to the subject matter hereof and supersedes all prior dealings between the parties with respect to such subject matter. The parties acknowledge and agree that (i) this Amendment shall only apply to the Covenant for the Facility, as it was originally constructed, and shall not be construed to supersede, waive, modify or otherwise alter the terms of the existing Covenant Regarding Peaking Unit dated December 23, 2008, recorded with the Registry on January 12, 2009 in Book 9234, Page 108; and (ii) the terms of the Amendment to Covenant dated September 25, 1995, recorded with the Registry in Book 3578, Page 201, are null and void and of no further effect as the modifications to the Project contemplated by such Amendment to Covenant were never constructed.

5. Authority. The parties each warrant to the other that the person or persons executing this Amendment on its behalf has or have authority to do so and that such execution has fully obligated and bound such party to all terms and provisions of this Amendment.

6. Counterparts; Successors. This Amendment may be executed in a series of counterparts, all of which, when taken together, shall constitute one and the same instrument.

This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

7. Recording. DPA shall cause this Amendment to be recorded at the Registry at DPA's expense.

(SIGNATURES ON FOLLOWING PAGE)

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Aug 25, 2025 8:37 PM EDT

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BK 11335 PG 39

IN WITNESS WHEREOF, intending to be legally bound, the parties have executed this Amendment as of the date first set forth above.

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Aug 25, 2025 8:37 PM EDT

DARTMOUTH POWER ASSOCIATES LIMITED
PARTNERSHIP

By: Dartmouth Power Generation, L.L.C., a
Delaware limited liability company, its
general partner

By: 
Name: Charles C. Cook
Title: Manager

TOWN OF DARTMOUTH, acting by and through
its SELECT BOARD

Michael P. Watson, Chairperson

Lara H. Stone, Vice-Chairperson

John George, Jr.

Shawn D. McDonald

Stanley M. Mickelson

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Aug 25, 2025 8:37 PM EDT

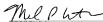
IN WITNESS WHEREOF, intending to be legally bound, the parties have executed this Amendment as of the date first set forth above.

DARTMOUTH POWER ASSOCIATES LIMITED
PARTNERSHIP

By: Dartmouth Plant Holding, L.L.C., a
Delaware limited liability company, its
general partner

By: _____
Name:
Title:

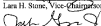
TOWN OF DARTMOUTH, acting by and through
its SELECT BOARD



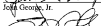
Michael P. Watson, Chairperson



Lara H. Stone, Vice-Chairperson



John George, Jr.



Shawn D. McDonald



Stanley M. Mickelson

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STATE OF Texas
COUNTY OF Texas

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On this 24th day of February, 2015, before me, the undersigned notary public, personally appeared Charles C. Cook, proved to me through satisfactory evidence of identification, which was personal knowledge or a state-issued driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Dartmouth Power Generation, L.L.C., the general partner of Dartmouth Power Associates Limited Partnership.



[Signature]
Notary Public
My Commission expires: 10/14/18

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF BRISTOL

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared Michael P. Watson, Lara H. Stone, John George, Jr., Shawn D. McDonald and Stanley M. Mickelson, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the people whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as members of the Select Board of the Town of Dartmouth, Massachusetts.

Notary Public
My Commission expires: _____

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Darlan King

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Aug 25, 2025 8:37 PM EDT

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 Darian King
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 Aug 25, 2025 8:37 PM EDT

STATE OF MASSACHUSETTS
 COUNTY OF BRISTOL

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as _____ of Dartmouth Plant Holding, L.L.C., the general partner of Dartmouth Power Associates Limited Partnership.

 Notary Public

My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS
 COUNTY OF BRISTOL

On this 2 day of February, 2015, before me, the undersigned notary public, personally appeared Michael P. Watson, Lara H. Stone, John George, Jr., Shawn D. McDonald and Stanley M. Mickelson, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the people whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as members of the Select Board of the Town of Dartmouth, Massachusetts.

Shawn D. McDonald
 Notary Public

My Commission expires: October 29, 2019

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 Aug 25, 2025 8:37 PM EDT

6

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EXHIBIT A

FISCAL YEAR	GIFT	DEFERRED AMOUNT
1993	\$500,000.00	\$0.00
1994	\$512,500.00	\$0.00
1995	\$525,312.50	\$0.00
1996	\$538,445.31	\$0.00
1997	\$551,906.45	\$0.00
1998	\$565,704.11	\$0.00
1999	\$579,846.71	\$0.00
2000	\$594,342.88	\$0.00
2001	\$609,201.45	\$0.00
2002	\$624,431.48	\$0.00
2003	\$640,042.27	\$0.00
2004	\$656,043.33	\$0.00
2005	\$672,444.41	\$0.00
2006	\$689,255.52	\$0.00
2007	\$706,486.91	\$0.00
2008	\$724,149.08	\$0.00
2009	\$742,252.81	\$0.00
2010	\$760,809.13	\$0.00
2011	\$779,829.36	\$0.00
2012	\$799,325.09	\$0.00
2013	\$434,109.22	\$365,215.87
2014	\$434,109.22	\$730,431.74
2015	\$434,109.22	\$1,095,647.61
2016	\$434,109.22	\$1,460,863.47
2017	\$434,109.22	\$1,826,079.34
2018	\$434,109.22	\$2,111,362.70
2019	\$434,109.22	\$2,324,706.80
2020	\$434,109.22	\$2,473,305.57
2021	\$434,109.22	\$2,563,633.54
2022	\$434,109.22	\$2,601,517.79
2023	\$434,109.22	\$2,592,202.70
2024	\$434,109.22	\$2,540,408.19
2025	\$434,109.22	\$2,450,382.21
2026	\$434,109.22	\$2,325,947.90
2027	\$434,109.22	\$2,170,546.11
2028	\$434,109.22	\$1,736,436.89
2029	\$434,109.22	\$1,302,327.66
2030	\$434,109.22	\$868,218.44
2031	\$434,109.22	\$434,109.22
2032	\$434,109.22	\$0.00

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R2624r0180

63970

300 GWR 10.00

Form 1

CDP No. 15-792

Commonwealth
of Massachusetts
 (To be printed by CDP)
 City (or Town) Dorchester
 Address Dorchester Power Association

Certificate of Compliance

 Massachusetts Wetlands Protection Act, G.L. c. 131, §40 and
 the Barnstable Wetlands Protection Bylaw

 From The Barnstable Conservation Commission (Issuing Authority)

 Robert G. Donahoe, Jr. (Name) 48 Franklin Street, Rm. 2, Suite 410
 To Dorchester Power Association (Address) 48 Franklin St., Dorchester, MA 01928

 Date of issuance April 3, 1991

 This Certificate is issued for work regulated by an Order of Conditions issued to Dorchester Power Association c/o EPA dated 11/15/89 and issued by the Barnstable Conservation Commission 1/15/90 (revised)

1. ☒ It is hereby certified that the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.
2. ☐ It is hereby certified that only the following portions of the work regulated by the above-referenced Order of Conditions have been satisfactorily completed. If the Certificate of Compliance does not include the entire project, specify what portions are included:
3. ☐ It is hereby certified that the work regulated by the above-referenced Order of Conditions was never commenced. The Order of Conditions has expired and is therefore no longer valid. No future work subject to regulation under the Act may be commenced without filing a new Notice of Intent and receiving a new Order of Conditions.

(Sign here)

Effective 11/19/89

B-1

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DC 2624 PG 0181

X

**Barbours Power Association
Certificate of Compliance**

FILE NO. 15-762

4. (b) The Certificate shall be recorded in the Registry of Deeds or the Land Court for the jurisdiction in which the lands located. The Order was originally recorded on 1/31/96 (year) as the Registry of Deeds File # 2280 Page 300 Amended Order of Compliance DC 2624 Page 40
5. The following conditions of the Order shall continue: (Set forth any conditions contained in the Final Order, without the reference to the finding, which are to continue for a longer period.)

Issued by The Barbours Power Association

Signature Myrtle S. Sledge

David L. Sledge

Robert A. Sledge

Richard A. Sledge

Paul Sledge

When issued by the Conservation Commission this Certificate must be signed by a majority of its members. On the 3rd day of April 19 97 before me personally appeared George A. Sledge It was known to me the person signing this document was the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Notary Public

Received & Recorded

June 28, 1996

Attest: John Sledge Registrar

Based on stated facts and subject to the Barbours Power Association

by The Barbours Power Association

Notary Public

Please to certify that the Certificate of Compliance is the property of

File number 15-762

has been recorded in the Registry of

Deeds

Page 300

and has been recorded in the Registry of Deeds or the Land Court for the jurisdiction in which the lands located

has been signed by the majority of the members of the Commission

has been signed by the majority of the members of the Commission

Signature

Notary

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RECEIVED

03030260150

MAY 22 1961

19-972



Commonwealth Council on Aging
of Massachusetts

Price per company in US\$

Cooper, D. W. 1987.

— **THE WALL STREET JOURNAL**

Order of Conditions
Massachusetts Wetlands Protection Act
G.L.c. 131, §40 and
the Department Wetlands Protection Rules

Visit the Dartmouth Conservation Commission

Old Mill River Road Industrial Development *Dr. John A. Donnelly, Agent,
c/o Dorris J. Columbia, Inc. Old Mill River Road Industrial Development

(Stamp of Institution)

609 County Road 4,
New Bedford, MA 02740-6517

*2018 Investment Dec.: Mx. Sentosa, Mx. B-2747

Address: 500 Liberty Management, Inc.
9 Midway Pl., Evanston, IL 60201

This Order is issued and is hereby affirmed.

25. Do you need delivery to applicant or representative on _____ (date)

off. For confidential source reports received on March 18, 1997.

The project's location: Plot 63, Lane 9, 10, 11, Plot 66, 1st St. Old Kall River Road

The property is located at the Property of _____ (Article 3)

Book 3259 Page 343

Bandwidth of resampler

The House of Representatives project was filed on August 3, 1992 1992

The public hearing was closed on March 16, 1955.

Discussion

The Secretary Commission has reviewed the above-referenced notice of intent and plans and has held a public hearing on the project. Based on the information available to the Commission, at this time, the Commission has determined that the area in which the proposed work is to be done is significant in the following interests in accordance with the Provisions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (which are attached):

© 2005 Blackwell Publishing Ltd, *Journal of Internal Medicine* 258: 103–110

228 *Pa. Ind. rel. survey*
229 *Revised survey results*

49. **प्रश्नकर्ता का नाम** : सुनील कुमार
50. **उत्तरदाता का नाम** : सुनील कुमार

Fig. 1 *Staphylococcus aureus*

1994 **First edition**
1995 **Second edition**

the presence of pollution.

1494 *Journal of Interpersonal Violence* 28(8)

Cardiovascular Medicine

- Protection of wildlife habitat

Total Filson Page Submitted: \$9,408.00

Eastern Slope 54, 67, 50

Total Features Due \$ _____

Case 1:20-cv-00001-UNA Document 1-1 Filed 01/20/21 Page 1 of 1

On the way to work

1000

1999年12月15日

10

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Old mill & other industrial development
ORDER OF CONSERVATION - Civil Works

9X302960154

FILE NO. 94-932

Therefore, the Department of Environmental Protection hereby orders that the following conditions are necessary to be observed in the Performance Standard set forth in the regulations to protect the environment and to protect the public health, safety and welfare. The Department of Environmental Protection hereby orders that the following conditions shall be observed in accordance with said conditions and with the Rights of the public set forth above. To the extent that the following conditions shall be observed, the public shall be protected from the effects of the project and the public shall be protected from the effects of the project.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless another of the following apply:
 - (a) The work is a substantial engineering project as provided for in the Act; or
 - (b) The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, soil, peat, cinders, dust, lime, ashes, refractory, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have expired or, if such an appeal has been filed, until proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry or Books of the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry or Books of the Land Court under the name of the owner of the land upon which the proposed work is to be done. In the case of unrecorded land, the Final Order shall also be noted in the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the COMMISSIONER on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number, 94-932".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Subsequent Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

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Darlan KingOld Mill River Road-Industrial Development
ORDER OF CONDITIONS - CONSTRUCTION

FILE NO. 12-172

13. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals, and until copies of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Guilford County Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Outcrops shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, ground cover or shrubs so as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owners shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the State Building and/or Planning Code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. A design engineer will certify, in writing, that this project has been completed in accordance with the above order of conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continually operated and maintained so as to comply with this Order of Conditions and N.G.L., C 126, S.45, the Wetlands Protection Act.

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BN3029P0153

Old Mill School Road Industrial Development
Order of Conditions Committee

FILE NO. 13- 802

Name:

Title:

Date:

Signed and Stamped by:

On File with
Barnstable Conservation
Commission

Conservation No. 200-50-4, 501

Special Conditions (Use additional paper if necessary)

29. Certain conditions, such as maintenance or monitoring, are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest of the applicant, or successor in control of the property. The applicant shall furnish a copy of this Order to any subsequent owner at the time that ownership is transferred.
31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:

The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Highways.
33. The Conservation Commission and/or the Town of Barnstable shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to the resource areas.
35. All erosion control measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in spread areas.
37. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.

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0302060151
Old Fort National Monument
ORDER OF CONDITIONS - CONTINUED

FILE NO. 15,972

38. If changes to the approved plan-of-record are filed with the Bureau of Conservation Commission are required by other regulatory agencies, any such changes shall be submitted for approval in accordance with condition #14 of this Order of Conditions.
39. This Order of Conditions shall be recorded within fifteen (15) days of receipt in accordance with conditions #6.
40. Prior to any construction, the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
41. Any construction in the flood plain shall conform to 180 C.M.S., section 2100, the Design Requirements for Construction in Floodplains.
42. It shall be the responsibility of the applicant or the applicant's representative to continuously maintain all mitigation barriers required by this Order of Conditions until the Commission approves or requires their removal.
43. Unless alternate erosion/siltation control measures have been approved by the Conservation Commission or the agent, all exposed soils exceeding a 4:1 slope shall be stabilized using erosion control blanket/soil nailing at least 48 hours of soil disturbance and shall remain in place for the duration of the project, or until vegetation has been re-established.
44. Any soils exposed by construction activity or disturbed in any other manner shall be, upon completion of construction, immediately stabilized with indigenous vegetation. Plantings may include, but not be limited to grass seed mixtures for approved taxon areas, indigenous shrub and tree species, or indigenous herbaceous cover species. All plantings shall be approved by the Bureau of Conservation Officer.
45. Once plantings become established, all hay bale silt fence and snow fencing, or any comparable thereof required by this Order of Conditions shall be, upon approval of the Bureau of Conservation Officer, immediately removed.
46. The Commission reserves the right to require additional protective measures for the resource areas should a site visit indicate the necessity for these additional measures.

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Over 1000 Industrial Development
SITES - 1000+ SITES

BK3029PG0155

Old Mill River Road Industrial Development
 20000 10th Avenue - Bensenville

FILE NO. 15-873

... and the ...

Supporting Online Material

Company:

25 D. O. Bottom
David H. H. H.
Paul Lewis

This Order is being issued by a majority of the Conservation Commission.

On this 12th day of March 1981 before me personally appeared Gerald FRANKLIN to me known to be the person described in and who executed the foregoing Petition and acknowledged that he has executed the same as his true and lawful deed.

Henry Pugh Nile Carter June 28, 1994
Slate County My commission expires

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EX3029PG0156

Old Mill River Road Industrial Development

CHAPMAN CONSULTING - COMMERCIAL

FILE # 80, 12-572

REVISION: Copied & stamped by Harold G. Garcia, on FILE # 80, 12-572
Commission

Exhibit A "Utility Construction Access Road", dated 3/15/91

Exhibit B "Maintenance schedule for the Detention Pond, Detention Basins &
Grass Plant Control Structures" dated: 3/15/91

"Definitive Subdivision Plan", Sheets 1, 2, 3, 4, 5, dated Revised 5/11/91

Dep. T-1 "Utility Construction Plan (Working Index), dated Revised 5/22/92

Dep. #1-A, #1-B, "Streets & Utility Plan Details for Power Dr.,
International Way & Tech Lane Located in Dartmouth Heritage
Industrial Park"

Dep. # "Street & Utility Overall Plan for Power Dr., International Way &
Tech Lane Located in Dartmouth Heritage Industrial Park", dated
Revised 12/22/92.

Dep. #2 "Street & Utility Plan Cross Sections for Power Dr., International
Way & Tech Lane Located in Dartmouth Heritage Industrial Park",
dated Revised 8/13/91.

Dep. #3 & 4 "Streets & Utility Plan for a Section of Power Dr., Located in
Dartmouth Heritage Industrial Park", dated: Revised 5/15/91.

Dep. #5 "Streets & Utility Plan for International Way Located in Dartmouth
Heritage Industrial Park", dated: Revised 5/15/91.

Dep. #6 "Streets & Utility Plan for Tech Ln., Located in Dartmouth Heritage
Industrial Park", dated: Revised 5/15/91

Dep. #7 "Street & Utility Plan for Power Extension & Access in Dartmouth
Heritage Industrial Park", dated: Revised 12/22/92.

Dep. #8 "Street & Utility Plan for Power Extension & Access in Dartmouth
Heritage Ind. Park", dated: Revised 5/15/91.

Dep. #9 "Street & Utilities Plan Detention Basin Details for Power Dr.,
International Way & Tech Lane Located in Dartmouth Heritage
Industrial Park", dated: Revised 12/22/92.

Dep. #10 "Street & Utility Plan Grassy Details Located in Dartmouth
Heritage Industrial Park", dated Revised 12/22/92.

Dep. #11 "Street & Utility Overall Plan for Power Dr., International Way
& Tech Lane Located in Dartmouth Heritage Industrial Park",
dated: 5/15/91.

Dep. #12 "Street & Utility Overall Plan for Power Dr., International Way &
Tech Lane Located in Dartmouth Heritage Industrial Park", dated
Revised 12/22/92.

Dep. #13 "Street & Utility Existing Waterbed Plan Located in Dartmouth
Heritage Industrial Park", dated: Revised 5/15/91.

Dep. #14 "Street & Utility Developed Waterbed Plan Located in Dartmouth
Heritage Indus. Park", dated Revised 5/15/91.

Dep. #15 "Overall Future Lot Development Plan", dated: Revised 12/22/92

5-2a

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W302960157

Old 1871 River Road Industrial Development
UNDER NO CONDITIONS - CONFIDENTIAL

PL 10-102 12-922

PLANS - CONFIDENTIAL

Dwg. #82, "Street & Utilities Plan and Profile for Sanitary Sewer & Water Main Located in Dartmouth Heritage Industrial Park", dated Revised 9/13/91.

Dwg. #83, "Street & Utilities Plan and Profile for Sanitary Sewer Located in Dartmouth Heritage Industrial Park", dated 9/13/91.

Dwg. #84, "Street & Utilities Plan and Profile for Sanitary Sewer Located in Dartmouth Heritage Industrial Park", dated 9/13/91.

Dwg. #85, "Street & Utilities Plan and Profile for Sanitary Sewer & Water Main Located in Dartmouth Heritage Industrial Park", dated Revised 9/13/91.

Dwg. #86, "Street & Utilities Plan and Profile for Sanitary Sewer & Water Main Located in Dartmouth Heritage Industrial Park", dated 9/13/91.

Dwg. #88, "Street & Utilities Plan of Site Details - No. 1 for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #89, "Street & Utilities Plan of Site Details - No. 2 for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #90, "Street & Utilities Plan of Site Details - No. 3 for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #91, "Street & Utilities Plan of Site Details - No. 4 for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #92, "Street & Utilities Plan of Site Details - No. 5 for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #93, "Street & Utilities Development Closed Watershed Plan for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated Revised 9/13/91.

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Darian King

Old Fall River Road Industrial Development

ORDER OF CONDITIONS - CONTINUED

FILE NO. 13-872

PLANS - CONTINUED

Dwg. #81, #82, #83, #84, #85, #86, #87, #88, #89, #90, "Subdivision Plan of Dartmouth Heritage Industrial Park Section-V", dated: Revised 9/13/91.

Dwg. #91, "Street & Utilities Point Plot Plan for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #91, "Street & Utilities Plan of General Notes & Legend for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #92, "Street & Utilities Plan of Existing Conditions for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #93, "Street & Utilities Plan of Test Pit Data for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #91, "Street & Utilities Overall Plan for Energy Road Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #92, "Street & Utilities Plan and Profile Index Plan for Energy Road Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #95, "Street & Utilities Plan and Profile for A Portion of Energy Road Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #96, "Street & Utilities Plan and Profile for A Portion of Energy Road Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #95, "Street & Utilities Plan and Profile for Century Lane and Vision Place Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #96, "Street & Utilities Plan and Profile for Development Square Located in Dartmouth Heritage Industrial Park", dated: Revised 9/13/91.

Dwg. #1, "Street & Utilities Plan of Sanitary Sewer Index for Energy Road, Development Square, Vision Place and Century Lane Located in Dartmouth Heritage Industrial Park", dated 9/22/91.

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Old Fall River Road Industrial Development
ORDER OF CONDITIONS - CONTINUED

FILE NO. 15-231

PLANS - CONTINUED

Reg. #12, "Hwy. & Utilities 7.5 Year Subcatchment Plan for Energy Road, Development Square, Vision Place and Century Lane located in Dartmouth Heritage Industrial Park", dated Revised 12/22/92

Special Conditions - Continued

47. Scour protection shall be provided for at all outlet locations from gabion structures.
48. The 100-year freeboard dimensions shall be increased to at least one foot in detention basins (4) six, (7) seven, and (8) eight.
49. A minimum of 35-feet of no activity shall be maintained adjacent to and in an upland direction from all wetland areas on site.

Received & Recorded *MDL 31, 29/8/92* *John Brown*

Attest: *John Brown* Register

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DEED RESTRICTION

We, James Gordon, Trustee of Old Fall River Realty Trust of 8 Newbury Street, Boston, MA c/o Energy Management, Inc., and Rahim Aghai and Dorothy Aghai, husband and wife of 23 Merrymount Eastworth, Massachusetts grant to the Town of Eastworth, acting by its Honing Board of Appeals and its Building Inspector, in consideration of a Variance Amendment recorded herewith, a DEED RESTRICTION with respect to the premises shown on the attached sketch entitled "Lots to be deed restricted as to construction" and dated July 16, 1991, and prepared by Sacchi Engineering, Inc. of New Bedford, MA. The Trustees hereby covenant that each of them and their successors, as their interest may appear, shall not erect any warehouse or manufacturing building upon the said premises except upon the following conditions, which conditions are intended to minimize the transmission of sound in the direction of the power plant referred to in the Variance referenced below:

1. The Warehouse and Manufacturing portion of all buildings which are constructed on the land shown on the said sketch shall be of masonry construction (block or brick exterior) and shall have concrete roof deck. Only those portions of a building or buildings on said land, which are used exclusively for office may be other construction types.
2. Loading Docks where used shall be located on the east exposure of the buildings. No loading doors, overhead doors, etc. for the Warehouse/Manufacturing areas shall be located on the north, south or west exposure of any building.

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10/20/00 10:20:00

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3. All roof mounted HVAC equipment, on any building on the land shown on said sketch shall be screened to inhibit the transmission of sound. The screen shall have a height which extends a minimum of three (3) feet over the top of the equipment and the screen shall not be located further than ten (10) feet measured horizontally from the equipment.
4. No compressors shall be mounted on the roof of any building.
5. There shall be no operable windows on the north, south and west facing exposure of any building or portion thereof used for Warehousing or Manufacturing.
6. No truck which operates with a diesel fueled engine shall be permitted to operate for a period longer than ten (10) minutes during the hours of 5:00 P.M. and 7:00 A.M. Similarly no diesel operated truck mounted refrigeration units shall be allowed to operate during the above hours.
7. No operating machinery shall be located outdoors other than that used for HVAC equipment and all such equipment shall be screened in the manner described in 3., above.
8. No parking of trucks, except those leased or owned by or on the premises incidental to the primary use shall be allowed at any time.
9. Relief from any of the above conditions may be granted by amended variance from the Board of Appeals upon finding that alternatives measures are proposed which will meet or exceed the acoustical control characteristics of the above conditions.

This deed restriction shall remain in full force and effect during the term of the variance as amended and recorded herewith and in Book 2559 and Page 117, Bristol County Deeds, and for such additional time as the power plant authorized thereby operates.

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This deed convention shall not serve as evidence of the said variance.

Witness our hands and seals this 14th day of September, 1991.

James E. Gordon
James E. Gordon, Trustee, Old
Fall River Realty Trust

Rahim Aghai
Rahim Aghai

Dorothy Aghai
Dorothy Aghai
Dorothy Aghai

COMMONWEALTH OF MASSACHUSETTS

Bristol, s.e.

Dartmouth
September 14, 1991

Then personally appeared the above named Rahim Aghai
and Dorothy Aghai, acknowledged the foregoing instrument
to be the free act and deed of each, before me:

[Signature]
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, s.e.

Boston
September 25, 1991

Then personally appeared the above named James E. Gordon, as Trustee of the
acknowledged the foregoing instrument to be his free act and deed, before me:

[Signature]
Notary Public
My Commission Expires: 11/1/91

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MS2008-0020



Let's to be good students
And to contribute

The restricted lots are shown "crosshatched" and are numbered 8, 15, 16, 17, and 18, above.

PROJECT: DARTMOUTH HERITAGE
INDUSTRIAL PARK-SECTION 2

DATE: 7-16-04
SCALE: 100 NATURAL



Received & Recorded April 29 1908 Tr. 47th Mo. Ch.

Adapt: *John Edward Nichols*

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Re. James Gordon, Trustee of Old Fall River Realty Trust of 5 Newbury Street, Boston, MA c/o Energy Management, Inc., and Rehim Aghai and Dorothy Aghai, husband and wife of 21 Noddybrook Drive, Dartmouth, Massachusetts grant to the Town of Dartmouth, acting by its Selectmen and its Building Inspector, in consideration of a Special Permit Amendment 92-1 recorded herewith, a ~~DEED~~ RESTRICTION with respect to the premises shown on the attached sketch entitled "lots to be deed restricted as to construction" and dated July 16, 1991, and prepared by Garola Engineering, Inc. of New Bedford, MA, The Grantors hereby covenant that each of them and their successors, as their interest may appear, shall not erect any warehousing or manufacturing building upon the said premises except upon the following conditions, which conditions are intended to minimize the transmission of sound in the direction of the power plant referred to in the Special Permit referenced below:

2. The Warehouse and Manufacturing portion of all buildings which are constructed on the land shown on the said sketch shall be of masonry construction (block or brick exterior) and shall have concrete roof deck. Only those portions of a building or buildings on said land, which are used exclusively for office may be other construction types.
3. Loading docks where used shall be located on the east exposure of the buildings. No loading doors, overhead doors, etc. for the Warehouse/Manufacturing areas shall be located on the north, south or west exposure of any buildings.

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3. All roof mounted HVAC equipment, on any building on the land shown on said sketch shall be screened to inhibit the transmission of sound. The screen shall have a height which extends a minimum of three (3) feet over the top of the equipment and the screen shall not be located further than ten (10) feet measured horizontally from the equipment.
4. No compressors shall be mounted on the roof of any building.
5. There shall be no operable windows on the north, south and west facing exposure of any building or portion thereof used for warehousing or manufacturing.
6. No truck which operates with a diesel fueled engine shall be permitted to operate for a period longer than ten (10) minutes during the hours of 5:00 P.M. and 7:00 A.M. Similarly no diesel operated truck mounted refrigeration units shall be allowed to operate during the above hours.
7. No operating machinery shall be located outdoors other than that used for HVAC equipment and all such equipment shall be screened in the manner described in 3., above.
8. No parking of trucks, except those leased or owned by or on the premises incidental to the primary use shall be allowed at any time.
9. Relief from any of the above conditions may be granted by special permit from the Board of Zoning upon finding that alternative measures are proposed which will meet or exceed the actual sound characteristics of the above conditions.

This deed restriction shall remain in full force and effect during the term of the special permit described as SF 90-1 as amended and recorded herewith and in Book 2599 and Page 276, Bristol County Deeds, and for such additional time as the power

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plant authorized thereby operates. This deed restriction shall
not survive lapse or abandonment of the said special permit.

Witness our hands and seals this 11th day of September, 1991.

James F. Gordon
James F. Gordon, Trustee, Old
Fall River Realty Trust

Rahim Aghai
Rahim Aghai

Dorothy Aghai
Dorothy Aghai
Dorothy Aghai

COMMONWEALTH OF MASSACHUSETTS

Bristol, s.s.

Dartmouth
September 10, 1991

Then personally appeared the above named Rahim Aghai
and Dorothy Aghai, acknowledged the foregoing instrument
to be the free act and deed of each, before me:

[Signature]
Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Bristol, s.s.

Boston
September 21, 1991

Then personally appeared the above named James F. Gordon, Trustee, Old Fall River Realty Trust
acknowledged the foregoing instrument to be the free act and deed of him,
before me:

[Signature]
Notary Public
My Commission Expires: 1/1/94

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LOT 6 BE BEER RESTAURANT
AS TO CONSTRUCTION

The restricted lots are shown "crosshatched" and are numbered 6, 15, 16, 17, and 18, above.

PROJECT: PLYMOUTH HERITAGE
INDUSTRIAL PARK-SECTION 2

DATE: 7-16-04
 姓名: 李 强



GARCIA, ENGINEERING, INC.
100 E. 1st St.
New York, NY 10002
(212) 336-3300

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Received & Accepted April 27, 1993; revised June 10, 1993.

ATTORNEY: *John J. Jones*

105 April 68 1974 at New York, N.Y.
John Edgar Hoover

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W2800-W0230

Ref: 2559-317

9556

October 18, 1981

DARTMOUTH, MASSACHUSETTS

I, Eleanor J. White, Town Clerk of the Town of Dartmouth, hereto certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning a Variance Amendment for Old Fall River Realty Trust concerning property located on Old Fall River Road, North Dartmouth, MA, Case Number 1591-80, filed in the office of the Town Clerk on September 28, 1981.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the back end page in which this decision was recorded at the Registry of Deeds.

Attests:

Eleanor J. White

ELEANOR J. WHITE
TOWN CLERK OF DARTMOUTH



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OFFICE OF THE
BOARD OF APPEALS

Town of Barnstable

400 Western Road • P.O. Box 9799
North Barnstable, Massachusetts 02747

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OFFICE OF THE BOARD OF APPEALS
TOWN OF BARNSTABLE

VARIANCE DECISION FOR AMENDMENT TO VARIANCE
GRANTED TO
OLD FALL RIVER REALTY TRUST
(Applicant)

CASE NUMBER 1991-10

1. PROCEDURAL AND FACTUAL SUMMARY

The Town of Barnstable Zoning Board of Appeals granted a variance to Old Fall River Realty Trust for use of two parcels of land located in North Barnstable as a minimal 50-megawatt power production facility and appropriate improvements. Said variance was case number 1990-01, filed with the office of the Town Clerk on October 4, 1990.

Old Fall River Realty Trust, 8 Newbury Street, Boston, Ma. 02118, filed an application with the Board of Appeals on February 22, 1991 to amend said variance. The amendment relates to only one of the original land parcels, namely that land identified as Parcel 1 in the grant of variance, now owned by said Applicant, located south of Old Fall River Road and designated as Assessor's Plot 67, Lot 9.

The application for amendment seeks authorization to sell for development a portion of said Parcel 1 to another party not associated with Old Fall River Realty Trust. The portion to be sold is proposed for development as an industrial park in compliance with the zoning designation of the area for limited industrial use. Said portion is hereinafter referred to as the "Ten Acre Parcel".

The variance authorized in case number 1990-01 granted relief from the height restriction on said Parcel 1 under Section 14.02 of the zoning bylaws, and incorporated various plans and other documents submitted and exhibited as conditions on the grant of the variance. The plans showed no development on the ten acre portion of parcel 1.

The application for amendment was noticed by publication and by mailing to "Parties in Interest" as that term is defined in M.G.L., c. 40A, section 11, and by posting on the Property.

The Board of Appeals heard testimony at a public hearing held on March 19, 1991, which was continued to May 14, 1991. JUNE

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20, 1991, July 17, 1991, and September 11, 1991. The hearing was closed on September 11, 1991.

The Board also received written materials and plans regarding the proposed development, including the following submissions from the Applicant:

- 1.1 Application, with summary of proposed amendment and benefits to accrue to town therefrom;
- 1.2 Plan entitled "Site Plan for Amendment to Special Permit and Variance 13-12 dated January 27, 1991 and prepared by R.A. Cataldo Engineering;
- 1.3 Letter from RRM Associates dated February 26, 1991;
- 1.4 Zoning and construction standards related to the ten acre parcel.

2. FINDINGS

- 2.1 With regard to circumstances related to soil conditions, shape or topography and especially affecting such land but not affecting generally the zoning district in which it is located:

2.1.1 Parcel 1, which totals approximately 42 acres 14.5 of which are to be used for the roadway leading through the industrial park and to the power facility], is generally shaped like an inverted "U", with the ten acres proposed to be sold existing to the southeast of the remainder of the parcel. The ten acre parcel is separated from the remainder of Parcel 1 by a soil and topography which makes said parcel inaccessible from the remainder of the parcel. A stream and a considerable area of wetlands exists in a band running almost directly north/south through the parcel, bisecting the parcel into eastern and western portions. In addition, the gas pipe line cuts the parcel in a line which runs east/west and forms the southerly border of the ten acre parcel. Consequently, these conditions create three distinct pockets of developable land. The first pocket, located generally west of the wetlands and south of the pipeline, consists of approximately 18 acres. The power production facility is to be constructed on this portion. The second pocket, located generally west of the wetlands and north of the pipeline, is proposed to remain vacant. The third pocket, easterly of the wetlands and north of the pipeline, is the isolated ten acre parcel.

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The use proposed for the ten acre parcel is consistent with the zoning bylaw for this land.

- 2.2 With regard to the issue that literal enforcement of the provisions of the zoning bylaw would involve substantial hardship, financial or otherwise:

2.2.1 The hardship with respect to the larger 42 acre +/- parcel was previously established. The release of the ten acres +/- for development as permitted under zoning does not affect the prior finding of hardship as to the height of the power plant. Also, the proposed amendment would, in fact restore the literal enforcement of the provisions of the zoning bylaw to the ten acre parcel.

- 2.3 With regard to the granting of desirable relief without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of the bylaw:

2.3.1 The relief sought would permit the ten acre parcel to be utilized in accordance with the intent and purpose of the zoning bylaw. However, the issue arises as to whether the relief of said parcel from the original variance causes some detriment to the public good in relation to the remaining land area and its ultimate use.

The potential detriment to the public good relates specifically to any visual or noise impacts which might result from the development of the ten acre parcel as an industrial subdivision. Consideration was given as to whether said development would reduce the visual and noise barriers around the power production facility which would have existed if the ten acre parcel remained in its undeveloped, or natural, state.

Testimony provided in a letter submitted from DSM separates spoke to the noise issue. DSM indicated that the condition of the ten acre portion of the overall parcel did not impact the way or the other or their noise projections from the power facility at the various noise receptor locations. Also, the petitioner has in cooperation with the owner of the land adjacent to the ten acres offered to grant to the Town a deed restriction by which a standard of construction would be imposed to contain and control additional noise from the ten acre development toward the power plant and residential owners.

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Additional testimony indicated that the ten acre parcel had been altered, prior to its sale to Old Fall River Realty Trust, through the cutting of trees and clearing of a large portion of that parcel. The trees which do remain tend to be located on the easterly boundary of the parcel and could continue to provide the same visual protection from the Towne Corner Road area.

The ten acre parcel is completely surrounded by land used limited industrial, all in the portion of the overall parcel most removed in distance from any residential zone.

The development of the ten acre parcel would permit the development of additional industrial uses which, in turn, would create new jobs and an increase in the Town's tax base. These factors would be for the public good.

3. DECISION

3.1 Based upon the findings presented above, the Zoning Board of Appeals herewith unanimously votes to grant the requested amendment of variance to the Applicant to allow the conversion of the ten acre parcel from the Old Fall River Realty Trust to another party unrelated to the development of the power production facility.

The grant of the amendment of variance is subject to the following specific conditions:

3.1.1 Access to the ten acres shall not be accomplished via the remainder of the Old Fall River Realty Trust parcel, and there shall be no direct road or driveway connection between the two.

3.1.2 The remainder of the Old Fall River Realty Trust parcel shall be developed only in accordance with said variance 1990-13 (as recorded in the Bristol County D.R. Registry of Deeds in Book 2059, Page 0274) and plans incorporated therein. No additional principal uses shall be undertaken on the land shown as vacant or undeveloped, except by further amendment of the variance.

3.1.3 Variance 1990-13, including all conditions and covenants, and agreement, shall, except as expressly amended herein, continue in full force and effect.

3.1.4 Any use of the ten acre parcel shall be subject to applicable requirements of the Town of Dartmouth Zoning By-Laws, provided, however, that no portion of

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the 10 acre parcel shall be used for primary production of clean and/or electric power, and further provided that the construction, design and operations standards set down in the Deed Restriction attached hereto as Exhibit A shall be followed as to the ten acres and the additional land area as shown on the sketch accompanying said Exhibit. The Deed Restriction shall be recorded prior to the recording of this Variance Amendment, or the Amendment shall be deemed lapsed and null and void and no building permit shall issue as to any of the ten acres without further relief from this Board.

It is essential to the intent of this Variance Amendment that the deed restriction be enforceable by the Town as if executed and recorded with the original Variance, and if the deed restriction shall be unenforceable against any party of record with interest in the land included in the deed restriction, this Amendment to the Variance shall be ineffective as to building or occupancy of a building upon said ten acres.

3.1.5 No building permit shall issue on the said ten acres until after the power plant has demonstrated its conformity with the Variance requirements, and until the Massachusetts Department of Environmental Protection has determined that the power plant is operating in conformity with the DQP Air Plan approval, provided, however, that if Barnstable Power Associates ("BPA") abandons the power plant and issues or voids the Variance this condition shall not apply. If five years have elapsed from the date of this Variance Amendment and the power plant has not achieved conforming operation as determined at the receptor points referred to herein or has not satisfied the requirements of the Department of Environmental Protection Air Plan approval, the then owner of the ten acres or a lot therein may apply to the Board for relief from this condition.

3.1.6 The Town may record agreed level measurements at any point on the ten acres or the BPA premises at any time prior to, during and after construction in connection with monitoring of the development of those lands and preparations for such monitoring, provided that the property owners shall be notified of the date and time of the measurements, and may have their respective commitments present. A record of all measurements obtained shall be furnished to the said property owners.

3.1.7 Any violation of restrictions and conditions applicable to the ten acre parcel, except as waived or

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directed by the Old Fall River Realty Trust. The Variance shall not affect the Variance as to the power plant use, it being the intent of this amendment to treat the use as hereby released, and the remaining power plant amendments separately for the purpose of enforcing the Variance and related agreements and covenants and deed restrictions.

This grant of amendment of variance shall not take effect until a copy of the decision bearing the certification of the Town Clerk that it has been filed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Bristol County (R.D.) Registry of Deeds and Indorsed in the Grantor Index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

The fee for recording or registering shall be paid by the owner or applicant.

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A, and shall be filed within 30 days after date of filing of such notice in the office of the Town Clerk.

If the rights authorized by the grant of these variations are not exercised within one year of the date of grant, they shall lapse; provided, however, that the granting authority in its discretion and upon written application by the grantor of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such granting authority prior to the expiration of such one year period. If the granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be re-established only after notice and a new hearing pursuant to the provisions of said Section 17.

Copies of the complete minutes of this hearing are available, upon request, at the office of the Board of Appeals.

Joseph A. Conroy
Joseph A. Conroy, LLC
CHAIRMAN

Received & Recorded April 25, 2025
John L. Conroy, Registrar

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Ref. 2559-276

October 18, 1991

DARTMOUTH, MASSACHUSETTS

I, Eleanor J. White, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Selectmen concerning Dartmouth Power Associates Limited Partnership, (Amendment of Special Permit No. 90-1 previously granted) filed in the office of the Town Clerk on September 27, 1991.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed.



Eleanor J. White

Eleanor J. White
Town Clerk of Dartmouth

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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

Town of Dartmouth
Board of Selectmen
File No. SP 90-1
AMENDMENT

AMENDED DECISION AND APPROVAL WITH CONDITIONS

DARTMOUTH POWER ASSOCIATES LIMITED DARTMOUTH
Amended Special Permit
Zoning By-Law, Section 14.006, 33.560; 38.302
and electric transmission under G.L. c. 186, §206

1. PROCESSIONAL SUMMARY

This Amendment Application is before the Selectmen under Zoning By-Law Section 14.006, which requires a special permit for "primary production of steam and/or electric power" in a limited industrial district. The Amendment application was filed with the Board of Selectmen by Dartmouth Power Associates Limited Partnership (hereinafter "Dartmouth Power Associates" or "DPA") on January 31, 1991. The application seeks to amend a Special Permit numbered SP-90-1, previously granted on October 2, 1990 and filed with the Town Clerk on October 4, 1990. A copy of said application is attached hereto and is incorporated hereto. Included with said application package were:

- A. Application form.
- B. List of waiver requests from the Rules and Regulations for Section 14.006 Special Permits.
- C. Summary of Proposed Amendment and Benefits to accrue to Town and/or DPA.
- D. Site Plan for Amendment to Special Permit and Variance (A-1) dated January 27, 1991 and prepared by R. A. Cataldo Engineering.

The said Special Permit was granted to permit the development of a power generating facility on approximately 42 acres of land now or formerly of Manuel Cataldo and Robin and Dorothy Alpha which are now owned by James Gordon, Trustee of Old Fall River Realty Trust. DPA is the lessee of said acreage. The decision also granted permits and approvals under Zoning By-Law

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TOWN OF DARTMOUTH
CLERK OF BOARD OF SELECTMEN

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Section 31-100 and 31-102 (now 31-104-01) and for underground electric transmission under N.C.E.C. 160, §220.

The Amendment application was noticed by publication and by mailed 30 "Notice in Interest" as that term is defined in N.C.E.C. 160, §111. The hearing thereof closed on February 24, 1991 and was closed on that same date. This matter before the Selectmen must be decided affirmatively by unanimous vote to grant the requested amendment to the Special Permit. The applicant in a writing filed with the Town Clerk extended the date for decision to September 11, 1991.

2. FACTUAL SUMMARY

Old Fall River Realty Trust (James Gordon, Trustee) is the owner of approximately 42 +/- acres of land south of Old Fall River Road in North Dartmouth. The address for Old Fall River Realty Trust is c/o Energy Management, Inc., 8 Newbury Street, Boston, Ma. The locus of said acreage and the applicant for the Amendment is Dartmouth Power Association Limited Partnership, of the same address.

The 42 +/- acres is composed of two parcels: 37 +/- acres of land now or formerly of Manuel DeMello and 4.8 +/- acres of land now or formerly of Rahin and Dorothy Aguiar (known as the "Roadway parcel"). The 37 +/- acres is designated as the Dartmouth assessors' maps as Plot 67, Lot 9.

The Applicant is in the process of developing and building a nominal 60 Megawatt electric power plant, fueled by natural gas, with associated administration and other small buildings, all as shown on plans incorporated in the 30-90-1 decision filed with the Town Clerk on October 4, 1990, on a portion of Plot 67, Lot 9. Said development and construction were described in and are subject to the standards and conditions set forth in the Special Permit granted October 2, 1988 and recorded in the Bristol County 18-D-1 Registry of Deeds in Book 2559, Page 256.

The Applicant now proposes to sell approximately ten of the original 37 +/- acres referred to in the Special Permit. Said ten acres are within the limited industrial zone under the Dartmouth Zoning By-Law and are shown on a plan which accompanied the Application for Amendment entitled, "Site Plan for Amendment of Special Permit and Variance (A-1) prepared by R. A. Cataldo Engineering and dated January 27, 1991.

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The proposed use of the ten acres is development for lots in the limited residential category and a portion of a roadway to be known as Tower Road. This development has been proposed before the Town since April 18, 1990 when the Definitive Plan for Section 11 of the so-called Agha Industrial subdivision was filed with the Dartmouth Planning Board. The Planning Board has not endorsed the subdivision plan as of this date.

The previously granted Special Permit establishes performance standards for various environmental impacts anticipated as a result of the power plant development, including noise emissions and traffic; and it makes certain findings regarding the proposed uses and scale and the buffering of the facility from existing roadways and residential areas. Certain noise monitoring points were established as part of the Special Permit. Testimony was offered at the hearing on the Amendment regarding the method by which the noise emissions at these monitoring points were established and the factors taken into account therein. Further testimony was received at said hearing with regard to the extent of wetlands existing on the ten acres and the amount of said acreage which exists as cleared land.

3. FINDINGS

Based upon the information contained within the Application for Amendment documents and testimony and presentations at the public hearing by Dartmouth Power Associates and/or the Aghas or their representatives, and the representations of the parties in interest who testified, and others, the Board of Selectmen make the following findings.

A. The findings included in the Special Permit in the following categories are ratified and confirmed:

1. Water supply and other required natural resources.
2. Waste water disposal.
3. Other air pollutants.
4. Storm water.
5. Fuel limit.
6. Section 14.203 of the Zoning By-Law.
7. Section 14.403 of the Zoning By-Law.
8. Rules and regulations of the Selectmen for section 14.100 Special Permits.
9. Section 10.104B (formerly section 10.302) of the Zoning By-Law.
10. Chapter 40A, Section 9 of M.G.S.

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The findings included in the Special Permit in the following categories are not varied despite the sale and ultimate use of the ten acres for limited industrial use, except as follows:

1. Noise. The deletion of ten acres from land which would otherwise remain an undeveloped part of the power plant property may result in an increase in noise at the receptor points defined in the original Special Permit. Further, in the event that such additional noise should result in exceedance at the receptor point, the Town will have increased difficulty in determining the source of the excess. It is therefore necessary to condition the release of the ten acres for development upon certain development standards, which will tend to reduce or contain the noise from the ten acre and which will enable the Town to determine in advance of building construction on the ten acres the actual noise from the power plant in conforming operation.

2. Traffic. The Selectmen previously found as to SP-90-1, that the Applicant has provided adequate provisions to minimize traffic and road surface impacts related to the development of the power production facility. This finding stands. Any additional traffic generated from development of the ten acres will not be inconsistent with the zoning bylaw, and if that traffic does not pass through or use for access the power plant land, the result will not adversely affect the traffic in the vicinity.

3. Mass and Scale. Testimony at the hearing has indicated that the ten acre parcel was expected to have two types of mitigating effects regarding the mass and scale of the power production facility. The wetlands, as the first type, was expected to remain in vegetated cover and thus would help in screening the facility. The cleared land, as the second type, produced very little mitigating influence with regard to mass and scale. Further, the forest management plan required of EPA as a condition in the original Special Permit has been submitted to the Building Inspector and remains effective as to the power plant. In addition, any use to be developed on the ten acres will be regulated by the limited industrial zone in which it is located. A limited industrial use, by its nature, is expected to

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be compatible with the mass and scale of the power generating facility. Consequently, based upon all of the above, we find that the development of the ten acre parcel will not alter the original finding "that the mass and scale of the Facility is consistent, by siting and design, with neighboring uses."

3. The Board finds that it has no authority to create a separate ten acre lot; that is a matter for the Planning Board in its exercise of subdivision control. Rather, the Selectmen's authority relates to the use of the ten acres and the release thereof from the from the restrictions imposed by the original Special Permit. This decision is not to be construed as subdivision approval.

4. DECISION

The Board of Selectmen herewith unanimously vote, based upon the findings presented above, to grant the Amendment to the Special Permit to the Applicant to develop in accordance with applicable zoning as to convey it to others for such development the so-called ten acre parcel subject to the conditions herein below. The Board further grants the waivers requested in the Application package, with the exception that the filing fee as paid shall not be refunded, because it is necessary to defray the Town's costs to process the amendment application. The Board further confirms its approval for the power production project as proposed under Section 23.900 of the Zoning by-Laws.

The grant of the Amendment to the Special Permit is subject to the following conditions, in addition to those imposed by the Special Permit SP 90-1:

1. Access to the ten acres shall not be accomplished via the remainder of the DPA parcel, and there shall be no direct road or driveway connection between the two.
2. The remainder of the DPA parcel shall be developed only in accordance with Special Permit SP 92-1 (as recorded in the Bristol County (D.P.) Registry of Deeds in Book 2559, Page 2361 and plans incorporated therein). No additional principal uses shall be undertaken on the land shown as vacant or undeveloped, except by further amendment of the Special Permit.

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3. Special Permit SP-10-1, including all conditions and covenants, and amendments, shall, except as expressly amended herein, continue in full force and effect.
4. Any use of the ten acre parcel shall be subject to applicable requirements of the Town of Barnstable Zoning By-Laws, provided, however, that no portion of the 10 acre parcel shall be used for primary production of steam and/or electric power, and further provided that the construction, design and operations standards set down in the Deed Restriction attached hereto as Exhibit A shall be followed as to the ten acres and the additional land area as shown on the sketch accompanying said exhibit. The Deed Restriction shall be recorded prior to the recording of this Special Permit Amendment, or the Amendment shall be deemed lapsed and null and void and no building permit shall issue as to any of the ten acres without further Special Permit relief from the Selectmen.

It is essential to the grant of this Special Permit Amendment that the deed restriction be enforceable by the Town as if executed and recorded with the original Special Permit, and if the deed restriction shall be unenforceable against any party of record with interest in the land included in the deed restriction, this Amendment to the Special Permit shall be ineffective as to building or occupancy of a building upon said ten acres.

5. No building permit shall issue on the said ten acres until after the power plant has demonstrated its conformance with the Special Permit and until the Massachusetts Department of Environmental Protection has determined that the power plant is operating in conformity with the DEP Air Plan approval, provided, however, that if DEP abandons the power plant and lapses or voids the Special Permit this condition shall not apply. If five years have elapsed from the date of this Special Permit Amendment and the power plant has not achieved conforming operation as determined at the inspection points referred to herein or has not satisfied the requirements of the Department of Environmental Protection Air Plan approval, the then owner of the ten acres or a lot therein may apply to the Selectmen for relief from this condition.

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6. The Town may record said land measurements at any point on the ten acres on the SPA project at any time prior to, during and after construction in connection with monitoring of the development of those lands and preparations for such monitoring, provided that the property owners shall be notified of the date and time of the measurements, and may have their respective consultants present. A record of all measurements obtained shall be furnished to the said property owners.
7. Any violation of restrictions and conditions applicable to the ten acre parcel, except as caused or directed by SPA, and Old Fall River Realty Trust and its successors, shall not affect the Special Permit as to the power plant use, it being the intent of this agreement to treat the ten acres hereby released, and the remaining power plant acreage separately for the purpose of enforcing the Special Permit and related agreements and covenants.
8. ORDER

The Board of Selectmen at a public meeting held on September 18, 1991 voted to grant the Amendment to the Special Permit, and each Selectman represents that he attended said hearing and heard all relevant testimony. This decision is to be enforced by the Town Building Commissioner in his capacity as zoning enforcement officer.

Selectmen, TOWN OF DARTMOUTH

Leonard Gonzalez
Leonard Gonzalez
William C. Squire
William C. Squire
Kevin T. Sartor
Kevin T. Sartor

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CONFIDENTIAL COPY

JAMES S. GORDON, TRUSTEE OF OLD FALL RIVER REALTY TRUST, under declaration of Trust dated November 29, 1999 and recorded in Bristol-South-District Registry at Needs in Book 2487, Page 0022, with a business address of 2 Venable Street, Boston, Massachusetts, for less than \$100.00 consideration paid, and for other good and valuable consideration, the receipt and sufficiency and whereof the undersigned hereby acknowledges, hereby grants to:

ROBIN AGRAI and DOBOTHY E. AGRAI, husband and wife en Joint Tenants, of Dartmouth, Bristol County, Massachusetts

WITH QUIETCLAIM COVENANTS, the land and premises located on the Southerly Side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts more particularly described in Schedule "A" attached hereto and made a part hereof.

EXECUTED under seal on this 27th day of APRIL, 1992.

Signed and sealed
in presence of:

Witness


JAMES S. GORDON, Trustee of
Old Fall River Realty Trust

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

APRIL 27, 1992

Then personally appeared the above-named James S. Gordon, Trustee of Old Fall River Realty Trust, and acknowledged the foregoing instrument to be his free act and deed and as Trustee and the free act and deed of the Old Fall River Realty Trust, before me.


Notary Public in and for the State of Massachusetts
My commission expires: 11/15/96

MASS REC BY
001876.00170

04/27/92

1992-04-27 1:14
CASH - \$ 0.00

04/28/92 10:03
ENCLOSURE

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**SCHEDULE A
Legal Description**

The land situated off Old Fall River Road in Dartmouth, Bristol County, Massachusetts, more particularly bounded and described as follows:

Beginning at the southeasterly corner of the premises to be described herein, said point being the southeasterly corner of the premises shown as Map 67, Lot 9 on the plan hereinafter referenced;

THENCE N 49° 00' 14" W Five Hundred feet (500.00') to a point;

THENCE N 20° 02' 50" E Nine Hundred Seventeen and 10/100 feet (917.10') to a point;

THENCE E 67° 57' 18" E Five Hundred and 24/100 feet (500.24') to a point;

THENCE S 20° 02' 50" W Nine Hundred Seven and 80/100 feet (907.80') to the point of beginning.

containing 10.47 acres and being more particularly shown as "PROPOSED 10 ACRE PARCEL," on a plan entitled "Project Easement Plan, Dartmouth, Massachusetts" prepared for Dartmouth Power Associates dated October 24, 1990, and recorded in the Bristol County (S.B.) Registry of Deeds in Plan Book 126, Page 71.

TOGETHER WITH certain EASEMENTS to the Grantees and to their heirs, administrators, executors, successors and assigns as appurtenant to the said 10.47 acre parcel for certain utility purposes, namely (1) an Easement shown on said plan as "Utility Easement" and containing 49,482.1 square feet, and (2) an Easement shown on said plan as the "Sewer & Water Easement" containing 34,160.8 square feet for so much of such easement area that lies outside of the area of the 10.47 acre parcel. Both of said easements may be used for the purpose of installing, constructing, repairing or maintaining a line or lines for sewer, water and electricity over, under and across the said easement areas, provided, however, that all such utilities shall be installed underground. The easements described herein shall run with the land.

SUBJECT TO certain existing easements to the Algonquin Gas Transmission Company as recorded in the Bristol County (S. B.) Registry of Deeds.

SUBJECT TO restrictions contained in a Special Permit recorded in said Registry in Book 3480, Page 277, as amended by Amended Special Permit dated September 14, 1991, to be recorded herewith, and restrictions contained in a Variance recorded in said Registry in Book 3099, Page 318, as amended by a Variance Decision for Assentment to Variance filed with the Dartmouth Town Clerk on September 28, 1991, to be recorded herewith, which restrictions,

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EX-2808 #0239

Among other things, prevent the 16.47 acre parcel from being used as the site for a power plant.

SUBJECT TO notations contained in two certain Deed Restrictions dated September 16, 1991, executed by James Gordon, Trustee of Old Fall River Realty Trust in favor of the Town of Barnstable, recorded in said Registry of Deeds in Book 1202, Page 205, and in Book 2808, Page 204.

RESERVING to the Grantors and to their successors and assigns the Right and Easement to construct, install, repair and maintain a drainage system in so much of the 16.47 acre parcel that lies within the area shown on said plan as "Public Easement 1." This easement shall run with the land as appurtenant to other land owned by James Gordon, Trustee of Old Fall River Realty Trust.

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TRUSTEE'S CERTIFICATION

The undersigned, JAMES E. GORDON, being the sole Trustee of Old Fall River Realty Trust dated November 22, 1989, and recorded with the Bristol County (S.D.) Registry of Deeds in Book 2467, Page 0023, hereby certify as follows:

1. I am the sole Trustee of said Trust.
2. Said Trust is in full force and effect and has not been altered, amended, revoked or terminated through the date of this Certificate.
3. I have been duly authorized and directed by all of the beneficiaries of said Trust to convey 18.47 acres of land located in Dartmouth, Massachusetts, more particularly shown as "PARCELS 10 ACRES PARCEL" on a plan entitled "Project Elephant Plan, Dartmouth, Massachusetts" prepared for Dartmouth Power Associates dated October 24, 1980 and recorded in the Bristol County (S.D.) Registry of Deeds in Plan Book 126, Page 73 for consideration of less than One Hundred Dollars to Robin Aghal and Dorothy E. Aghal and in connection therewith to execute, acknowledge and deliver any and all documents necessary in connection with the sale of the Premises.

Executed as an instrument under seal this 22nd day of April, 1992.

OLD FALL RIVER REALTY TRUST

By: James E. Gordon
James E. Gordon, Trustee

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

April 22, 1992

Then personally appeared the above-named James E. Gordon, Trustee as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me.

My Notary Public

My commission expires: 07/01/93

bch/TrCert.Gor 4/24/92

Received & Recorded April 28 1992

Attest: John Samuel Registrar

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Knows all Men by these Presents

The New Bedford Institution for Savings, holder of a _____ mortgage
from John J. Lopez M/V.M. John Lopez _____
in said Institution.
dated May 22, 1979 recorded with Regist. Comm. (S.D.) Registry
of Deeds, Book 3184 Page 327
acknowledges satisfaction of the same.

In Witness Whereof said New Bedford Institution for Savings has caused its
corporate seal to be affixed and this instrument to be signed in its name and sealed by its
Vice President, hereunto duly authorized, this 22nd day of April, 1987.

New Bedford Institution for Savings,
By *James M. Jansen*
Vice President

Commonwealth of Massachusetts

Noted, at _____ April 22, 1987. Personally appeared the above-named officer of
said Institution and acknowledged the foregoing instrument to be the free act and deed of said
New Bedford Institution for Savings, before me.

Magistrate Joseph
My Commission expires _____ 1990

Received & Recorded May 13, 1987 M/V. Sec. 6, 1987 B.

Attest: *John J. Lopez* Register

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Ref. 3522-83

ASSIGNMENT

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP, a Massachusetts limited partnership and EMI/DARTMOUTH, INC., a Massachusetts business corporation, both with an address at 8 Newbury Street, Boston, MA 02116, for consideration paid do hereby assign to the TOWN OF DARTMOUTH, a municipal corporation organized under the laws of the Commonwealth of Massachusetts with offices at 430 Western Road, North Dartmouth, MA 02347 all of their right, title and interest in and to a certain eight (8) inch water pipe and all of their right, title and interest in and to certain poles and electric/telephone wires and supporting wires thereto all of which are located in and upon land now or formerly owned by Robert J. Mello in the Town of Dartmouth, County of Bristol said premises consisting of fifteen (15) acres more or less and described as "PARCEL ONE" in a certain deed from Anshel Saw Mills Company to Robert J. Mello dated April 17, 1975 and recorded in Bristol County (S.D.) Registry of Deeds book 1699, page 99; and all of their right, title and interest in and to an easement and right of way concerning said eight (8) inch water pipe, poles and wires along with all of its right to pass, repair and rights to entry to maintain, install and reconstruct in said premises.

The easement area concerned herein is thirty (30) feet in width consisting of 24,711 square feet more or less and is more particularly shown and described on a certain plan entitled "Plan of Easement Through Land of Robert J. Mello, North Dartmouth, MA." prepared for Town of Dartmouth, MA, drawn by McKimsey and Sons, Inc., dated April 30, 1982 which is to be recorded in said Registry.

IN WITNESS WHEREOF, EMI/DARTMOUTH, INC. for itself as a corporation and as the sole General Partner of DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP, has caused its corporate seal to be affixed hereto and this assignment to be signed, acknowledged and delivered on their names and behalf of James H. Gordon and Mitchell H. Jacobs, the President and Treasurer respectively of EMI/DARTMOUTH, INC. hereto duly authorized this 12 day of May, 1992.

DARTMOUTH POWER ASSOCIATES
LIMITED PARTNERSHIP and
EMI/DARTMOUTH, INC. for itself and as
sole General Partner of DARTMOUTH
POWER ASSOCIATES LIMITED
PARTNERSHIP

By: James S. Gordon
JAMES S. GORDON, its President
being duly authorized

By: Mitchell H. Jacobs
MITCHELL H. JACOBS, its Treasurer
being duly authorized

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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

May 12, 1992

Then personally appeared the above-named JAMES S. GORDON and MITCHELL H. JACOBS, the President and Treasurer, respectively, of EMUDARTMOUTH, INC., the sole General Partner of DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP, and acknowledged the foregoing instrument to be their free act as President and Treasurer, and the free act and deed of EMUDARTMOUTH, INC., and the free act and deed of DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP, before me.

Yvonne Flanagan
Notary Public
My commission expires 06-1-95


Received & Recorded May 19, 1992 at 11:00 AM

Attest: *John L. Connel* Registrar

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Form 1

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Commonwealth
of Massachusetts

Serial No. 15- 204

(To be attached to map)

City/Town: DARTMOUTH

Address: DARTMOUTH TOWN ASSOCIATION

Order of Conditions

Massachusetts Wetlands Protection Act

G.L. c. 131, §40 and

the DARTMOUTH Wetlands Protection Bylaw

From: The DARTMOUTH Conservation Commission

Dartmouth Town Association

To: City/Town Management, Inc.

(Name of Applicant)

(Name of property owner)

85 Prince George Road, Suite 410

Dartmouth, MA 02747

Address

This Order is issued and delivered as follows:

☐ To hand delivery to applicant or representative on 10/24/91

☒ By certified mail (return receipt requested) on June 26, 1991 (Date)

The project is located at Old Newport Road

The property is recorded at the Registry of Deeds

Book 2564 Page 142

Certificate of registration

The notice of intent for this project was filed on April 29, 1991 (Date)

The public hearing was held on June 11, 1991 (Date)

Findings

The DARTMOUTH Conservation Commission has reviewed the administrative record of

intent and plans and has held a public hearing on the project. Based on the information available to the

Commission at this time, the Commission has determined that

the area in which the proposed work is to be done is significant to the following interests in accordance with

the Presumptions of Significant Use set forth in the regulations for each Area Subject to Protection under the

Act (check as appropriate):

☒ Public water supply ☒ Flood control ☒ Land containing shellfish

☒ Private water supply ☒ Storm damage prevention ☒ Fisheries

☒ Groundwater supply ☒ Preservation of public use ☒ Protection of wildlife habitat

Total Filing Fee Submitted \$575.00 State Share \$250.00

City/Town Share \$325.00 (If fee in excess of \$25)

Total Refund Due to City/Town City/Town Portion \$ 325.00 State Portion \$ 250.00

(If total) (If total)

Effective 11/1/89 5-1

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Therefore, the Department of Environmental Protection hereby orders that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect these resources described above. The Department of Environmental Protection orders that all work shall be performed in accordance with said conditions, and with the details of work referenced above. To the extent that the following conditions modify or differ from the plans, specifications or other documents submitted with the Notice of Work, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or violation of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless a later date of completion is provided for in the Order.
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be amended by the issuing authority at any time or more periods of up to three years, each upon notification to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, left, paper, cardboard, pipe, tires, wheels, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative special periods from this Order have expired or, if such an extension has been filed, until all extensions before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the water in which the land is located, with the chain of title of the affected property, in the case of riparian land, the Final Order shall also be filed in the Registry's Order Book under the name of the owner of the land upon which the proposed work is to be done. In the case of riparian land, the Final Order shall also be entered on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Department on the 15th of the end of the Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number 25-054".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Supplemental Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

13. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals and until notice of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, omissions, or additions shall be subject to the approval of the Dartmouth-Conservative Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Contours shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, ground cover or shrubs so as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grass and vegetation in order to minimize erosion.
22. No runoff shall be allowed to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owner shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the State Building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. The design engineer will certify, in writing, that this project has been completed in accordance with the above order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continuously operated and maintained so as to comply with this Order of Conditions and N.H.L.R. § 110, § 40, the Wetlands Protection Act.

INSTRUMENT PREPARED BY
SERIES OF CONDITIONS CONTINUED

266200233

FILE NO. 15-004

Place

Title

Dated
4/24/71

Signed and Stamped by
WILLIAM A. COULSON

On File with

Department of Conservation
Commission

By: Wm. A. Coulson, Director, Bureau of Wildlife

By: Wm. A. Coulson, Director, Bureau of Wildlife

By: Wm. A. Coulson, Director, Bureau of Wildlife

By: Wm. A. Coulson, Director, Bureau of Wildlife

By: Wm. A. Coulson, Director, Bureau of Wildlife

By: Wm. A. Coulson, Director, Bureau of Wildlife

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Special Conditions (Use additional paper if necessary)

29. Certain conditions, such as maintenance or monitoring, are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest of the applicant, or successor in control of the property. The applicant shall furnish a copy of this Order to any subsequent owner at the time that ownership is transferred.
31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Waterways.
33. The Conservation Commission and/or the Town of Barnstable shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to the resource areas.
35. All mitigation control measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.

Durham Power Associates
Order of Conditions - Construction

FILE NO. 15-004

38. If changes to the approved plan-of-record on file with the Durham Construction Commission are required by other regulatory agencies, any such changes shall be submitted and approved in accordance with Ordinance #14 of this Order of Conditions.
39. This Order of Conditions shall be accepted within fifteen (15) days of receipt in accordance with Ordinance #6.
40. Prior to any construction, the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
41. Any construction in the flood plain shall conform to 380 C.M.R., section 764, the Design Requirements for Construction in Floodplains.
42. It shall be the responsibility of the applicant or the applicant's representative to continuously maintain all siltation barriers required by this Order of Conditions until the Commission approves or requires their removal.
43. Unless alternate erosion/siltation control measures have been approved by the Conservation Commission or the agent, all exposed soils exceeding a 4:1 slope shall be stabilized using erosion control blankets within 48 hours of soil disturbance and shall remain in place for the duration of the project, or until vegetation has been re-established.
44. When the ground water level reaches a point of five feet (5') above the protective screen in the production well, the ground water level will be recorded in the observation well "06-12" located in the wetland area adjacent to the production well. At this time, a report documenting the ground water level shall immediately be submitted to the Conservation Commission office. Subsequent weekly reports shall be submitted to the Conservation Commission office until the ground water elevation rises. To prevent adverse impacts to the adjacent wetland area, at no time shall the ground water level in observation well 06-12 be allowed to be five feet below the initial reading taken.

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Darlan King

power-transitions.com

Aug 25, 2025 8:37 PM EDT



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 8B - Certificate of Compliance
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
And the Dartmouth Wetlands Protection Bylaw

DEP File Number

15-2034

Provided by DEP

A. Project Information

Important:
When filling out
forms on the
computer, use
only the tab key
to move your
cursor - do not
use the Return
key.



1. This Certificate of Compliance is issued to:

Dartmouth Power Associates LP c/o Michael Armstrong

Name

One Energy Road

Mailing Address

Dartmouth

City/Town

MA

State

02747

Zip Code

2. This Certificate of Compliance is issued for work regulated by a final Order of
Conditions issued to:

Dartmouth Power Associates LP

Name

1/22/2009

Date

15-2034

DEP File Number

3. The project site is located at:

One Energy Road

Street Address

Map 67

Assessor's Map/Parcel Number

Dartmouth

City/Town

Lot 9

Parcel/Lot Number

The final Order of Condition was recorded at the Registry of Deeds for:

Property Owner (if different)

Bristol

County

9248

Book

150

Page

Certificator

4. A site inspection was made in the presence of the applicant, or the applicant's agent,
on:

Date

Reside Return to:

Walter McClellan - Fish W.P.
155 Seaport Blvd
Boston, MA 02210



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands
WPA Form 8B - Certificate of Compliance
 Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
 And the Dartmouth Wetlands Protection Bylaw

DEP File Number:

15-2034

Provided by DEP

B. Certification

Check all that apply:

- ☒ **Complete Certification:** It is hereby certified that the work regulated by the above-referenced Order of Conditions has been satisfactorily completed.
- ☐ **Partial Certification:** It is hereby certified that only the following portions of work regulated by the above-referenced Order of Conditions have been satisfactorily completed. The project areas or work subject to this partial certification that have been completed and are released from this Order are:
- _____
- _____
- ☐ **Invalid Order of Conditions:** It is hereby certified that the work regulated by the above-referenced Order of Conditions never commenced. The Order of Conditions has lapsed and is therefore no longer valid. No future work subject to regulation under the Wetlands Protection Act may commence without filing a new Notice of Intent and receiving a new Order of Conditions.
- ☐ **Ongoing Conditions:** The following conditions of the Order shall continue: (Include any conditions contained in the Final Order, such as maintenance or monitoring, that should continue for a longer period).

Condition Numbers: 1-40

C. Authorization

Issued by:

Dartmouth Conservation Commission

August 16, 2011

Conservation Commission

Date of Issuance

This Certificate must be signed by a majority of the Conservation Commission and a copy sent to the applicant and appropriate DEP Regional Office (See <http://www.mass.gov/dep/about/region/findyour.htm>).

Signatures:

Jacqueline E. McInnis
 Jacqueline E. McInnis, Chair

Michael A. Kellon
 Michael A. Kellon, Vice Chair

Richard T. Mullen
 Richard T. Mullen

David J. Boudreau
 David J. Boudreau

Jennifer Brindley
 Jennifer Brindley

Dave Fata
 Dave Fata

Commonwealth
of Massachusetts

15761

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PK 2552-0137

CMP No. 15-040

(See process in CMP)

City/Town: Duxbury

Applicant: Duxbury Power Associates, Inc.
City Energy Management, Inc.

**Order of Conditions
Massachusetts Wetlands Protection Act
G.L. c. 131, §40 and
the Duxbury Wetlands Bylaw**

Ctf
3/3/00
4633-266

From: the Duxbury Conservation CommissionTo: Duxbury Power Associates Inc.
c/o City Energy Management, Inc.Margaret Smith
c/o Carol Smith, Jr.

(Name of Applicant)

(Name of property owner)

8 Seabury St.
Duxbury, MA 02119558 Weymouth Road
Duxbury, MA 02119

Address

Address

This Order is issued and delivered as follows:

☐ by hand delivery to applicant or representative on August 22, 1990 (date)☒ by certified mail, return receipt requested on August 22, 1990 (date)This project is located at Lots 62-30 & 63-7, between Weymouth Road & Duxbury Corner Rd.The property is recorded at the Registry of DeedsBook 1502 Page 418

Certificate (if registered): _____

The Notice of Intent for this project was filed on June 15, 1990 (date)The public hearing was closed on August 21, 1990 (date)**Findings**

The Duxbury Conservation Commission has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the Commission has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection Under the Act (check all appropriate):

- ☒ Public water supply
☒ Private water supply
☒ Ground water supply

- ☒ Flood control
☒ Storm damage prevention
☒ Prevention of pollution

- ☐ Land containing shellfish
☐ Farmlands
☐ Protection of wildlife habitat

Total Filing Fee Submitted \$250.00State Share \$172.50City/Town Share \$77.50

(No fee in excess of \$250)

Total Refund Due \$ 0.00City/Town Portion \$ 0.00State Portion \$ 0.00

(No cash)

(No cash)

Effective 11/10/99

5-1

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Aug 25, 2025 8:37 PM EDT

Dartmouth Board Associates, Inc.
 ORDER OF CONSERVATION - Confidential

FILE NO. 15-000

Therefore, the Dartmouth Conservation Commission hereby finds that the following conditions are necessary, in accordance with the Environmental Standards set forth in the regulations, to protect those interests checked above. The Conservation Commission orders that all work shall be performed in accordance with said conditions and with the Ministerial Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications or other protocols submitted with the notice of intent, the conditions shall control.

General Conditions

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any material in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, brick, plaster, wire, ash, paper, cardboard, cans, tires, ashes, rebar/strips, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of resumed land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Commission on the form at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number, 15-000".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Superseeding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

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Dartmouth JMWCA Association, Inc.
ORDER OF CONDITIONS COMPLIANCE

FILE NO. 15-046

13. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals; and until copies of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Dartmouth Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Contours shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris, and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, groundcover or shrubs as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owners shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the state building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. The design engineer will certify, in writing, that this project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continuously operated and maintained so as to comply with this Order of Conditions and M.G.L., C 131, § 40, the Wetlands Protection Act.
29. Certain conditions, such as maintenance or monitoring are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest or successor in control.

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Dartmouth Power Association, Inc.
ORDER OF CONDITIONS CONTINUED:

FILE NO. 15-846

Plan:

Title	Dated	Signed and Stamped by:	On File with:
Notice of Intent Sewer Line Construction		Paul A. Gable	
Sheet 1 General Site Plan			Dartmouth Conservation Commission
Sheet 2 General Notes & Legend			
Sheet 3 Plan & Profile Sta. 42+00 to 53+00			
Sheet 4 Plan & Profile Sta. 53+00 to 57+00			
Sheet 5 Detail Sheet A			
Sheet 6 Detail Sheet B			

Plans dated June 6, 1986,

Special Conditions (Use additional paper if necessary)

31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
 The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Waterways
33. The Conservation Commission and/or the Town of Dartmouth shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to resource areas.
35. All siltation measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. All mitigation and resource protection devices and measures, e.g. hay bales, siltation fence, etc., are to be installed prior to initiation of any work under this Order of Conditions. The Conservation Agent shall be notified when in place for inspection and verification. No work to be undertaken under the Order of Conditions until written approval is received from the Conservation Commission or its Agent.
38. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.
39. In accordance with Condition number thirteen (13), no activity shall take place until the applicant has furnished written documentation that the plans on file with the Conservation Commission are consistent with permits and approvals of other Town Records.

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 Aug 25, 2025 8:37 PM EDT

40. This Order of Conditions shall be recorded within fifteen (15) days of receipt in accordance with Condition #8.
41. Prior to any construction the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.
42. Any construction in the flood plain shall conform to 780 C.M.R., Section 744, the Design Requirements for Construction in Floodplains.
43. It shall be the responsibility of the applicant or the applicant's representative to continuously maintain all siltation barriers required by this Order of Conditions until the Commission approves or requires its removal.
44. All siltation control measures shall be in place and approved by the Conservation Agent prior to the start of construction.
45. Construction shall take place during the driest times of the year (i.e. July and August).
46. No fueling of or major repair of vehicles will occur in the wetland or buffer zone portions of the site.
47. All excavated wetland soils shall be segregated and upon replacement in the trench, they shall be returned to their original soil profiles.
48. Twenty-four hours prior to any stream crossing, the Conservation Officer shall be notified, and a time schedule shall be made for the officer to be present during construction activity.
49. Stream crossings shall be done so as to capitalize on favorable weather conditions, minimize the duration of construction operations, and in all respects to minimize potential sedimentation impacts. Therefore the following procedures shall be implemented:
- a) Erosion control devices and stabilize bank.
 - b) The silt curtains shall be placed 10-foot and 100-foot down stream from the crossing site.
 - c) Trench spoils placed beyond adjacent bank of stream shall be riprap with hay bales and silt fencing.
 - d) Excavation, bedding and backfilling of the trench shall occur on the same day.
 - e) Materials used to restore the stream bottom and banks shall be comparable to pre-existing conditions.

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Aug 25, 2025 8:37 PM EDT

Dartmouth Power Associates Inc.

ORDER OF CONDITIONS - Continued

FILE NO. 15-006

48. Continued

1) Stream bottom contours and bank slopes shall be restored to pre-existing conditions.

2) Stream banks will be re-vegetated using approved wetland seed mixtures and mulch.

49. There shall be no storage of hazardous materials, chemicals, fuels and lubricating oils within 100 feet of any wetland area.

50. Salt fencing material shall be removed once the site is stabilized.

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Dunsmuir Power Associates Inc.

DEVELOP OF CONSTRUCTIONS - Continued

FIELD NO. 15-044

Issued By Dartmouth

Conservation Committee

LMN Fund Inc.

Don't know

[illegible]

Paul Jones

This Order must be signed by a majority of the Conservation Commission

On this 21st day of August 1996 before me personally appeared Gerald Franklin to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

Rita Costa
Rita Costa

June 28, 1996

My commission expires

[illegible]

Received & Recorded 17 Oct. 5, 1974

ATTN: John J. Jones Registrar

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Darlan King

power-transitions.com

Aug 25, 2025 8:37 PM EDT

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 Darian King
 20260

October 23, 1990

power-transitions.com
 Aug 25, 2025 8:37 PM EDT
 DARTMOUTH, MASSACHUSETTS

I, Eleanor J. White, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Selectmen concerning a Special Permit and other approvals for Dartmouth Power Associates Limited Partnership concerning property located on Old Fall River Road, North Dartmouth, MA., filed in the office of the Town Clerk on October 4, 1990.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 37 of Chapter 40A of the Massachusetts General Laws.

Attest:

Eleanor J. White

ELEANOR J. WHITE
 TOWN CLERK OF DARTMOUTH



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 Darian King

power-transitions.com
 Aug 25, 2025 8:37 PM EDT

Covenant
 11-2-90
 2564-84
 Amendment
 4/29/92
 2787-220
 Amendment
 01-12-09
 9234-82

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Darian King

2559 0277

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Aug 25, 2025 8:37 PM EDT

DESIGNATION AND APPROVAL WITH CONDITIONS

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP
Special Permit

Issued By-Law, Section 14.808, 33.500, 38.202
and Electric Transmission Under N.G.L. c. 166, s.22G

Town of Dartmouth
Board of Selectmen
File No. SP 28-1

OCT 9 4 1930
TOWN OF DARTMOUTH
ELEANOR J. WHITE
TOWN CLERK
2197 P.M.

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Aug 25, 2025 8:37 PM EDT

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Darian King

DOA - DECISION, OCTOBER 2, 1990

1. PROCEDURAL SUMMARY.....	PAGE 1
2. FACTUAL SUMMARY.....	PAGE 2
3. ISSUES OF LAW AND REGULATIONS.....	PAGE 4
SUMMARY OF REQUIRED FINDINGS.....	PAGE 9
4. FINDINGS.....	PAGE 10
EXHIBITS.....	PAGE 10
WATER SUPPLY, ETC.....	PAGE 11
NOISE AND POLLUTANTS.....	PAGE 11
WASTE WATER.....	PAGE 11
OTHER AIR POLLUTANTS.....	PAGE 11
TRAFFIC.....	PAGE 12
STORM WATER.....	PAGE 12
MASS AND SCALE.....	PAGE 12
FUEL LIMIT.....	PAGE 13
REGULATORY REFERENCES.....	PAGE 13
5. DECISIONS AND CONDITIONS.....	PAGE 14
PREREQUISITE PERMITS.....	PAGE 14
AIR QUALITY MONITORING STANDARDS.....	PAGE 15
NOISE MONITORING STANDARDS.....	PAGE 16
TRUCK TRAFFIC STANDARDS.....	PAGE 18
ACCESS AND MONITORING BY TOWN.....	PAGE 19
CONSTRUCTION SCHEDULE.....	PAGE 19
COVENANT (REVENUE).....	PAGE 20
FORESTRY PLAN.....	PAGE 21
STATE MARKINGS.....	PAGE 21
FUEL OIL LIMITS.....	PAGE 21
WATER LIMIT.....	PAGE 22
NOTICE OF CHANGE OF MANAGERS/OWNERS.....	PAGE 22
PROJECT LIMIT.....	PAGE 23
PROJECT TERM.....	PAGE 23
6. ORDERS AND SIGNATURES.....	PAGE 23
SIGNATURES.....	PAGE 24

EXHIBITS

- A. WATER AGREEMENT - DPA/LPW
 - B. COVENANT
 - C. PRODUCTION LOCATIONS FOR NOISE IMPACTS (PRIOR Figure 3.2-2)
- FTL/DPA.cmts

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Darian King

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Aug 25, 2025 8:37 PM EDT

CONFIDENTIALITY OF MASSACHUSETTS

Bristol, ss.

Town of Dartmouth
Board of Selectmen
File No. SP 30-1

DECISION AND APPROVAL WITH CONDITIONS

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP :
Special Permit :
Zoning By-Law, Section 14.060, 14.062, 14.302 :
and electric transmission under M.G.L. c. 146, s. 22C :

1. PROCESSIONAL SUMMARY

This application is before the Selectmen under Zoning By-Law Section 14, which requires a special permit for primary production of steam and/or electric power, in a Limited Industrial District. The application was filed by Dartmouth Power Associates Limited Partnership (hereinafter "Dartmouth Power Associates" or "DPA") on June 4, 1990 for a special permit on land of Manuel DeMello (later amended to include, also, land of Rahim and Dorothy Aghai). A copy of said application is attached hereto and is incorporated herein. Said Manuel DeMello and Rahim and Dorothy Aghai filed affidavits stating that they have agreed to sell land to Dartmouth Power Associates and to permit said entity to apply for permits and approvals in their stead.

DPA has also requested that the Selectmen grant permits under Zoning By-Law Section 14.060 and 14.302, and for underground electric transmission service under G.L. c. 146, s. 22C.

The application was noticed by publication and by mailing to "Parties in Interest" as that term is defined in G.L. c. 40A, Section 11. The hearing thereon commenced on July 12, 1990 and was continued to August 2, 1990, August 16, 1990, September 18, 1990, and closed on September 18, 1990.

For convenience some of the hearing sessions were held jointly with the Zoning Board of Appeals, which heard certain variance requests pertaining to this case and other land required to implement delivery of power to the power grid.

A stenographic record was kept of all testimony taken at the said hearings (excepting a continuance on September 18, 1990) and a copy thereof is on file with the Selectmen.

This matter before the Selectmen must be decided affirmatively by unanimous vote to grant the requested special permit.

2. FACTUAL SUMMARY

Dartmouth Power Associates is a Massachusetts limited partnership. Its business address is c/o Energy Management, Inc., 8 Newbury Street, Boston, MA 02116, which corporation is also the general partner.

DPA proposes an "electrical generating facility" in the limited industrial district, and more particularly, on a parcel of land about 24 acres, easterly off Old Fall River Road. The parcel is designated Ambassador's Plot 67, Lot 9 and is now owned by Manuel DeMello of 770 Old Fall River Road, Dartmouth and Rahim and Dorothy Aghai of 23 Merrymount Drive, Dartmouth.

The project is a nominal 48 megawatt electric power plant, fueled by natural gas and contains associated administration and other small buildings as set forth in plans submitted to the Town (the "project"). The plant will operate continuously, except during maintenance periods. The Algonquin gas pipeline is located on the site. DPA proposes that the plant also be fueled by No. 2 distillate oil up to 1,500 hours each year. Such oil is the equivalent of home heating oil. It would be delivered by truck. If the plant were to burn oil continuously for 1,500 hours, it would use 94,400 gallons in each 24 hour period for up to 62.5 days. In order to keep the oil tank full, the project would require approximately 13 truck deliveries each day.

The main power plant building will be approximately 53 feet high to house turbines, with a "penthouse" approximately 71 feet high to accommodate the boiler. A stack approximately 172 feet high is proposed to release combustion exhaust into the air. The height limits are also now before the Board of Appeals for variance because the development standards of Section 14.460 of the By-laws do not permit such heights, and the Selectmen do not have authority to grant relief from said development standards.

The electricity will be transported from the power plant underground along Old Fall River Road to an electric riser station in an adjacent residential district and into the "power grid" (the overhead high-tension wires passing in the vicinity). The Selectmen also have before them a request for a license to bury power lines five feet deep in Old Fall River Road. In addition, the Applicant has requested a variance from the Board of Appeals because a riser station will be constructed in a residential district. The Selectmen's special permit decision does not purport to permit a riser station in the residential district.

The plant will require an average of approximately 449,000 gallons of water each day for cooling and for emission control. The approximate peak water use is projected at 574,150 gallons per day. The water is not available locally and the Town has inadequate supply at present to serve the DGP, although there is no difficulty in transmitting the necessary water to the site by running a Town water pipe from Old Fall River Road when and if an adequate supply of water is available.

To overcome the shortage of water, the applicant proposes to develop a well site, and to dedicate to the Town the well field after development with all necessary pipes, pumps, treatment facilities, and controls installed to augment the town water system with sufficient water to meet the average requirements of the proposed plant. The proposed new well field and related items must be approved by the Department of Environmental Protection (hereinafter sometimes referred to as DEP) before connection to the Town distribution system, assuming the Town Department of Public Works (sometimes hereinafter referred to as DPW) authorizes each connection. The DPA well field is not on or near the site of the Power Plant, and the water developed by DPA will mix with other Town water from various sources. DPA and the Town Public Works Commissioners have signed an agreement with respect to development of the well field and the subsequent transfer of land, equipment and water to the Town. DPA will purchase the water transported to it at rates determined by the Town Public Works Commissioners.

The Applicant also proposes to discharge sanitary effluent and process waste water into the Town sewer system by a pipeline to be constructed by the DPA across the land of the Commonwealth referred to as the "prison site." The required connection requires the Department of Environmental Protection and Town Department of Public Works' permission to discharge into the town sewer. The Commonwealth must also grant the town permission to cross the "prison site" to connect to the sewer lines. The total effluent so discharged is projected to be approximately 19,902 gallons per day. This amount is about one-fiftieth of the water used because most of the water evaporates in the cooling towers and in the emission process. The process waste water is a concentrate of the Town water and there are no additives.

When in operation, the plant will raise the noise level in its vicinity and discharge certain pollutants into the air. The Applicant must meet the Massachusetts Department of Environmental Protection air pollution standards, with respect to noise and other air pollutants pursuant to a permit under 310 CMR Part 7.00. Such permit has not yet been obtained by the Applicant. The Applicant proposes to condition the requested Special Permit on compliance with the noise and air standards established by said DEP permit, and further to comply with other noise, air and traffic standards to be established and monitored by the Town.

As an additional benefit from the proposed project, the Applicant has offered to covenant to the Town that it and its successors in interest shall donate to the Town an annual sum of money in addition to annual property taxes to enable the Town to mitigate direct and indirect impacts, if any, and to provide added amenities to the Town. The covenant would provide an annual cash (base) gift of \$500,000, less the usual taxes (and after ten (10) years exclusive of the Fire District assessment) plus an initial amount of \$20,000 to be replenished annually if drawn upon for Town monitoring purposes. The base figure of \$500,000 would be increased annually by 2 1/2 percent for the first twenty years, and thereafter continue at a decreasing level to thirty-five years, when the Plant is deemed obsolete.

3. ISSUES OF LAM AND REGULATIONS

3.1 Section 14. This section of the Dartmouth Zoning By-law contains several sections which are relevant to the project proposed by the Applicant.

3.1.1. Section 14.160. The statement of purpose for the Limited Industrial District is to "provide employment opportunities and diversify the tax base while not imposing hazards or nuisances on neighboring residential uses, commercial uses, and environment." The Selectmen are required, in granting a Special Permit, to consider this general statement of purpose.

3.1.2. Section 14.2. Within this Section, there is the following paragraph:

"No use will be permitted which will produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, excessive dust or vapor, harmful radioactivity, offensive noise or vibration, flashes, objectional effluent or electrical interference which may affect or impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the neighborhood."

With regard to this paragraph, the Selectmen must be assured that the proposed use will not create any nuisance or hazard listed in said paragraph.

14.1.3 Section 14.1. This Section identifies the Permitted Uses within a Limited Industrial District and states as follows:

*Other manufacturing processing and primary production of waste and/or electric power shall require a Special Permit from the Board of Selectmen, which may impose reasonable conditions, upon finding that:

The project can reasonably be expected to have adequate water and other required natural resources.

The project includes adequate impact mitigation for noise and other pollutants.

The project includes adequate provisions to minimize traffic and road surface impacts.

The facility's mass and scale is consistent, by siting and design, with neighboring uses.

That the facility be limited to gas fired with fuel oil backup manufacturing and production of steam, hot water and/or electric power.

The Selectmen read the foregoing to require them to consider each of the above areas in reaching a decision as to the granting of a Special Permit, and further, should it be determined that a Special Permit should issue, to guide them in the identification of appropriate conditions related thereto.

3.1.4 Section 14.2. This subsection of Section 14 establishes development standards for any proposed use within a Limited Industrial District. It further identifies the specific items with regard to which the Selectmen must make findings under the law. The development standards thus set forth are:

14.401. ...all lots shall have a minimum frontage of 150 feet and minimum area of 43,560 square feet.

14.402. The maximum height of any building shall be 35 feet, as measured from the mean point of grade of foundation. Chimneys, towers and other projections not used for storage or human occupancy may not exceed a height of 50 feet.

14.403. All uses on a lot which include, but are not limited to, buildings, driveways, parking

areas, storage areas, impermeable surfaces, etc. shall not cover more than 45 percent of the entire lot. Landscaped areas are not included.

14.404. All parts of any buildings or structures, except fences, shall be set back at least 40 feet from any street, 50 feet from any designated Onshio Road, Road Road, and Balance Corner Road, and at least 25 feet from a side or rear property line.

14.405. No building or structure shall be placed nearer than 100 feet to or abutting residential district; this space shall include a 20-foot wide buffer of evergreen trees or existing trees provided that they create an equivalent year-round buffer.

14.406. Signs shall be regulated and controlled as in Section 11, General Business Districts, signs, except that signs must be set back at least 30 feet from property lines and may not exceed 60 square feet in area.

14.407. The design standards and plan content requirements contained in Section 14, Off Street Parking Plan Regulations, shall be compiled with, except:

A. Off-street parking spaces for manufacturing shall be provided on the premises at the rate of 1.1 per employee, or one for each 1,000 square feet of gross floor area if employment is not known.

B. All parking, storage, and loading areas shall be at least 50 feet from any residential district.

14.408. All water, sewer, gas, electric, and other services shall be underground.

14.409. No material or supplies shall be stored or permitted to remain on any part of the property outside the building constructed thereon. Any finished products or semi-finished products stored on the property outside of said building shall be confined to the rear half of the property and shall be appropriately screened on all sides, but shall in no instance be placed on that side of a building paralleling an existing or proposed street. No waste material or refuse shall be dumped upon or permitted to remain upon any part

of said property outside of a building constructed thereon.

3.1.5. Section 14.300. This section expands upon the submission materials required with a Special Permit application. The items include:

- a site plan with topography in two-foot contours.
- a storm water management plan.
- a traffic impact assessment report.
- projected a.m. and p.m. peak traffic and average daily traffic.
- a review of any existing traffic master plans.
- a level of service analysis for nearby roads and intersections impacted by 10 percent or more by the project.

3.2 Regulations. The Board of Selectmen have adopted regulations, pursuant to Sections 14.300 and 15.300 of the Barnmouth Spring By-law and Massachusetts General Laws (MGL) Chapter 40A, Section 9. These regulations set forth in greater detail the submission requirements for a Special Permit application and outline the accepted procedure for review. In addition, they state, under item 1.409, specific Conditions for Approval. These conditions are that "the (development) plan meets all applicable zoning requirements and that:

- A. The project can reasonably be expected to have adequate water and other required natural resources on a sustainable yield basis for the useful life of the project. Residual risks may be balanced by appropriate surety agreements.
- B. The project includes adequate impact mitigation for noise and other pollutants. The test of adequacy shall include full compliance with all applicable federal, state and local regulations.
- C. The project includes adequate provisions to minimize traffic and road surface impacts. The test of consistency shall include full compliance with all applicable federal, state and local regulations.

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D. The facility's perceived mass and scale is consistent, by siting and design, with neighboring uses. The test of consistency shall consider the effects of distance from public vantage points.

E. In the case of a power plant, that the facility is limited to use of natural gas with backup of propane gas and gas and/or fuel oil for the production of power, factoring and production of steam, hot water and/or electric power.

3.3. Other Aspects of Law. There are certain other aspects of law which are relevant to the application of Dartmouth Power Associates to construct the Project.

3.3.1. Zoning By-Law, Section 31.500. This item of the By-Law states:

In Limited Industrial Districts,...the type of industry to occupy and buildings constructed upon the said premises and the architecture and type of construction of all buildings to be erected upon said land shall meet with the approval of the Board of Selectmen...

3.3.2. Zoning By-Law, Section 38.302. This item of the By-Law states:

Whether the use of a building or structure, for the purpose for which permission is sought, is or would be in violation of any specific provision of these By-Laws, or would prove to have any nuisance qualities, or be for any reason injurious to the health, safety, morals, or welfare of the community in any of the districts zoned under these By-Laws.

3.3.3. MGL, Chapter 166, Section 22E. Under this provision of Massachusetts General Laws, the Board of Selectmen are authorized to issue special permission for the construction of conduits for the underground installation of electric transmission service.

3.3.4. Other Permits. Many aspects of the proposed Project before the Selectmen are subject to other permits, including, but not limited to, Department of Environmental Protection as to water supply, sewer connection, and air quality; variances by the Town Board of Appeals; the Town Department of Public Works' approvals as to the proposed well field and connection to the town sewer; Building Code as administered by the Town Building Commissioner; and the Town Conservation Commission as to the wetlands and the buffer zone

thereof. The Army Corps of Engineers must be given notice as to proposed wetlands alterations prior to any construction activities.

3.3.5 Dartmouth Zoning - General. The proposed Project is recognized to require compliance with any and all other sections of the Dartmouth zoning by-laws not specifically enumerated above and which may be properly included in the Board of Selectmen's Special Permit granting authority.

3.4. Summary of Required Findings and Actions

3.4.1. Findings. In acting upon the application for a Special Permit for this Project, the Board of Selectmen must make Findings under the following provisions of law and regulations:

- A. Zoning Bylaw, Section 14.200, last paragraph.
- B. Zoning Bylaw, Section 14.400, Development Standards.
- C. Regulations of the Board of Selectmen re. to Special Permits, Item 1.408.
- D. Zoning By-Law, Section 18.302.
- E. Massachusetts General Laws, Chapter 40A, Section 9.

3.4.2. Conditions. Under various aspects of law and regulations outlined in this section, the Board of Selectmen are empowered to establish specific conditions, should the Special Permit be granted.

3.4.3. Waivers. Under item 1.308 of the submission requirements set forth in the Rules and Regulations for the granting of Special Permits, the Selectmen are authorized to determine whether waivers of the requirements shall be granted.

3.4.4. Related Aspect of Law. The Selectmen have been asked to grant approval for the installation of underground conduit to contain electric transmission lines under M. G. L. c. 166, s. 22B, and to approve the project under the Zoning Bylaw, Section 31.500.

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4. FINDINGS

The Board of Selectmen have been provided with a Special Permit application filing, along with the following associated reports plans, and materials:

A. Plans:

- i) Site Plan A - 1: Dartmouth Power Associates Limited Partnership Electric Generating Facility, date 5/31/90
 - ii) Site Plan A - 2: Dartmouth Power Associates Limited Partnership Electric Generating Facility, date 5/31/90
 - iii) Preliminary Waterbed Analysis Plan - 1: Dartmouth Power Associates Limited Partnership Electric Generating Facility, date 5/31/90
 - iv) Generation Building Elevation (Figure 3.1-3), Dartmouth Power Associates
 - v) Axonometric View of Power Plant - Dartmouth Power Associates
- B. Environmental Impact Report (final), DOE No 7243, submitted to and approved by the Massachusetts Secretary of Environmental Affairs, dated January, 1990. This document contains various site plans relevant to this decision.
- C. FAA Stack Height Notification, submitted to the New England Regional Office of FAA.
- D. Air Permit Application, submitted to and awaiting approval by the Massachusetts Department of Environmental Protection.
- E. FERC Rate Petition, submitted to and approved by the Federal Energy Regulatory Commission.
- F. Presentation outline: July 12, 1990 Public Hearing.
- G. Response to Technical Comments from Robert Erickson, Town Planner, and David Hickox, DPW Assistant Superintendent.
- H. A Water Agreement, executed by DPA and the Board of Public Works of the Town of Dartmouth, containing the terms and conditions related to the development of water supply for the Project, and the subsequent trans-

for of the well field and related equipment to the Town.

- I. A Covenant, encompassing the terms and conditions of DPA's contribution to annual revenues of the Town, in excess of real property taxes.

Based upon these items and upon testimony and documents provided by Dartmouth Power Associates and/or its representatives and consultants at the Public Hearing, and by others who attended the hearings, the Board of Selectmen make the following findings:

1. Water Supply and Other Required Natural Resources.

The regulations adopted by the Board of Selectmen refer to "other natural resources to be acquired within Dartmouth or abutting towns". In this regard, the only natural resource to be obtained within Dartmouth is water and no natural resources are to be acquired from abutting towns. With specific reference to water, we find that the project will require an annual average of approximately 449,000 gallons of water per day. This water is not available on DPA's site. DPA has offered to develop wells on land now owned by the Town, and on land to be offered to the Town in accordance to a Water Agreement attached hereto as Exhibit A. Based upon the terms and conditions contained within said Water Agreement, and with the additional condition set forth herein below, we find that DPA can be reasonably expected to have adequate water.

2. Noise and Other Pollutants.

2.1. Noise. DPA has submitted the design of its plant to the Massachusetts Department of Environmental Protection under 310 CMR 7.00 (Air Pollution Control). Further, the Selectmen have established additional conditions herein below. If the DEP approves DPA's Air Plans Application and given the provisions of the said additional conditions, we find that the Project has adequate impact mitigation for noise.

2.2. Waste Water Disposal. DPA proposes to build a sewer line from a point within the site of the Bristol County Jail and House of Correction site to the DPA project, or to dispose of waste water by means of subsurface septic and tight tank trucks, subject to Dartmouth Board of Health and the DEP's approval. We find that, subject to conditions specified herein below, the Applicant has provided adequate impact mitigation for sewage disposal.

2.3. Other Air Pollutants. DPA has submitted the design of its plant to the Massachusetts Department of Environmental Protection (DEP) under 310 CMR 7.00. Further, the Selectmen have

established additional conditions herein below. If DCR approves the Applicant's Application and given the provisions of said additional conditions, we find that the project has adequate impact mitigation for other air pollutants.

2.4. Traffic. DPA has conducted the necessary studies and impact assessment related to traffic to be generated as a result of the Project. The existing public ways are generally adequate to accommodate the anticipated traffic. Further the Selectmen have established various conditions herein below. We find that if the Applicant complies with said additional conditions, the Applicant has provided adequate provisions to minimize traffic and road surface impacts.

2.5. Storm Water. DPA has proposed to minimize the impact of the project with respect to storm water discharge or run-off as follows:

1. No storm water shall be directed onto Old Fall River Road during the construction and use of a temporary driveway leading to the construction site.
2. DPA shall obtain an Order of Conditions from the Conservation Commission prior to the construction of the permanent road and power plant facility.
3. DPA shall satisfy the Building Commissioner that all storm drainage will be controlled so as to result in no net increase in rate of storm water runoff from its site.

We find that implementation of these three measures will adequately mitigate adverse impact from surface water runoff.

2.6. Mass and Scale. DPA has provided visual information which indicates that the mass and scale of the Project is consistent with the uses expected to be found in a limited industrial District. Further, the information provided indicates that the natural growth of tree screens make less intrusive the building and stacks, particularly from any public vantage point along Old Fall River and Peaslee Corner Roads. Also, this barrier is expected to serve as an additional noise buffer. In addition, the Applicant has proposed to submit a forest management plan and stack marking details with its building permit application.

On the basis of this information, we find that the mass and scale of the Facility is consistent, by siting and design, with neighboring uses. This finding does not relieve the Applicant from compliance with any of the development standards imposed by such 14.490, et seq. or from obtaining variances therefrom.

3.3. Fuel Limit. We find that the proposed power plant will be primarily fired by means of natural gas, provided by means of the Algonquin gas lines which traverse the site. We further find that said fuel is consistent with the requirement that the plant be primarily gas fired; that the plant accept gas produced from coal or other sources off-site, provided, however, that the plant shall not burn coal as a direct fuel source.

In addition, the Applicant proposes to limit its use of #2 heating oil as a fuel back-up to 1200 hours each year when gas is not available. We have established conditions related to use of #1 distillate fuel levels below so as to ensure that the plant is fired primarily by gas with fuel oil as a backup, as is required in the Zoning By-law.

Specific findings required by law or regulation are as follows:

1. Under Section 14.280 of the Zoning By-law. We find that the proposed development and management of the Project by Dartmouth Power Associates or its affiliated entities if operated to the standards as proposed and with adherence to the conditions we have imposed will not of necessity produce a nuisance or hazard from fire or explosion, toxic or corrosive fumes, gas, smoke, odors, obnoxious dust or vapor, harmful radioactivity, offensive noise or vibration, flashes, objectional effluent or electrical interference which may affect or impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the neighborhood. We further find that it is desirable and necessary that the Town diligently monitor this facility to assure that this section of the Zoning By-law and the Terms and conditions of this permit are not violated.

2. Under Section 14.400 of the Zoning By-law. We find that the proposed development by Dartmouth Power Associates of the Project will meet all of the development standards of this Section, with the exception of 14.402, Maximum height. We have conditioned this permit on appropriate relief from the height limitations of 14.402, which relief the Selectmen have no authority to grant.

3. Under Regulations, Section 1.402. We find that the proposed development by Dartmouth Power Associates of the Project is found to comply with the Regulations of the Board of Selectmen as follows:

A. The proposed project as conditioned may be constructed to meet all applicable zoning requirements, with the exception of matters now before the Zoning Board of Appeals for variance.

8. The proposed project complies with other requirements of the Regulations found in items 4 through 7 inclusive of Item 1.460.

4. Under zoning By-Law, Section 14.402 - The proposed development of the Project by Dartmouth Tower Associates is found to be a use of a building which will not be in violation of any specific provision of the zoning by-laws, with the exception of 14.402, maximum height, which is the subject of a petition for variance before the Zoning Board of Appeals, and as conditioned will not tend to have any nuisance qualities, or to be injurious to the health, safety, morals, or welfare of the community in any of the districts zoned under the by-laws.

5. Under R.S.B., Chapter 42A, Section 3. Based upon the foregoing findings, we further find that as provided and if built and operated under the conditions we have established, the Project is in harmony and compliance with the general purpose of R.S.B., Chapter 42A, Section 3.

6. DECISION

The Board of Selectmen herewith unanimously vote, based upon the findings presented above, to grant a Special Permit to the Applicant to construct a nominal 66 megawatt electric power plant on its site on Old Fall River Road. The Board further grants the waivers requested in the application for Special Permit. The Board further grants approval for the Project under Section 33.500 of the zoning By-laws, and for the installation of underground conduit in Old Fall River Road to contain electric transmission lines, as provided in the application for said approval.

The grant of the special Permit is subject to the following specific conditions:

6.1. Prerequisite Permits and Approvals. The Project must receive permission or approval as to the following other regulatory matters prior to applying for a building permit, (including an at risk building permit) for the facility:

A. Relief from the maximum height provisions contained in Section 14.402 of the zoning By-Law as to buildings and structures in the Limited Industrial District. Also, with respect to uses and structures in the residential district, relief from the use provisions contained in Section 9.100 thereto, the accessory use provisions contained in Section 3.301 thereto, and the height provisions contained in Section 4.217 thereto.

B. Massachusetts Department of Environmental Protection (DEP) approval of DPA's application for an Air Plan approval under 310 CMR 7.00 et seq.

C. A sewer extension or connection permit or approval for an on-site septic system from the Board of Health.

3.2. Operating Conditions. The Applicant must also comply with the following operating conditions:

3.2.1. Air Quality Monitoring Standards (non-toxic).

A. Performance Standard

The Dartmouth Power Associates (DPA) facility shall not operate so as to cause any of the following ground level air pollutant concentrations to be exceeded at the measurement locations which are specified on Exhibit C, Figure 3.1-2, which figure is contained in the Final Environmental Impact Report, January, 1990:

Nitrogen Dioxide: Annual arithmetic average concentration of 100 micrograms per cubic meter or one-hour arithmetic average of 320 microgram per cubic meter.

Carbon Monoxide: One hour average of 10 milligrams per cubic meter or eight-hour average of 40 milligram per cubic meter.

Total Suspended Particulate Matter: Annual average of 40 micrograms per cubic meter or 24-hour average of 150 micrograms per cubic meter.

Sulfur Dioxide: Annual average of 80 micrograms per cubic meter or 24 hour average of 165 micrograms per cubic meter or 1 hour average of 1100 micrograms per cubic meter.

Lead: Calendar quarter average of 1.5 micrograms per cubic meter.

Water Vapor, misting and fogging: The cooling towers shall not be operated when to do so may result in a condition of air pollution by the disposition of cooling tower exhaust moisture, including water droplets, fog or mist, off the DPA premises.

B. Measurement Location and Methods

Compliance with the conditions of 1(A), excepting water vapor, fogging, misting, shall be determined by United States Environmental Protection Agency Reference or Equiv-

alent Methods at the locations specified on said Figure 5.2-2.

C. Determination of Cause of Excess Pollutants.

In the event that pollutant concentrations exceeding the levels specified in Condition 5.2.1 A are measured by the methods and at assessed locations specified in Condition 5.2.1 B, it shall be necessary to ascertain whether the DPA facility is the cause of the excess. The facility shall be deemed to be the cause of the excess if its contribution to the measured concentration exceeding the specified level is fifty percent or more of the specified level. In determining the facility's contribution to the specified level it shall be necessary to consider the operational state of the facility as evidenced by monitoring records of stack emissions maintained by DPA, the fuel being used, and meteorological conditions at the time. If the facility can not be ruled out as the cause of the excess on the basis of these factors, the Building Commissioner may require that the plant be shut down for a period of not more than 24 hours for the purposes of making comparative measurements.

D. Remediation

In the event that the DPA facility is judged to be the cause of the excess, the Building Commissioner may restrict or prohibit the operation of the plant until such time as it can be operated in compliance with the performance standards listed in 5.2.1 A.

It is understood that in order to remedy the excess, the plant may need to be operating at certain times to diagnose the source of the problem, and while under restricted or prohibited operation, the diagnostic operations shall be limited to necessary hours between 7:00 A.M. and 7:00 P.M., Monday through Friday, unless expressly prohibited for good cause by the Building Commissioner.

5.2.2. Noise Monitoring Standards

A. The noise contribution of the DPA facility shall be limited as follows at the nine receptor points designated as R1 through R9 on the said Exhibit C, Figure 5.2-2.

Receptor Locations	Maximum Allowable Noise Contribution of the DPA Facility	
	Idma ref.	20 Microseconds
R1		32
R2		34
R3		30

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R4 29
R5 33
R6 34
R7 35
R8 36
R9 37

In addition to the decibel requirements as R1 through R9 as specified above, the EPA facility shall not cause or contribute any pure tone condition at any of these receptor locations. A pure tone shall be defined as when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

In addition, all steam relief valves and other safety releases and devices shall be so designed that sound levels produced, whether voluntary or not, shall not exceed by more than 10 decibels and for not more than a total of two (2) minutes per hour the maximum allowed sound level limit at receptors R1 through R9.

It is anticipated that during the initial start-up period prior to substantial completion of the facility (as defined in EPA's construction contract), it will be necessary to test and adjust equipment that may result in various steam releases which are required to endure for significant periods of time. Such events are permitted between the hours of 7:00 A.M. to 7:00 P.M. weekdays only and may not cause sound levels that exceed by more than 10 decibels the maximum allowed sound limit at receptor locations R1 through R9.

3. An initial noise compliance demonstration test for the EPA facility shall be required within 180 days of initial start-up. Any time extension requested must be approved in writing by the Selectmen. This test may be consolidated with any noise testing requirements of the SEP Air Plans Approval. A written protocol for this test must be submitted to the Town of Dartmouth at least 60 days prior to the proposed testing date. The purpose of this test shall be to determine compliance with Condition 5.2.2 A above.

C. Remediation

In the event that the EPA facility is in non-compliance with any of the noise limits specified above, corrective action to bring the facility into compliance must be immediately initiated and diligently pursued with plans by professional engineers to be submitted to the Selectmen within 14 days of notice of such non-compliance. In the event that the EPA

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facility exceeds any noise limits by more than 5 decibels, the TOWN may restrict or prohibit the operation of the plant except for daytime diagnostic or testing purposes.

5.2.3. Truck Traffic Standards

A. During construction, any trucks moving to or from the site shall be requested by DPA to do so only between the hours of 7:00 o'clock A.M. and 4:00 P.M. Following construction, semi-trailer trucks delivering materials or goods will be permitted access to the Applicant's site only during the hours between 7:00 o'clock A.M. and 9:00 o'clock P.M., but not between the hours of 4:00 o'clock P.M. to 6:00 o'clock P.M. Trucks delivering distillate fuel shall be of a double driving axle type. Except in the event of an emergency, not more than thirteen (13) fuel oil trucks shall visit the site on any particular day. DPA shall instruct its suppliers and those delivering goods or materials to the site to utilize a route which traverses only Fausse Corner Road and Old Fall River Road between Fausse Corner Road and the entrance roadway to the facility site. In addition, any damage to town roads evidenced to have been caused by DPA or its contractors during the construction period will be repaired at DPA's expense.

B. Remediation.

If the TOWN has reason to believe that the facility does not comply with the truck traffic standards set forth above, the Town, may monitor the facility at any time with notice to DPA. DPA may have a representative present at any such test. DPA will also make its delivery records available to the Town's DPW superintendent on twenty-four (24) hours notice. Any violation of the truck traffic standards as established shall be stopped immediately by DPA through notice to its suppliers and through non-acceptance by DPA of goods or materials delivered in violation of the standards, if necessary.

5.2.4. Access and Monitoring by TOWN

A. Access. The Selectmen and their designee(s) may measure and inspect for compliance with operating conditions and for compliance with zoning by-law section 14, at any time. DPA shall be notified prior to commencement of the inspection by telephone call to the plant. The Town need not go upon the property of others unless specifically authorized to do so, and the Town may rely on information gathered at measurement locations to which it has been granted access to determine compliance. If DPA wishes measurements at other measurement locations, DPA shall obtain for the Town permission to reach

these locations. With respect to air quality and noise measurement locations 1, 2, 3, and 4 on Figure 3.2-2, the Town may assume that a measurement taken at the Town road closest to that location is the same as or slightly lower than a measurement taken at the particular measurement location, if access to the location is not permitted. DPA shall secure to the Town access along the Algonquin Gas Transmission easement to measurement point 4.

Whenever the plant is in non-compliance with the operating standard at any measurement location, or believed to be in non-compliance with Section 6-1-2 section 14.305, the Selectmen or their designee(s) or the Building Commissioner shall be permitted to carry out such inspections as he/she deems necessary on DPA property including, but not limited to all areas within the plant facility. Twenty-four (24) hours' notice shall be given of such inspections by a telephone call to the plant.

8. Monitoring Fund. Prior to the initial noise compliance demonstration required above with reference to noise monitoring, DPA (and its successors and assigns) shall pay Twenty thousand dollars (\$20,000) into a special fund to be administered by the Board of Selectmen, which fund shall be maintained annually at \$20,000. The Selectmen may use the fund to reimburse the Town for its reasonable expenses, including but not limited to the charges of outside consultants, used to monitor operating standards and conditions as set forth in this Special Permit. The Selectmen shall furnish to the applicant annually a statement of expenses from this fund. Said accounting shall include invoices and time records. Upon receipt of said accounting, DPA and its successors and assigns shall promptly but not more often than annually, restore the fund to its original funded level of \$20,000.

5.2.9. Construction Schedule.

Construction may proceed in accordance with the terms and conditions of a building permit and other required permits, provided that:

A. Prior to DEP Air Plan Approval Under 310 CMR 7.05 et seq. there shall be no building permit, at risk or otherwise.

B. Prior to DEP approval of long term pump testing at the DPA well site demonstrating availability of a safe well yield of at least 500,000 average daily gallons satisfactory to the Town Department of Public Works, and documentary evidence of an obligation by DPA to a contractor to construct wells and related works to deliver into the Town

water distribution system the said 500,000 average daily gallons of potable water, DPA may proceed no further than an "at risk" foundation permit as determined by the Building Commissioner, provided, also, that DPA first satisfies the Building Commissioner that it will have appropriate DPW and SEP plan approvals to connect to town sewer prior to the commercial date, or that the Board of Health and other relevant authorities have approved on-site or alternative disposal methods for both sewage and waste process water.

C. If DPA wishes to proceed beyond an "at-risk" building permit as aforesaid, DPA shall have either satisfactorily completed the well field and related works to the satisfaction of the Town DPW so as to deliver to the Town distribution system at least 500,000 average daily gallons of potable water, or have posted with the Town an escrow deposit of cash, or an irrevocable letter of credit in an amount determined by DPW to be sufficient to secure complete construction of the necessary wells and related works to deliver said 500,000 average gallons per day of potable water to the Town's system, whether from DPA's well field or from any other source developed by DPA if DPA's well field is insufficient.

D. In any event, the delivery of said average daily gallons of potable water to the Town system shall be accomplished within 12 months of the initial issuance of the at-risk building permit, or by the date of substantial completion, whichever is earlier, or this Special Permit shall be suspended until the said water is so delivered.

E. If for any reason DPA determines to terminate its water agreement with the Town DPW, this Special Permit shall immediately be null and void.

F. No certificate of occupancy, including a temporary occupancy certificate, shall be issued and there shall not be found compliance with this Special Permit until all construction conditions are fully met, including but not limited to delivery of the adequate, potable water supply as set forth in this Decision.

G. If DPA relies initially on on-site sewage disposal, connection shall be made to the Town sewer forthwith when the Town DPW, SEP and other authorities have permitted construction of such connection, and DPA shall diligently take all necessary steps to obtain such permission.

5.2.6. Covenant.

The Applicant has executed and delivered to escrow agent, Attorney Joseph P. Hamon, the Covenant attached

hereto as Exhibit A. The Covenant was proposed by SPA to provide the Town with financial resources in excess of real-estate tax revenues. The Applicant intends by the Covenant to mitigate any direct and indirect impacts of this project which may not have been anticipated in other conditions and proposals herein or which may directly or indirectly occur in the future. The Covenant shall be held in escrow until such time as the Applicant takes title to the property, at which time the Applicant agrees to immediately record said Covenant prior to the recording of any mortgages or other conveyances related to Project premises. The anticipated benefits and protection to the Town from full performance of the Covenant provisions are substantial and have weighed heavily in the decision to grant this Special Permit conditionally. Accordingly, full and faithful performance of the terms of the Covenant is a condition of operation of the Project and this Special Permit shall lapse and become null and void should the Applicant and its successors fail to make timely payment.

5.2.7. Forestry Plan.

SPA shall submit a Forestry Plan prepared by a qualified forester and reasonably satisfactory to the Building Commissioner, the purpose of which shall be to preserve as much natural vegetation as possible so that the facility will be screened from Old Fall River Road and from Fumose Corner Road to the greatest extent practicable. Said Plan shall be submitted with SPA's first application to the Building Commissioner for a building permit (whether or not "at risk").

5.2.8. Stack Markings.

The Applicant shall comply with the requirements of the Federal Aviation Administration ("FAA") with regard to color and lighting of the stack. There shall be no additional signing on the stack, and to the extent permitted the stack shall be painted to blend into its surroundings.

5.2.9. Fuel Oil Limits.

The facility shall be fueled by gas, except for a maximum of 1,500 hours annually, during which hours the plant may be fueled only by #2 distillate fuel oil (maximum .01 sulphur content). Said distillate fuel oil shall be utilized only in the event that there is an insufficient supply of natural gas to fuel the plant, except to dispose of stored fuel to prevent

spillage and except for the purpose of peak shaving operations, so called. The combination of peak shaving and disposal of stored fuel to maintain fuel quality shall not total more than seven hundred fifty (750) hours annually.

5.2.10. Water Limit.

The amount of water drawn from the Town of Dartmouth water supply pipes by DPA at its site off Old Fall River Road shall be restricted as follows:

A. Only the amount of water required to operate and maintain the nominal 68 megawatt gas-fired power plant and the associated administration building as set forth in plans submitted to the Town shall be utilized by the applicant for the Project. Notwithstanding the foregoing, in no event will the amount of water drawn for the Project exceed ninety percent (90%) of the safe yield of water developed by DPA on its land at its expense as determined and established by the Massachusetts DEP prior to transfer of such land and well field to the Town, provided, however, that if the safe yield so determined includes water from the Town's Violette well, the ninety percent (90%) shall be calculated after deducting 320 gallons per minute from the total safe yield. No Town water shall be drawn for any other purpose at said Project site.

B. DPA shall not sell, deliver or distribute water drawn from the Town pipes or Town well fields to any other party.

C. Any additional water available to DPA under its Water Agreement with the Department of Public Works of the Town of Dartmouth but not required for the proposed nominal 68 megawatt plant and its appurtenances shall not be available for use for any expansion of the Project.

5.2.11. Notice of Change of Responsible Managers and Principal Owners.

The Applicant shall at all times inform the Selectmen of the names, addresses and telephone numbers of persons responsible for the construction and operation of the power plant, and of the names and addresses of the general partners, and if the general partner is a corporation, the officers of the corporation. The information concerning the limited partnership and the corporation may be submitted by copy of the filing with the Secretary of the Commonwealth.

In the event of a change in general partners or in the individual who is president or general manager of a corporate general partner or the plant manager, or transfer of ownership to an entity other than DPA, then the owner shall at least two weeks prior to such transfer or change notify the Selectmen of the pending transfer, and the name of the intended replacement or transferee. The Selectmen may carry out an inspection to assure that the standards and condition of this permit are then being met, and shall notify both the owner and the intended replacement or transferee of the date and time of the inspection.

5.2.12. Project Limit.

The Project shall be constructed substantially as described and evaluated in said FEIR #7263 (January, 1990) and on plans submitted.

5.2.13. Project Term.

The term of this Special Permit shall be thirty-five (35) years from the Commercial Date, as that term is defined in the Covenant. Notwithstanding the foregoing, upon application by DPA, the Selectmen, or their successor special permit granting authority, may extend the special permit for an additional thirty-five (35) years or some lesser period. Such application may be made any time after the twenty-first (21st) year after the Commercial Date. Otherwise, this Special Permit shall lapse at the thirty-fifth (35th) year. The Special Permit shall be extended if the Selectmen or successor determines after hearing that the operation of the plant under the Special Permit so extended shall meet the DEP's or successor Massachusetts Agency's performance standards for a new power plant of the kind and size then proposed and shall meet the standards set forth in Section 14.305 of the Town By-Law in existence as of the date of this decision, provided, however, that the Selectmen or their successors shall be entitled to make new findings pursuant to the By-Laws and shall be entitled to impose new conditions. The Special Permit extension shall not be unreasonably withheld.

6. DECISION

The Board of Selectmen at a public meeting held on September 25, 1990 voted to grant the permits and approvals requested, and each Selectman represents that he attended each hearing and heard all relevant testimony. This decision is to be enforced by the Town Building Commissioner in his capacity as zoning enforcement officer. The date of this written decision is October 2, 1990.

SELECTMEN, TOWN OF DARTMOUTH

Edward J. Macdonald
Edward J. Macdonald

William C. Bender
William C. Bender

Kevin C. Bender
Kevin C. Bender

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 Darian King
WATER AGREEMENT

This Agreement entered into this 9th day of ~~April~~ 1991 between the Town of Dartmouth by its Department of Public Works (the "Town") and Dartmouth Power Associates Limited Partnership ("DPA"), a Massachusetts limited partnership with a principal place of business at Energy Management, Inc., 3 Newbury Street, Boston, MA 02111.

1 Background

1.1 DPA plans to construct an independent power production facility (the "Facility") on land which it leases off Old Fall River Road, Dartmouth, Massachusetts.

1.2 DPA has agreed to purchase approximately 26 acres of land directly south of the Town's Violenta Well (the "Francis Land"). The Francis Land is shown on the Tax Map 44 as Lots 45 and 46. The Francis Land and the Violenta Well are shown on the attached Exhibit 1.

1.3 DPA is developing a municipal quality wellfield on the Francis Land (the "Wellfield"). The Violenta Land, and the Wellfield is shown on the attached Exhibit 1.

1.4 DPA proposes to install a gravel packed well or wells, a pump house, and related piping on the Francis Land and the adjoining Town land, and to convey the Francis Land to the Town in consideration for the right granted by the municipal authorities of the Town to connect the Facility to the water supply system (the "System") operated by or on behalf of the Town at a location near the Facility on Old Fall River Road, and to draw the water necessary to operate its Facility from the System.

2 Responsibilities of the Parties

2.1 DPA will submit a New Source Final Report (the "Report") for the Wellfield to the Department of Environmental Protection for approval. The safe yield for the Wellfield approved by the DEP will be referred to in this Agreement as the "Well Safe Yield".

2.2 DPA will construct the pump house and associated equipment necessary to operate the Wellfield according to the Guidelines and Policies for Public Water Systems promulgated by the DEP, and an underground pipeline from the Wellfield to the main line on Old Westport Road at the entrance to the Violenta Well. In addition, the water treatment facilities constructed by DPA to treat the Wellfield will be interconnected with the Violenta Well. The proposal specifications are attached hereto as Exhibit 3. In addition, DPA will construct and maintain a water booster station on land owned by the Town adjacent to

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the Town's water tank on Old Fall River Road. DPA will obtain all necessary permits and approvals from the DEP. The Town will cooperate with DPA to obtain said permits and approvals. DPA will use its best efforts to construct the wells within twelve months following the issuance of a building permit with respect to the Facility; however, DPA and the Town acknowledge that DPA is not responsible for delays caused by the failure of the DEP or any other permitting agency to act in a timely manner.

2.3 The Town will promptly apply to the DEP for permission pursuant to M.G.C. c.40, Section 41, to acquire the French Land and to execute and record any instruments necessary therefore. The application will be prepared by DPA, and will contain a site plan, a legal description, the current owner and address of the landowners, and the strings involved. If required to give DEP approval, and at the request of DPA, the Town will purchase or take such land or easements as are required by the DEP, and DPA will pay the costs incurred in connection with any such taking.

2.4 Following the construction of the Wellfield, DPA will convey the Wellfield and the French Land to the Town by a release deed running to the Town, or its nominee, conveying good and clear record and marketable title, free from encumbrances, except for restrictions of record, provisions of existing building and zoning laws and such taxes for the current year as are not due and payable. Notwithstanding the foregoing, in the event that the title to the western border of the land can not be distinctly ascertained by DPA, DPA may at its option convey a portion of the French Land to the Town by a release deed as long as the portion of the land covered by the quitclaim deed complies with the DEP's Guidelines regarding Aquifer Protection Zones.

2.5 The Town hereby agrees to connect the Facility to the Town's water supply on Old Fall River Road without charging a connection fee, and provide DPA with up to an annual average of ninety (90) per cent of the Well Sale Yield. The Town and DPA expressly agree that the Well Sale Yield and DPA's annual average draw is to be determined at the time of the DEP's approval of the New Source Report, and not at a later time. The Town will bill and DPA will pay for the water which is consumed at the Facility at standard commercial user rates. Notwithstanding the foregoing, no water will be supplied until the Wellfield is interconnected with the System, and the Wellfield and related equipment has been accepted by the Department of Public Works.

2.6 The Town has a well site located off Chase Road (the "Well E Site"). The Well E Site is further described on Exhibit 2. If DPA requires additional water, the Town will allow DPA to permit and construct a well on the Well E Site. One-half of the approved sale yield of any wells developed by DPA at the Well E Site will be added to the Well Sale Yield for the purpose of computing the annual average of water provided to DPA in accordance with Section 2.5 above up to a maximum increase of 100,000 gallons.

2.7 The Town and its municipal authorities shall grant DPA easements over any Town land as necessary for the purpose of locating, constructing and testing the Wellfield and all

associated piping systems at no cost to DPA. DPA and its agents, shall have the right (subject to applicable regulations or Town agencies), to enter upon the Town's land or reasonable access, for the purpose of developing wells, including making surveys, engineering studies, soil and other surface and subsurface tests and borings.

2.8 DPA shall have the right throughout the term of this Agreement, at DPA's sole expense and from time to time, to adjust, in its own name and, if necessary and upon prior written notice to the Town, in the Town's name, such variance, special exceptions and plans of development as necessary to permit development of the Wellfield. Moreover, the Town will join in such applications.

3. Miscellaneous

3.1 DPA may terminate this Agreement at any time by written notice to the Town. On termination, DPA will remove its equipment from Town land and restore any disturbed areas of Town land, and neither DPA or the Town shall have any further obligations under this Agreement.

3.2 DPA makes no representation or warranty as to the capacities or water qualities of the Wellfield following the conveyance of the Wellfield to the Town. By its acceptance of the Wellfield, the Town releases DPA from any and all obligations or liabilities with respect to this Agreement. The parties understand that DPA shall not be required to operate and maintain the Wellfield.

3.3 This Agreement may be assigned by DPA to its lenders in connection with the financing of the Facility. The Town agrees to deliver such consents, stopgap certificates, and related documents as DPA reasonably requests in connection with this financing.

~~3.4 No release under or upon any obligation contained in this Agreement shall be made against any partner of DPA, or any partner, stockholder, director, officer or employee thereof, and the Town expressly waives and releases all right to assert liability under this Agreement against, or to satisfy any claim arising hereunder or thereunder against, any such person out of any assets of any such person other than the interest of any such person in the DPA.~~

3/14/00
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Darian King
Dartmouth Power Associates Limited Partnership
by: EMI Dartmouth, Inc., general partner

by: 
James S. Gordon, President

Town of Dartmouth

by: its Department of Public Works

by: 

by: 

by: 

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Darlan King

EXHIBIT 1

Miss M. Prince, Los Angeles, Westfield

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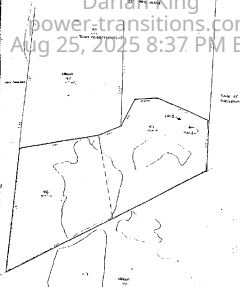
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EXHIBIT 1

NOTICE OF DELIMITATION

PLANS SHEET 1/1000 1000000000

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EXHIBIT 2

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Map of West Bank

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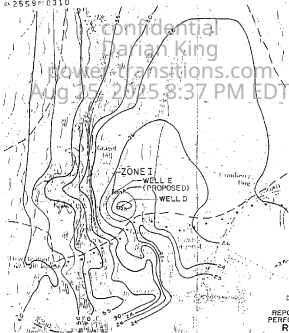


EXHIBIT 2
 WATER AGREEMENT

EXHIBIT D

Proposed Preliminary Specifications for TW-1 and TW-2 Wellfield

TW-1 is to be a ten-inch diameter, steel-encased, naturally developed well with a 10-inch stainless steel well screen and preserved with a sixteen-inch sanitary seal for use as a permanent back up well to TW-2.

TW-1 will also include a submersible pump of sufficient size to pump approximately 250 GPM (43,000 GPD), and a pitless adapter, Electrical controls, piping, valves, and fittings well also be included.

TW-1 will have the capability to operate, in the event of an electrical power failure, by the use of an engine-driven emergency generator which is to be utilized by both TW-1 and TW-2.

TW-2 is to be a twenty-four inch by eighteen inch steel-encased, gravel-packed well with an eighteen inch stainless steel well screen and preserved with a sanitary seal.

A submersible pump sized to pump approximately 420 GPM (604,000 GPD), a pitless adapter, and associated electrical, controls, piping, valves, and fittings will also be included.

An emergency generator with a weatherproof enclosure will be installed adjacent to TW-1 and TW-2.

Discharge piping from TW-1 and TW-2 will tie together and be routed up to and along side the existing Violets pumpchase where a concrete block enclosure addition will be attached to the pumpchase for a chemical treatment system to service TW-1 and TW-2, and integrated so that the Violets Well (at a future time) can tie into the system. Additional lighting, ventilation, ingress and egress will be incorporated where necessary. The specific chemical treatment system has not yet been determined and is pending DEP review.

Once the water is treated, the remaining piping will run underground adjacent to the Violets Well discharge piping, and will tie into the Town's existing line situated in Old Wapport Road.

Electrical service will come off the last electrical pole located at the V-Well and either be continued via the existing gravel road down to TW-1 and TW-2, or run underground adjacent to the new pipeline.

CONFIDENTIAL
COVENANT

The undersigned Dartmouth Power Associates Limited Partnership ("DPA"), a Massachusetts limited partnership, with its principal place of business c/o Energy Management, Inc., 3 Newbury Street, Boston, Ma. 02108, hereinafter called the "Covenantor", having applied to the Board of Selectmen of the Town of Dartmouth for a Special Permit to construct a 100,000 kilowatt electric power plant, does hereby covenant and agree with the said Town of Dartmouth, a municipal corporation having a usual place of business at 400 Silsbee Road, North Dartmouth, MA 02748, as follows:

1. Background

DPA plans to construct an independent power production facility at a site located off Old Fall River Road in North Dartmouth, Massachusetts; a riser station to be used in connection with the facility on Old Fall River Road; and a road, poles, wires, and conduits to be used in connection with the facility (the "Project"). In furtherance of its plans, DPA has applied to the said Selectmen for a special permit under the town zoning bylaw and in support of its special permit application, DPA has agreed to make an annual gift to the Town (the "Annual Gift") to mitigate present and future direct and indirect impact of the Project.

2. Commercial Date

The Commercial Date is defined herein as the actual service date as defined in a Power purchase agreement dated September 15, 1989 by and between Dartmouth Power Associates and the Commonwealth Electric Company.

3. Annual Taxes

The Annual Taxes shall mean all taxes, including but not limited to taxes on the value of real and personal property and including fire district assessments for the first ten (10) annual gifts, but excluding fire district assessments thereafter, which are assessed by the town in any year covered by this covenant against DPA, its partners, or the owners of land upon which the Project will be located, including the road, the water pumping station, the riser station, and all lines, poles, and conduits servicing the Project.

4. Annual Gift

The Annual Gift will be made within thirty days of the end of each of the Town's fiscal years beginning with the fiscal year commencing after the Commercial Date, and shall be equal to (1) \$500,000 increased for twenty successive years by two and one half per cent in each succeeding fiscal year (hereinafter the gift

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base), less (ii) the amount of Annual Taxes for the preceding fiscal year over any abatement of Annual Taxes received during the preceding fiscal year; provided however, if in any fiscal year the Annual Taxes exceed the Annual Gift which would be due in that fiscal year, then no Annual Gift shall be due for that fiscal year, and any abatement of Annual Taxes received for that fiscal year shall not increase the Annual Gift in any subsequent year. The gift base shall not increase from the twenty-first (21st) through the thirty-fifth (35th) annual gifts, and thereafter the gift base shall be reduced by ten percent (10%) each year and there shall be no gift due after the thirty-fifth (35th) year following the fiscal year commencing after the Commercial Page.

6. Abatement of Gift

Upon application by DPA after the twentieth (20th) year, DPA may petition the Selectmen for an abatement of the annual gift then due, which abatement the Selectmen may grant upon certification the plant is and was operating to standard engineering practice each year from the twentieth (20th) year to the date of the abatement petition and proof that there has been a decrease in net income attributable to the cost of gas or water or the reduced return from electrical purchases under gas or power purchase contracts or DPA water rates effective in the prior year. In any event, the gift abatement shall not exceed fifty percent (50%) of the established decrease in net income attributable to the cost of water and gas or power purchase decrease.

7. Termination

This Covenant shall terminate on the earlier of (i) the thirty-fifth (35th) annual gift or (ii) on the date the Project ceases to operate.

8. Assignment

This Covenant shall inure to the benefit of and shall be binding on the Town, DPA and their respective Successors and assigns. DPA may assign, convey, and transfer all or a portion of its right, title, and interest in the Covenant to any entity which is successor to DPA, or to any bank or financial institution which finances the project.

9. Entire Agreement

This Covenant together with the Selectmen's Special Permit dated October 2, 1992 and recorded herewith in Book _____, Page _____, constitutes the entire understanding and agreement of DPA with respect to the subject matter hereof and supersedes all prior understandings and agreements, both written and verbal. This Covenant shall not be amended or altered unless said amendment or alteration is agreed to in writing by the Board of Selectmen or the successors in office of said Board. This Covenant is governed by and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, Dartmouth Power Associates Limited Partnership has caused this Covenant to be executed as a sealed instrument by James C. Gordon, President of EMI Dartmouth, Inc., its General Partner, hereunto duly authorized this 2nd day of October, 1990.

COVENANTOR
Dartmouth Power Associates Limited Partnership

EMI Dartmouth, Inc., its General Partner

By: James C. Gordon
James C. Gordon, President
(Certificate of Corporate Vote attached)

COMMONWEALTH OF MASSACHUSETTS

WINTHROP, SS

October 2, 1990

Then personally appeared before me the above-named James C. Gordon, and acknowledged the foregoing instrument to be his free act and deed as President of EMI Dartmouth, Inc. and the free act and deed of EMI Dartmouth, Inc. and Dartmouth Power Associates Limited Partnership, before me.

Notary Public
My Commission Expires

FTL/CDA.cov

Receipt generated original
document under 5.7.26
is acknowledged.

[Signature]
10/31/90

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Darian King

CERTIFICATE OF VOTE

02

EMI BARTMOUTH, INC.

I, Mitchell N. Jacobs, Clerk of EMI BARTMOUTH, INC., a Massachusetts corporation, do hereby certify that at a special meeting of the Board of Directors and Shareholders of the Corporation duly called and held at the office of the Corporation on the second day of October, 1990, all shareholders and directors being present and voting throughout, the following resolution was unanimously adopted:

VOTED: That the Corporation as General Partner of Bartmouth Power Associates Limited Partnership, a Massachusetts limited partnership ("BPA"), execute and deliver to the Town of Bartmouth a Covenant in connection with a Special Permit application, Board of Selectmen File No. SP90-1, which Covenant relates to the obligation of BPA to make an annual \$60,000. gift to the Town of Bartmouth; and further, that the President of the Corporation be and hereby is authorized and directed to execute said Covenant.

I do further certify that the above vote has not been altered, amended, rescinded or repealed.

I do further certify that the Corporation is a duly organized Massachusetts corporation; and that the foregoing vote is in accordance with the charter and By-laws of the Corporation; and that James G. Gordon is the duly elected and qualified President of the Corporation and that I am the duly elected and qualified Clerk of the Corporation.

Dated at Boston, Massachusetts this 2nd day of October, 1990.

Mitchell N. Jacobs, Clerk

Attested to:

James G. Gordon, President

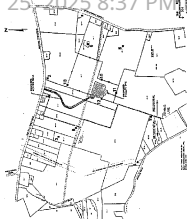
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Prison Maps

SECTION 1-1
PRISON LOCATION FOR NINE DISTRICTS

Received & Recorded

Oct 25 1991 at *10:21* min *L*

Attest:

John L. Jones Register

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Darian King

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DARTMOUTH, MASSACHUSETTS

I, Eleanor J. White, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning a Variance for Old Fall River Realty Trust concerning property located on Old Fall River Road, North Dartmouth, MA., Case Number 1990-33, filed in the office of the Town Clerk on October 4, 1990.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Attest:

Eleanor J. White

ELEANOR J. WHITE
TOWN CLERK OF DARTMOUTH



*Amendment
4/29/96
1908-213*

*2m endm
01-12-09
9234-96*

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VARIANCE HEARING FOR
OLD FALL RIVER REALTY TRUST
(Applicant)

CASE NUMBER 1990-04

1. PROCEEDINGS AND FACTUAL SUMMARY

The Board of Appeals held a hearing, open to the public, on Thursday, August 2, 1990, at 7:00 p.m., on the application of Old Fall River Realty Trust, 8 Newbury Street, Boston, MA 02116 for variance from the zoning bylaws of the Town of Dartmouth concerning property owned by and located as follows:

- Parcel 1 - Manuel DeMello, 313 Faunce Corner Road,
No. Dartmouth, MA
- Assessors' Plot 67, Lot 9 and easement
over Lot 18
- located south of Old Fall River Road,
No. Dartmouth, MA
- Parcel 2 - James Hensliff & Terrance D. LeBerge,
7 Surrey Drive, Laksville, MA
- Assessors' Plot 72, Lot 28-2
- located north of Old Fall River Road,
No. Dartmouth, MA

Proper standing of the Applicant was established by means of affidavits from the above owners submitted in writing to the Board.

Also included in the original application was a third parcel, (Assessors' Plot 47, Lot 18 and Assessors' Plot, 48, Lot 13), owned by Rahis and Dorothy Aghai, 23 Merrymount Drive, No. Dartmouth, MA. This parcel was removed from the petition by letter of the Aghai's dated September 5, 1990.

Old Fall River Realty Trust (the "Trust") is a real estate trust established to purchase and own the land upon which Dartmouth Power Associates, a Massachusetts limited partnership with a business address c/o Energy Management, Inc., 8 Newbury Street, Boston, MA 02116 (DPA), proposes to construct an electrical generating facility with associated equipment and river station (the "Project"). The Project is a nominal 60 megawatt electric power plant, fueled by natural gas. The power plant will be located on Parcel 1 (defined above), which is within a Limited Industrial District. The Algonquin gas pipeline is also located on Parcel 1.

The main power building will be 31 feet high to house turbines, with a "penthouse" 71 feet high to accommodate the boiler. A stack 177 feet high is proposed to release combustion exhaust into the air.

The electricity generated at the power plant will be transported underground along Old Fall River Road to an electric riser station located on Parcel 1 (defined above), which is in an adjacent Single Family Residential district. The electricity then will enter the "power grid" (the overhead high-tension wires passing in the vicinity). The height of the riser station poles will be 40 feet. A variance is requested from the following sections of the zoning by-law:

Parcel 1 - Section 14.402 (Height)

- The Applicant seeks to construct a power production facility on this parcel. The proposed production building will exceed the maximum allowed height of 35 feet, and the associated stack will exceed the maximum allowed height of 50 feet.

Parcel 1 - Section 1.301 (Accessory Uses)
 - Section 8.100 (Use of Land)
 - Section 4.217 (Height)

- The Applicant seeks to construct an electric riser station on this parcel. This proposed station is not an accessory or residential use, and the height of the proposed poles may exceed the maximum height of 35 feet.

The Application was noticed by publication and by mailing to "Parties in Interest" as that term is defined in M.C.L., Ch. 40A, Section 11, and by posting on the Property.

The Board of Appeals heard testimony at the public hearing, which was continued from August 1, 1990 to September 6, 1990, and then to September 26, 1990, and then to October 2, 1990. The hearing was closed on October 2, 1990.

The Board also received written materials and plans regarding the proposed project, including various letters on file at the Board's office, and the following submissions from the Applicant:

- 1) Plans entitled:
 - i) DPA-100, Rev. D, "Locus Plan", Electric Generating Facility

11) DFA-1, Rev. 1, "Vicinity Map"
 111) DFA-111, Rev. 1, "Plot Plan", Electric Gas
 Structure #1

3) Environmental Impact Report (final), DOE# NO: 7362, submitted to and approved by the Massachusetts Secretary of Environmental Affairs, dated January, 1990. This document contains various plans and information relevant to the application.

3) FAA Stack Height Notification, submitted to the New England Regional Office of FAA.

4) Presentation Outline, July 13 Public Hearing - held before the Board of Selectmen, which has been asked to grant a Special Permit for the Project under the provisions of Section 14 of the Zoning By-Law.

5) Response to Technical Comments from Robert Ericson, Town Planner, and David Hickox, DFW Engineer.

6) A Water Agreement, executed by DFA and the Board of Public Works of the Town of Dartmouth, dated September 18, 1990, containing the terms and conditions related to the development of water supply for the Project, and the subsequent transfer of the well field and related equipment to the Town.

7) A Covenant, dated October 2, 1990, encompassing the terms and conditions of DFA's contribution to annual revenues of the Town, in excess of real property taxes.

8) Transcript of the meeting/public hearing before the Board of Selectmen on July 12, 1990, August 16, 1990, September 18, 1990, and September 25, 1990.

9) Transcripts of the meetings/public hearings before the Dartmouth Zoning Board of Appeals on August 2, 1990, September 6, 1990, and September 26, 1990.

FINDINGS

A. With regard to circumstances relating to soil conditions, shape or topography and especially affecting such land not affecting generally the zoning district in which it is located:

1. Main Parcel

The main parcel is vacant and land-locked, except for a paper right-of-way which will be developed only if the Project as proposed is constructed.

This parcel is generally flat and has buildable soils (not wetlands soils) of sufficient scope to facilitate the Project. Since most of the Limited Industrial District in the Town does contain wetland soils, it is unique to encounter sufficient land area of suitable soils to construct the proposed facility. On the other hand, most of the perimeter of the main parcel contains wetlands soils, thereby creating this parcel as nearly unobtainable in the midst of undeveloped land.

The parcel is bisected by the gas transmission pipeline. The line only crosses the Limited Industrial District in this northerly section. The location of the pipeline across the parcel produces a hardship with regard to alternate development of the site. In addition, the proposed facility is uniquely able to accommodate the pipeline into its development program.

The parcel also is the closest one with useable soils, shape and topography with relative proximity to the intersection of the gas pipe line and the electric transmission line.

Although the soils of the parcel are appropriate for the development of the proposed Project, they nevertheless are underlain by a relatively high water table. This condition precludes excavation at the site to locate the power plant building and associated facilities (including the stack) at a lower elevation relative to ground level.

The main parcel is located adjacent to the new Bristol County jail facility. This fact creates a unique juxtaposition of the parcel to a use which might not be considered favorable for other types of industrial development.

2. Riser Station Parcel

This parcel has a unique location adjacent to both a public road and the electrical transmission lines of the "power grid". The electrical lines make the parcel unattractive for residential development.

The topography, elongated shape and soils of the riser station parcel would also make it difficult for ordinary development as a single family residential use. It is a long and narrow parcel, and it contains steep topographic contours. The majority of the parcel also exhibits wetland soils characteristics.

3. With regard to the issue that literal enforcement of provisions of the zoning by-law would involve substantial hardship, financial

or otherwise.

No development of the parcels by DPA would mean financial hardship to the current owners of these parcels. It is unlikely that their land would be developed by any other party, given the problems inherent in the sites as set forth in A above.

Further, the inability of the Applicant to obtain variances as requested would mean that the Project would be economically unfeasible. Thus, hardship would ensue to both the petitioner, Old Fall River Realty Trust, and the land owners who would be unable to sell their sites.

There would also be created a hardship on the industrial sites adjacent to the main parcel. DPA is proposing to construct a road and extend utilities to its currently land-locked plant site. These infrastructure improvements would not be available to the adjacent industrial land if this project does not proceed. Consequently, the owners of this land would also encounter financial hardship through reduced value for their sites without the development of the Project.

C. With regard to the granting of desirable relief without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law:

The proposed power plant project will bring substantial public benefit to the community. The development of infrastructure - both through the Water Agreement and through the installation of the road and utilities referred to in B above - will produce considerable financial assistance to the Town. In addition, there will be construction and permanent jobs created as a direct result of the Project, plus there will be jobs to be created on the adjacent industrial parcels made available for development through this Project. Further, the Covenant signed by DPA will bring substantial financial benefit to the community over an extended term, and through this will produce good for current and future Dartmouth residents.

The project, in fact, supports the purpose of the Limited Industrial by-law to "provide employment opportunities and diversify the tax base while not imposing hazards or nuisances." There are no hazards or nuisances related to the facility which are not sufficiently mitigated through state or federal permit conditions, through conditions issued as part of the Special Permit by the Board of Selectmen, or by those to be established by this Board.

The main facility will not be seen from public ways, except for the stack. Such distance views are not detrimental to the public good, nor do they nullify or derogate from the intent or purpose of the by-law. They are, in fact, similar in this sense to the existing towers at the SNG campus.

The residential issue is already reported by the commission. The river station will bring an insubstantial expansion of this non-residential use. In addition, the river station will be screened from the public roadway and properly landscaped to produce an overall visible benefit to the site.

DECISION

Based upon the findings presented above, the Zoning Board of Appeals herewith unanimously votes to grant the requested variances to the Applicant to provide for the construction of a nominal 25 megawatt electric power plant on its site on Old Fall River Road, with an appropriate river station on a nearby site on Old Fall River Road.

The grant of the variances is subject to the following specific conditions:

A. Related Permits and Approvals

The Project must receive permission or approval as to the following other regulatory matters prior to applying for a building permit for the power plant facility:

- 1) Approval from the Massachusetts Department of Environmental Protection (DEP) of DWA's application for an Air Plan approval under 310 CMR 7.00 et seq.

The Board of Selectmen, on October 2, 1990, signed a Special Permit for the power plant, and further granted approval for the Project under Section 23.50B of the Zoning By-Laws, and for the installation of underground conduit in Old Fall River Road to contain electric transmission lines. Said Special Permit includes various conditions requisite to the maintenance of the Special Permit. These conditions establish standards with regard to the following specific issues:

- 1) Air Quality Monitoring (non-noise)
- 2) Noise Monitoring
- 3) Truck Traffic
- 4) Access and Monitoring Fund

- 5) Construction Schedule
- 6) Covenant
- 7) Forestry Plan
- 8) Stack Markings
- 9) Fuel Oil Limits
- 10) Water Usage
- 11) Notice of Transfers and Changes in Management
- 12) Project Limits
- 13) Project Term

To avoid redundancy and overlapping Board jurisdiction, the zoning Board of Appeals will rely upon these conditions as providing adequate and appropriate protection for the town in the above matters, and these conditions, contained in Section 5 of the Decision and Approval with Conditions related to the Special Permit to Dartmouth Power Associates Limited Partnership signed by the Board of Selectmen on October 2, 1990 (File No. SP 90-1) are hereby incorporated by reference in this grant of variances.

In addition, the variances granted herewith are conditioned upon complete compliance with the following further requirements:

14) Water Agreement. The provisions of the Water Agreement signed September 18, 1990 between the Town of Dartmouth by its Department of Public Works and Dartmouth Power Associates Limited Partnership must be fulfilled.

15) The permitted heights for the structures shall be:

Main Plant	= 53 feet
Penthouse	= 71 feet
Stack	= 172 feet
Riser Station	= 40 feet

All construction shall be in substantial accord with plans submitted to the Board.

16) The base elements of the riser station shall be screened by appropriate vegetation from view from Old Fall River Road and from adjacent land parcels, except for any gate section required for access of vehicles inside the station fencing. SPA shall submit a landscaping plan of this parcel prepared by a qualified landscaped architect and reasonably satisfactory to the Dartmouth

Planning Board staff. The design of the riser station and the landscaping around said station shall be approved by the Dartmouth Planning Board staff. The vehicular entrance to the riser station parcel shall be approved by the Town Safety Officer. The oil tank, cooling towers and buildings shall be screened from any existing or proposed roads by a vegetated buffer of existing trees or by the planting of new evergreen trees and shall be approved by the Dartmouth Planning Board staff. DPA shall paint the oil tank and cooling towers dark green as long as doing so does not interfere with the proper use thereof.

17) The riser station shall be constructed substantially in conformity with the plans submitted to the Board. There shall be no further expansion of the riser station nor shall there be any further industrial use of the riser station parcel.

18) The proposed plant is a nominal 48 megawatt gas-fired power production facility. There will be no further expansion of the power production facility or its appurtenances.

19) The amount of water drawn from the Town of Dartmouth water supply pipes by DPA at its site off Old Fall River Road shall be restricted as follows:

a) Only the amount of water required to operate and maintain the nominal 48 megawatt gas-fired power plant and the associated administration building as set forth in plans submitted to the Town shall be utilized by the applicant for the Project. Notwithstanding the foregoing, in no event will the amount of water drawn for the Project exceed ninety percent (90%) of the safe yield of water developed by DPA on its land at its expense as determined and established by the Massachusetts DEP prior to transfer of such land and well field to the Town, provided, however, that if the safe yield so determined includes water from the Town's Violetta well, the ninety percent (90%) shall be calculated after deducting 120 gallons per minute from the total safe yield. No Town water shall be drawn for any other purpose at said site.

In addition, the following conditions shall apply:

b) DPA shall not sell, deliver or distribute water drawn from the Town pipes or Town well fields to any other party.

c) Any additional water available to DPA under its Water Agreement with the Department of Public Works of the Town of Dartmouth but not actually needed for the proposed nominal 48 megawatt plant and its appurtenances shall not be available for use for any expansion of the Project.

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Aug 25, 2025 8:37 PM EDT

This grant of variance shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 30 days have elapsed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Bristol County (S.B.) Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

The fee for recording or registering shall be paid by the owner or applicant.

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A, and shall be filed within 30 days after date of filing of such notice in the office of the Town Clerk.

If the rights authorized by a the grant of these variances are not exercised within one year of the date of grant, they shall lapse; provided, however, that the granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such granting authority prior to the expiration of such one year period. If the granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of said Section 17.

Copies of the complete minutes of this hearing are available, upon request, at the office of the Board of Appeals.

DARTMOUTH BORING BOARD OF APPEALS

Joseph L. Cosentino
Joseph L. Cosentino, Chairman

Joseph Barbiero
Joseph Barbiero

Raymond Souza
Raymond Souza

FTL/COADREC.VAR/10/1/90

received & Recorded

Acted: John E. Connel Registrar

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Commonwealth
of Massachusetts

20262

30P Fields

15-141

(To be filled by user)

City/Town: DartmouthApplicant: Dartmouth Water Association

Order of Conditions

Massachusetts Wetlands Protection Act

G.L.c. 131, §40 and

the Dartmouth Wetlands Bylaw

From the Dartmouth Conservation Commission

Dartmouth Water Association

To: C/O Energy Management, Inc.

Radina Agha:

(Name of Applicant)

(Name of property owner)

8 Newbury St.

23 Perrywood Drive

Address: Dartmouth, MA 01918Address: Mo. Dartmouth, MA 01912

This Order is issued and delivered as follows:

☒ by hand delivery to applicant or representative on _____ (date)☐ by certified mail, return receipt requested on October 17, 1996 (date)This project is located at: lots 67-9, 10, 11, 68-13, 69-21, Silver RoadThe property is recorded at the Registry of Bristol

1877

532

Book: 2259 Page: 246

Certificate (if registered): _____

The Notice of Intent for this project was filed on June 22, 1996 (date)The public hearing was called on October 16, 1996 (date)

Findings

The Dartmouth Conservation Commission has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the Commission has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Prohibitions of Significance set forth in the regulations for each Area Subject to Protection under the Act (check as appropriate):

- ☒ Public water supply
☒ Private water supply
☒ Ground water supply

- ☒ Flood control
☒ Storm damage prevention
☒ Prevention of pollution

- ☒ Land containing shellfish
☒ Fisheries
☒ Protection of wildlife habitat

Total Filing Fee Submitted: \$725.00State Share: \$250.00City/Town Share: \$275.00

(1/4 fee in excess of \$250)

Total Refund Due \$: -0-City/Town Portion \$: -0-State Portion \$: -0-

(Vt 1038)

(Vt total)

Effective 11/10/99

5-1

Amended
Order of Conditions
2-25-91
2604-187

Amended
Order of
Conditions
3/13/91
2610-115

Extension
Permit
9/17/93
3143-108

Partial
Cof. of
Compliance
10/27/94
3382-94

Cof. of Compliance
11-19-96
3771-192

Therefore, the Dartmouth Conservation Commission hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests (checked above). The Conservation Commission orders that all work shall be performed in accordance with said conditions (check if the proposed project and those above, to the extent that the following conditions modify or differ from the plans, specifications or other process submitted with the Notice of Intent, the compliance shall control).

General Conditions

1. Failure to comply with all conditions listed herein, and with all related statutes and other regulatory requirements, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable Federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, bricks, plaster, wire, latex, paper, cardboard, pipe, tires, stones, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from the Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Order Index under the name of the owner of the land upon which the proposed work is to be done. In the case of unrecorded land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Commission on the format at the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection, File Number 15-841".
10. Where the Department of Environmental Protection is requested to make a determination and to issue a Succeeding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

ORDER OF CONDITIONS - CONTINUED

FILE NO. 12- 941

13. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals; and until copies of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Barnmouth Conservancy Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted, except as indicated by this Order of Conditions.
16. Contents shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the notice of intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, ground cover or shrubs as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owners shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the State building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. The Design engineer will certify, in writing, that this project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continuously operated and maintained so as to comply with this Order of Conditions and M.G.L., c 121, s 40, the Wetlands Protection Act.

Dartmouth Power Associates
ORDER OF CONDITIONS CONTINUED

FILE NO. 13- 041

Plans:

Title

Scaled

Signed and Stamped By:

On File with:

See Spec. 3-4

Special Conditions (Use additional paper if necessary)

29. Certain conditions, such as maintenance or monitoring, are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest of the applicant, or successor in control of the property. The applicant shall furnish a copy of this Order to any subsequent owner at the time that ownership is transferred.
31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
 The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Highways.
33. The Conservation Commission and/or the Town of Dartmouth shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to the resource areas.
35. All siltation control measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.

Dartmouth Power Associates

ORDER OF CONDITIONS & CONDITIONS

FILE NO. 15-441

38. If changes to the approved plan-of-record on file with the Dartmouth Conservation Commission are required by other regulatory agencies, any such changes shall be submitted for approval in accordance with condition #14 of this Order of Conditions.
39. This Order of Conditions shall be reviewed within fifteen (15) days of receipt in accordance with Condition #6.
40. Prior to any construction, the name and telephone number of a contact person in charge of activity on-site shall be submitted to the Conservation Commission.
41. Any construction in the flood plain shall conform to 780 C.M.S., section 744, the Design Requirements for Construction in Floodplains.
42. It shall be the responsibility of the applicant or the applicant's representative to continuously maintain all erosion barriers required by this Order of Conditions until the Commission approves or requires their removal.
43. Unless alternate erosion/siltation control measures have been approved by the Conservation Commission or its agent, all exposed soils exceeding a 4:1 slope shall be stabilized using erosion control blankets/seeding within 48 hours of soil disturbance and shall remain in place for the duration of the project, or until vegetation has been re-established.
44. All clearing and grubbing operations within the jurisdiction of the Conservation Commission shall be subject to approval of the Commission or its agent.
45. Current approval is based on assumed unit discharge rates (cfs/acre) for the power plant with (exclusive of access roadway (drainage)). When the final site design of the power plant is completed, the applicant shall request an amendment to this Order of Conditions and shall submit a final design of the power plant site layout and the associated stormwater management system with all final hydrologic information to the Commission for verification and approval.
46. If current approval is not modified by future subdivision submittals, the stormwater management system shall be completed as proposed prior to the power plant start-up. If the plan-of-record affixed by this Order is modified in any way by future subdivision submittals, the applicant remains responsible, prior to power plant start-up, for the physical completion of the revised plan to the extent necessary to provide performance equivalent to that required by this Order.
47. All snow fencing noted as "Detail of Silt Fence" as noted on Drawing Number 8, Titled "Notes of Latest Power Plant Roadway & Utilities (Detail Sheet A)", dated 10/10/96, shall be curb-and-gutter (or equivalent). Any holes shall be double-staked. All other details shall remain as shown.

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 Darian King

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Aug 25, 2025 8:37 PM EDT

Dartmouth Power Associates

ORDER OF CONDITIONS - Continued:

FILE NO. 15-841

40. "Tailed Bay Erosion Control", as shown on Drawing/Notice 5, titled "Notice of Intent Power Plant Roadway & Utilities (Detail Sheet A), dated 10/10/90, shall be amended to include a layer of filter fabric to be placed under the inlet grate in a manner which will insulate catch basin sumps from siltation. All catch basins shall be installed in this manner and remain this way throughout construction and until all soils have been stabilized.
41. All general silt, erosion control and soil stabilization program and sedimentation control provisions as outlined on Drawing/Notice 5, titled "Notice of Intent Power Plant Roadway & Utilities (General Notes & Legend)", of the approved plan-of-record shall be part of this Order of Conditions and shall be required where appropriate.

PLANS: Signed by Ralph A. Gallo, R.A. Civil Engineering

- Dep. #1 - Notice of Intent Power Plant, Roadway & Utilities (General Site Plan), Dated Revised 10/10/90
- Dep. #2 - Notice of Intent Power Plant, Roadway & Utilities (General Notes & Legend), Dated Revised 10/10/90
- Dep. #3 - Notice of Intent Power Plant, Roadway & Utilities (Power Plan & Profile Sta. 62+00 to Sta. 75+94), Dated Revised 10/10/90
- Dep. #4 - Notice of Intent Power Plant, Roadway & Utilities (Power Plan & Profile Sta. 70+76 to Sta. 78+00), dated Revised 10/10/90
- Dep. #5 - Notice of Intent Power Plant, Roadway & Utilities (Energy Road Sta. 8+00 to Sta. 18+00), dated Revised 10/10/90
- Dep. #6 - Notice of Intent Power Plant, Roadway & Utilities (Energy Road Sta. 18+00 to Old Fall River Road), dated Revised 10/10/90
- Dep. #7 - Notice of Intent Power Plant, Roadway & Utilities (Development Spans), dated Revised 10/10/90
- Dep. #8 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet A), dated Revised 10/10/90
- Dep. #9 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet B), dated Revised 10/10/90
- Dep. #10 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet C), dated Revised 10/10/90
- Dep. #11 - Notice of Intent Power Plant, Roadway & Utilities (Detail Sheet D), dated Revised 10/10/90
- Dep. #12 - Notice of Intent Power Plant, Roadway & Utilities (Recessed Analysis Plan), dated Revised 10/10/90

Dakota Power Association
ORDER OF CONDITIONS - Confidential

FILE NO. 14,841

Issued by Dakota Power Association Conservator Commission

Signature George A. Terepau

Paul L. Linder

Paul L. Linder

Paul L. Linder

This Order must be signed by a majority of the Conservator Commission.

On this 15th day of November, 1933, before me personally appeared George A. Terepau known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her true act and deed.

Paul L. Linder Notary Public State of North Dakota June 28, 1995

Received & Recorded Oct. 25 1934 at W. J. Linder

The assessor, the clerk, and person authorized by the Order, any member of said society and any other which be presented with a true copy, or any two members of the City or town or county (each) shall at once, on receipt hereof at their right to request the Conservator of said institution to issue a Subsequent Order, showing the record in made by number, that in same manner to the Department, Department, if any of the record shall be made and be made for record that in same manner to the Conservator Commission and the assessor.

Attest: John Linder Register

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Aug 25, 2025 8:37 PM EDT

20935

SDCMR 10.00

Form 5

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Darian King
power-transitions.com

SDCMR 10.00 15-792

City/Town: Barnstable

Address: Barnstable Power Assoc.

Commonwealth
of Massachusetts



Aug 25, 2025 8:37 PM EDT

Order of Conditions
Massachusetts Wetlands Protection Act
G.L.c. 131, §40

Article 13, the Barnstable Wetlands Bylaw

From: the Barnstable Conservation Commission

To: Barnstable Power Association/BAI
(Name of Applicant) Will Pugsley
(Name of property owner)
4 Westbury St. 564 Fisher Rd.
Barnstable, MA 02716 Address: Barnstable, MA 02717

This Order is issued and delivered as follows:

by hand delivery to applicant or representative on (date)

by certified mail, return receipt requested on October 19, 1999 (date)

this project is located at Plot 44, Lots 45, 46, 47, Old Westport Rd.

The property is recorded at the Registry of Deeds

Book 3735 Page 331

Certificate of registration

The notice of intent for this project was filed on September 12, 1999 (date)

The public hearing was closed on October 17, 1999 (date)

Findings

The Barnstable Conservation Commission has reviewed the above-referenced Notice of Intent and plans and has held a public hearing on the project. Based on the information available to the Commission at this time, the Commission has determined that the area on which the proposed work is to be done is significant to the following interests in accordance with the Presumptions of Significance set forth in the regulations for each Area Subject to Protection under the Act (check as appropriate):

- | | | |
|--|---|--|
| ☒ Public water supply | ☒ Flood control | ☐ Land containing shellfish |
| ☒ Private water supply | ☒ Storm damage prevention | ☒ Fisheries |
| ☒ Ground water supply | ☒ Prevention of pollution | ☒ Protection of wildlife habitat |

Filing Fee \$: \$1000

Refund Due \$:

Effective 8/1/89

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Aug 25, 2025 8:37 PM EDT

Ordered
Class of
Wetlands
11/1/90
2488-40
4/1/91
2624-180

Therefore, the Department of Environmental Quality Engineering hereby finds that the following conditions are necessary, in accordance with the Performance Standards set forth in the regulations, to protect those interests checked above. The Department orders that all work shall be performed in accordance with said conditions and with the notice of intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications or other proposals submitted with the notice of intent, the conditions shall control.

General Conditions:

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory requirements, shall be deemed cause to revoke or modify this Order.
2. This Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - (a) the work is a maintenance dredging project as provided for in the Act; or
 - (b) the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance and both that date and the special circumstances warranting the extended time period are set forth in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. Any fill used in connection with this project shall be clean fill, containing no trash, refuse, rubbish or debris, including but not limited to lumber, brick, plaster, wire, fish, paper, cardboard, pebbles, stones, tires, stumps, refrigerators, motor vehicles or parts of any of the foregoing.
7. No work shall be undertaken until all administrative appeal periods from this Order have elapsed or, if such an appeal has been filed, until all proceedings before the Department have been completed.
8. No work shall be undertaken until the Final Order has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Order Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. The recording information shall be submitted to the Department on the last day of the end of this Order prior to commencement of the work.
9. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words: "Massachusetts Department of Environmental Quality Engineering, File Number 15-792".
10. Where the Department of Environmental Quality Engineering is requested to make a determination and to issue a Supplementing Order, the Conservation Commission shall be a party to all agency proceedings and hearings before the Department.
11. Upon completion of the work described herein, the applicant shall forthwith request in writing that a Certificate of Compliance be issued stating that the work has been satisfactorily completed.
12. The work shall conform to the following plans and special conditions:

ORDER OF CONDITIONS CONTINUED

FILE NO. 15-702

13. No activity shall occur prior to obtaining all necessary and required permits, licenses, and approvals, and until copies of the same have been furnished to the Conservation Commission.
14. Any design modifications, alterations, amendments, or additions shall be subject to the approval of the Dartmouth Conservation Commission. Requests for any changes shall be made in writing and shall be accompanied by a revised plan.
15. No modification of surface features, drainage or topography shall be permitted except as indicated by this Order of Conditions.
16. Contours shall remain unchanged except as permitted by this Order of Conditions.
17. There shall be no construction other than that proposed by the Notice of Intent and included on the submitted plan.
18. Immediately upon completion of the exterior construction, grading and landscaping shall be carried out in order to minimize erosion.
19. All wet areas not to be altered shall be kept clear of rubbish, debris, and construction material.
20. All exposed soil or subsoil shall be replanted with vegetation such as grass, groundcover or shrubs so as to minimize erosion and siltation.
21. There shall be minimum disruption of existing grades and vegetation in order to minimize erosion.
22. No runoff shall be caused to drain onto adjoining property or upon any public way.
23. All excess material shall be removed from the site.
24. When construction begins, the owners shall notify the Conservation Commission immediately so that regular inspections may be made.
25. All work performed in accordance with said plans and this Order of Conditions shall be in compliance with the state building and/or plumbing code.
26. The Inspector and/or the Commission members shall have the right to enter upon the land for the purpose of the inspection and/or the taking of pictures. Times for the same shall be at the discretion of the Commission.
27. The design engineer will certify, in writing, that this project has been completed in accordance with the above Order of Conditions before the Certificate of Compliance will be issued.
28. All facilities and equipment shall be continually operated and maintained so as to comply with this Order of Conditions and M.G.L., C 131, § 40, the Wetlands Protection Act.
29. Certain conditions, such as maintenance or monitoring are on-going and do not expire at the end of three years or with the issuance of a Certificate of Compliance.
30. This Order of Conditions shall apply to any successor in interest or successor in control.

Name:

Title

Date

Signed and Stamped by:

On File with:

Consent Rate Map Dist Will Loomis, Inc. by Bruce W. Sewall

Dartmouth Conservation Commission

Co., Old Town, Maine

Special Conditions (Use additional paper if necessary)

31. Any changes required by any other board or authority may require a new filing with the Conservation Commission.
32. At the discretion of the Conservation Commission, the applicant may be required to file with any or all of the following agencies:
The Department of Environmental Management, the Army Corps of Engineers, Coastal Zone Management and the Division of Waterways
33. The Conservation Commission and/or the Town of Dartmouth shall not be responsible or liable for the construction, the operation, or the maintenance of any part of this project and does not warrant the safety of the same.
34. Prior to any construction, an on-site meeting between the Conservation Officer, the contractor, and the holder of this Order of Conditions shall take place to identify work that will be done in and adjacent to resource areas.
35. All erosion measures shall be installed and then approved by the Conservation Officer prior to any construction.
36. Any fill and/or construction materials shall be placed in upland areas.
37. All mitigation and resource protection devices and measures, e.g. hay bales, siltation fence, etc., are to be installed prior to initiation of any work under this Order of Conditions. The Conservation Agent shall be notified when in place for inspection and verification. No work to be undertaken under the Order of Conditions until written approval is received from the Conservation Commission or its Agent.
38. The applicant shall have on hand at the start of any soil disturbance, removal, or stockpiling, a minimum of fifty (50) hay bales and sufficient stakes for securing these bales. Said bales shall be used only for the control of emergency erosion problems, and shall not be used for the normal control of erosion.
39. In accordance with Condition number thirteen (13), no activity shall take place until the applicant has furnished written demonstration that the plans on file with the Conservation Commission are consistent with permits and approvals of other Town Boards.

40. This Order of Conditions shall be recorded within fifteen (15) days of receipt in accordance with Condition #6.
41. Prior to any construction the name and telephone number of a contact person in charge of activity on site shall be submitted to the Conservation Commission.

Aug 25, 2025 8:37 PM EDT

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Southwest Power Administration
ORDER OF CONVEYANCE - Continued

JK 239800267
FILE NO. 8-732

Issued By: Darlan King Conservation Commission

Signature: [Signature] Paul Faria

[Signature] [Signature]

[Signature] [Signature]

[Signature] [Signature]

This Order must be signed by a majority of the Conservation Commission.

On this 17th day of October, 1989, before me
personally appeared Gerald Franklin, to me known to be the
person described in and who executed the foregoing instrument and acknowledged that he/she executed
the same as his/her free act and deed.

[Signature]
Notary Public - Public Courts

June 28, 1986
My commission expires

The applicant, the person, or person approved by this Order, any owner of land during the term upon which the O-7000000 work is to be done or any other residents of the city or town in which such land is located are hereby notified that they have the right to request the Department of Environmental Quality Engineering to issue a Superfunding Order, providing the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee and Plan Technical Form as provided in 202 CMR (6.007), within ten days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and the applicant.

Received & Recorded [Signature] 2 Nov 15 min P. M.

Attest: [Signature] Register

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Aug 25, 2025 8:37 PM EDT

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 Darian King
 20977
 QUITCLAIM DEED

WE, the undersigned **RAHIM AGHAI** and **DOROTHY AGHAI** a/k/a **DOROTHY E. AGHAI** of 13 Merrymount Drive, Dartmouth, Bristol County, Massachusetts, for less than \$100.00 consideration paid and for other good and valuable consideration, the receipt and sufficiency and whereof the undersigned hereby acknowledge, hereby grant to:

JAMES F. GORDON, TRUSTEE of OLD FALL RIVER REALTY TRUST, under Declaration of Trust dated November 29, 1989 and recorded in Bristol South District Registry of Deeds in Book 2487, Page 0023,

WITH QUITCLAIM COVENANTS, the land and premises located on the southerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts were particularly described in Exhibit "A" attached hereto and made a part hereof.

The within-granted premises are a portion of the premises granted to the grantors by deeds dated, respectively, October 31, 1988 and December 30, 1988, and recorded in said Bristol South Deeds in Book 2210, Page 289 and Book 2359, Page 349, to which said deeds reference is hereby made for grantor's title; and grantor, Dorothy Aghai originally acquired title to said premises under deed from Chicago Title Insurance Company dated June 20, 1988 and recorded with said Bristol South Deeds in Book 2157, Page 162, to which deed title reference is also hereby made.

Subject to certain Grant of Easements to Algonquin Gas Transmission Company recorded with said Registry of Deeds in Book 1056, Page 150, Book 1040, Page 457 and in Book 2046, Page 311.

Reserving to the Grantors and their heirs, executors, administrators, successors and assigns the right, license and easement to use the parcel of land herein conveyed for all purposes for which a road may be used in the Town of Dartmouth, including the right to install and use utilities therein.

WITNESS our hands and seals this 31st day of October, 1990.

Signed and sealed
 in presence of:

Michael J. Gordon
 Witness to Grant of Easements

Rahim Aghai
 RAHIM AGHAI

Dorothy Aghai
 DOROTHY AGHAI
 (A/K/A DOROTHY E. AGHAI)

Witness

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EX 2564 0010

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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss:

Doc. L
October 11, 1990

Then personally appeared the above-named Bahin Aghai and Dorothy Aghai s/k/a Dorothy E. Aghai, and acknowledged the foregoing instrument to be their free act and deed, before me,

Robert G. H. [Signature]
Notary Public
My commission expires: 1-15-94



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EXHIBIT "A"
TO
QUITCLAIM DEED
FROM
JAMIN AGHAI AND DOROTHY AGHAI A/K/A DOROTHY E. AGHAI
TO
JAMES S. GORDON, TRUSTEE OF OLD FALL RIVER BEACH TRUST

That certain parcel of land situated on the southerly side of Old Fall River Road in the Town of Dartmouth, Bristol County, Massachusetts, bounded and described as follows:

BEGINNING at a point in the southerly line of said Old Fall River Road, said point being the intersection of the westerly line of a proposed roadway (to be called Energy Road) with the southerly line of said Old Fall River Road, said point also being one hundred ninety-eight and no hundredths feet (198.00') easterly, as measured along the southerly line of said Old Fall River Road, from the northeasterly corner of land now or formerly of Marial P. Pardo;

THENCE running S. 71° 43' 53" E. along the southerly line of said Old Fall River Road, a distance of one hundred eleven and sixty-eight hundredths feet (111.68') to a point of curvature;

THENCE continuing along the southerly line of said Old Fall River Road curving to the left along an arc of a curve having a radius of one thousand six hundred thirty and no hundredths feet (1630.00'), a central angle of 1° 38' 29" for an arc length of forty-seven and seventeen hundredths feet (47.17') to a point;

THENCE running westerly and southerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 80° 20' 31" for an arc length of sixty-one and sixty-seven hundredths feet (61.67') to a point;

THENCE running S. 38° 16' 07" W. for a distance of sixty-three and sixteen hundredths feet (63.16') to a point;

THENCE running southerly curving to the right along an arc of a curve having a radius of six hundred forty and no hundredths feet (640.00'), a central angle of 8° 29' 24" for an arc length of ninety-four and eighty-three hundredths feet (94.83') to a point;

[Page 1 of 4 of Exhibit "A" to Deed]

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THENCE running S. 26° 45' 31" W. for a distance of fifty-eight and forty-six hundredths feet (58.46') to a point;

THENCE running southerly and easterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 90° 00' 00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;

THENCE running S. 26° 45' 31" W. for a distance of sixty and no hundredths feet (60.00') to a point;

THENCE running westerly and southerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 90° 00' 00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;

THENCE running S. 26° 45' 31" W. for a distance of one hundred fifty-six and ninety-seven hundredths feet (156.97') to a point;

THENCE running southwesterly curving to the right along an arc of a curve having a radius of three hundred forty and no hundredths feet (340.00'), a central angle of 26° 35' 45" for an arc length of one hundred fifty-four and eighty-six hundredths feet (154.86') to a point;

THENCE running S. 51° 51' 14" W. for a distance of three hundred forty and eighty-four hundredths feet (340.84') to a point;

THENCE running southwesterly and southerly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 87° 45' 41" for an arc length of three hundred ninety-eight and twenty-five hundredths feet (398.25') to a point;

THENCE running S. 34° 34' 25" E. for a distance of seventy-seven and fifty hundredths feet (77.50') to a point;

THENCE running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), an interior angle of 90° 00' 00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;

[Page 2 of 4 of Exhibit "A" to Deed]

- THENCE running S. 34° 54' 36" E. for a distance of sixty and no hundredths feet (60.00') to a point;
- THENCE running southwesterly and southeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 20° 06' 03" for an arc length of sixty-two and eighty-three hundredths feet (62.43') to a point;
- THENCE running S. 34° 54' 36" E. for a distance of one hundred fifty-four and twelve hundredths feet (154.12') to a point in the northerly line of a fifty foot (50') wide Algonquin Gas Transmission easement;
- THENCE running S. 71° 35' 20" E. for a distance of one hundred ninety-one and six hundredths feet (191.06') to a point in the westerly line of land now or formerly of Manuel DeMello;
- THENCE running S. 21° 01' 21" W., bounded easterly by said DeMello land, for a distance of two hundred twenty-three and nine hundredths feet (223.09') to a point;
- THENCE running N. 87° 10' 13" W. for a distance of eighty and no hundredths feet (80.00') to a point;
- THENCE running northerly and northwesterly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 37° 44' 06" for an arc length of one hundred twenty-one and twenty-four hundredths feet (121.24') to a point;
- THENCE running N. 34° 54' 35" W. for a distance of four hundred forty-two and seven hundredths feet (442.07') to a point;
- THENCE running northerly and northeasterly curving to the right along an arc of a curve having a radius of three hundred forty and no hundredths feet (340.00'), a central angle of 87° 45' 41" for an arc length of five hundred twenty and seventy-nine hundredths feet (520.79') to a point;
- THENCE running N. 82° 51' 14" E. for a distance of one hundred thirty-three and twenty-five hundredths feet (133.25') to a point;

[Page 3 of 4 of Exhibit "A" to Deed]

THENCE

running northeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 34° 32' 33" for an arc length of fifty-nine and twenty-five hundredths feet (59.25') to a point;

THENCE

running N. 48° 09' 38" E. for a distance of sixty-one and thirty hundredths feet (61.30') to a point;

THENCE

running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 95° 07' 35" for an arc length of sixty-six and forty-one hundredths feet (66.41') to a point;

THENCE

running N. 32° 51' 15" E. for a distance of sixty-seven and two hundredths feet (67.02') to a point;

THENCE

running northeasterly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 26° 05' 45" for an arc length of one hundred eighteen and forty-two hundredths feet (118.42') to a point;

THENCE

running S. 28° 48' 31" E. for a distance of three hundred fifty-five and forty-four hundredths feet (355.44') to a point;

THENCE

running northeasterly curving to the left along an arc of a curve having a radius of five hundred sixty and no hundredths feet (560.00'), a central angle of 9° 29' 34" for an arc length of eighty-two and ninety-eight hundredths feet (82.98') to a point;

THENCE

running N. 13° 16' 37" E. for a distance of sixty-two and forty-six hundredths feet (62.46') to a point;

THENCE

running northerly and westerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 60° 00' 00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to the point and place of beginning in the southerly line of said Old Fall River Road.

The above-described parcel is a portion of the premises shown as being owned by Robin A. Dorethy Aghai on a certain plan entitled: "Plan of Land in Dartmouth, MA. Bristol County (S.D.) Prepared For: Energy Management, Inc." dated October 25, 1993, by Golden Land Survey, Inc. of Marshfield, Massachusetts, and recorded in Bristol South Registry of Deeds herewith; and said parcel contains approximately 195,924 square feet of land (4.4978 acres).

(Page 4 of 4 of Exhibit "A" to Deed)

Received & Recorded at 11:30 AM on 10/31/93

Attest: *[Signature]* Register

Darian King

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Aug 25, 2025 8:37 PM EDT

CONFIDENTIAL
 AGREEMENT AND LICENSE AGREEMENT

BETWEEN
 RAHIM AGHAI AND DOROTHY AGHAI,
 DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP
 AND

TRUSTEE OF OLD FALL RIVER REALTY TRUST

THIS AGREEMENT (herein called the "Agreement") made as of this 31st day of October, 1993 by and between Rahim Aghai and Dorothy Aghai, s/k/a Dorothy S. Aghai of Dartmouth, Massachusetts (herein separately and together called "Aghai"), James S. Gordon, Trustee of Old Fall River Realty Trust (under Declaration of Trust dated November 29, 1988, and recorded in Bristol South District Registry of Deeds in Book 2407, Page 23, and not individually (herein called "Trustee"), and Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership (herein called "DPA").

"ADDRESS: Flat 67-Lots 9, 10 & 11
 Dartmouth, Massachusetts"

WITNESSETH:

WHEREAS, Aghai is owner of certain parcels of real estate located in the Town of Dartmouth, Bristol County, Massachusetts, designated as Lot A and Lot B on that certain plan (herein called the "Lot Plan") entitled: "Approval Not Required Plan Coven For Rahim S. Dorothy Aghai and James S. Gordon, Trustee" dated October 23, 1990, prepared by R.A. Cataldo Engineering of 141 Power Road, Pawtucket, Rhode Island, and recorded in said Bristol South Deeds concurrently herewith (herein the aforesaid Lot A and Lot B are separately referred to as "Lot A" and "Lot B", respectively, and are collectively called the "Aghai Lots"); and

WHEREAS, Trustee is the owner of that certain realty parcel in said Dartmouth shown as Lot C on the Lot Plan (herein called the "Facility Parcel"); and

WHEREAS, Trustee, as landlord, and DPA, as tenant, have entered into a lease of the Facility Parcel, notice of which is recorded in said Bristol South Deeds concurrently herewith (which said lease, as the same may be hereafter amended, modified and changed from time to time, being herein called the "Lease"); and

WHEREAS, an electric generating facility (herein called the "Facility" which term refers to and includes, by way of specification and not limitation, buildings, structures, improvements, towers, edifices, facilities, amenities, connections and installations, and roads, drives, and ways, providing access, ingress and egress to and from the Facility Parcel and public streets and ways, drainage installations and facilities, and equipment, amenities and improvements incident, related to or necessary or desirable for the development, construction, use, operation, maintenance, repair, replacement, servicing and continuance of the foregoing is proposed for development on and for the Facility Parcel; and

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WHEREAS, the development, use, operation, and utilization of the Facility may require the installation, construction, use, operation, servicing and continuance of a water pumping station, or booster facility, on portions of Lot B, and the installation, construction, use, operation, servicing and continuance of pipes, lines, wires, conduits, ducts, connections, and other facilities, installations, erections, improvements and rights in, through, under, over, on, across or upon portions of Lot B, and the grant by Aghai of easements, licenses and rights for such purposes; and

WHEREAS, in connection with the development, use, operation, repair, replacement, maintenance, servicing and utilization of the Facility:

(a) several drainage easement areas, or man-made excavations, including water detention basins, developed for purposes of temporary or permanent containment of above-ground storm water and run-off, including all culverts, conduits, lines, pipes, swales, catch basins or other water collection equipment, water control and direction devices, pumps, filtration equipment and other equipment, facilities and improvements incident, related to or necessary or desirable to control water surges and flooding from storms) will be located on certain designated portions of the Aghai Lots;

(b) it may be necessary or desirable for Trustee and/or DPA to grant to owners of the "Smith Lands", as hereafter defined, easements, licenses or other grants, permitting such owners, and those claiming under them, to utilize road facilities located upon portions of Lot C, for purposes of access, ingress and egress and utility connection or supply, involving the installation, construction, use, operation, maintenance, repair, replacement, upkeep and continuance of roads, drives, ways and paved surfaces (and facilities and improvements incident or related to such roads, drives, and ways) in, through, under, over, on, across or upon those certain designated portions of Lot A designated as "Future Extension Easement A" and "Stub Easement" on the "Easement Plan" hereafter described, and the installation, construction, use, operation, servicing and continuance of roads, drives and ways, pipes, lines, wires, conduits, ducts, connections, and other facilities, improvements and rights in, through, under, over, on, across or upon said Future Extension Easement A and Stub Easement areas; and

WHEREAS, Aghai, Trustee and DPA have herein agreed upon the terms and requirements of the grants, easements and licenses made by Aghai for installation, construction, use, operation, servicing and continuance of: the aforementioned water pumping station and related facilities in, through, under, over, on and upon Lot B; drainage facilities on the Aghai Lots; roads, drives, ways and paved surfaces and related facilities and amenities (including utility service facilities) in, through, under, over, on and upon Lot A; and other easement agreements contained herein.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars paid by each of the parties hereto unto the others, receipt

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Aug 25, 2025 8:37 PM EDT

and sufficiently whereof the parties hereby acknowledge, the undersigned parties hereby respectively agree as follows:

1. Agai hereby grants to each of Trustee and DPA, as appertenant to the Facility Parcel, the following perpetual, exclusive (except where otherwise herein specifically provided), rights, benefits, privileges, easements and licenses, exercisable at any time, and from time to time, but subject always to the terms, conditions and requirements of this Agreement:

(A) An irrevocable license, easement and right to install, build, construct, locate, relocate, remove, modify, change, maintain, service, inspect, patrol, upkeep, repair, use and continue, a water pumping facility (including, without limitation, one or more buildings or other structures, fixtures, machinery and heavy equipment, apparatus, and any related accouterments or amenities: roads, drives, ways and paved surfaces, including curb cuts to provide ingress, egress and access to said Old Fall River Road; underground or above-ground pipes, ducts, poles, cables, lines, wires and conduits, and other facilities to provide utility supply and/or for purposes of the control, circulation, direction, pumping or flow of water and/or water pressure; and for any other purposes and requirements reasonably necessary or convenient for the operation of a water pumping facility or booster facility and related amenities or facilities) in, through, under, over, on, upon, through and across the portions of Lot B designated as "Booster Station" and located as shown on the plan entitled "Project Easement Plan Dartmouth Massachusetts Dartmouth Power Associates" dated October 24, 1990 and prepared by H. A. Cataldo & Associates, Inc. and recorded concurrently herewith (herein called the "Easement Plan"), including the right to dig ditches and trenches, change grades, excavate, remove and replace soils, fill and to perform other related or necessary work in accordance with applicable law, regulation and ordinance, and the terms, provisions and requirement of this Agreement; and

(B) An irrevocable license, easement and right to install, build, construct, locate, relocate, remove, modify, change, maintain, service, inspect, patrol, upkeep, repair, use and continue, roads, drives, ways, and paved surfaces in, through, under, over, on, upon, through and across those portions of Lot A designated as "Future Extension Easement A" on the Easement Plan, (any portion and all of which said roads, drives, ways and paved surfaces are herein called the "Extension Parcel Roads"), and the "Future Easement" designated on said Easement Plan, including the right to dig ditches and trenches, change grades, excavate, remove and replace soils, fill and perform other related or necessary work in accordance with applicable law, regulation and ordinance, and the terms, provisions and requirement of this Agreement, including the irrevocable license, easement to connect, unite or otherwise join the Extension Parcel Roads to any roads, drives or ways constructed upon Lot C and adjoining the Future Extension Easement A, provided, however that all uses made of the Extension Parcel Roads shall be in strict conformity with the zoning use requirements of the current "Limited Industrial" zoning district applicable thereto; and

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(C) An irrevocable, non-exclusive, license, easement and right-of-way, on, under, upon, over, through and across any or all portions of Future Extension Easement A and/or the State Easement, whether or not the same are graded, paved or otherwise prepared or improved to use the same to provide or afford unrestricted access, ingress, egress and use for pedestrians and vehicles (including, without limitation, large trucks, vans and construction equipment and other heavy vehicles), and to use and utilize said roads and ways in the manner in which private ways are customarily used in said Dartmouth; to and from and between: (i) any internal portions of the Facility Parcel; and/or (ii) any portions of the Facility Parcel and the public way presently known as Old Fall River Road in Dartmouth; and/or (c) any portions of the Facility Parcel and any portions of the land and premises (herein called the "Seith Lands") described in a certain deed from Cecil Seith, Jr. to Margaret K. Seith, in trust, dated November 8, 1988, and recorded in said Bristol South Deeds in Book 1502, Page 418, and from the Seith Lands to and from said Old Fall River Road; and

(D) An irrevocable license, easement and right to install, build, construct, locate, relocate, remove, modify, change, maintain, service, operate, inspect, patrol, upkeep, repair, use and continue, water detention ponds and related swales, water collection facilities, culverts, drainage lines, pipes, and equipment, appurtenances and amenities and facilities, and basins, ponds, or earth piles intended for the control, collection, re-distribution, and disposal of storm water and surface water run-off, in, through, under, over, on, upon, through and across the portions of the Aghal Lots identified as "Drainage Easement #12" and "Drainage Easement #14", and "Drainage Easement #15" and "Barn A" and "Barn B" and "Barn C" and "Barn D" as shown on the Easement Plan (herein all of the foregoing being collectively called the "Drainage Areas"), including the right to dig ditches, ponding areas, trenches, swales, culverts and channels, and to change grades, excavate, remove and replace soils, fill and to perform other related or necessary work in accordance with applicable law, regulation and ordinance, and the terms, provisions and requirements of this Agreement. Notwithstanding the designations of the said Drainage Areas on the Easement Plan, the parties agree that the location and description of said Drainage Areas shall correspond to the locations of the such areas as established under the definitive subdivision plan of the Aghal Lots as approved by the Dartmouth Planning Board, whereupon the parties shall execute a written amendment modifying the description(s) of the "Drainage Areas", as that term is used herein, accordingly; and

(E) An irrevocable license, easement, right and right-of-way, to enter in, on, under, upon, over, through and across the Future Extension Easement A area and/or the Booster Station parcel and/or any Drainage Areas and/or any "Service Line Easement Area" (as that term is hereinafter defined), or any respective portions thereof, to keep the same free and clear of trees, brush, bushes, undergrowth or vegetation which may interfere with or endanger any structures, improvements, facilities or improvements located or to be constructed thereon, and the construction, installation, use, operation, maintenance, removal or relocation thereof, including the right to

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cut, remove, root, prune, crop, trim and otherwise cut and remove same as necessary and

(F) An irrevocable license, easement and right to grant, give, convey, transfer or assign to any owners or occupants of the Smith lands and/or to any utility, supplier, provider, or utility company and/or to any federal, state, local or municipal governmental authority, and each and every political subdivision of any of the foregoing, and all agencies, departments, commissions, boards, bureaus and instrumentalities of any of the foregoing, exclusive of non-exclusive rights and privileges to utilize or to exercise any of the licenses, easements and rights herein granted by Aghai; and no grant, sub-easement, or licensing made pursuant hereto, shall be deemed to be or to give rise to any claim or assertion by Aghai, or any successor in interest, that any such grant to any party, or any use thereof, however made, shall constitute an overloading of any license, easement or right herein granted by Aghai.

2. Aghai hereby agrees to grant or provide to Trustee and/or DPA in the future such other rights, privileges, easements, licenses and appurtenances as are reasonably necessary for DPA to develop, construct, install and operate its planned power plant (including, without limitation, utility easements and utility lines), all of the foregoing of which are called "Service Line Easements" and the areas covered thereby are herein referred to as "Service Line Easement Area", provided the same do not materially, adversely interfere with the construction of an industrial subdivision by Aghai on the Aghai Lots and/or adjoining property presently owned by Aghai.

3. Any work undertaken or performed in connection with the construction, installation, repair, maintenance, or replacement of facilities, installations and items authorized under Paragraph 1. above, shall comply with the following:

(A) All costs of design, engineering, construction, installation, repair, removal, upkeep and maintenance thereof, including all surveying expenses and all charges incurred for building permits and other necessary permits, shall be paid solely by the party performing such work;

(B) No buildings or other improvements will be constructed or located on any portion of the Future Extension Easement Area and/or Stub Easement and/or the Booster Station parcel and/or any Drainage Areas and/or any Service Line Easement Area by any owner or tenant of the Aghai Lots, or any portion thereof, or by any person, party or entity claiming by, through or under any such owner;

(C) All excavation, earth removal, filling, construction, installation and other work performed pursuant to this Agreement shall be in accordance with applicable laws, ordinances, orders, rules, regulation of all governmental authorities having jurisdiction thereof;

(D) Aghai, reasonably promptly after the written request of Trustee or DPA, as the case may be, shall execute in recordable form,

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acknowledge, deliver and record in said Bristol South Deeds or other applicable deed registry, an agreement, memorandum or other instrument establishing or confirming the locations of any Service Line Easement Area approved by Aghai hereunder or deemed approved by Aghai as herein provided, as the case may be, which agreement, memorandum or other instrument shall be accompanied by a plan of the approved location prepared by a surveyor or professional land engineer licensed in the State of Massachusetts. All costs incurred for preparation of any such agreement, memorandum or other easement instrument and plan, and for the recording thereof, shall be borne by the party requesting same from Aghai.

4. The parties hereby further agree as follows:

(A) Except as otherwise specifically provided herein, all covenants, conditions, rights, benefits, privileges and easements contained in this Agreement shall be and shall be deemed to be covenants running with the land and shall ensure to the benefit of Trustee, DPA, and each and every owner of record of Lot C, or portion thereof, and their respective successors, tenants or lessees, grantees, successors and assigns, and any person or party directly or indirectly claiming by, through or under any of them, including their respective officers, employees, contractors, mortgagees, agents and invitees, and the same shall be binding upon Aghai and each and every owner of record of the Aghai Lots, or part, and their respective successors, tenants or lessees, grantees, successors and assigns, and any person or party directly or indirectly claiming by, through or under any of them, including their respective officers, employees, contractors, mortgagees, agents and invitees;

(B) Except where otherwise specifically provided herein, all rights, benefits, privileges, easements and licenses herein granted or provided by Aghai to Trustee and/or DPA are intended for the exclusive use and exercise by such grantees, and those claiming under them, and those claiming under them, and neither the Future Extension Easement A area nor the Booster Station parcel nor any Service Line Easement area shall be used or occupied in any manner by Aghai or any successors in interest;

(C) That no term or provision hereof may be waived, modified or amended nor shall it be deemed or construed to have been waived, modified or amended, except by written agreement executed by all then holders of all of the rights, privileges and easements set forth and/or contained herein, and all mortgagees of record of the Facility Parcel, and then only to the extent set forth in said written agreement;

(D) That the easement grants contained herein are not intended, and shall not be construed as a dedication thereof for public use, provided, however, that any owner of the portions of the Aghai Lots containing the Future Extension Easement A area and the Booster Station parcel shall, without payment of any sum of money and without provision of any consideration, promptly after the written request by DPA or the Trustee, execute, acknowledge or deliver any applications, notices, requests, confirmations, or other forms or

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instruments of any kind or nature for purposes of dedication of the roads, ways or drives or any service lines located on the Future Extension Easement & area, or any parking facilities located on the Scooter Station parcel, for purposes of dedicating (or proposing to dedicate) the same to public use;

(E) That if any term or provision hereof or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision hereof shall be valid, enforceable and enforced to the fullest extent permitted by law;

(F) Each party, promptly after written request from the other, shall from time to time execute in recordable form, acknowledge, and deliver to the requesting party agreements, memoranda or other instruments or writings confirming the valid force and effect of this Agreement and the easements, grants and authorizations made or given pursuant hereto;

(G) In any instance in which the consent or approval of any party is required hereunder as a condition precedent for the commencement, prosecution or performance of any construction, repair, placement, relocation or other work or activity, or the exercise any right herein granted, such consent and approval shall not be unreasonably withheld or delayed;

(H) Any notice or other communication required to be sent or given under this Agreement shall be in writing and shall be deemed to have been properly sent or given when mailed by prepaid registered or certified mail, return receipt requested, addressed, as follows:

If to Aghai, to:	Dr. and Mrs. Rahim Aghai 13 Merryacott Drive North Dartmouth, Massachusetts 02747; and
If to DPA, to:	Dartmouth Power Associates Limited Partnership 8 Newbury Street Boston, Massachusetts 02116 Attn.: Mr. James S. Gordon; and
If to Trustee, to:	James S. Gordon, Trustee Old Fall River Realty Trust 4 Newbury Street Boston, Massachusetts 02116,

or to such other places or to such other parties as any party (or successor to any party, if applicable) may hereafter designate to the others by written notice gives in the manner provided herein; In the event the owner of record of any portion of the Aghai Lots is other than Rahim Aghai and/or Dorothy Aghai and/or the owner of Lot C, or part, is other than Trustee, written notice to such party shall

be deemed given if sent as hereinabove provided, and addressed to such respective party at the address of such party shown on the most recent records of the Town of Dartmouth Assessing Department:

(I) That except as otherwise provided herein (or under separate written agreement) all personal property, equipment, or other taxes assessed to or levied against any fences, lines, equipment, installations, improvements and other facilities erected, built or installed on, in or under the Future Extension Easement Area and/or the Soccer Station parcel and/or the Drainage Area and/or any Service Lane Easement Area, whether charged to Aghai, Trustee, or DPA, or any party claiming under them respectively, as the case may, shall be the sole responsibility and obligation of the lessee or tenant from time to time of the Facility Parcel for so long as the Lease hereinabove referred-to shall be in force and effect, and thereafter, the owner of fee title to the Facility Parcel;

(J) This Agreement shall be governed by and construed in accordance with the laws of the State of Massachusetts, as the same may from time to time exist.

7. Trustees hereby agree that for so long as the aforesaid Lease shall remain in force, it shall not exercise or utilize any of the rights, benefits, privileges, easements and licenses herein granted or provided, and further agree that DPA, and its successors, grantees, sublessees, subtenants, and assigns, and those claiming by, through or under them, respectively, shall have sole and exclusive rights thereto and all benefits thereunder or arising therefrom.

8. Notwithstanding anything contained in this instrument to the contrary, any easement described herein, or portion thereof, not required by the Town of Dartmouth for the approval of a definitive subdivision plan for the Aghai Lots and for "Energy Road" as shown on the Easement Plan, shall be amended or surrendered by DPA to Aghai by a subsequent modification of this instrument which will be recorded in said Bristol South Books.

EXECUTED UNDER SEAL by the respective parties in multiple counterpart as of the date first set forth hereinabove.

AGHAI: *Dorothy Aghai*
Dorothy Aghai
 Dorothy Aghai /s/ Dorothy E. Aghai

16258400028

DPA:
DARTMOUTH POWER ASSOCIATES
LIMITED PARTNERSHIP

By: James S. Gordon
Energy Management, Inc., a
Massachusetts corporation

By: James S. Gordon
James S. Gordon, its President,
being duly authorized

By: James S. Gordon
James S. Gordon, its Treasurer,
being duly authorized

TRUSTEE:

James S. Gordon
James S. Gordon, Trustee of
Old Mill River Realty Trust, as
aforesaid

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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

Notary Public
October 31, 1990

Then personally appeared the above-named Robin Aghai and Dorothy Aghai, (A/K/A Dorothy E. Aghai), and acknowledged the foregoing instrument to be their free act and deed, before me.

Notary Public
Notary Public

My Commission Expires: 10/31/91

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

October 31, 1990

Then personally appeared the above named James S. Gordon, the President of Energy Management, Inc., the sole General Partner of Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership, and acknowledged the foregoing to be his free act and deed as President of Energy Management, Inc., and the free act and deed of Dartmouth Power Associates Limited Partnership, before me.

Notary Public
Notary Public

My Commission Expires: 10/18/91

COMMONWEALTH OF MASSACHUSETTS

JONATHAN S. SMITH, Notary Public
My Commission Expires July 14, 1997

SUFFOLK, ss

October 31, 1990

Then personally appeared the above-named James S. Gordon, as Trustee of Old Fall River Realty Trust, and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of Old Fall River Realty Trust, before me.

Notary Public
Notary Public

My commission expires: 10/18/91

exam2.dps
10/31

JONATHAN S. SMITH, Notary Public
My Commission Expires July 14, 1997

Received & Recorded *Feb 2, 1991* *4:30 PM*

Attest: *John Smith* Register

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EASEMENT

We, the undersigned, CAROL NEEDHAM (A/K/A CAROL WHITE), CECIL SMITH, III, MARION E. SMITH (A/K/A MARION LUIZ SMITH), and ARNOLD J. SMITH, with a mailing address c/o Margaret Xifaras, Esq., 116 Orchard Street, New Bedford, Massachusetts 02740, (hereinafter jointly and severally called "Grantor"), being all of the owners of certain lands and premises located on the southerly side of Old Fall River Road in Dartmouth, Bristol County, Massachusetts more particularly described in Deed from Cecil Smith, Jr. to Margaret M. Smith, in Trust, dated November 3, 1945, and recorded with Bristol County South District Registry of Deeds in Book 1802, Page 419 (herein called the "Servient Estate") for consideration paid and in full consideration of the sum of Thirty-Five Thousand and 00/100 (\$35,000.00) Dollars, and other good and valuable consideration, receipt and sufficiency whereof Grantor hereby acknowledges, hereby grant to JAMES S. GORDON AS THE TRUSTEE OF THE OLD FALL RIVER REALTY TRUST, under Declaration of Trust dated November 29, 1989, and recorded in Bristol County South District Registry of Deeds in Book 2487, Page 23, with an office address c/o Energy Management, Inc., 8 Newbury Street, Boston, Massachusetts, (hereinafter called the "Grantee"), and to Grantee's tenants, licensees, successors, grantees, legal representatives and assigns, with (CUTSTAIN COVENANTS, the perpetual, irrevocable, exclusive (except where otherwise herein specifically provided), rights, benefits, privileges, easements and licenses hereinafter described, exercisable at any time, and from time to time, without the consent or approval of Grantor, or any person, party or entity claiming by, through or under Grantee, and without payment of any further sums of money or the provision of other or further consideration:

(1) A permanent easement, license and right to install, build, construct, locate, relocate, remove, modify, change, replace, maintain, service, operate, inspect, patrol, upkeep, repair, use and continue, a sewer pipeline, and related conduits, lines, pipes, equipment, apparatus and fixtures, whether located underground or above-ground, and other facilities reasonably necessary or convenient to provide for sewerage and waste removal (herein, said sewer pipeline and/or any said other facilities and equipment are herein separately or collectively called the "Sewerage Line Facilities") in, through, under, over, on, upon, through and across the portions of the Servient Estate more particularly described in Exhibit "A" attached hereto and made a part hereof, which parcel is herein designated the "Permanent Sewer Easement", for purposes of providing lines and facilities for the transporting and carrying sewerage, wastes and septic disposal between sewer lines, pipelines and other facilities at any time located on the premises, now owned by Grantee and/or other owners, and more particularly described in Exhibit "B"

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attached hereto, and such additional lands as may be serviced by said Sewerage Line Facilities and approved by the Town of Dartmouth, Massachusetts, or any of its governmental subdivisions, agencies, or municipal authorities, and lands now owned by the Commonwealth of Massachusetts (and being used as a jail facility), including the right to dig ditches and trenches, change grades, excavate, remove and replace soils, fill and to perform other related or necessary work in accordance with applicable law, regulation and ordinance, and the terms, provisions and requirement of this Agreement; and

(2) Two (2) separate temporary easements, each ten (10') feet in width on each side of the Permanent Sewer Easement and parallel thereto, and herein each of which is referred to as a "Temporary Easement", for purposes of installing, building, constructing the Sewerage Line Facilities which may be located or installed within the location of the Permanent Sewer Easement. Grantor hereby grants to Grantee the right to utilize said Temporary Easement Areas for purposes of providing access to the Permanent Sewer Easement, and the storage and location thereon of equipment, supplies, pipes, machinery, trucks and other construction vehicles, necessary or desirable for purposes of the construction and reconstruction of the Sewerage Line Facilities. Any rights to use each of said Temporary Easement Areas herein granted shall automatically terminate upon public dedication of the Permanent Sewer Easement and/or all Sewerage Line Facilities therein to the Town of Dartmouth, Massachusetts, or to any of its governmental subdivisions, agencies, or municipal authorities, or upon their acceptance of the sewer pipeline located within the Sewer Easement Area; and

(3) The perpetual right and easement, at any time and from time to time, and without further payment therefor at any time and from time to time: (a) to clear and keep the said Permanent Sewer Easement and/or any Temporary Easement Areas, and all portions thereof, cleared of trees, vegetation and underbrush, and to crop or trim said trees, vegetation or brush by mechanical, chemical, or other means, and to remove structures or other obstructions therefrom which in any such case may in the sole judgment of the Grantee interfere with the operation of any sewer pipeline or other equipment and facilities, or be advisable for their safe or continuous operation; and (b) to change and/or maintain the present grade of the Permanent Sewer Easement Area and to prevent the change of grade, filling, or excavation thereof; and (c) to have access to and to enter in, through, under, over, on, upon, through and across the Servient Estate at reasonable times and on reasonable notice, to perform survey work and test borings and other physical examinations for a period of thirty (30) consecutive days after the commencement of construction of the Sewerage Line Facilities, and such extended time as may be necessary by reason of delays arising from weather conditions or Acts of God, and to perform survey work and test

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borings and other physical examinations for a period of thirty (30) consecutive days after notice to Grantee given as aforesaid in connection with any proposed relocation of the Permanent Sewer Easement.

Notwithstanding the location of the Permanent Sewer Easement and Temporary Easement areas located as herein described, Grantor hereby grants to Grantee the irrevocable license, easement and right, to relocate the Permanent Sewer Easement and Temporary Easement areas to other locations on the Servient Estate, from time to time, if, and only if, necessitated by final design and/or location requirements and criteria of the Town of Dartmouth, Massachusetts, or any of its governmental subdivisions, agencies, or municipal authorities, provided that not less than thirty days' prior written notice, together with a copy of a plan (herein called the "Relocation Plan") prepared by a Massachusetts registered land surveyor or engineer showing the relocations of the Permanent Sewer Easement and Temporary Easement areas, is given to Grantee by hand delivery or by certified United States post at the mailing address set forth above, and provided further that Grantee shall, after the expiration of said thirty day period, record said Relocation Plan in the Bristol County South District Registry of Deeds together with a written declaration executed by Grantee and referring to the within instrument, stating that the locations of the permanent sewer easement shown on the Relocation Plan were necessitated by final design and/or location requirements and criteria by said Town of Dartmouth or municipal authorities, whereupon the term "Permanent Sewer Easement" and "Temporary Easement", as used in the within instrument shall refer to the respective locations thereof shown on said Relocation Plan and shall encumber the same as herein provided. Upon the recording of said declaration and the Relocation Plan, such portions of the Servient Estate covered by the Permanent Sewer Easement and/or Temporary Easement locations as herein described or defined and not included within the relocations of such areas as shown on the Relocation Plan, shall automatically be released from the encumbrance of and not covered by the easements established hereunder.

Grantor hereby covenants and agrees with Grantee, for itself, and for each and every owner from time to time of the Servient Estate containing all or any portion of the Permanent Sewer Easement and/or Temporary Easement, to sign, execute, acknowledge, approve, submit and deliver, promptly after written request from Grantee, from time to time, any and all building permits, permit or license applications, zoning variances or special permit applications, and all other instruments which Grantee may request from Grantor for submission or approval of any local, state or federal governmental authority or utility supplier in connection with or relating to the installation, building, construction, reconstruction, location, relocation,

removal, modification, change, replacement, maintenance, servicing, upkeep, repair, operation, use or utilization of any Sewerage Line Facilities now or hereafter made or to be made.

Grantor hereby reserves the right, exercisable by written notice given to Grantee on or before January 4, 1991, and provided the same is permitted by all applicable laws and governmental regulations, to elect that Grantee shall install a sewer pipeline greater than twelve (12") inches in diameter, provided that Grantee shall then have paid to Grantor, in advance, the full amount of the incremental cost of the larger sewer pipeline and related materials, as estimated by Grantee, and the right, from time to time to pave over any portion of the Permanent Sewer Easement, provided that only blacktop or bituminous materials shall be used for such paving purposes.

There is hereby granted unto Grantee the right and license to grant or to publicly dedicate the Permanent Sewer Easement and/or Temporary Easement and/or all Sewerage Line Facilities to the Town of Dartmouth, Massachusetts, or to any of its governmental subdivisions, agencies, or municipal authorities, without any consent, permission or approval from Grantor, and upon such grant or dedication, the said Town of Dartmouth, Massachusetts, or municipal authority having jurisdiction, shall succeed to all rights and benefits of Grantee hereunder.

Grantee, by the recording of the within instrument, has covenanted and agreed with Grantor, as follows: (a) to proceed in good faith and with reasonable diligence to obtain all necessary local, state and federal permits, licenses and approvals for the construction and installation of the Sewerage Line Facilities; and (b) to keep and maintain the Sewerage Line Facilities, after the same are installed, and any replacements thereof, in good maintenance and repair; and (c) to construct, at Grantee's sole cost and expense, in compliance with all applicable governmental requirements existing at the time of such construction, one (1) stub, tie-in, access hook-up, or other place of junction or union in a location selected by Grantee and reasonably approved by Grantor in writing to allow connection of the sewer pipeline installed in the Permanent Sewer Easement with underground sewer pipelines serving the Servient Estate, or any portion thereof; and (d) not less than sixty (60) days after written notice from Grantor received by Grantee, and provided that the full and entire cost thereof is paid by Grantor to Grantee, including, without limitation, the cost of all construction and obtaining all applicable governmental permits and approvals, and the same does not interfere in any way with or result in any interruption of any use or operation of the Sewerage Line Facilities, to construct one (1) or more additional stubs, tie-ins, access hook-ups, or other junction facilities in location(s) selected by Grantor in Grantor's reasonable determination to allow connection of the sewer pipeline installed in the Permanent Sewer Easement

with underground sewer pipelines serving the Servient Estate, or any portion thereof; and (e) to use reasonable efforts in good faith to fully construct and install all Sewerage Line Facilities in the Permanent Easement Area within one hundred and eighty (180) consecutive days after the commencement of construction of the Sewerage Line Facilities, and such extended time as may be necessary by reason of delays arising from weather conditions or Acts of God, provided that in the event of any such delays, Grantee shall use reasonable efforts to restore open excavations to the original grade to the greatest extent possible or feasible during such period of delay; and (f) that upon completion of the initial construction of the Sewerage Line Facilities, at Grantee's sole cost and expense, to reseed all land areas of the Servient Estate disturbed by such construction activities with seed stock, if any required by local, state, or federal authorities having jurisdiction (or reasonably selected by Grantee in the absence of such seed stock requirements); and (g) within a reasonable time after Grantee has performed any maintenance, replacement, inspection, patrolling or repair work in respect to the Sewerage Line Facilities, including excavation work, to restore, to the maximum extent possible, the surfaces of all land areas of the Servient Estate disturbed by such activities to the surface condition existing immediately prior to the commencement of such activities, provided, however, Grantee's only obligation in respect to the restoration of paved surfaces is to reasonably patch the disturbed, paved areas; (h) to indemnify and hold Grantor harmless for all costs and expenses, including attorney's fees, arising from or in connection with the construction, installation, existence, maintenance or repair of the Sewerage Line Facilities, or any construction or other work associated therewith, except for such as may arise wholly or partially from any act or neglect of Grantor, or any persons for whose conduct Grantor may be legally responsible, or resulting wholly or in part from any use or activity made or undertaken by them in the Permanent Sewer Easement and/or Temporary Easement areas. No breach or default by Grantee or any other person or party of any of the covenants and agreements made in this paragraph, shall constitute, cause or result in any forfeiture, reversion, termination or cancellation of any of the grants, rights, benefits, privileges, easements and licenses herein made by Grantor, but Grantee may pursue any other rights or remedies on such account provided by law or equity.

Grantee hereby covenants to indemnify and hold Grantor harmless for all costs and expenses, including attorney's fees, arising from or in connection with the construction, installation, existence, maintenance, repair use or continuance sewer lines (any other associated therewith) serving the Servient Estate and connected to the Sewerage Line Facilities, except for such as may arise wholly or partially from any act or neglect of Grantee, or any persons for whose conduct Grantee may be legally responsible, or resulting wholly or in part from any use or

activity made or undertaken by grantor in the permanent Sewer Easement and/or Temporary Easement areas, or any other portions of the Servient Estate.

Except as otherwise specifically provided herein, all rights, benefits, privileges, easements and right-of-way granted herein shall inure to the benefit of the owner(s) of record from time to time of the land described in Exhibit "B" hereto, and shall be an easement appurtenant thereto, and all covenants and agreements made herein by grantor and grantees, shall be binding upon all owners of record from time to time of the Servient Estate and said Exhibit "B" premises, respectively, and their all persons, parties and entities claiming by, through or under them, and such covenants and agreements of grantor and Grantee herein shall be covenants running with the land and premises constituting the Servient Estate and said Exhibit "B" premises, respectively.

This Easement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

EXECUTED under seal on this 31st day of October, 1990.

signed and sealed
in presence of:

[Signature]

Carol Medeiros

CAROL MEDERIOS
(A/K/A CAROL SMITH)

[Signature]

Carol Ann Smith
CAROL SMITH, III

[Signature]

Marion E. Smith
MARION E. SMITH
(A/K/A MARION LEE SMITH)

[Signature]

Marion E. Smith
MARION E. SMITH

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BRISTOL, ss:

October 31, 1990

Then personally appeared the above-named Carol Madeiros
(a/k/a Carol Smith) and acknowledged the foregoing instrument to
be her free act, before me,

Leah W. O'Brien
Notary Public

My Commission Expires: 7/13/95

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

October 31, 1990

Then personally appeared the above-named ~~Carol~~ Smith, III
and acknowledged the foregoing instrument to be his free act,
before me,

Leah W. O'Brien
Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

October 31, 1990

Then personally appeared the above-named Marion E. Smith and
acknowledged the foregoing instrument to be her free act, before
me,

Leah W. O'Brien
Notary Public

My Commission Expires: 7/13/95

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

October 31, 1990

Then personally appeared the above-named Ambrose J. Smith
acknowledged the foregoing instrument to be their free act,
before me,

Leah W. O'Brien
Notary Public

My Commission Expires:

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7/13/95

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EX-2564-0053

EXHIBIT "A"
TO
SACBMENT

That certain parcel of land, thirty (30.00') feet in width, running from land formerly of Manuel Dellella (and now owned by James S. Dwyer, Trustee), the land now or formerly of the Commonwealth of Massachusetts (Correction Facility), located in the Town of Dartmouth, County of Bristol and Commonwealth of Massachusetts, being further bounded and described as follows:

-beginning at an iron pin set at the southeasterly corner of said former Dellella land, said point also being a corner of land now or formerly of Ernest F. Vieira, said point also being in the northerly line of property now or formerly of the Grantor named in the within instrument;

thence running S 10°30'14" W for a distance of three hundred twenty-eight and eighty-three hundredths (328.83') feet to a point;

thence running S 8°48'32" E for a distance of three hundred one and thirty-one hundredths (301.31') feet to a point;

thence running S 27°21'08" W for a distance of three hundred and twenty hundredths (300.20') feet to a point;

thence running 37°10'10" E for a distance of seven hundred four and twelve hundredths (704.12') feet to a point;

thence running S 88°50'11" E for a distance of thirty-three and twelve hundredths (33.12') feet to a point in the westerly line of land now or formerly of the Commonwealth of Massachusetts (Correction Facility);

thence running S 4°48'53" W along the westerly line of said Commonwealth of Massachusetts land, for a distance of thirty-one and eighty-one hundredths (31.81') feet to a point;

thence running N 85°50'11" W for a distance of fifty-one and twenty-six hundredths (51.26') feet to a point;

thence running N 37°10'10" W for a distance of seven hundred thirty and seventy-six hundredths (730.76') feet to a point;

thence running N 27°21'08" E for a distance of three hundred nine and nineteen hundredths (309.19') feet to a point;

(Page 1 of 2)

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thence running S 3°45'12" W for a distance of two hundred ninety-nine and thirty-five hundredths (299.35') feet to a point;

thence running N 20°30'14" E for a distance of three hundred thirty-six and ninety-five hundredths (336.95') feet to a point in the southerly line of said former DeSelle land;

thence running S 45°25'34" W along the southerly line of said DeSelle land, for a distance of thirty (30.00') feet to the point and place of beginning.

The above described easement contains 50,826 square feet (1.1661 acres) of land.

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2564 PC0055

EXHIBIT "A"
TO
REGISTER

The land and premises shown as Lot A, Lot B, and Lot C on a certain plan entitled "Approval Not Required Plan Drawn For Raula & Dorothy Aghai and James S. Goidos, Trustees Assessors Plat 67- Lots 9, 10 & 11 Dartmouth Massachusetts" dated October 25, 1990, prepared by R.A. Cataldo Engineering of 141 Power Road, Pawtucket, Rhode Island, and recorded in said Bristol South Deeds concurrently herewith, and also, the following-described premises being shown as Dartmouth Assessors Plat 65, Parcel 11:

BEGINNING at the northeast corner of certain premises conveyed to Raula Aghai and Dorothy Aghai and at the northeast corner of land now or formerly of John Faunce at a point in the south line of the Old Fall River Road; thence

SOUTH 13 1/20 W 79 rods, more or less to land now or formerly of Wilfred K. Gifford; thence

WESTERLY in line of last named land 422.3 feet to a pipe and stones at the northwest corner of said last named land; thence

SOUTHERLY in line of last named land 109 feet to an oak tree at the northeast corner of land now or formerly of Eerothea M. Rapora; thence

WEST 59' N in line of land now or formerly of Elbridge G. Turner et al 74 3/4 rods, more or less, to land now or formerly of Pardon Russell et al; thence

NORTH 30' E 48.41 rods to the south line of the highway (known as the Old Fall River Road); thence

EASTERLY in line of said highway 770 feet, more or less, to a point for a corner; thence

SOUTHERLY 282.42 feet to a point; thence

EASTERLY 158.53 feet to a point; thence

SOUTHERLY 42.34 feet; thence

EASTERLY 98.34 feet; thence

NORTHERLY 253.64 feet to the south line of said highway; thence

EASTERLY in line of said highway 708 feet, more or less, to the point of beginning.

CONTAINING 49.7 acres more or less, and being the "FOURTH PARCEL" in Exhibit A to said recorded in Bristol South Deeds in Book 2259, Page 145.

Received & Recorded *Nov. 2, 1990 at 4:30 pm* M

Attest: *John Thomas* Register

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GRANT OF EASEMENT AGREEMENT

THIS GRANT OF EASEMENT AGREEMENT (herein called the "Agreement") made as of this 1st day of October, 1990 by and between JAMES S. GORDON, TRUSTEE OF OLD FALL RIVER REALTY TRUST under Declaration of Trust, dated November 29, 1989, and recorded in Bristol South District Registry of Deeds in Book 2487, Page 22, and not individually (herein called "Trustee"); and CAROL MEEHINS (A/K/A CAROL SMITH), CECIL SMITH, III, MARION E. SMITH (A/K/A MARION LOUISE SMITH), and AMERSON P. SMITH (herein collectively called "Grantee").

WITNESSETH:

WHEREAS, Trustee is owner of a certain parcel of real estate situate in the Town of Dartmouth, Bristol County, Massachusetts, shown as Lot C ("Lot C") on that certain plan (herein called the "ASR Plan") entitled: "Approval Not Required Plan Drawn For Rahin & Dorothy Aghai and James S. Gordon, Trustee Assessors Plat 67- Lots 3, 10 & 11 Dartmouth Massachusetts" dated October 26, 1990, prepared by R.A. Cataldo Engineering of 141 Power Road, Pawtucket, Rhode Island, and recorded in said Bristol South Deeds concurrently herewith; and

WHEREAS, Trustee intends to construct and install a paved road (herein called "Energy Road") within those portions of Lot C more particularly described in Exhibit "A" hereto, in order to provide access, ingress and egress to and from and between portions of Lot C and Old Fall River Road in said Dartmouth; and

WHEREAS, Trustee is a grantee under a certain "Easement and License Agreement Between Rahin Aghai and Dorothy Aghai, Dartmouth Power Associates Limited Partnership and James S. Gordon, Trustee of Old Fall River Realty Trust" dated as of October 11, 1990 and recorded with said Deeds herewith (herein called the "Easement Grant") recorded in said Bristol South Deeds concurrently herewith, wherein Trustee is granted, *inter alia*, an irrevocable license, easement and right to build, construct, locate, and install roads, drives, ways, and paved surfaces in, through, under, over, on, upon, through and across portions of lands owned by said Rahin Aghai and Dorothy Aghai (collectively herein called "Aghai") referred to as the "Future Extension Easement A" in said Easement Grant and designated as such on that certain plan entitled "Project Easement Plan Dartmouth Massachusetts Dartmouth Power Associates" dated October 24, 1989, prepared by R. A. Cataldo Engineering and recorded concurrently with the Easement Grant, and herein called the "Easement Plan", together with the right and easement to grant a sub-easement of such rights to Grantee to allow for the continuation of Energy Road for the use and benefit of the lands (herein called the "Smith Land") owned by Grantee and more particularly described in a certain deed from Cecil Smith, Jr. to Margaret M. Smith, in trust, dated November 8, 1989, and recorded in said Bristol South Deeds in Book 1302, Page 418; and

WHEREAS, Trustee has agreed to grant to Grantee, rights and easements for the further continuation of Energy Road over certain

portions of Lot C shown as "Future Extension Easement B" on the Easement Plan to connect said Future Extension Easement A to the Smith Land; and

WHEREAS, Trustee and Grantee have herein agreed upon the terms and requirements of the grants, easements and rights-of-way for the building, construction, and development by Grantee of roads, drives, ways and paved surfaces and related facilities and amenities (including utility service facilities) in, through, under, over, on and upon Lot C;

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars paid by each of the parties hereto unto the others, receipt and sufficiency whereof the parties hereby acknowledge, the undersigned parties hereby respectively agree as follows:

1. Trustee hereby grants to Grantee, as appurtenant to the Smith Land, the following perpetual, non-exclusive rights, rights-of-way and easements, subject always to the terms, conditions and requirements of this Agreement:

(A) An irrevocable, non-exclusive, license, easement and right-of-way, on, under, upon, over, through and across any or all portions of Energy Road, whether or not graded, paved or otherwise prepared or improved to use the same to provide or afford unrestricted access, ingress, egress and use for pedestrians and vehicles (including, without limitation, large trucks, vans and construction equipment and other heavy vehicles), and to use and utilize said roads and ways in the manner in which private ways are customarily used in said Dartmouth, to and from and between any portions of the Smith Land and the public way presently known as Old Fall River Road in Dartmouth;

(B) An irrevocable license, easement and right to install, build, construct, locate, relocate, remove, modify, change, maintain, service, inspect, patrol, upkeep, repair, use and continue, roads, drives, ways, and paved surfaces in, through, under, over, on, upon, through and across "Future Extension Easement A" and "Future Extension Easement B" (any portion and all of which said roads, drives, ways and paved surfaces are herein called the "Extension Parcel Roads"), including the right to dig ditches and trenches, change grades, excavate, remove and replace soils, fill and perform other related or necessary work in accordance with applicable law, regulation and ordinance, and the terms, provisions and requirements of this Agreement, including the irrevocable license, easement to connect, unite or otherwise join the Extension Parcel Roads to any roads, drives or ways constructed upon the portions of Lot C described in Exhibit "A" hereto and adjoining the Future Extension Easement A parcel; and

(C) An irrevocable license, easement and right to install, build, construct, locate, relocate, remove, modify, change, maintain, service, inspect, patrol, upkeep, repair, use and continue, in, through, under, over, on, upon, through and across Future Extension Easement A and Future Extension Easement B underground pipes, ducts, lines, poles, cables, wires and conduits, and other facilities and equipment (hereinafter the foregoing items being

separately or collectively called the "service lines") connecting the Smith Land with one (1) or more streets, tie-ins, access hook-ups, or other junction facilities in location(s) selected by Grantee in its reasonable determination to allow connection of the Smith Land with water mains installed in Energy Road for the supply of water utility services, which right shall include the right to dig ditches and trenches, change grades, excavate, remove and replace soils, fill and perform other related or necessary work in accordance with applicable law, regulation and ordinance, and the terms, provisions and requirements of this Agreement.

2. Any work undertaken or performed in connection with the construction, installation, repair, maintenance, or replacement of facilities, installations, and items authorized under Paragraph 1. above, shall comply with the following:

(A) All costs of design, engineering, construction, installation, repair, removal, upkeep and maintenance thereof, including all surveying expenses and all charges incurred for building permits and other necessary permits, shall be paid solely by the party performing such work;

(B) No buildings or other improvements will be constructed or located on any portion of the Future Extension Easement A and/or Future Extension Easement B by any owner or occupant of the Smith Land and/or any portion thereof, or by any person, party or entity claiming by, through or under any such owner or occupant;

(C) All excavation, earth removal, filling, construction, installation and other work performed pursuant to this Agreement shall be in accordance with applicable laws, ordinances, orders, rules, regulation of all governmental authorities having jurisdiction thereof.

3. The parties hereby further agree as follows:

(A) Except as otherwise specifically provided herein, all covenants, conditions, rights, benefits, privileges and easements contained in this Agreement shall be and shall be deemed to be covenants running with the land and shall inure to the benefit of Grantee, and owners of record of the Smith Land, or portion thereof, and their respective successors, tenants or lessees, grantees, successors and assigns, and any person or party directly or indirectly claiming by, through or under any of them, and the same shall be binding upon trustee and each and every owner of record of Lot C, and such owner's respective successors, tenants or lessees, grantees, successors and assigns, and any person or party directly or indirectly claiming by, through or under them;

(B) To protect, defend, indemnify and hold harmless each other party from and against any and all loss, damage, liability, cost and expense (including attorney's fees at all trial and appellate levels) in the event that any mechanic's lien or other statutory lien is filed by reason of work, labor, service or materials supplied to or at the request of such party in connection with any construction, installation, maintenance, repair or other work performed under this Agreement;

(C) That no term or provision hereof may be waived, modified or amended nor shall it be deemed or construed to have been waived, modified or amended, except by written agreement executed by all then holders of all of the rights, privileges and assessments set forth and/or contained herein, and all mortgagees of record of the lot C, and then only to the extent set forth in said written agreement;

(D) That the assessment grants contained herein are not intended, and shall not be construed as, a dedication thereof for public use;

(E) That if any term or provision hereof or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and such term and provision hereof shall be valid, enforceable and enforced to the fullest extent permitted by law;

(F) In any instance in which the consent or approval of any party is required hereunder as a condition precedent for the commencement, prosecution or performance of any construction, repair, placement, relocation or other work or activity, or the exercise any right herein granted, such consent and approval shall not be unreasonably withheld or delayed;

(G) Any notice or other communication required to be sent or given under this Agreement shall be in writing and shall be deemed to have been properly sent or given when mailed by prepaid registered or certified mail, return receipt requested, addressed, as follows:

If to Grantee, to: c/o Margaret Xifaras, Esq.
115 Orchard Street
New Bedford, Massachusetts 02740; and

If to Trustee, to: James S. Gordon, Trustee
Old Fall River Realty Trust
8 Sewbury Street
Boston, Massachusetts 02116,

or to such other places or to such other parties as any party (or successor to any party, if applicable) may hereafter designate to the others by written notice given in the manner provided herein;

(H) This Agreement supercedes any and all other agreements the parties hereto in respect to the foregoing, whether verbal or written, and all such other agreement, of whatever name and nature, and whenever made, are hereby merged herein, and shall have no independent meaning or effect;

(1) That except as otherwise provided herein (or under separate written agreement) all personal property, equipment, or other items necessary to or levied against any roads, paved areas, utility lines, equipment, or other installations, improvements and other facilities created, built or installed on, in or under the Future Extension A and/or Future Extension B, whether charged to Grantee or Trustee, or any other party shall be the sole responsibility and obligation of Grantee, and the record owners, from time to time, of the Smith land.

(2) This Agreement shall be governed by and construed in accordance with the laws of the State of Massachusetts, as the same may from time to time exist.

EXECUTED UNDER SEAL by the respective parties in multiple counterpart as of the date first set forth hereinabove.

TRUSTEE,

James S. Gordon
James S. Gordon, Trustee of
Old Wall River Realty Trust, as
aforesaid

Signed and sealed
in presence of:

Richard H. Smith

Richard H. Smith

Richard H. Smith

Richard H. Smith

Richard H. Smith

sgrood.dya
10/21/96

GRANTEE:

Carol Medeiros

CAROL MEDEIROS
(N/A CAROL SMITH)

Carol Smith, Tr. & Mary Ann
CAROL SMITH, TR. & MARY ANN

Marian E. Smith

MARION E. SMITH
N/A MARION LEE SMITH

Andrew J. Smith

ANDREW J. SMITH

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

October 3rd, 1990

Then personally appeared the above-named James S. Gordon, as Trustee of Old Fall River Realty Trust, and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of Old Fall River Realty Trust, before me.

[Signature]
Notary Public JONATHAN S. SMITH

My Commission Expires July 18, 1997
JONATHAN S. SMITH, Notary Public
My Commission Expires July 18, 1997

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

October 3rd, 1990

Then personally appeared the above-named Carol Medeiros (A/K/A Carol Smith) and acknowledged the foregoing instrument to be her free act, before me,

[Signature]
Notary Public
My Commission Expires:

7/13/95

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

October 3rd, 1990

Then personally appeared the above-named ~~James S. Gordon~~ and Ambrose J. Smith acknowledged the foregoing instrument to be their free act, before me,

[Signature]
Notary Public
My Commission Expires:

7/13/95

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss:

October 3rd, 1990

Then personally appeared the above-named Marion E. Smith and acknowledged the foregoing instrument to be her free act, before me,

[Signature]
Notary Public
My Commission Expires:

7/13/95

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That certain parcel of land situated on the southerly side of Old Fall River Road in the Town of Dartmouth, Bristol County, Massachusetts, bounded and described as follows:

BEGINNING at a point in the southerly line of said Old Fall River Road, said point being the intersection of the westerly line of a proposed roadway (to be called Energy Road) with the southerly line of said Old Fall River Road, said point also being one hundred ninety-eight and no hundredths feet (199.80') easterly, as measured along the southerly line of said Old Fall River Road, from the northeasterly corner of land now or formerly of Manuel P. Partade;

THENCE running S. 71° 43' 53" E. along the southerly line of said Old Fall River Road, a distance of one hundred eleven and sixty-eight hundredths feet (111.68') to a point of curvature;

THENCE continuing along the southerly line of said Old Fall River Road curving to the left along an arc of a curve having a radius of one thousand six hundred thirty and no hundredths feet (1630.00'), a central angle of 1° 39' 29" for an arc length of forty-seven and seventeen hundredths feet (47.17') to a point;

THENCE running westerly and southerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 88° 10' 31" for an arc length of sixty-one and sixty-seven hundredths feet (61.67') to a point;

THENCE running S. 18° 14' 07" W. for a distance of sixty-three and sixteen hundredths feet (63.16') to a point;

THENCE running southerly curving to the right along an arc of a curve having a radius of six hundred forty and no hundredths feet (640.00'), a central angle of 8° 29' 24" for an arc length of ninety-four and eighty-three hundredths feet (94.83') to a point;

[Page 1 of 4 of Exhibit "A"]

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- THENCE running N. 26° 45' 31" W. for a distance of fifty-eight and forty-six hundredths feet (58.46') to a point;
- THENCE running southerly and easterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 90° 30' 00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;
- THENCE running S. 18° 45' 31" W. for a distance of sixty and no hundredths feet (60.00') to a point;
- THENCE running westerly and southerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 90° 30' 30" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;
- THENCE running S. 26° 45' 31" W. for a distance of one hundred fifty-six and ninety-seven hundredths feet (156.97') to a point;
- THENCE running southwesterly curving to the right along an arc of a curve having a radius of three hundred forty and no hundredths feet (340.00'), a central angle of 34° 05' 43" for an arc length of one hundred fifty-four and eighty-six hundredths feet (154.86') to a point;
- THENCE running S. 52° 31' 16" W. for a distance of three hundred forty and eighty-four hundredths feet (340.84') to a point;
- THENCE running southwesterly and southerly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 87° 45' 41" for an arc length of three hundred ninety-eight and twenty-five hundredths feet (398.25') to a point;
- THENCE running S. 34° 54' 25" E. for a distance of seventy-seven and fifty hundredths feet (77.50') to a point;
- THENCE running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), an interior angle of 90° 00' 30" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;

[Page 2 of 4 of Exhibit "A"]

- THENCE running S. 34° 54' 25" E. for a distance of sixty and no hundredths feet (60.00') to a point;
- THENCE running southwesterly and southeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 94° 00' 00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;
- THENCE running S. 34° 54' 25" E. for a distance of one hundred fifty-four and twelve hundredths feet (154.12') to a point in the northerly line of a fifty foot (50') wide Algonquin Gas Transmission easement;
- THENCE running S. 71° 15' 20" E. for a distance of one hundred ninety-one and six hundredths feet (191.06') to a point in the westerly line of land now or formerly of Manuel DeMello;
- THENCE running S. 21° 01' 21" W., bounded easterly by said DeMello land, for a distance of two hundred twenty-three and nine hundredths feet (223.09') to a point;
- THENCE running N. 87° 10' 18" W. for a distance of eighty and no hundredths feet (80.00') to a point;
- THENCE running northerly and northwesterly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 37° 44' 36" for an arc length of one hundred seventy-one and twenty-four hundredths feet (171.24') to a point;
- THENCE running N. 34° 54' 25" W. for a distance of four hundred forty-two and seven hundredths feet (442.07') to a point;
- THENCE running northerly and northeasterly curving to the right along an arc of a curve having a radius of three hundred forty and no hundredths feet (340.00'), a central angle of 87° 45' 41" for an arc length of five hundred twenty and seventy-nine hundredths feet (520.79') to a point;
- THENCE running N. 52° 51' 16" E. for a distance of one hundred thirty-three and twenty-five hundredths feet (133.25') to a point;

[Page 3 of 4 of Exhibit "A"]

- THENCE running northeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 34' 32' 13" for an arc length of fifty-nine and twenty-five hundredths feet (59.38') to a point;
- THENCE running N. 44° 09' 38" E. for a distance of sixty-one and thirty hundredths feet (61.30') to a point;
- THENCE running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 95° 07' 18" for an arc length of sixty-six and forty-one hundredths feet (66.41') to a point;
- THENCE running N. 31° 31' 16" E. for a distance of sixty-seven and two hundredths feet (67.02') to a point;
- THENCE running northeasterly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 36° 05' 45" for an arc length of one hundred eighteen and forty-two hundredths feet (118.42') to a point;
- THENCE running N. 24° 48' 11" E. for a distance of three hundred fifty-five and forty-four hundredths feet (355.44') to a point;
- THENCE running northeasterly curving to the left along an arc of a curve having a radius of five hundred sixty and no hundredths feet (560.00'), a central angle of 8° 29' 34" for an arc length of eighty-two and ninety-eight hundredths feet (82.98') to a point;
- THENCE running N. 18° 16' 07" E. for a distance of sixty-two and forty-six hundredths feet (62.46') to a point;
- THENCE running northerly and westerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 90° 09' 40" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to the point and place of beginning in the southerly line of said Old Fall River Road.

The above-described parcel are the premises conveyed by Rahim Agbai and Dorothy Agbai (a/k/a Dorothy E. Agbai) to James S. Gordon, Trustee of Old Fall River Realty Trust, under deed dated October 31, 1990 and recorded herewith.

Received & Recorded

Nov. 2, 1991 Hrs. 30 min. P.M.

[Page 4 of 4 of Exhibit "A"]

Attest: John L. Conrad Registrar

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Darlan King

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Aug 25, 2025 8:37 PM EDT

20968

EASEMENT GRANT

We, the undersigned, JAMES HARRIS AND TERRANCE D. LANGE, INDIVIDUALLY AND AS CO-PARTNERS D/A APACHE ASSOCIATES, a Massachusetts general partnership, with an office address at 1 Surrey Drive, Lakeville, Massachusetts 01946, (hereinafter, together with their successors, heirs, grantees and assigns, collectively called "Grantor"), being the owners of a certain parcel of real estate situate on the northerly side of Old Fall River Road in the Town of Dartmouth, Bristol County, Massachusetts, shown as Lot 1 (herein referred to as "Lot 1" on that certain plan (herein called the "Approval Not Required Plan") entitled: "Approval Not Required Plan Drawn For Terrance D. Lange & James Harris Located On Old Fall River Road North Dartmouth, Massachusetts Scale: 1"=60' Date November 1989" prepared by Bristol County Engineering, Inc. of Swansea, Massachusetts, and recorded with Bristol South District Registry of Deeds in Plan Book 124, as Plan 116, in consideration of the sum of TEN (\$10.00) Dollars paid, and for other good and valuable consideration, receipt whereof Grantor hereby acknowledges, including the acceptance by the "Grantee" hereinafter named of Grantor's conveyance deed of Lot 2 (herein referred to as "Lot 2") as shown on the Approval Not Required Plan, hereby grant, convey and assign to JAMES S. GORDON, TRUSTEE OF THE OLD FALL RIVER REALTY TRUST, under Declaration of Trust dated November 29, 1989, and recorded in Bristol South District Registry of Deeds in Book 1487, Page 21 (hereinafter, together with each and every owner of record from time to time of said Lot 1, called "Grantee"), with an office address of 8 Newbury Street, Boston, Massachusetts, and to Grantee's tenants, lessees, grantees, successors, assigns, and any person or party directly or indirectly claiming by, through or under any of them, including their respective officers, employees, contractors, mortgagees, agents and invitees, with GUARANTEE COVENANTS, the perpetual, exclusive right, benefit, privilege, easement, license and right-of-way, exercisable at any time, and from time to time, without the consent or approval of Grantor, or payment of any sum of money or any further or additional consideration: (A) to enter in, through, under, over, on, upon, through and across the portions of said Lot 1 more particularly described in Exhibit "A" attached hereto and made a part hereof (herein called the "Easement Parcel"), as the same may hereafter be relocated as hereinafter described, to perform any and all survey work, soil tests, environmental tests, and other property examinations, and to install, build, construct, reconstruct, locate, relocate, remove, modify, change, replace, maintain, service, inspect, patrol, upkeep, repair, operate, and continue in, through, under, over, on, upon, through and across the Easement Parcel, a line of lines of poles, H-frames, towers and combinations thereof, and related appendages, projections, extensions, pendants, rods and overhangs, with wires and cables above and under ground, and all foundations, anchors, props, braces, struts, guys, guy wires, and other supporting structures and installations necessary or

desirable for the bracing, bearing or carrying of the electrical poles in upright position or the support of wires or lines thereon, and all usual fixtures, equipment, appurtenances and apparatus appurtenant or incident thereto, and any underground or above-ground pipes, ducts, lines, poles, cables, wires and conduits, and other facilities, equipment and apparatus deemed necessary or desirable by Grantee for the placement or support of said poles and/or other structures and facilities for purposes of transmission and/or distribution and/or conveyance of energy or electrical energy for light, heat, power, telephone, telegraph, the transmission of electronic communications, cable television, data communication, and other electronic information or intelligence, or other utilities, or for any other purpose; and (8) to keep the Easement Parcel and adjoining portions of Lot 1 free and clear of trees, brush, bushes, undergrowth or vegetation which may in the sole judgment of Grantee interfere with or endanger any poles, pole lines, structures, equipment or facilities located or to be constructed thereon, or the construction, installation, use, operation, maintenance, removal or relocation thereof, including the right to cut, remove, root, prune, crop, trim and otherwise cut and remove same as necessary by mechanical, chemical, or other means and to remove structures or other obstructions from the said Easement Parcel which may in the sole judgment of Grantee interfere with or endanger any poles, pole lines, structures, equipment or facilities located or to be constructed thereon, or their use or operation; to add to or otherwise change the locations of any poles, pole lines, structures, equipment or facilities located in the Easement Parcel; to enter upon and pass along said Easement Parcel from adjoining premises for any and all of the foregoing described purposes and as necessary to reach or access said Easement Parcel in any reasonable manner over other land of which the Easement Parcel is a part; to install, construct, maintain, repair, replace and continue anchors and guy wires on portion of said Lot 1 adjacent to and lying outside of the Easement Parcel as needed to strengthen or support any pole line or lines at angle points; to change and/or maintain the present grade of the Easement Parcel, and to prevent the change of grade, filling, or excavation thereof; Provided, However, that the rights and easements granted in the immediately preceding clause (8) to Grantee, and those claiming under Grantee, affecting portions of Lot 1 not included within the Easement Parcel shall: (1) in all events be confined to those portions of Lot 1 located easterly of the westerly sideline of the "New Bedford Gas & Edison Light Company Easement" located as shown on said Approval Not Required Plan; and (2) be subject to the terms and provisions of the "Main Line Easement Grants" hereinafter described; and (3) not be exercised such that improvements constructed on the Easement Parcel and/or adjoining portions of Lot 1 unreasonably interfere with pedestrian and/or vehicular access, ingress and egress to and from Old Fall River Road and remaining portions of said Lot 1.

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Notwithstanding the location of the Easement Parcel established in Exhibit "A" herein, Grantor hereby authorizes and grants to Grantee the irrevocable license, easement and right, to relocate the Easement Parcel to another location on Lot 1, from time to time, by recording a plan showing the relocated Easement Parcel in the Bristol County South District Registry of Deeds showing the center line of the line of poles to be located thereon and the Easement Parcel, together with a written declaration executed by Grantee and referring to the within instrument, stating that the Easement Parcel located on the plan recorded with said declaration shall hereafter constitute the "Easement Parcel" herein, and containing a legal description for the new Easement Parcel, wherein the term "Easement Parcel", as used herein, shall refer to that shown on said plan and described in the declaration, and the portions of Lot 1 theretofore previously included as part of the Easement Parcel and not contained within the newly described Easement Parcel shall be released from and not covered by the easements established hereunder; provided, however, any such relocated Easement Parcel shall in no event be more than one hundred (100') feet in width nor located westerly of the westerly sideline of the "New Bedford Gas & Edison Light Company Easement" located as shown on the Approval Not Required Plan.

Grantor hereby acknowledges that Lot 1 is subject to a certain "New Bedford Gas & Edison Light Company Easement" located as shown on the Approval Not Required Plan (herein called the "Main Line Easement Area"), and described in two (2) certain easement grants (herein called the "Main Line Easement Grants"), both dated June 21, 1940 and recorded in said Bristol South Deeds in Book 1318, at Page 217 and Page 519, respectively. For the consideration hereinabove recited, Grantor further grants, conveys and assigns to Grantee and to Commonwealth Electric Company, and to their respective tenants, lessees, grantees, successors, assigns, and any person or party directly or indirectly claiming by, through or under any of them, with QUIETENING COVENANTS, the perpetual right, benefit, privilege, easement, license and right-of-way, exercisable at any time, and from time to time, without the consent or approval of Grantor, or payment of any sums of money or any further or additional consideration to perform any and all survey work, soil tests, environmental tests, and other property examinations, and to install, build, construct, reconstruct, locate, relocate, remove, modify, change, replace, maintain, service, inspect, patrol, upkeep, repair, operate, and continue in, through, under, over, on, upon, through and across the Main Line Easement Area, a line or lines of poles, H-frames, towers and combinations thereof, and related appendages, projections, extensions, pendants, rods and overhangs, with wires and cables above and underground, and all foundations, anchors, props, braces, struts, guys, guy wires, and other supporting structures and installations necessary or desirable for the bracing, bearing or carrying of the electrical poles in upright position or the support of wires or lines thereon, and all usual fixtures, equipment, and apparatus

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appurtenant or incident thereto, and any underground or above-ground pipes, ducts, lines, poles, cables, wires and conduits, and other facilities, equipment and apparatus appurtenant or incident thereto deemed necessary or desirable by Grantee and/or Commonwealth Electric Company, and those claiming under them, for the placement or support of said poles and/or other structures and facilities for purposes of transmission and/or distribution and/or conveyance of energy or electrical energy for light, heat, power, telephone, telegraph, the transmission or electronic communications, cable television, data communication, and other electrical information or intelligence, or other utilities, or for any other purpose, including any and all purposes relating to the connection or junction or union of poles, lines, wires, cables and electrical transmission and/or distribution and/or conveyance facilities now or hereafter located on any portions of the Main Line Easement Area with or to poles, lines of poles, lines, wires, cables and electrical transmission and/or distribution and/or conveyance facilities and equipment now or hereafter located on any portions of the Easement Parcel. Grantor further acknowledges and agrees that: (a) the aforesaid easements granted under the Main Line Easement Grants are in full force and effect, that no termination provided for therein has occurred, and that Grantor hereby specifically waives and releases forever any such termination provisions contained therein; and (b) all rights of Grantor under the Main Line Easement Grants are hereby made subject and subordinate in all respects to the rights, grants, easements, licenses and rights-of-way granted or provided by Grantor in the within Easement Grant.

Grantor hereby covenants and agrees with Grantee, for itself, and for each and every owner from time to time of Lot 1, to sign, execute, acknowledge, approve, submit and deliver, promptly after written request from Grantee, from time to time, any and all building permits, permit or license applications, zoning variance or special permit applications, and all other instruments which Grantee may request from Grantor for submission to or approval by any local, state or federal governmental authority or utility supplier in connection with or relating to the installation, building, construction, reconstruction, location, relocation, removal, modification, change, replacement maintenance, servicing, upkeep, repair, operation, use or utilization of any portion of the Easement Parcel and/or adjoining portions of Lot 1 located easterly of the westerly sidewalk of the aforementioned "New Bedford Gas & Edison Light Company Easement" as shown on said Approval Not Required Plan and/or any and all improvements thereof now or hereafter made and/or applicable or relating in any way to the connection or junction or union of lines, poles, wires, or other facilities now or hereafter located anywhere on the Easement Parcel with electrical transmission and/or distribution and/or conveyance facilities and/or electrical lines, facilities and equipment now or hereafter located on any portions of the Main Line Easement Area, the Grantor hereby further authorizing and appointing Grantee as its attorney-in-fact, which appointment being coupled

with an interest in irrevocable, for purposes of signing, executing, acknowledging, approving, submitting and delivering, in the name of Grantor, any and all building permits, permit or license applications, zoning variance or special permit applications, and all other instruments requested by Grantee as herein described in the event Grantor shall fail or refuse so to do within thirty (30) days after the giving of Grantee's request.

Any and all poles, lines, wires, installations, equipment, fixtures, apparatus, and other property of Grantee, and those claiming by, through, or under Grantee, now existing or at any time hereafter located, installed, constructed or placed in, through, under, over, on, across, or upon the Easement Parcel and/or adjoining portions of Lot 1 as hereinbefore limited shall be and shall at all times remain the property of Grantee, or such other parties, as the case may be, whether or not affixed to the realty or to Lot 1, and nevertheless affixed.

Any notice or other communication to be sent or given under this Easement Grant shall be in writing and shall be deemed to have been properly sent or given when mailed by prepaid registered or certified mail, return receipt requested, addressed to the record owner of Lot 1, or Lot 2, as the case may be, as shown in the most recent records of the Town of Dartmouth Board of Assessors.

Except as otherwise specifically provided herein, all rights, benefits, privileges, easements and right-of-way granted herein shall inure to the benefit of the owner(s) of record from time to time of Lot 2, and shall be an easement appurtenant thereto, and shall be binding upon Grantor and all owners of record from time to time of Lot 1, and those claiming by, through or under them, and all covenants and agreements of Grantor herein set forth are intended as and shall be covenants running with the land and premises constituting Lot 1.

This Easement Grant shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

EXECUTED under seal in the Commonwealth of Massachusetts on this the 26th day of October, 1990.

GRANTOR:


 TERRANCE D. LEBERGE,
 (a/k/a Terrance D. Leberge),
 Individually And As Co-partner of
 Apache Associates


 JAMES MASLOFF, Individually
 And As Co-partner of Apache
 Associates

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COMMONWEALTH OF MASSACHUSETTS

Bristol, ss:

October 26, 1990

Then personally appeared the above named Terrance D. Lohrge, individually and as co-partner of Apache Associates and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Apache Associates, before me.


Notary Public

My Commission Expires: August 29, 1992

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss:

October 26, 1990

Then personally appeared the above named James Macgiff, individually and as co-partner of Apache Associates and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Apache Associates, before me.


Notary Public

My Commission Expires: August 29, 1992

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NOTICE
TO
EASEMENT GRANT

LEGAL DESCRIPTION OF EASEMENT PARCEL

That certain parcel of land situated on the northerly side of Old Fall River Road in the Town of Dartmouth, County of Bristol and Commonwealth of Massachusetts, being further bounded and described as follows:

Beginning at a point in the northerly line of Old Fall River Road at the southeast corner of land now or formerly of Ricardo Sousa Lima & Olga O. Lima, said point also being the southwest corner of lot 1 shown on the plan recorded with Bristol South District Registry of Deeds in Plan Book 124, as Plan 114 hereinafter referred-to:

Thence running N 18° 35' 19" E, bounded westerly by said Lima land, a distance of thirty-five (35.00') feet to a point, said point being the southwest corner and the point of beginning of the Easement Parcel herein described;

Thence continuing N 18° 35' 19" E, bounded westerly by said Lima land, a distance of one hundred and one hundredth (100.01') feet to a point, said point being the northwest corner of the Easement Parcel herein described;

Thence running S 70° 35' 05" E a distance of one hundred fifty-one and forty-one hundredths (151.41') feet to a point, said point being the northeast corner of the Easement Parcel herein described;

Thence running S 19° 11' 13" W, bounded easterly by Lot 3 as shown on a certain "Approval Not Required Plan Drawn For Terrance D. LeBerge & James Hassell Located On Old Fall River Road North Dartmouth, Massachusetts Scale: 1"=80' Date November 1989" prepared by Bristol County Engineering, Inc. of Swansea, Massachusetts, and recorded with Bristol South District Registry of Deeds in Plan Book 124, as Plan 114, a distance of one hundred (100.00') feet to a point, said point being the southeast corner of the Easement Parcel herein described;

Thence running N 70° 35' 05" W, a distance of one hundred fifty and thirty-seven hundredths (150.37') feet to said point of beginning of the Easement Parcel at its southwest corner.

The above described Easement Parcel contains fifteen thousand eighty-nine square feet, more or less, (15,089 +/- S.F.) of land.

Recorded & Recorded

Nov. 2, 1990 4:30 PM P. M.

7
Attest: John Gomes Register

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REF: 2559-272

The undersigned Dartmouth Power Association, Limited Partnership ("DPA"), a Massachusetts limited partnership, with its principal place of business c/o Energy Management, Inc., 1 Newbury Street, Boston, MA 02116, hereinafter called the "Covenantee", having applied to the Board of Selectmen of the Town of Dartmouth for a special permit to construct a nominal 40 watt electric power plant, does hereby covenant and agree with the said Town of Dartmouth, a municipal corporation having a usual place of business at 400 Slocum Road, North Dartmouth, MA 02746, as follows:

1. Background

DPA plans to construct an independent power production facility at a site located off Old Fall River Road in North Dartmouth, Massachusetts; a riser station to be used in connection with the facility on Old Fall River Road; and a road, poles, wires, and conduits to be used in connection with the facility (the "Project"). In furtherance of its plans, DPA has applied to the said Selectmen for a special permit under the town zoning bylaw and in support of its special permit application, DPA has agreed to make an annual gift to the Town (the "Annual Gift") to mitigate present and future direct and indirect impact of the Project.

2. Commercial Date

The Commercial Date is defined herein as the actual service date as defined in a Power purchase agreement dated September 19, 1989 by and between Dartmouth Power Associates and the Commonwealth Electric Company.

3. Annual Taxes

The Annual Taxes shall mean all taxes, including but not limited to taxes on the value of real and personal property and including fire district assessments for the first ten (10) annual gifts, but excluding fire district assessments thereafter, which are assessed by the Town in any year covered by this covenant against DPA, its partners, or the owners of land upon which the Project will be located, including the road, the water pumping station, the riser station, and all lines, poles, and conduits servicing the Project.

4. Annual Gift

The Annual Gift will be made within thirty days of the end of each of the Town's fiscal years beginning with the fiscal year commencing after the Commercial Date, and shall be equal to (1) \$500,000 increased for twenty successive years by two and one half per cent in each succeeding fiscal year (hereinafter the gift

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base), less (ii) the excess of Annual Taxes for the preceding fiscal year over any abatement of Annual Taxes received during the preceding fiscal year; provided however, if in any fiscal year the Annual Taxes exceed the Annual Gift which would be due in that fiscal year, then no Annual Gift shall be due for that fiscal year, and any abatement of Annual Taxes received for that fiscal year shall not increase the Annual Gift in any subsequent year. The gift base shall not increase from the twenty-first (191st) through the twenty-fifth (25th) annual gifts, and thereafter the gift base shall be reduced by ten percent (10%) each year and there shall be no gift due after the thirty-fifth (15th) year following the fiscal year commencing after the Commercial Date.

5. Abatement of Gift

Upon application by DPA after the twentieth (20th) year, DPA may petition the Selectmen for an abatement of the Annual gift then due, which abatement the Selectmen may grant upon certification the plant is and was operating to standard engineering practice each year from the twentieth (20th) year to the date of the abatement petition and proof that there has been a decrease in net income attributable to the cost of gas or water or the reduced return from electrical purchases under gas or power purchase contracts or DOW water rates effective in the prior year. In any event, the gift abatement shall not exceed fifty percent (50%) of the established decrease in net income attributable to the cost of water and gas or power purchase decrease.

7. Termination

This Covenant shall terminate on the earlier of (i) the thirty-fifth (35th) annual gift or (ii) on the date the Project ceases to operate.

7. Assignment

This Covenant shall inure to the benefit of and shall be binding on the Town, DPA and their respective Successors and assigns. DPA may assign, convey, and transfer all or a portion of its right, title, and interest in the Covenant to any entity which is successor to DPA, or to any bank or financial institution which finances the project.

8. Entire Agreement

This Covenant together with the Selectmen's Special Permit dated October 3, 1990 and recorded herewith in Book 1513, Page 423, constitutes the entire understanding and agreement of DPA with respect to the subject matter hereof and supersedes all prior understandings and agreements, both written and verbal. This Covenant shall not be amended or altered unless said amendment or alteration is agreed to in writing by the Board of Selectmen or the successors in office of said Board. This Covenant is governed by and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, Dartmouth Power Associates Limited Partnership has caused this Covenant to be executed as a sealed instrument by James C. Gordon, President of EMI Dartmouth, Inc., its General Partner, hereunto duly authorized this 2nd day of October, 1990.

COVENANTOR
Dartmouth Power Associates Limited Partnership

EMI Dartmouth, Inc., its General Partner

By: James C. Gordon
James C. Gordon, President
(Certificate of Corporate Vote attached)

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

October 2, 1990

Then personally appeared before me the above-named James C. Gordon, and acknowledged the foregoing instrument to be his free act and deed as President of EMI Dartmouth, Inc. and the free act and deed of EMI Dartmouth, Inc. and Dartmouth Power Associates Limited Partnership, before me.

Charles J. Gil
Notary Public
My Commission Expires ..



Received & Recorded Nov. 2, 1990 4:30 PM

FEL/DGA.cov

Attest: John Edward Registrar

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20991

DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

Declaration of Easements, Covenants, and Restrictions made as of this thirtieth (30th) day of October, 1990, by Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership having its principal place of business at 1 Newbury Street, Suite 2, Boston, Massachusetts (the "Grantor").

ARTICLE ONE. Recitals.

1.1 The Grantor is to be the owner of an electric generation facility (the "Unit"), which is to be constructed on certain premises located in the Town of Dartmouth, Massachusetts, which premises have been leased to the Grantor pursuant to a lease between the Grantor, as lessee, and Old Fall River Realty Trust, a Massachusetts trust and the owner of such premises, as lessor, and which premises are more particularly described in Appendix A attached hereto (the "Site"). The Unit currently is expected to produce approximately sixty-seven thousand, six hundred kilowatts (67,600 kW) of electricity from a single gas turbine and supplementary-fired waste heat boiler with a dual inlet steam turbine.

1.2 The Grantor has entered into an agreement regarding the purchase and sale of the electricity to be produced by the Unit with Commonwealth Electric Company, a Massachusetts corporation (the "Grantee"), dated as of September 8, 1989 (the "Original Power Purchase Agreement"), and modified by an amendment dated as of August 3, 1990 (the "Amendment"). The Original Power Purchase Agreement and the Amendment are attached as Appendix B hereto. The Original Power Purchase Agreement, as currently amended by the Amendment, and as it may hereafter be amended, modified, or restated, is referred to hereto as the "Power Purchase Agreement." Pursuant to the Power Purchase Agreement, the Grantee has agreed to purchase and the Grantor has agreed to sell all of the electric capacity and related energy to be generated by the Unit through the twenty-fifth (25th) anniversary of the Actual In-Service Date (as such term is defined in the Power Purchase Agreement) of the Unit.

1.3 In order to facilitate the financing and thereby the development and construction of the Unit, the Power Purchase Agreement provides that the Grantee pay to the Grantor a front-loaded floor price for electric capacity and related energy produced by the Unit, such that the Grantee and its successors will receive proper consideration therefor only to the extent that the Grantee is able to purchase the electric capacity and related energy produced by the Unit under terms and conditions identical or substantially identical to those contained in the Power Purchase Agreement for the full anticipated term thereof.

1.4 The Power Purchase Agreement provides that the Grantee may at its own cost construct, install, own, operate, and maintain electrical gathering equipment and other facilities at the Site, in order to fulfill the purposes of this Declaration and of the Power Purchase Agreement.

1.5 The Original Power Purchase Agreement and the Amendment have been submitted to and approved by the Massachusetts Department of Public

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Utilities, in accordance with the regulations of such Department, and have been submitted to and approved by the Federal Energy Regulatory Commission, in accordance with the regulations of such Commission.

1.4 The Grantor expects to derive substantial profit from the consideration received through the operation of the Unit, including, without limitation, consideration received through the sale of capacity and related energy to the Grantee under the Power Purchase Agreement.

1.5 The Grantor and the Grantee desire to ensure the ability of the Grantee to purchase the electric capacity and related energy produced by the Unit under terms and conditions, and at rates, identical or substantially identical to those contained in the Power Purchase Agreement for a period equal to the full anticipated term thereof, subject to the terms hereof, so as to ensure proper consideration to the Grantee for amounts paid by it under the Power Purchase Agreement and to protect and preserve the Grantee's investment in any existing equipment or other facilities that the Grantee might install as hereinabove described.

1.6 Accordingly, as was provided in the Power Purchase Agreement as an inducement to the Grantee to enter into the Power Purchase Agreement, and in consideration of the foregoing as well as for other good and valuable consideration, the Grantor, for itself, its successors, and assigns with respect to the Site, hereby grants to the Grantee an easement with respect to the Site as described in Article Two hereof, subjects the Site to certain covenants and restrictions as described in Article Three hereof, and declares that the Site and the Unit shall be held, transferred, sold, conveyed, and occupied subject to such easement and to such covenants and restrictions as hereinafter set forth.

ARTICLE TWO. Grant of Easement.

2.1 Subject to the terms, conditions, covenants, and restrictions of this Declaration, the Grantor does hereby grant to the Grantee a right-of-way and non-exclusive easement with respect to the Site to construct, install, maintain, repair, replace, remove, and operate in, on, over, under, across, and through the Site electrical metering equipment and other facilities, as well as to enter upon the Site for purposes of inspecting the Unit at all reasonable times and, except in case of emergency, upon reasonable notice, all as contemplated by the terms of the Power Purchase Agreement.

2.2 The Grantor hereby also grants to the Grantee in connection with the Site the right of entry and passage of men and women, vehicles, and machines on, over, across, and through the walkways, roadways, and parking areas on the Site, to the extent reasonably required for the purposes of having access to the Site for performing such work as is hereinabove permitted.

2.3 Grantor hereby also grants to the Grantee the right to cut, trim, or remove, at the Grantee's expense, any roots, trees, shrubs, bushes, or other surface or subsurface obstructions on the Site that may in the reasonable opinion of the Grantor interfere with or be likely to interfere with the operation and functioning of any electrical transmission, metering, or

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substation equipment, or other facilities located at the Site, or with the delivery to the Grantee of the electric capacity or related energy from the Unit.

1.4 The Grantor expressly reserves the right to grant to other persons or entities easements with respect to the Site, provided that such other grants of easements do not materially interfere with the operation, maintenance, or safety of the electrical metering equipment or other facilities of the Grantee, or materially affect any facilities installed by the Grantee by virtue of the rights granted hereunder. The Grantor shall notify the Grantee of the nature and extent of any proposed easement to be granted to any other party prior to the granting of such easement. The Grantee shall have no rights of approval hereunder with respect to any such easement so long as the Grantor is in compliance with this Declaration.

1.5 The Grantee, by accepting the rights granted to it hereunder, agrees as follows in connection with the exercise of such rights:

1.51 The Grantee shall be responsible for any damage occurring to the Site or the Unit that is provably caused by the Grantee's activities, and shall promptly effect, at its own cost, such repair as is necessary to restore the Site or the Unit to substantially the condition in which it existed immediately prior to the commencement of whatever activities of the Grantee that resulted in such damage;

1.52 The Grantee shall save harmless and indemnify the Grantor, its successors, and its assigns from and against any and all claims, actions, damages, expenses, losses, settlements, or liabilities incurred by the Grantee, its property, its employees, its agents, its contractors, or the public that may at any time occur or arise out of the actions of the Grantee, its agents, its contractors, or its employees;

1.53 The Grantee shall use its best reasonable efforts to avoid interference with the work of, and the use and occupancy of the Site by, the Grantor and its agents, its employees, and its contractors;

1.54 The Grantee shall avoid the Site becoming encumbered by materialmen's liens, and if such liens are not avoided, shall be promptly removed upon request; and

1.55 The Grantee shall cause any work performed by it, its agents, its employees, and its contractors to be performed in compliance with applicable law and in a workmanlike manner.

1.6 The Grantor and the Grantee agree to consult so as to effect coordination of all activities contemplated hereunder.

1.7 Nothing contained in this Article shall be construed so as to prohibit the Grantor from having the right to use and enjoy the Site fully, including without limitation means of ingress and egress, which right of use and enjoyment shall not be interrupted by the Grantee except to the extent that such interruption might be necessary to allow the Grantee to exercise the rights granted to it herein. The Grantor may close off certain easement

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rights granted to the Grantee for repair so long as the Grantor provides the Grantee with adequate access to equipment acceptable to the Grantee.

2.8 Subject to the termination provisions set forth in Article Four hereof, the easement granted hereunder to and for the benefit of the Grantee, its successors, and its assigns, shall at all times be deemed to be a benefit with respect to and burden upon the Site, intended to run with the Site and the title thereto, and shall be binding upon the Grantor, its successors, its assigns, and all parties claiming by, through, or under any of them, and shall inure to the benefit of the Grantee, its successors, its assigns, and all parties claiming by, through, or under any of them.

ARTICLE THREE. Declaration of Covenants and Restrictions.

3.1 The Grantor hereby declares that the Site and the Unit shall be subject to the following restrictions for the benefit of the Grantee, its successors, and its assigns:

3.11 No electricity produced at the Site shall be offered, sold, tendered, or delivered to any person or entity other than the Grantee, without the prior written consent of the Grantee.

3.12 No production of steam or any other activity undertaken at the Site shall materially adversely affect the production of electricity at the Site, without the prior written consent of the Grantee.

3.13 The production of electricity at the Site shall at all times be subject to the operational, maintenance, and insurance requirements set forth in the Power Purchase Agreement, subject to Article Four hereof, without regard to whether the Power Purchase Agreement is in effect.

3.14 The Grantee has certain rights regarding any electricity produced at the Site, and no such electricity shall be offered for sale except in accordance with the terms of the Power Purchase Agreement. If the Power Purchase Agreement previously has been terminated, such electricity shall be offered for sale to the Grantee under terms and at rates substantially identical to those contained in such terminated Power Purchase Agreement, with only such modifications, other than price, as may be required by changed circumstances resulting from third-party actions (including, for example, changes in laws, regulations, or NEPOOL requirements or procedures).

3.2 Notwithstanding the foregoing, in the event that (1) the Grantor has terminated the Power Purchase Agreement by reason of the material breach thereof by the Grantee, going to the essence of such agreement, (2) subsequent to the failure of the Grantee to cure such breach within a reasonable period the Grantee tenders the subject energy and capacity to the Grantee pursuant to Article 3.14 hereof upon the same terms as would apply under such terminated Power Purchase Agreement, and (3) despite such tender the Grantee refuses to take and pay for such energy and capacity as contemplated under such terms; then the Grantor shall be free, notwithstanding this Declaration, to sell the subject energy and capacity to a third party during the pendency of such period of non-performance by the

Grantee, and, upon request, the Grantee shall provide a recordable document acknowledging such right.

3.3 The Grantor hereby covenants for the benefit of the Grantee, its successors, and its assigns that if at any time during the term of this Declaration, as specified in Article Four hereof, the Power Purchase Agreement terminates for any reason other than the expiration of its full anticipated term, or if the Power Purchase Agreement is no longer in effect, the Grantor, its successors, and its assigns (subject in the case of the assignees to the Accommodation Agreement) attached as Appendix C hereto, to the provisions thereof shall, within fifteen (15) days of the date of such termination or of such cessation of being in effect, offer to enter into an agreement with the Grantee for the sale of electricity from the Unit under terms and at rates substantially the same as those contained in such terminated or no-longer-in-effect Power Purchase Agreement, with only such modifications, other than price, as may be required by changed circumstances resulting from third-party actions (including, for example, changes in laws, regulations, or NEPOOL requirements or procedures), and shall enter into such an agreement if the Grantee accepts such offer. Such an agreement, to the extent practicable, shall be dated as of the date of termination of the Power Purchase Agreement.

3.4 The Grantee, by accepting the benefits of the covenants and restrictions declared hereunder, agrees that at the written request of any successor to or assignee of the interests of the Grantor in and to the Unit and the Site, pursuant to Article 3.3 hereof, the Grantee shall within thirty (30) days be ready and willing to enter into an agreement with such successor or assignee under terms and at rates substantially the same as those contained in the Power Sale Agreement, with only such modifications, other than price, as may be required by changed circumstances resulting from third-party actions (including, for example, changes in laws, regulations, or NEPOOL requirements or procedures).

3.5 In the event of any subdivision of the Site into parcels, this Declaration shall not apply to any such parcel that neither contains the Unit (or any appurtenance thereto) nor is necessary for the efficient operation of the Unit for its intended purposes; provided that the elimination of such parcel from the Site subject to this Declaration must not substantially diminish the value of this Declaration as a means of ensuring the right of the Grantee to purchase the capacity and related energy produced by the Unit under terms and at rates identical or substantially identical to those contained in the Power Purchase Agreement, for the full anticipated term thereof. The Grantor shall submit to the Grantee any proposed plan for subdivision of the Site. If such plan is acceptable to the Grantee, the Grantee shall within a reasonable time provide its approval thereof, with a view toward such approval being in recordable form prior to the conveyance contemplated within such proposed plan for subdivision.

3.6 Subject to the termination provisions set forth in Article Four hereof, the covenants and restrictions declared hereunder for the benefit of the Grantee, its successors, and its assigns shall at all times be deemed to be continuing covenants and restrictions that shall be deemed to be a benefit with respect to and burden upon the Site, intended to run with the Site and the title thereto, and shall be binding upon the Grantor, its successors, its

assigns, and all parties claiming by, through, or under any of them, and shall inure to the benefit of the Grantee, its successors, its assigns, and all parties claiming by, through, or under any of them.

ARTICLE FOUR. Termination.

4.1 This Declaration shall terminate on the first to occur of the following:

4.11 The date of expiration of the full anticipated term of the Power Purchase Agreement;

4.12 The date of a final and non-appealable judicial determination that the Power Purchase Agreement, or a subsequent agreement contemplated in Articles 3.3 and 3.4 hereof, has been terminated at the request of the Grantor in an arbitration or judicial proceeding due to the substantial and material default of the Grantee;

4.13 The date that this Declaration is terminated with the written consent of the Grantor and the Grantee; or

4.14 The failure by the Grantee after thirty (30) days' prior written notice to perform its obligation under Article 3.4 hereof.

4.2 Upon the termination of this Declaration, the Grantor and the Grantee hereby agree to execute and deliver appropriate instruments of release from and discharge of the terms hereof, to be filed with the Bristol County Registry of Deeds, Southern District (the "Registry"). In the case of termination pursuant to the receipt of a judgment in accordance with Article 4.12 hereof, the Grantor may file such judgment with the Registry.

ARTICLE FIVE. Miscellaneous Provisions.

5.1 Each and every contract, deed, deed of trust, mortgage, or other instrument covering or conveying the Unit, the Site, or any portion thereof, that is executed after this Declaration is filed with the Registry and before this Declaration terminates, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, covenants, and restrictions set forth herein, regardless of whether such covenants, covenants, and restrictions are set forth in such contract, deed, or other instrument. The Grantor agrees to advise any prospective transferee of the Site, the Unit, or any interest therein, in any sale or other disposition (including a foreclosure sale or other disposition in the exercise of remedies under any mortgage or other security interest), that this Declaration is of record and that any such transfer will be subject to this Declaration.

5.2 The Grantor and the Grantee hereby declare their understanding and intent that the burdens of the covenants, covenants, and restrictions set forth herein touch and concern the Unit and the Site in that the Grantor's interest in the Unit and the Site is rendered less valuable thereby. The Grantor and the Grantee hereby further declare their understanding and intent that the benefits of such covenants, covenants, and restrictions touch and concern the Unit and the Site by enhancing and increasing the likelihood

that the Grantee and its successors, the intended beneficiaries of such easements, covenants, and restrictions, will be able to purchase the electric capacity and related energy from the Unit under terms and at rates identical or substantially identical to those contained in the Power Purchase Agreement for the full anticipated term thereof.

5.3 If the Grantor defaults in the performance or observation of any covenant or restriction set forth in this Declaration, and if such default remains incurable for a period of thirty (30) days after written notice thereof is given by the Grantee to the Grantor, then the Grantee may declare a default to have occurred hereunder, and, at its option, may take any one or more of the following steps:

5.31 By mandamus or other suit, action, or proceeding at law or in equity, including suit for injunctive relief, require the Grantor to perform its covenants hereunder or enjoin any acts or omissions that may be unlawful or in violation of the covenants or restrictions set forth herein or of the rights of the Grantee hereunder;

5.32 Have reasonable access to and inspect, examine, and make copies of all the books and records of the Grantor pertaining to the EIR or the Unit; and

5.33 Take such other actions at law or in equity as may appear necessary or desirable to enforce the restrictions upon and covenants of the Grantor hereunder.

5.4 The Grantor shall cause this Declaration and any amendments or supplements hereto to be duly filed with the Registry. The Grantor shall pay all fees and charges incurred in connection with any such filing.

5.5 This Declaration shall be governed by the laws of the Commonwealth of Massachusetts.

5.6 This Declaration shall be amended only by a written instrument executed by all the parties hereto or their successors in title, which amendment shall be duly filed with the Registry in accordance with Article 5.4 hereof.

5.7 Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, or by hand or personal delivery, at the addresses specified below, or at such other addresses as may be specified in writing by the party in question:

To the Grantor: Dartmouth Power Associates Limited Partnership
8 Newbury Street, Suite 5
Boston, Massachusetts 02110
Attention: James Gordon, President

To the Grantee: Commonwealth Electric Company
3421 Cranberry Highway
Wareham, Massachusetts 02537
Attention: President

THE COMMONWEALTH OF MASSACHUSETTS }
 THE COUNTY OF SUFFOLK }

Personally appeared before me Tom C. Gordon
Tom C. Gordon of DMI/Dartmouth, Inc., General partner of
 Dartmouth Power Associates Limited Partnership, a signed and sealed of the
 foregoing instrument, to me known as being therein duly authorized, and
 acknowledged the same to be the free act and deed of DMI/Dartmouth, Inc.,
 acting in its capacity as general partner of Dartmouth Power Associates
 Limited Partnership, and to be the free act and deed of said Dartmouth Power
 Associates Limited Partnership.

Danni Dally
 Notary Public

Dated: October 30, 1990

My Commission Expires 1/1/94

THE COMMONWEALTH OF MASSACHUSETTS }
 THE COUNTY OF SUFFOLK }

Personally appeared before me Donald T. LeBaron
~~YEE PRESIDENT~~ of Commonwealth Electric Company, a signer and
 sealer of the foregoing instrument, to me known as being therein duly
 authorized, and acknowledged the same to be the free act and deed of said
 Commonwealth Electric Company.

Donald T. LeBaron
 Notary Public

Dated: Oct 30, 1990

My Commission Expires July 27/91



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APPENDIX A
Description of the file

See the following.

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That certain parcel of land situated on the southerly side of Old Fall River Road in the Town of Southfield, County of Bristol, and Commonwealth of Massachusetts, being further bounded and described as follows:

beginning at a point in the southerly line of said Old Fall River Road, said point being the intersection of the westerly line of a proposed roadway (to be called Energy Road) with the southerly line of said Old Fall River Road, said point also being one hundred sixty-eight and no hundredths feet (168.00') easterly, as measured along the southerly line of said Old Fall River Road, from the northeasterly corner of land now or formerly of Manuel P. Fortado;

thence running S 71°43'53" E along the southerly line of said Old Fall River Road, a distance of one hundred eleven and sixty-eight hundredths feet (111.68') to a point of curvature;

thence continuing along the southerly line of said Old Fall River Road curving to the left along an arc of a curve having a radius of one thousand six hundred thirty and no hundredths feet (1630.00'), a central angle of 1°39'29" for an arc length of forty-seven and seventeen hundredths feet (47.17') to a point;

thence running westerly and southerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 88°20'31" for an arc length of sixty-one and sixty-seven hundredths feet (61.67') to a point;

thence running S 18°16'00" W for a distance of sixty-three and sixteen hundredths feet (63.16') to a point;

thence running southerly curving to the right along an arc of a curve having a radius of six hundred forty and no hundredths feet (640.00'), a central angle of 8°29'24" for an arc length of ninety-four and eighty-three hundredths feet (94.83') to a point;

thence running S 36°45'33" W for a distance of fifty-eight and
forty-six hundredths feet (58.46') to a point;

thence running southerly and easterly curving to the left along
an arc of a curve having a radius of forty and no hundredths feet
(40.00'), a central angle of 90°50'00" for an arc length of sixty-two
and eighty-three hundredths feet (62.83') to a point;

thence running S 36°45'31" W for a distance of sixty and no
hundredths feet (60.00') to a point;

thence running westerly and southeasterly curving to the left along
an arc of a curve having a radius of forty and no hundredths feet
(40.00'), a central angle of 90°50'00" for an arc length of sixty-two
and eighty-three hundredths feet (62.83') to a point;

thence running S 36°45'31" W for a distance of one hundred
fifty-six and ninety-seven hundredths feet (156.97') to a point;

thence running southwesterly curving to the right along an arc
of a curve having a radius of three hundred forty and no hundredths
feet (340.00'), a central angle of 16°05'45" for an arc length of one
hundred fifty-four and eighty-six hundredths feet (154.86') to a
point;

thence running S 52°51'16" W for a distance of three hundred
forty and eighty-four hundredths feet (348.84') to a point;

thence running southwesterly and southeasterly curving to the left
along an arc of a curve having a radius of two hundred sixty and no
hundredths feet (260.00'), a central angle of 87°45'41" for an arc
length of three hundred ninety-eight and seven-five hundredths feet
(398.25') to a point;

thence running S 34°54'25" E for a distance of seventy-seven and
fifty hundredths feet (77.50') to a point;

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thence running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), an interior angle of 90°00'00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;

thence running S 14°44'20" E for a distance of sixty and no hundredths feet (60.00') to a point;

thence running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 90°00'00" for an arc length of sixty-two and eighty-three hundredths feet (62.83') to a point;

thence running S 24°54'28" E for a distance of one hundred fifty-four and twelve hundredths feet (154.12') to a point in the northerly line of a fifty foot (50') wide Algonquin Gas Transmission Easement;

thence running S 71°21'30" E along said easement, for a distance of one hundred ninety-one and six hundredths feet (191.06') to a point;

thence running S 73°46'24" E along the northerly line of said gas easement, for a distance of six hundred twenty-six and forty hundredths feet (626.40') to a point;

thence running S 20°30'14" W, bounded westerly in part by land now or formerly of Ernest F. Vieira, for a distance of nine hundred twenty-eight and ninety-seven hundredths feet (928.97') to an iron pin set in the northerly line of land now or formerly of Margaret M. Smith;

thence running N 59°19'16" W along the northerly line of said Smith land, for a distance of six hundred thirty-four and sixty-three hundredths feet (634.63') to a point;

thence running N 22°01'22" E for a distance of seven hundred one and eighty-nine hundredths feet (701.89') to a point;

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thence running S 87°10'00" W for a distance of eighty and no hundredths feet (80.00') to a point;

thence running westerly and northwesterly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of 17°34'00" for an arc length of one hundred seventy-one and twenty-four hundredths feet (171.24') to a point;

thence running N 34°34'35" W for a distance of four hundred forty-two and seven hundredths feet (442.07') to a point;

thence running northerly and easterly curving to the right along an arc of a curve having a radius of three hundred forty and no hundredths feet (340.00'), a central angle of 87°45'41" for an arc length of five hundred twenty and seventy-six hundredths feet (520.76') to a point;

thence running N 52°51'16" E for a distance of one hundred thirty-three and twenty-five hundredths feet (133.25') to a point;

thence running northeasterly and northwesterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 84°52'33" for an arc length of fifty-nine and twenty-five hundredths feet (59.25') to a point;

thence running N 46°09'38" E for a distance of sixty-one and thirty hundredths feet (61.30') to a point;

thence running southeasterly and northeasterly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of 95°27'16" for an arc length of sixty-six and forty-one hundredths feet (66.41') to a point;

thence running N 52°51'16" E for a distance of sixty-seven and two hundredths feet (67.02') to a point;

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thence running northeasterly curving to the left along an arc of a curve having a radius of two hundred sixty and no hundredths feet (260.00'), a central angle of $16^{\circ}03'45''$ for an arc length of one hundred eighteen and forty-two hundredths feet (118.42') to a point; thence running $N 16^{\circ}45'31'' E$ for a distance of three hundred fifty-five and forty-four hundredths feet (355.44') to a point;

thence running northeasterly curving to the left along an arc of a curve having a radius of five hundred sixty and no hundredths feet (560.00'), a central angle of $8^{\circ}25'34''$ for an arc length of eighty-two and ninety-eight hundredths feet (82.98') to a point;

thence running $N 16^{\circ}16'07'' E$ for a distance of sixty-two and forty-six hundredths feet (62.46') to a point;

thence running northerly and westerly curving to the left along an arc of a curve having a radius of forty and no hundredths feet (40.00'), a central angle of $90^{\circ}00'00''$ for an arc length of sixty-two and eighty-three hundredths feet (62.83') to the point and place of beginning in the southerly line of said Old Fall River Road.

Said parcel contains 783.433 square feet (17.91 Acres) of land, more or less.

The foregoing described premises is shown on a plan entitled "Project Lease Plan drawn for Barnstable Power Associates Limited Partnership Barnstable Massachusetts," prepared by E.A. Corralde Engineering, dated October 25, 1990 recorded of even date.

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APPENDIX B

Copies of the Original Prior Business Agreement and the Amendment

See the following.

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POWER PURCHASE AGREEMENT

Agreement entered into this 24th (24th) day of September, 1989, by and between Commonwealth Electric Company, a Massachusetts corporation with offices located at 3421 Cranberry Highway, Norham, Massachusetts (the "Company"), and Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership with its principal place of business at 1 Newbury Street, Suite 8, Boston, Massachusetts (the "Seller").

The Seller plans to construct, own, and operate an electric generation facility, including two gas turbines and a supplementary-fired waste heat boiler with a dual fuel steam turbine, together with heating and other integral equipment, which will be capable of generating approximately one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW) of electricity (the "Unit"). The Unit will be located at a site in the Town of Dartmouth, Massachusetts, which will be owned by the Seller, more particularly described in Appendix A attached hereto (the "Site"). The Seller wishes to sell and deliver and the Company wishes to purchase and take delivery of a portion of the electricity produced by the Unit, pursuant to the terms and conditions as set forth in this Agreement.

Therefore, the parties, each in consideration of the agreements of the other, hereby agree as follows.

ARTICLE 1. Definitions.

When used with initial capitalizations, whether in the singular or in the plural, the following terms shall have the following meanings.

Actual In-Service Date shall mean the date upon which the Seller shall have both (i) produced electricity while operating the Unit at or above an average of ninety percent (90%) of the Design Capacity for five (5) consecutive days, and (ii) delivered the Company's Entitlement of such electricity to the Company.

Adjusted Capacity for each Seasonal Period shall be the greater of (i) the seasonal Capacity as determined by the first Capacity Audit performed during each Seasonal Period following the Actual In-Service Date, or (ii) the Design Capacity.

Billing Period shall mean any calendar month in which the Unit produces electricity pursuant to this Agreement and for which the Company is obligated to pay for such electricity produced for each month pursuant to this Agreement.

Capacity shall mean the maximum dependable load carrying ability in kilowatts of the Unit during the applicable Seasonal Period (exclusive of capacity required for Unit use). Capacity shall be determined by the NEPOOL Operations Committee in accordance with NEPOOL Criteria, Rules and Standards ("CRS") No. 4. In the event that CRS 4 ceases to be established, or if the Company ceases participation in NEPOOL, the Company may impose

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reasonable substitute standards that would have the same effect as this CR3 in determining Capability.

Capability Audit shall mean a test of the Unit's Capability conducted periodically pursuant to the provisions of Section 4.11 of the NEPOOL Agreement and CR5.4, or any properly issued replacements thereof created from time to time during the term of this Agreement.

Capacity Deficiency shall mean the amount, if any, by which the Adjusted Capability of the Unit is less than the Adjusted Capability.

Company's Effortment shall mean that percentage of Unit capacity equal to the ratio of the Contract Capacity to the Adjusted Capability.

Contract Capacity shall mean fifty thousand kilowatts (50,000 kW).

Delivered Energy shall mean, for each Billing Period, the Company's portion of the kilowatt-hours metered during the Billing Period pursuant to Article 7 hereof.

Delivery Point shall mean the point at which the Unit shall be interconnected with the Company's system, in accordance with an interconnection agreement to be agreed to by the Seller and the Company.

Design Capacity shall mean one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW), at fifty-nine (59) degrees Fahrenheit.

FERC shall mean the Federal Energy Regulatory Commission.

Force Majeure shall include those events set forth in Article 10.1 hereof.

Good Utility Practice shall mean the practice, methods, and acts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expediency. With respect to the Unit, Good Utility Practice includes but is not limited to taking reasonable steps to ensure the following:

- (1) That adequate materials, resources, and supplies, including fuel, are available to meet the Unit's needs;
- (2) That sufficient operating personnel are available and are adequately experienced, trained, and licensed as necessary to operate the Unit properly and efficiently, and who are capable of responding to emergency conditions whether caused by events on or off the Site;
- (3) That preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

- (4) That appropriate monitoring and testing are performed to ensure that equipment is functioning as designed;
- (5) That equipment is not operated recklessly, or in a manner that is unsafe to workers, the general public, or the environment, or without regard to defined limitations such as steam pressure, temperature and moisture content, chemical content of make-up water, flood conditions, safety inspection requirements, operating voltage, current, frequency, rotational speed, power, synchronization, or control system limits;
- (6) That equipment will function properly under both normal and emergency conditions; and
- (7) That the Unit is operated in conformance with the applicable NEPOOL CRS and Operating Procedures, and NEPEX dispatch instructions.

MDU shall mean the Massachusetts Department of Public Utilities.

NEPEX shall mean the central dispatching agency, as defined in Section 15.22 of the NEPOOL Agreement, operating through such satellite dispatching centers as the NEPOOL Management Committee may determine to be appropriate.

NEPOOL shall mean the New England Power Pool.

NEPOOL Agreement shall mean the New England Power Pool Agreement, dated September 1, 1971, as amended.

Promised In-Service Date shall be July 1, 1992.

Seasonal Period shall mean either the summer period, June through September, or the winter period, October through May, as appropriate.

System Emergency shall mean an imminent condition on the Company's or a neighboring utility's system that is likely to result in significant disruption of service or is likely to endanger life or property.

Testing Period shall mean any period of time during which the Unit is being tested and may produce electric energy prior to the Actual In-Service Date.

Test Power shall mean any electric energy produced by the Unit during the Testing Period.

ARTICLE 2. Sale of Power.

- 2.1 The Seller agrees to sell and deliver and the Company agrees to purchase and take delivery of the Company's Entitlement and related energy produced by the Unit during the term of this Agreement.
- 2.2 The Unit shall be staffed, operated, and maintained in a manner consistent with the standards applicable to generating facilities owned

and operated by participants in NEPOOL, as such standards may be in effect from time-to-time during the term of this Agreement. The Seller also agrees to make the Unit available for NEPOOL dispatch in accordance with the provisions of Section 12.2 of the NEPOOL Agreement.

2.3 In addition to the foregoing, the Seller shall undergo periodic Capability Audits upon the request of NEPOOL or of the Company. In the event that the Unit demonstrates a Capacity Deficiency in excess of two thousand kilowatts (2,000 kW), the Company may assess the Seller an offset charge each month, which shall be equal to one twelfth (1/12) of the sum of the Capacity Responsibility Adjustment Charge plus the Capacity Responsibility Deficiency Charge, established from time to time by NEPOOL pursuant to the provisions of Section 9.4 of the NEPOOL Agreement, multiplied by such Capacity Deficiency.

2.4 During the Testing Period, the Unit may generate Test Power. The Company agrees to take and pay for any Test Power offered for sale, up to the Company's Entitlement and related energy, subject to the following conditions:

2.4.1 The tests conducted during the Testing Period shall be performed in accordance with Good Utility Practice.

2.4.2 The administrative committee established pursuant to this agreement shall be kept informed of operations during the Test Period, and

2.4.3 The Company shall pay for any Test Power monthly at a price determined pursuant to the Company's generally available Rate 7-1 "Power Purchase Rate" (NDPU No. 132) or the generally available replacement therefor.

ARTICLE 3. Effective Date and Term.

3.1 This Agreement shall become effective when all necessary approvals have been received from the FERC and from the NDPU, in a form acceptable to both parties; provided, however, that the Company's obligation to purchase the Company's Entitlement and related energy (other than pursuant to Article 2.4) shall not commence until the Actual In-Service Date. Unless sooner terminated in accordance with any applicable provision hereof, this Agreement shall remain in full force and effect until the twenty-fifth (25th) anniversary of the Actual In-Service Date.

3.2 If all necessary permits or licenses to build and operate the facility have not been obtained, or construction of the Unit has not commenced, within twenty-four (24) months following the date first above-written, or if, in the reasonable judgment of either party exercised not sooner than twenty-four (24) months following the date first above written, the Actual In-Service Date is likely to occur later than twenty-four (24) months after the Proposed In-Service Date, either party may terminate this Agreement upon sixty (60) days written notice to the other.

ARTICLE 4. Security Deposit

- 4.1 Within thirty (30) days following the date that this Agreement is approved by the MDP, the Seller shall deliver to the Company seven hundred fifty thousand dollars (\$750,000) as a security deposit (the "Security Deposit"). The Security Deposit is calculated as the product of (i) fifty thousand kilowatts (50,000 kW) which is the Contract Capacity, and (ii) fifteen dollars (\$15) per kilowatt. The Company shall hold the Security Deposit in an interest-bearing sweep account.
- 4.2 If, prior to the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, or if this Agreement is terminated in accordance with the provisions of ARTICLE 1.2, the entire Security Deposit shall be returned to the Seller after payment to the Company of accumulated interest and a percentage of the principal equal to the ratio of the elapsed time between Agreement execution and the cancellation date to the total time between Agreement execution and Proposed In-Service Date; provided, however, that if the reason for such cancellation, abandonment, or termination is the failure of the FERC to approve or accept this Agreement, in a form acceptable to both parties, then the entire Security Deposit plus any accumulated interest shall be returned to the Seller.
- 4.3 If, after the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, the entire Security Deposit plus any accumulated interest shall be paid to the Company; provided, however, that if the reason for such cancellation, abandonment, or termination is the inability or refusal of the Company to interconnect, the entire Security Deposit plus any accumulated interest shall be returned to the Seller.
- 4.4 If the Actual In-Service Date occurs on or before the Proposed In-Service Date, the entire Security Deposit plus any accumulated interest shall be returned to the Seller.
- 4.5 If the Actual In-Service Date occurs within twenty-four (24) months after the Proposed In-Service Date, the entire Security Deposit and any accumulated interest through the Proposed In-Service Date shall be paid to the Seller and any interest accumulated after the Proposed In-Service Date shall be paid to the Company; provided, however, that if the reason for the occurrence of the Actual In-Service Date after the Proposed In-Service Date is the inability or refusal of the Company to interconnect, any interest accumulated after the Proposed In-Service Date shall also be paid to the Seller.
- 4.6 If the Actual In-Service Date does not occur within twenty-four (24) months after the Proposed In-Service Date, the entire Security Deposit plus any accumulated interest shall be paid to the Company and the Agreement shall be terminated according to the provisions of Article 3.2.

ARTICLE 5. Purchase Price

From and after the Actual In-Service Date, the Company shall pay to the

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Seller each Billing Period, in accordance with the provisions of Article 5 of this Agreement, the sum of the Monthly Capacity Charge and the Monthly Energy Charge, as determined pursuant to Appendix B attached hereto. In allocating the Monthly Energy Charge, rates shall be rounded to the nearest one-hundredth of one cent (\$.0001) per kilowatt-hour and shall be multiplied by the Delivered Energy for the prior Billing Period. If the Actual In-Service Date does not fall on the first day of the Billing Period in which such Date occurs, then the Monthly Capacity Charge for such first Billing Period shall be prorated appropriately. Sales or other ad valorem taxes upon the sale of electricity pursuant to this Agreement shall be borne by the Company.

ARTICLE 6. Delivery by the Seller.

- 6.1 The Seller shall exert all reasonable efforts consistent with Good Utility Practice to cause the Unit to be capable of operating and producing electric energy at or near normal seasonal Capability on a continuous twenty-four (24) hour basis for the full term of this Agreement.
- 6.2 Electric energy generated by the Unit shall be delivered to the Company at the Delivery Point and shall be in the form of three (3) phase, sixty (60) hertz, alternating current at approximately one hundred fifteen thousand (115,000) volts nominal (the "Nominal Voltage"). However, in no event shall said Nominal Voltage be less than one hundred fifteen thousand volts (115 kV), nor shall electricity be delivered at greater than five (5) percent above the Nominal Voltage, nor shall the frequency vary by more than one hundredth (.01) hertz from sixty (60.00) hertz except for unavoidable necessary fluctuations.
- 6.3 The Seller may from time to time withdraw the Unit from service and cease to supply electric energy to the Company as necessary to perform scheduled or unscheduled maintenance or repair upon the Unit. The Seller shall comply with the provisions of NEPOOL Operating Procedure No. 5 as in effect from time to time when planning any scheduled maintenance or repair upon the Unit. The Seller shall give the Company such notice as may be practicable in the circumstances when withdrawing the Unit from service for unscheduled maintenance or repair.

ARTICLE 7. Meters and Metering.

- 7.1 The Company shall review and approve the metering installations required to record the quantities of electricity purchased from the Seller. Such metering equipment shall be capable, ~~under~~ with the aid of providing data required to determine kilowatt-hours per hour purchased during each hour of the month as well as total kilowatt-hours purchased each month under the terms of this Agreement. The Seller shall install, own, operate, and maintain such metering equipment, which equipment shall be located at the Seller's high voltage bus or buses. If, for any reason, it is impractical to install meters at such bus or buses, appropriate adjustments shall be made to reflect the actual amount of electric energy that would have been recorded by meters located at such bus or buses.

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- 7.2 The Seller shall maintain the accuracy of all metering equipment installed pursuant hereto by regular testing and calibration in comparison to recognized standards. The metering equipment shall be sealed, and the Seller will comply with any reasonable request of the Company with regard to the presence of the Company's representative when such seals are to be broken or when the meters are to be inspected, tested, or adjusted. The Company may request at any time a test of the accuracy of any metering equipment installed pursuant hereto and shall bear the costs thereof in the event that said requests are made more frequently than once in each twelve (12) months. The results of all meter calibrations or tests, regardless of whether performed at the Company's request, shall be open to examination by the Company at all reasonable times.
- 7.3 Any meter tested and found to register less than or equal to one half of one percent (0.5%) above or below the recognized comparative standard shall be considered correct and accurate. If the metering fails to operate or, as a result of such tests, the metering equipment is found to be defective or inaccurate, the Seller shall restore it to a condition of accuracy or replace it. In such event, appropriate adjustments shall be agreed to by the Seller and the Company and reflected in the next monthly statement of the Seller rendered pursuant to Article 8.1. Such adjustments shall correct all measurements made by the defective or inaccurate meter for either (i) the actual period during which inaccurate measurements were made, if determinable to the mutual satisfaction of the Company and the Seller, or (ii) if such period is not determinable, for a period equal to one-half of the time elapsed since the last prior test, but in no event greater than twelve (12) months.
- 7.4 Other provisions of this Article notwithstanding, the Company may elect to install its own metering equipment in supplement to the Seller's metering equipment. Should any metering equipment installed by the Seller fail to register the amount of electric energy delivered to the Company during any period, the Company's metering equipment shall, if so installed, be used to determine the amount of energy so delivered. If the Company wishes its metering equipment to be so used, the Company agrees to operate, maintain, and read such equipment according to the standards established by this Article with respect to the Seller's metering equipment. The Seller agrees, upon the request of the Company, to provide a suitable location at the Site for installation of the Company's meters at no cost to the Company.
- 7.5 Upon the written request of the Company, the Seller shall install, own, operate, and maintain, pursuant to the provisions of this Article, such telemetering equipment and data circuits as the Company may reasonably require for the transmission of various metered values to its operations center. The design equipment and data circuits shall be approved by the Company prior to their installation by the Seller.

ARTICLE 8. Billing and Payment.

- 8.1 The Seller shall render monthly statements for the Billing Period then most recently ended within ten (10) working days following the receipt

by the Company of all actual metered values for each Billing Period. The monthly statement shall detail the amount of Delivered Energy during each Billing Period. Any amount payable hereunder not paid within thirty (30) days from the date of receipt by the Company of all actual metered values for the Billing Period shall be subject to a late payment charge at the annual rate of two (2) percentage points over the current interest rate on prime commercial loans then in effect at the First National Bank of Boston from the date of receipt of such monthly statement until the date of payment.

- 8.2 In the event that any data required for billing purposes hereunder are unavailable when required for such billing, the unavailable data may be estimated by the Company, subject to any required adjustment, based upon actual data, in a subsequent Billing Period within the following twelve (12) months.
- 8.3 Neither the Company nor the Seller shall have the right to challenge any monthly statement rendered or received hereunder, to invoke arbitration of the same, or to bring any asset or administrative action of any kind questioning the propriety of said monthly statement, after a period of one (1) year from the date such monthly statement was rendered. In the event that any such monthly statement depends in whole or part upon estimated data, this one (1) year limitation period shall be deemed to begin in the Billing Period in which such estimated data are adjusted to actual.

ARTICLE 9. Governmental Regulation.

- 9.1 This Agreement shall be submitted by the Company to the MDPU in accordance with the regulations of the MDPU, and by the Seller to the FERC in accordance with the regulations of the FERC as set forth at 18 C.F.R. Part 35.
- 9.2 Each party hereto shall be responsible for taking all necessary actions to satisfy any regulatory requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such party hereunder.
- 9.3 This Agreement and all rights and obligations of the parties hereunder are subject to applicable state and federal laws and duly promulgated orders and duly authorized actions of governmental authorities.

ARTICLE 10. Liability and Force Majeure.

- 10.1 The parties hereto shall be excused from performing hereunder, and shall not be liable in damages or otherwise, if and to the extent that they are unable to do so or are prevented from doing so by an event of Force Majeure, including, without limitation, by statute or regulation, or by action or inaction of any court or public authority having or purporting to have jurisdiction in the premises; or by reason of storm.

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 flood, fire, earthquake, explosion, and disturbance, labor dispute, act of God or the public enemy, restraint by a court or regulatory agency, or any other cause, whether or not similar thereto, beyond the reasonable control of the affected party. Each party shall have the obligation to operate in accordance with Good Utility Practice at all times and to use diligent effort to overcome and remove any cause of failure to perform; provided, however, that neither party shall be required to settle any labor dispute on terms that, in the sole judgment of the party involved in such dispute, are contrary to its interests, so long as such party is acting in good faith and otherwise in compliance with applicable labor laws and regulations.

10.3 Neither the Company nor the Seller shall, in any event, be liable to the other or to any third party for any consequential, indirect, or special damages to persons or property, whether arising in tort, contract, or otherwise, by reason of this Agreement or any services performed or undertaken to be performed by the Company or the Seller hereunder.

10.3 Whenever the Company's system or the systems with which it is directly or indirectly interconnected experiences a System Emergency, or whenever it is necessary or desirable to aid in the restoration of service on its system or on the systems with which it is directly or indirectly interconnected, the Company may, in its reasonable judgment, curtail or interrupt the taking of electric energy hereunder, provided such curtailment or interruption shall continue only for so long as is reasonably necessary. Such curtailment, interruption, or reduction shall not be deemed to be a default by the Company nor shall the Company be liable therefore to the Seller or to any other party.

10.4 The Company and the Seller agree that each shall be responsible for the electricity on its respective side of the Delivery Point and shall indemnify, save harmless, and defend the other against all claims, demands, costs, or expenses for loss, damage, or injury to persons or property in any manner directly or indirectly arising from, connected with, or growing out of the presence, use, or transmission of electricity over the wires, cables, devices, or apparatuses owned by it. The Company and the Seller each assumes full responsibility in connection with the service rendered hereunder for its respective wires, cables, and other devices used in connection with such service. Each party hereto shall be solely liable for all claims of its own employees arising from any worker's compensation laws.

10.5 Neither by inspection, by non-rejection, nor in any other way does either party give any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of any equipment, apparatus, or device installed on the other party's premises.

ARTICLE 11. Governing Law.

The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts.

ARTICLE 12. Arbitration.

ARTICLE 12. ARBITRATION.

12.1 In the case of any dispute between the parties with respect to the interpretation of this Agreement or the performance of the same, either party may give notice or willing to the other of its desire to submit any question to arbitration and may designate an arbitrator. Within thirty (30) days after the receipt of such notice the other party may, in writing, select an arbitrator. If the parties do not agree on an arbitrator, within twenty (20) days after the appointment of the second arbitrator, the first and second arbitrators shall invoke the services of the American Arbitration Association to appoint a third arbitrator. This third arbitrator shall, to the extent practicable, have special competence and experience with respect to the subject matter under consideration. An arbitrator so appointed shall have full authority to act pursuant to this Article. No arbitrator, whether chosen by a party hereto or appointed, shall have the power to amend or add to this Agreement.

12.3 The party calling the arbitration shall, within twenty (20) days after the other the failure of the other party to name an arbitrator, or in writing, the appointment of the third arbitrator, as the case may be, fix, in writing, a time and a place of hearing, to be not less than twenty (20) days from the delivery of notice to the other party. The arbitrator or arbitrators (the "Arbitrators") shall, thereupon, proceed promptly to hear and determine the controversy pursuant to the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings; except that if such rules conflict with the then current provisions of the laws of the Commonwealth of Massachusetts relating to arbitration, such conflict shall be governed by the then current provisions of such laws. The Arbitrators shall fix a time within which the matter shall be submitted to them by either or both of the parties, and shall render a decision within ten (10) days after receiving the final submission from the parties unless, for good reasons to be certified by the arbitrator, the Arbitrators extend such time. The decision of the arbitrator or arbitrators, or two of the three arbitrators, shall be taken as the final decision. Such decision shall be made in writing and in duplicate, and one copy shall be delivered to each of the parties. The Arbitrators, by their award, shall determine the manner in which the expenses of the arbitration shall be borne, except that each party shall pay the costs of its own counsel. Each party shall accept and abide by the arbitration decision. The award of the Arbitrators shall be final and enforceable. Judgment upon such award may be entered by the prevailing party in any court having jurisdiction thereof, or application may be made by such party to any court for judicial acceptance of such award and an order of enforcement.

ARTICLE 13. Insurance

13.1 From and after the Actual In-Service Date, the Seller shall (i) keep the Unit insured by means of a policy or policies of insurance protecting against loss or damage to the Unit by fire, lightning, and other casualties normally insured against with a uniform standard extended coverage endorsement, and (ii) maintain liability insurance as described in Appendix C attached hereto. Such insurance is to be at all times in amounts not less than that reasonably required by the Company. The Company shall be the named insured in these policies, which policies shall contain a waiver of subrogation in favor of the named insured. All policies, or copies thereof, together with a certificate from the insurer evidencing that the policies are currently in force, shall be delivered to the Company.

13.2 Such insurance shall be provided by policies that shall be written by such companies and in such form as shall be generally commercially available and acceptable to the Company, such acceptance not to be unreasonably withheld; shall be primary and without right of contribution from other insurance that may be available; shall provide that, with respect to the Company, the insurance shall not be invalidated by any action or inaction by the Seller including, without limitation, any representation made by or on behalf of the Seller in the procurement of such insurance; and shall provide that such insurance shall not be cancelled or amended without at least thirty (30) days' prior written notice to the Company.

13.3 Not less than thirty (30) days prior to the expiration date of each policy furnished by the Seller pursuant to this Article, the Seller will deliver to the Company a renewal policy or policies accompanied by evidence of payment of the premium therefor.

13.4 In the event of a loss occurring after completion of the construction of the Unit, the amount of any proceeds of insurance described in this Article remaining after deducting all expenses (including attorney fees) incurred in the collection of such proceeds from the gross proceeds thereof (the "Net Proceeds") shall be applied to the prompt repair, restoration, modification, or improvement of that portion of the Unit damaged or destroyed by such casualty, unless the Seller and the Company have agreed that such repair, restoration, modification, or improvement is not practicable under the circumstances.

ARTICLE 14. Preservation of the Unit

14.1 The Seller in its sole discretion may sell or otherwise dispose of any machinery, equipment, or other personal property constituting part of the Unit that the Seller determines has become inadequate, obsolete, worn out, unsuitable, undrinkable, or unnecessary, provided that (i) substitute property having equal or greater utility, but not necessarily the same function, in the operation of the Unit is installed at the Unit and such removal and substitution would not materially impair the efficiency of operation of the Unit, adversely affect the structural integrity or electrical output of the Unit, or change the nature of the

Unit to the extent that it would not necessitate the type of electricity generation facility operated prior to such replacement; and (ii) the prior written consent of the Company is obtained, which consent shall not be unreasonably withheld; provided, however, that such consent shall not be required for removals and substitutions made during ordinary and routine repair and maintenance. The Seller shall promptly report to the Company each such removal, substitution, sale, or other disposition. In addition, not less often than semi-annually, the Seller shall make available to the Company's representatives on the administrative committee described in Article 17.6 all records with respect to prior dispositions and substitutions, together with information as to planned dispositions and substitutions during the next six months.

14.2 The Seller shall pay or cause to be paid all taxes, payments in lieu of taxes, assessments, and other charges now or hereafter levied against the Unit or any part thereof, together with any penalties or interest on any of the foregoing, and upon request of the Company, the Seller shall exhibit to the Company receipts for the payment of such charges prior to the date when they would become delinquent; the foregoing to be subject, however, to the right of the Seller and other parties in interest to contest in good faith the levying of such charges.

14.3 At the time of providing security to the Company pursuant to Article 15 hereof, the Seller shall warrant that good record and marketable title to the Site and to the Unit is held by the Seller (subject only to any mortgages, liens, leases, or other encumbrances existing as of record and copies of which have been provided to the Company). The Seller shall not enter into any transaction involving the transfer, sale, or lease of the Site or the Unit, or any interest therein, without the prior written consent of the Company in each case obtained, which consent shall not be unreasonably withheld. Such transfer, sale, or lease shall be in such form as to assure that the Company's right to receive the electric output of the Site and Unit pursuant to the terms of this Agreement shall apply against an entity that might thereby obtain title to or possession of the Site or Unit.

14.4 The Seller will maintain the Unit, or cause the Unit to be maintained, in accordance with Good Utility Practice, will not permit or suffer any waste thereof or the cessation of any nuisance or unlawful occupation or business on, or use of, the Unit, and will comply, or cause compliance, with all statutes, ordinances, and requirements of any governmental authority relating to the Unit; and the Seller at its expense shall provide the Company with a report on an annual basis prepared by a nationally recognized firm of consulting engineers, chosen by the Seller and approved by the Company, such approval not to be unreasonably withheld, attesting to the fact that the Unit is being maintained in accordance with Good Utility Practice. If substantial items affecting long-term efficient operation of the Unit that are described in any such annual report as being in need of correction are not corrected within six months following such annual report, the Company may withhold payment of the Monthly Capacity Charge component of the Total Purchase Price, with such amounts to be held in escrow by the Company until the cited items have been corrected, upon which correction the escrowed funds shall be released to the Seller. Notwithstanding the foregoing, if any such

correction is not made within twelve (12) months from the date of each annual report, the Company may elect to cause such correction to be made and the saided funds shall be applied to cover the costs of such correction.

- 14.5 The Company and any persons authorized by the Company shall have the right to enter and inspect the Unit at all reasonable times upon reasonable prior written notice to the Seller, and to examine Unit operating manuals and maintenance records.

ARTICLE 15. Security of Continued Performance.

In order to secure such complete performance of the Seller's obligations as is necessary for the Company to provide service to its ratepayers, the Seller, prior to the Actual In-Service Date, shall provide to the Company security in the form and scope set forth below:

- 15.1 Mortgage and Security Agreement. The Seller shall execute and deliver to the Company a mortgage and security agreement creating liens and security interests in the Unit, the Site, all improvements upon the Site, and all rents, profits, issues, and other benefits derived from the foregoing, subordinate only to the lien of the institutional or unaffiliated lenders securing amounts lent for the construction or permanent financing or refinancing of the Unit. Such liens and security interests of the Company shall secure (i) all amounts paid by the Company to the Seller pursuant to this Agreement in excess of the Company's actual avoided costs and (ii) performance of Seller's obligations under this Agreement for the full anticipated term thereof, including all damages resulting from the Seller's failure to perform such obligations. Such mortgage and security agreement will be in form and substance acceptable to the Company.

- 15.2 Declaration of Easements, Covenants, and Restrictions. The Seller shall cause to be granted to the Company an unsubordinated declaration of easements, covenants, and restrictions encumbering the Site for a period equal to the anticipated full term of this Agreement (the "Declaration"). The Declaration shall grant to the Company easements for access to the Site and for the placement and operation of facilities thereon (which shall not interfere with the rights of the Seller to design, construct, and operate the Unit), as well as create restrictions and covenants to the effect that if any electricity is produced at the Site during the term of the Declaration, the Company's entitlement thereto shall not be tendered or sold except to the Company in accordance with this Agreement. The Declaration shall reserve to the Seller the right to grant other easements, as long as such other easements do not interfere with the rights of the Company. The Declaration shall be in form and substance acceptable to the Company and shall run with the Site and be binding upon the successors of the Seller and inure to the benefit of the Company and its successors.

- 15.3 Accommodation Agreement. The Seller shall cause any lender of funds to the Seller for the acquisition of the Site or Unit (the "Lender") to execute and deliver an Accommodation Agreement, under which such

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 Lender shall agree: (i) to make its own interests subject to the Declaration described above; (ii) to honor this Agreement to the extent the Lender is in possession of the Site or Unit; (iii) to transfer interests in the Site or Unit only upon the condition that the transferee become obligated to honor this Agreement from the date of such transfer; and (iv) to avoid interference with the Company's rights hereunder provided that the Company continues to make payments hereunder to the Seller's successor-in-interest and that the Company otherwise performs in accordance with this Agreement.

15.4 Letter of Credit. The Seller shall provide, in form and substance acceptable to the Company, an irrevocable letter of credit in favor of the Company. The Seller shall maintain such letter of credit throughout the period during which payments by the Company to the Seller are expected to exceed the Company's anticipated avoided cost for power, and such letter of credit shall be in an amount equal to the expected amount by which such payments will exceed of the Company's anticipated avoided cost for power, according to the following schedule:

from	through	amount
Actual In-Service Date	December 31, 1993	\$2,326,162
January 1, 1993	December 31, 1993	3,262,380
January 1, 1994	December 31, 1994	5,667,578
January 1, 1995	December 31, 1995	7,511,136
January 1, 1996	December 31, 1996	9,515,361
January 1, 1997	December 31, 1997	10,546,831
January 1, 1998	December 31, 1998	9,606,184
January 1, 1999	December 31, 1999	6,816,707
January 1, 2000	December 31, 2000	5,898,860
January 1, 2001	December 31, 2001	3,615,830

ARTICLE 16. Rights of Company with respect to Expansion of Plant and Extension of Unit Life.

The Seller shall not enter into any contract for the sale of electricity from any addition to or expansion of the Unit, or from any other electric generation facilities located at the Site, until and unless (i) the Seller shall have first offered to enter into a contract with the Company on substantially the same business terms as those specified in any proposal or letter of intent between the Seller and any other party with respect thereto and (ii) the Company does not accept such offer within thirty (30) days of the date presented to the Company in writing and enter into a contract reflecting such business terms within sixty (60) days thereafter. Further, should the Seller operate the Unit beyond the term of this Agreement, the Seller shall enter into a contract for the sale of electricity from the Unit or any other electrical generation facilities located at the Site only under the conditions set forth in the foregoing sentence. The Seller agrees to keep the Company fully and promptly apprised, through the administrative committee described in Article 17.4, of any plans the Seller may develop for any addition to or expansion of the Unit or the development of any other generation facilities at the Site, which information the Company agrees not to disclose except with the Seller's prior written permission.

ARTICLE 17. Miscellaneous Provisions.

- 17.1 This Agreement shall constitute the entire agreement between the parties hereto relating to the subject matter hereof, and all previous agreements, discussions, communications, and correspondence with respect to the subject matter hereof shall be superseded by the execution of this Agreement.
- 17.2 This Agreement may not be modified or amended except in writing signed by or on behalf of both parties by their duly authorized officers.
- 17.3 In the event that any or all of the NEPOOL standards referred to herein shall cease to be established, or if the Company ceases participation in NEPOOL, the Company may impose reasonable substitute standards that do not materially alter the obligations of the Seller as such obligations existed under the NEPOOL standards.
- 17.4 This Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided however, that no assignment by either party (or any successor or assignee thereof) of its rights and obligations hereunder, except an assignment by the Company of such rights and obligations to a wholly-owned subsidiary or an affiliate wholly-owned by the same holding company, shall be made or become effective without the prior written consent of the other party in each case obtained, which consent shall not be unreasonably withheld. All assignments by the Seller or the Seller's successors and assigns shall be in such form as to assure that the Company's right to receive the electric output of the Site and Unit pursuant to the terms of this Agreement shall apply against any entity that might obtain title to or possession of the Site or Unit.
- 17.5 Notwithstanding any assignments of rights or duties hereunder, neither party shall be relieved of any duties or responsibilities under this Agreement and this Agreement shall continue in accordance with its terms and each party shall be and remain liable to the other under all provisions of this Agreement unless the other party has expressly consented in writing to such release of duties and responsibilities, such consent not to be unreasonably withheld. Further, any payments made by one party to an assignee of the other party or any other actions taken by such party with respect to such assignee shall be in full satisfaction of any duties or responsibilities that the party would otherwise owe to the other party, as if made or taken directly to such other party.
- 17.6 The parties hereto agree to establish an administrative committee, which shall serve informational functions only. Unless otherwise agreed by the administrative committee, such committee shall meet at least once each calendar quarter prior to the Actual In-Service Date and at least twice each year thereafter. The Company and the Seller shall have equal representation upon such committee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above-written.

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP
By its General Partner, EDC/Development, Inc.

By: *James E. Gordon*

Its: *President*

COMMONWEALTH ELECTRIC COMPANY

By: *Donald J. Blane*

Its: *Vice President*

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APPENDIX A
TO POWER PURCHASE AGREEMENTDescription of the Site

The Site consists of thirty-seven and sixty-one hundredths (37.61) acres in an L-shaped configuration as shown on the Town of Darnmouth Assessment Map as Parcel 67.9.

The Site is primarily vacant woodlands and brush with the exception of a small wooden building in the northwest sector. A portion of the land has been cleared for timber.

The approximate elevation of the Site is one hundred sixty (160) feet above sea level. The Site is basically flat, sloping toward the southwest into wetlands. An Algonquin Gas Transmission Company pipeline bisects the Site in an east-west direction.

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APPENDIX B
TO POWER PURCHASE AGREEMENT

1. Total Purchase Price: Each Billing Period, commencing with the Actual In-Service Date, the Company shall pay to the Seller the sum of the following:

- 1.1 The Monthly Capacity Charge, as defined in and computed in accordance with Section 3 of this Appendix B, and as adjusted in accordance with Section 3 of this Appendix B; and
- 1.2 The Monthly Energy Charge, as defined in and computed in accordance with Section 4 of this Appendix B.

2. Monthly Capacity Charge: The Monthly Capacity Charge shall consist of the sum of the Monthly Capacity Investment Cost, the Monthly Investment Cost, and the Monthly Pipeline Transportation Capacity Demand Cost, all as defined and computed as follows.

2.1 Monthly Capacity Cost: The initial Monthly Capacity Cost shall equal one hundred ninety-two thousand, seven hundred six dollars (\$192,706). The Monthly Capacity Cost shall be subject to the following adjustments.

2.1.1 Following the first month after the Actual In-Service Date, the Monthly Capacity Cost shall be adjusted quarterly to reflect changes in the GNP Implicit Price Deflator, such changes to be measured from the month of the Actual In-Service Date. The GNP Implicit Price Deflator is revised quarterly and is published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business.

2.1.2 In the event that MEXEL or the Company requests in excess of one hundred (100) stops and one hundred (100) starts of the Unit in any calendar year, the Seller may include the additional operation and maintenance costs that it incurs as a direct result of such excess stops and starts, as such costs are determined by the firm of consulting engineers described in Article 14.4 of this Agreement.

2.2 Monthly Investment Cost: The Monthly Investment Cost shall equal six hundred ninety-seven thousand, one hundred eighty-six dollars (\$697,186).

2.3 Monthly Pipeline Transportation Capacity Demand Cost: The Monthly Pipeline Transportation Capacity Demand Cost shall equal the product of 0.1962 (which is equal to the Contract Capacity divided by the Design Capacity) and the sum of the following firm transportation demand charges:

2.3.1 The applicable and approved NOVA pipeline transportation capacity demand rate, expressed in dollars per million British

Thermal Units (B/MBTU), multiplied by the appropriate amount of gas, as such rate is on file with the appropriate regulatory authorities;

2.3.2 The applicable and approved TransCanada pipeline transportation capacity demand rate, expressed in dollars per million British Thermal Units (B/MBTU), multiplied by the appropriate amount of gas, as such rate is on file with the appropriate regulatory authorities; and

2.3.3 The applicable and approved pipeline transportation capacity demand rate contained in the United States Domestic Pipeline tariff (as defined in Section 5 of this Appendix B), expressed in dollars per million British Thermal Units (B/MBTU), multiplied by the appropriate amount of gas, as such rate is on file with the applicable regulatory authorities.

2. **Bonus or Penalty Cost Adjustment:** A bonus or penalty cost adjustment shall be made to the Monthly Capacity Cost or to the Monthly Capacity Charge, based on the ability of the Seller to operate the Unit as measured on a moving, twelve month, cumulative equivalent availability factor basis. This adjustment shall be made pursuant to the following formula:

If EAF is less than .85,

$$\text{Adjustment} = ((\frac{\text{EAF}}{.81}) - 1) \times \text{Monthly Capacity Charge}$$

If EAF is equal to or greater than .85,

$$\text{Adjustment} = ((\frac{\text{EAF}}{.91}) - 1) \times \text{Monthly Capacity Cost}$$

Where EAF = Equivalent Availability Factor

$$\text{EAF} = \frac{\text{EAH}}{\text{Hours in Period}}$$

EAH = Equivalent Available Hours

$$\text{EAH} = \frac{\text{sum, over all hours in period, of megawatts available in hour}^*}{\text{Seasonal Maximum Net Claimed Capacity Rating in Hours}^{**}}$$

* The megawatts available in an hour shall reflect Seasonal Maximum Claimed Capacity, adjusted only for non-temperature related outages and/or limitations.

** Seasonal Maximum Net Claimed Capacity shall be established pursuant to NEPOOL CRI 4, "Rating and Auditing of Generating Capability."

Example:

	Hour 1	Hour 2	Hour 3
available MW	167	165	163
maximum net	165	168	165
SAH	$\frac{167}{165} + \frac{165}{165} + \frac{163}{165}$	$\frac{165}{165} + \frac{168}{165} + \frac{165}{165}$	$\frac{163}{165} + \frac{165}{165} + \frac{165}{165}$

$$SAH = \frac{2.889}{3} = .963$$

4. Monthly Energy Charge: The Monthly Energy Charge shall consist of the product of (a) the Delivered Energy for the prior Billing Period, expressed in kilowatthours; and (b) the sum of the Variable Fuel Supply Rate and the Variable Fuel Transportation Throughput Rate, expressed in dollars per kilowatthour (\$/kWh), both as defined and computed as follows.

4.1 Variable Fuel Supply Rate: The Initial Variable Fuel Supply Rate, as of December 31, 1983, is set equal to the following:

4.11 One dollar and thirty-five cents per million British Thermal Units (\$1.35/MMBTU); divided by

4.12 One (1) minus the appropriate quantity, expressed as a decimal, of "pipeline" and "unaccounted for" gas, as included in the applicable and approved commodity charges; multiplied by

4.13 The Adjusted Heat Rate. The Adjusted Heat Rate is equal to eight thousand, five hundred eighty three British Thermal Units per kilowatthour (8,583 BTU/kWh), expressed in millions of British Thermal Units per kilowatthour (i.e., 0.008583 MMBTU/kWh), and is equal to the Unit heat rate of eight thousand three hundred seventy-four British Thermal Units per kilowatthour (8,374 BTU/kWh) multiplied by the sum of one (1) plus a degradation of two and one-half (2.5) percent.

The Initial Variable Fuel Supply Rate shall be adjusted monthly to reflect the proportional change in the following index, which uses the year 1983 as its base:

	Weighting	12 mo. avg.
Tennessee CD-6	25%	\$2.506/MMBTU
Algonquin F-1	25%	2.186
Algonquin Market Price	50%	1.319
Weighted Cost		\$1.836/MMBTU

4.2 Variable Fuel Transportation Throughput Rate: The Variable Fuel Transportation Throughput Rate shall equal the Adjusted Heat Rate, multiplied by the sum of the following firm commodity throughput rates:

4.2.1 The ~~SCADA~~ ~~capacity~~ throughput rate, expressed in dollars per million British Thermal Units (1/MMBTU), as such rate is on file with the appropriate regulatory authorities;

4.2.2 The TransCanada ~~capacity~~ throughput rate, expressed in dollars per million British Thermal Units (1/MMBTU), as such rate is on file with the appropriate regulatory authorities; and

4.2.3 The ~~capacity~~ throughput rate contained in the United States Domestic Pipeline Tariff (as defined in Section 3 of this Appendix B), expressed in dollars per million British Thermal Units (1/MMBTU), as such rate is on file with the appropriate regulatory authorities.

5. For purposes of this Appendix B, the United States Domestic Pipeline Tariff shall be the tariff or tariffs for each of the pipeline companies and local distribution companies transporting natural gas from the Canadian border to the Unit's meter station. In the event that firm transportation is unavailable to the unit's meter station upon the Actual In-Service Date, the United States Domestic Pipeline Tariff shall reflect the most recently filed charges with the Canadian and United States regulatory agencies to transport gas to the Unit's meter station.

6. Illustration of projected Total Purchase Price assuming a fifty percent (50%) escalation at ninety-one percent (91%) capacity:

Monthly Capacity Cost (initial amount):	\$392,706	[=0.5662 c/kWh*]
Monthly Investment Cost (fixed amount):	\$397,186	[=2.0590 c/kWh*]
Monthly Pipeline Demand Cost (assuming total of transportation capacity demand charges = \$1,328,380):	353,466	[=1.9946 c/kWh*]
CAPACITY CHARGES (unadjusted, see §2):	\$1,383,338	[=3.6620 c/kWh*]

Variable Fuel Supply Rate
 (assuming index adjustment and
 accounting for "pipeline
 gas" amounts): \$471,118** 1.4214 \$/kWh

Variable Fuel Transportation
 Throughput Rate
 (assuming cost of pipeline
 throughput rates
 = \$4.168/MBTTU): 119,740** 0.3600 \$/kWh

ENERGY CHARGE: \$690,858** 1.7819 \$/kWh

TOTAL PURCHASE PRICE: \$1,075,226 [+5.6457 \$/kWh]

* calculated by dividing the actual dollar amount by the following:
 (365 days/year)(12 month/year)(24 hours/day)(.31)(50,000 kWh)

** calculated by multiplying the actual \$/kWh rate by the following:
 (365 days/year)(12 month/year)(24 hours/day)(.31)(50,000 kWh)

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APPENDIX C
TO POWER PURCHASE AGREEMENT

Liability Insurance

From and after the Actual In-Service Date, the Seller shall take out, carry, and maintain, or cause to be taken out, carried, and maintained, comprehensive general liability insurance, including automobile and contractual liability, and liability arising out of aircraft or watercraft, if applicable, with a combined single limit per occurrence of at least five million dollars (\$5,000,000) applicable to bodily injury, sickness or death, and loss of or damage to property, subject to an aggregate limit of not less than five million dollars (\$5,000,000) for products and completed operations. Endorsements shall be included for X, C, and U hazards (blasting, collapse, and underground property damage), broad form property damage, and personal injury in addition to bodily injury.

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AMENDMENT TO POWER PURCHASE AGREEMENT

Amendment, dated as of this third (3d) day of August, 1990, by and between Commonwealth Electric Company, a Massachusetts corporation with offices located at 2421 Cranberry Highway, Woburn, Massachusetts (the "Company"), and Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership with its principal place of business at 8 Newbury Street, Suite 6, Boston, Massachusetts (the "Seller"), to Power Purchase Agreement, by and between the Company and the Seller, dated as of September 3, 1989 (the "Agreement").

SECTION ONE. Recitals.

1.1 The Company and the Seller entered into the Agreement, pursuant to which the Seller agreed to sell and deliver and the Company agreed to purchase and take delivery of a portion of the electric capacity and related energy to be produced by an electric generation facility (the "Unit"), which is to be constructed, owned, and operated by the Seller, at a site in Dartmouth, Massachusetts (the "Site"). In accordance with applicable law, the Agreement was submitted by the Company to the Massachusetts Department of Public Utilities (the "MDPU") for approval, which approval was received by order dated March 30, 1990; and was submitted by the Seller to the Federal Energy Regulatory Commission (the "FERC"), which agency is in the process of reviewing the Agreement as of the date hereof.

1.2 As set forth in the Agreement, the Unit was to utilize two gas turbines and was to be capable of generating approximately one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW) of electricity (the "Original Design Capacity").

1.3 Subsequent to the execution of the Agreement, the Seller determined, and duly notified the Company, that the Unit will utilize a single gas turbine and will be capable of generating approximately sixty-seven thousand, six hundred kilowatts (67,600 kW) of electricity.

1.4 Also as set forth in the Agreement, the Company was to purchase a portion of the electric capacity and related energy produced by the Unit equal to fifty megawatts (50 MW) divided by the Original Design Capacity (the "Original Entitlement").

1.5 Subsequent to the execution of the Agreement and the determination by the Seller to reduce the capability of the Unit as described above, the Seller offered to sell and deliver to the Company approximately seventeen thousand, six hundred kilowatts (17,600 kW) in addition to the Original Entitlement, such that the Company would purchase all of the electricity produced by the Unit. The Company has determined that the purchase of such additional electricity would benefit its ratepayers and would facilitate the administration of the Agreement, and accordingly the Company has accepted such offer of the Seller.

1.6 By virtue of the determination of the Seller to decrease the capability of the Unit and the acceptance by the Company of the Seller's offer to purchase

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the entire output of the downsized Unit, several provisions in the Agreement must be modified. These provisions include definitions sections, the section governing the amount of the security deposit to be delivered by the Seller, the section governing the billing mechanism, the section governing the letter of credit to be delivered by the Seller, and the section setting forth the mechanism for calculating the price to be paid under the Agreement.

1.7 Although both the Seller and the Company have understood that the Unit was to be subject to economic dispatch by the New England Power Pool ("NEPOOL"), a provision governing such dispatchability was inadvertently omitted from the Agreement and the parties desire to insert such a provision into the Agreement. In addition, the parties desire to insert a provision into the Agreement protecting the Company and its ratepayers from any income tax liability that the Company might incur as a result of its accepting any contributed property from the Seller.

1.8 The Seller has indicated to the Company that it has made substantial progress with respect to securing necessary financing for the construction and operation of the Unit. Such progress notwithstanding, the Seller has requested that it be permitted to defer delivering to the Company the security deposit required pursuant to the Agreement until sixty (60) days following the approval of this Amendment by the NEPPU, and that such security deposit be in the form of a letter of credit in lieu of cash. As an accommodation to the Seller, the Company has agreed to grant these requests of the Seller.

1.9 Accordingly, the Company and the Seller, each in consideration of the foregoing and of the agreements of the other, hereby agree as hereinafter provided.

SECTION TWO. The second introductory paragraph of the Agreement is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

The Seller plans to construct, own, and operate an electric generation facility, utilizing a single gas turbine and a supplementary-fired waste heat boiler with a dual inlet steam turbine, together with housings and other integral equipment, which will be capable of generating approximately sixty-seven thousand, six hundred kilowatts (67,600 kW) of electricity (the "Unit"). The Unit will be located at a site in the Town of Dartmouth, Massachusetts, which will be owned by the Seller, more particularly described in Appendix A attached hereto (the "Site"). The Seller wishes to sell and deliver and the Company wishes to purchase and take delivery of all of the electricity produced by the Unit, pursuant to the terms and conditions set forth in this Agreement.

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SECTION THREE. Article 3 of the Agreement is hereby amended in accordance with the following:

3.1 The definition of Agreed Incentive Rate is amended by deleting "the Company's Entitlement of" from such definition.

3.2 The definition of Company's Entitlement is deleted in its entirety.

3.3 The definition of Contract Capacity is deleted in its entirety.

3.4 The definition of Delivering Energy is amended by deleting "the Company's portion of" from such definition.

3.5 The definition of Design Capacity is amended by deleting "one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW)" from such definition and substituting "sixty-seven thousand, six hundred kilowatts (67,600 kW)" in lieu thereof.

3.6 The following definition is to be inserted immediately before the definition of NERC:

Economic Dispatch shall mean the operation of the Unit in accordance with such procedures as may be established by NEPOOL from time to time to foster the objective of satisfying the energy requirements of the participants of NEPOOL at the lowest practicable cost.

SECTION FOUR. Article 2.1 of the Agreement is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

The Seller agrees to sell and deliver and the Company agrees to purchase and take delivery of all electric capacity and related energy produced by the Unit during the term of this Agreement; provided, however, that in no event shall the Company be obligated to purchase and take delivery of electric capacity and related energy in excess of the Design Capacity.

SECTION FIVE. Article 2.4 of the Agreement is hereby amended by deleting "up to the Company's Entitlement and related energy," from such article.

SECTION SIX. The following is to be inserted into the Agreement as Article 2.5:

The Unit shall be subject to Economic Dispatch at the direction of the Company or its designee. The Unit shall also be subject to changes in the level of its output at the direction of the Company or its designee, provided that such changes are within the Unit's reasonable design limitations.

2.5.1 If the Seller fails to dispatch the Unit as called for by the Company, then the Company shall calculate the uneconomic:

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Incremental production costs it incurs that are attributable to such failure of the Seller (the "Incremental Production Cost Penalty"). The Company shall also not pay for any electric capacity or energy produced at the Unit as a result of the Seller's failure to comply with the Company's sale pursuant to this Article 3.1. The Company shall deduct any Incremental Production Cost Penalty from any Payments due the Seller for any electric capacity and energy purchased by the Company during the Billing Period ("Net Billing Amount"). In the event that the Net Billing Amount for a Billing Period is due to the Company, such Net Billing Amount shall be billed to the Seller and the Seller shall reimburse the Company therefor according to the same standards as are established for payments to the Seller.

3.5.2 The Incremental Production Cost Penalty shall be the difference between (i) the production costs that the Company experienced during the period of the Seller's failure to dispatch the Unit as called for by the Company, and (ii) the production costs that the Company would have experienced during such period had the Seller complied with the Company's call to dispatch the Unit.

SECTION SEVEN. Article 4 of the Agreement is hereby amended by deleting it in its entirety and inserting the following in lieu thereof:

- 4.1 Within sixty (60) days following the date that the MDPU approves the amendment to this Agreement dated as of August 2, 1990, the Seller shall deliver to the Company an irrevocable letter of credit in favor of the Company (the "Security Deposit Letter of Credit"), from an issuer and in form and substance acceptable to the Company, in the amount of one million, two hundred twenty-eight thousand, six hundred seven dollars (\$1,228,607) as a security deposit (the "Security Deposit"). The Security Deposit is calculated as the sum of (i) one million, fourteen thousand dollars (\$1,014,000), the "Principal", which is the product of sixty-seven thousand, six hundred kilowatts (67,600 kW, which is the Design Capacity) and fifteen dollars (\$15) per kilowatt; and (ii) two hundred fourteen thousand, six hundred seven dollars (\$214,607), the "Interest Component", which is approximately equal to the simple interest that would accrue on the Principal between the date of this Agreement (i.e., September 5, 1989) and the Proposed In-Service Date (i.e., July 1, 1992) at a rate of seven and one-half percent (7½) per annum.
- 4.2 If, prior to the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, or if this Agreement is terminated in accordance with the provisions of Article 3.2, the Company may draw under the Security Deposit Letter of Credit an amount equal to a percentage of the Interest Component plus a percentage of the Principal, which percentage in both cases shall be equal

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to the ratio of (i) the elapsed time between the date of this Agreement and the Cancellation Date; to (ii) the total time between the date of this Agreement and the Proposed In-Service Date; provided, however, that if the reason for such cancellation, abandonment, or termination is the failure of the FERC to approve or accept this Agreement, in a form acceptable to both parties, the Company shall deliver to the issuer of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.

- 4.3 If, after the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, the Company may draw upon the entire Security Deposit Letter of Credit; provided, however, that if the reason for such cancellation, abandonment, or termination is the inability or refusal of the Company to interconnect, the Company shall deliver to the issuer of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.
- 4.4 If the Actual In-Service Date occurs on or before the Proposed In-Service Date, the Company shall deliver to the issuer of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.
- 4.5 If the Actual In-Service Date occurs within twenty-four (24) months after the Proposed In-Service Date, the Company may draw under the Security Deposit Letter of Credit an amount equal to a percentage of the Interest Component, which percentage shall be equal to the ratio of (i) the elapsed time between the Proposed In-Service Date and the Actual In-Service Date, to (ii) the total time between the date of this Agreement and the Proposed In-Service Date; provided, however, that if the reason for the occurrence of the Actual In-Service Date after the Proposed In-Service Date is the inability or refusal of the Company to interconnect, the Company shall deliver to the issuer of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.
- 4.6 If the Actual In-Service Date does not occur within twenty-four (24) months after the Proposed In-Service Date, the Company may draw upon the entire Security Deposit Letter of Credit and may terminate this Agreement according to the provisions of Article 3.2.

SECTION EIGHT. Article 5 of the Agreement is hereby amended by correcting the spelling of the word "calibrating" found at the beginning of the fifth (5th) line of such article.

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SECTION NINE. Article 8.1 of the Agreement is hereby amended by deleting the third sentence of such article in its entirety and inserting the following in lieu thereof:

Any amount payable hereunder not paid within thirty (30) days (or, if such date is not a working day, then by the next working day thereafter) from the date of receipt by the Company of all ~~such~~ undisputed values for the billing period shall be subject to a late payment charge of the annual rate of two (2) percentage points over the current interest rate on prime commercial loans then in effect at the First National Bank of Boston from the date of receipt of such monthly statement until the date of payment.

SECTION TEN. Article 15.2 of the Agreement is hereby amended by deleting "the Company's Entitlement thereto" from such definition and substituting "each electricity" in lieu thereof.

SECTION ELEVEN. Article 18.4 of the Agreement is hereby amended by deleting the schedule currently contained in such article and substituting the following in lieu thereof:

from	through	amount
Actual In-Service Date	December 31, 1993	\$0
January 1, 1994	December 31, 1994	\$175,208
January 1, 1995	remainder of term of Agreement	\$0

SECTION TWELVE. The following is to be inserted into the Agreement as Article 17.7:

The Seller shall reimburse the Company for any costs relating to income tax liabilities incurred by the Company as a result of its acceptance of any contributed property from the Seller.

SECTION THIRTEEN. Appendix B to the Agreement is hereby amended in accordance with the following:

13.1 Article 2.1 of Appendix B is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

Monthly Capacity Cost: The initial Monthly Capacity Cost shall equal the product of the Design Capacity and three thousand, eight hundred fifty-four dollars and twelve cents per megawatt-month (\$3,854.12/MW-mo.). The Monthly Capacity Cost shall be subject to the following adjustments.

13.2 Article 2.2 of Appendix B is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

Monthly Investment Cost: The Monthly Investment Cost shall equal

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the product of the Design Capacity and thirteen thousand, nine hundred forty-three dollars and seventy-two cents per megawatt-month (\$13,943.72/MW-mo.).

13.3 Article 2.3 of Appendix B is hereby amended by deleting "the product of 0.2863 (which is equal to the Contract Capacity divided by the Design Capacity) and" from such article.

13.4 Article 3 of Appendix B is hereby amended by deleting the example currently contained in such article and substituting the following in lieu thereof:

Example:

	Hour 1	Hour 2	Hour 3
available MW:	64	64	65
maximum net:	67.6	67.6	67.6
EAH = $\frac{64}{67.6} + \frac{64}{67.6} + \frac{65}{67.6}$	= 2.625		
EAP = $\frac{2.625}{3}$	= .875		

13.5 Article 6 of Appendix B is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

Illustration of projected Total Purchase Price assuming delivery of sixty-seven thousand, six hundred kilowatts (67,600 kW) at a ninety-one percent (91%) availability:

Monthly Capacity Cost [initial amount: \$2864.12/MW x 67.6 MW]:	\$193,538.91	[= 0.5403¢/kWh*]
Monthly Investment Cost [fixed amount: \$13,943.72/MW x 67.6 MW]:	\$942,385.47	[= 2.5890¢/kWh*]
Monthly Pipeline Demand Cost [assuming total of transportation capacity demand charges = \$531,965]:	\$31,965.80	[= 1.1616¢/kWh*]
CAPACITY CHARGES [unadjusted; see §3]:	\$1,735,050.92	[= 3.8638¢/kWh*]
Variable Fuel Supply Rate [assuming commodity rate of \$1.425/MMBTU following index adjustment and accounting for "pipeline gas" amounts: .00883 MMBTU/kWh x \$1.425/MMBTU]:	\$549,243.60**	1.2231¢/kWh

Variable Fuel/Transportation
Throughput, kwh
[assuming sum of pipeline
throughput rates =
42c/MMBTU: .00553
MMBTU/kwh = \$0.42/MMBTU]: 161,332.22** 0.3608c/kwh

ENERGY CHARGE: \$71,425.79 0.269c/kwh

TOTAL PURCHASE PRICE: \$2,446,228.77 [= 0.4079c/kwh]

* calculated by dividing the actual dollar amount by the following:
(365 days/yr.)(1/12 yr./mo.)(24 hrs./day)(.91)(67,600 kW)

** calculated by multiplying the actual, unrounded c/kwh rate by the
following: (365 days/yr.)(1/12 yr./mo.)(24 hrs./day)(.91)(67,600 kW)

SECTION FOURTEEN. The Company shall submit this Amendment to the MDPU, and the Seller shall submit this Amendment to the FERC, for the approval of each of the MDPU and the FERC. This Amendment shall become effective upon the receipt of such approvals in form and substance acceptable to the Company and the Seller.

In witness whereof, the Company and the Seller have caused this Amendment to be duly executed as of the day and year first above written.

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP,
By EML/Dartmouth, Inc., its General Partner,

By James L. Gordon

Its President

COMMONWEALTH ELECTRIC COMPANY,

By Donald J. Huns

Its Vice President

8-1199-0000-0000-000

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APPENDIX C

Copy of the Accommodation Agreement

See the following.

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Received & Recorded

Nov. 2, 1990 at 4 hrs. 30 min. P.M.

Attest:

John L. Jones Register

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Darian King

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ACCOMMODATION AGREEMENT

Accommodation Agreement, dated as of the thirtieth (30th) day of October, 1980, among Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership ("Dartmouth"); Commonwealth Electric Company, a Massachusetts corporation ("Commonwealth"); Old Fall River Realty Trust, a Massachusetts trust (the "Lessor"); Westpac Banking Corporation, an Australian corporation ("Westpac"), as agent for each of the lenders identified as a "Senior Lender" (the "Senior Lenders") under the loan agreement (as hereinafter defined); and Trust Company of the West, a California trust company ("TCW"), and its individual capacity but only as trustee of the trust established pursuant to the individual Trust Agreement, dated as of January 31, 1987, as amended, between The Bankmaker-Bankers National Pension Trust and itself, Westpac, the Senior Lenders, and TCW are collectively referred to herein as the "Lenders."

ARTICLE ONE. Recitals.

1.1 Dartmouth is to be the owner of an electric generation facility (the "Unit"), which is to be constructed on certain premises leased to Dartmouth in the Town of Dartmouth, Massachusetts (the "Site"). The Unit currently is expected to produce approximately sixty-seven thousand six hundred kilowatts (67,600 kW) of electricity from a single gas turbine and supplementary-fired waste heat boiler with a dual inlet steam turbine.

1.2 Dartmouth has entered into an agreement regarding the purchase and sale of the electricity to be produced by the Unit with Commonwealth, dated as of September 5, 1985 (the "Original Power Purchase Agreement"), and modified by an amendment dated as of August 3, 1989 (the "Amendment"). The Original Power Purchase Agreement and the Amendment are attached as Article 7 hereto. The Original Power Purchase Agreement, as currently amended by the Amendment, and as it may hereinafter be amended, modified, or restated, is referred to herein as the "Power Purchase Agreement." Pursuant to the Power Purchase Agreement, the Grantee has agreed to purchase and the Grantor has agreed to sell all of the electric capacity and related energy to be generated by the Unit through the twenty-fifth (25th) anniversary of the Actual In-Service Date (as such term is defined in the Power Purchase Agreement) of the Unit.

1.3 The Original Power Purchase Agreement and the Amendment have been submitted to and approved by the Massachusetts Department of Public Utilities, in accordance with the regulations of such Department, and have been submitted to and approved by the Federal Energy Regulatory Commission, in accordance with the regulations of such Commission.

1.4 Dartmouth, as lessee, has entered into a ground lease with the Lessor, dated as of October 5, 1980, with respect to the Site (the "Lease").

1.5 Pursuant to a certain loan agreement, dated as of October 30, 1980, among Dartmouth, Westpac, and TCW (the "Loan Agreement"), the Senior Lenders and TCW have agreed, subject to the satisfaction of certain terms

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and provisions set forth therein, to finance the construction of the Unit in a principal amount not to exceed seventy-three million, eight hundred seventy-seven thousand dollars (\$73,877,000) the "Loan Principal") and to provide certain term loans upon completion of construction of the Unit, in a principal amount not to exceed the Loan Principal.

1.6 Dartmouth seeks to assign its interest in the Power Purchase Agreement to the Lenders as collateral pursuant to the terms of the Loan Agreement and to the terms of a general assignment and security agreement dated as of October 30, 1990, among Dartmouth, Westgas, and TCW (the "Assignment"). Pursuant to the terms of the Power Purchase Agreement, such assignment requires the consent of Commonwealth.

1.7 Commonwealth is willing to consent to such assignment on the condition that the parties hereto acknowledge and confirm certain obligations, as required pursuant to the terms of the Power Purchase Agreement and as set forth herein.

1.8 Dartmouth seeks to assign its rights and interest under the Lease to Lenders as collateral pursuant to the terms of the Loan Agreement and the Assignment, and the Lender is willing to consent to such assignment.

1.9 Accordingly, in consideration of the foregoing and the mutual covenants herein contained, the parties hereto agree as hereinafter provided.

ARTICLE TWO. Acknowledgments and Confirmations.

2.1 Dartmouth is arranging financing for the acquisition of the Site and the construction of the Unit from the Lenders by means of loans under the Loan Agreement, which Loan Agreement provides that such loans will be secured, ~~under~~ in the case of certain of such loans by a first mortgage on the Unit and the Site (the "First Mortgage"), in the case of certain other of such loans by a second mortgage on the Unit and the Site (the "Second Mortgage"), by an assignment of Dartmouth's rights and interest under the Power Purchase Agreement, and by an assignment of Dartmouth's rights and interest under the Lease.

2.2 The Power Purchase Agreement contains provisions that both facilitate and accommodate the financing plans of Dartmouth, including provisions establishing a floor price for electricity sold thereunder and allowing for such an assignment to a lender under certain conditions. In addition, the Power Purchase Agreement contains provisions establishing security arrangements designed to secure the interests of Commonwealth in full performance thereof throughout its full anticipated term. The Power Purchase Agreement is a fully advantageous contract for Commonwealth and its ratepayers only if Commonwealth secures full performance from Dartmouth over the full term thereof. In the early years of the Power Purchase Agreement, Commonwealth will be facilitating the financing of the Site and the Unit by virtue of paying a floor price for electricity at a rate anticipated to be in excess of Commonwealth's avoided cost for such electricity. Full consideration for such floor price being provided in the early years of the Power Purchase Agreement is to be obtained in the later years of the Power Purchase

Agreement by Commonwealth paying a price for electricity at a rate anticipated to be below its avoided costs thereof.

2.3 The Power Purchase Agreement provides for the establishment of a series of security arrangements to secure the interests of Commonwealth with respect to such access payments in the early years and in full and continuous performance of Dartmouth's obligations under the Power Purchase Agreement throughout its full term. Such arrangements include the following:

2.31 A Mortgage (the "Commonwealth Mortgage");

2.32 An irrevocable letter of credit;

2.33 A Declaration of Assurances, Covenants, and Restrictions (the "Declaration"), which will apply and run with both the Site and the Unit, subjecting both to the Power Purchase Agreement, which is prior to both the First Mortgage and the Second Mortgage, and to which this Accommodation Agreement shall be appended; and

2.34 This Accommodation Agreement.

2.4 At the express request of Dartmouth and the Lenders, and solely as an accommodation to Dartmouth and the Lenders, Commonwealth has agreed to forebear recording the Commonwealth Mortgage until both the First Mortgage and the Second Mortgage are recorded. In view of such accommodation, Dartmouth and the Lenders have undertaken certain affirmative obligations as set forth in Articles 4.2 and 6.2 hereof, and Commonwealth's consent to the assignment of Dartmouth's rights and interest in the Power Purchase Agreement is expressly conditioned upon the complete performance of such obligations.

2.5 Commonwealth and Dartmouth hereby confirm their obligations under the Power Purchase Agreement.

2.6 Dartmouth and the Lessor hereby confirm their obligations under the Lease.

ARTICLE THREE. Covenants of the Lessor.

The Lessor acknowledges that it is familiar with the terms of the Power Purchase Agreement and the Declaration, and agrees as follows:

3.1 The Lessor represents that it is the owner of the Site. The rights and interests of the Lessor under the Lease and in the Site shall be subject to the terms of the Declaration.

3.2 The Lessor shall require any prospective transferee of the Site to expressly acknowledge and accept the obligations of the Lessor under the Accommodation Agreement, and will include in any deed or other instrument of conveyance a statement that the conveyance is subject to the terms of the Declaration.

3.3 If the Lessor acquires possession of the Unit or the Site, or of

Dartmouth's interest therein, by virtue of or in lieu of the exercise of its rights under the Lease or otherwise:

3.31 It will consult with Commonwealth with a view to effectuating appropriate Union therewith;

3.32 It will use all reasonable efforts to perform or cause to be performed the obligations of Dartmouth under the Power Purchase Agreement arising after the date of such possession and to ensure the Unit to operate in accordance with and pursuant to the provisions of the Power Purchase Agreement;

3.33 If it proceeds to transfer the Unit or the Site pursuant to foreclosure sale or any other means of disposition, the Lessor will require any prospective transferee to honor the Power Purchase Agreement as if such transferee were the Seller thereunder, and will include in any deed or other instrument of conveyance a statement that the conveyance is subject to the terms of the Declaration; and

3.34 It will not disturb the enjoyment by Commonwealth of its rights and benefits under the Declaration and under the Power Purchase Agreement.

3.4 In the event of a casualty to the Unit, the Lessor will allow the application of Net Proceeds (as such term is defined in the Power Purchase Agreement) to the prompt repair, restoration, modification, or improvement of that portion of the Unit damaged or destroyed by such casualty, unless the parties hereto agree that such repair, restoration, modification, or improvement is not practicable under the circumstances, in accordance with Article Seven hereof.

ARTICLE FOUR. Consents of the Lenders.

Each of Westpac, the Senior Lenders (through their agent, Westpac), and TCV acknowledges that it is familiar with the terms of the Power Purchase Agreement and the Declaration, and each agrees as follows:

4.1 The rights and interests of the Lenders under the First Mortgage and the Second Mortgage, as the case may be, are subject to the terms of the Declaration, and the Declaration shall be recorded prior to both the First Mortgage and the Second Mortgage in the Bristol County Registry of Deeds, Southern District (the "Registry").

4.2 In view of the accommodation by Commonwealth to the request of Dartmouth and the Lenders to forbear recording the Commonwealth Mortgage until both the First Mortgage and the Second Mortgage have been recorded, the Lenders agree that they shall remove or cause to be removed, within a reasonable time, any intervening liens with respect to the Unit or the Site (other than the Second Mortgage) that arise between the time of recording the First Mortgage and the time of recording the Commonwealth Mortgage.

4.3 If any Lender acquires possession of the Unit or the Site, or of Dartmouth's interest therein, by virtue of or in lieu of the exercise of its

rights or remedies under the First Mortgage, the Second Mortgage, the Loan Agreement, or otherwise:

4.31 It will consult with Commonwealth with a view to effectuating appropriate Union (Dartmouth);

4.32 It will use all reasonable efforts to perform or cause to be performed the obligations of Dartmouth under the Power Purchase Agreement arising after the date of such purchase and insofar as the Unit to operate in accordance with and pursuant to the provisions of the Power Purchase Agreement;

4.33 If it proceeds to transfer the Unit or the Site pursuant to foreclosure sale or any other means of disposition, such Lender will require any prospective transferee to honor the Power Purchase Agreement as if such transferee were the Seller thereunder, and will include in any deed or other instrument of conveyance a statement that the conveyance is subject to the terms of the Declaration; and

4.34 It will not disturb the enjoyment by Commonwealth of its rights and benefits under the Declaration and under the Power Purchase Agreement.

4.4 In the event of a casualty to the Unit, the Lenders will allow the application of Net Proceeds (as such term is defined in the Power Purchase Agreement) to the prompt repair, restoration, modification, or improvement of that portion of the Unit damaged or destroyed by such casualty, unless the parties hereto agree that such repair, restoration, modification, or improvement is not practicable under the circumstances, in accordance with Article Seven hereof.

ARTICLE FIVE. Covenants of Commonwealth.

5.1 Commonwealth hereby consents to the assignment by Dartmouth of Dartmouth's interest in the Power Purchase Agreement to the Lenders as collateral securing Dartmouth's obligations under the Loan Agreement; provided, however, that such consent will not be effective if any of the following conditions is not completely satisfied:

5.11 That each of the parties hereto executes, acknowledges, and delivers this Accommodation Agreement;

5.12 That the Commonwealth Mortgage is recorded in the Registry within fourteen calendar days of the date hereof (or such reasonable additional period as Commonwealth in its sole discretion allows); and

5.13 That the Lenders and Dartmouth fulfill their obligations to remove intervening liens within a reasonable time, as set forth herein, so as to assure that the Commonwealth Mortgage shall be subordinate only to the Declaration, the First Mortgage, and the Second Mortgage.

5.2 Commonwealth agrees that with respect to the Declaration and the Power Purchase Agreement, it will return to the Lessor, the Lenders, their successors or assigns, or any other transferees of the Site or the Unit,

provided that such party honors this Accommodation Agreement, the Declaration, and the Power Purchase Agreement:

5.3 In the event of a casualty to the Unit, Commonwealth will allow the application of Net Proceeds (as such term is defined in the Power Purchase Agreement) to the prompt repair, restoration, modification, or improvement of that portion of the Unit damaged or destroyed by such casualty, unless the parties hereto agree that such repair, restoration, modification, or improvement is not practicable under the circumstances, in accordance with Article Seven hereof:

ARTICLE SIX. Covenants of Dartmouth.

6.1 If it proceeds to transfer the Unit or the Site, Dartmouth will require any prospective transferee to honor the Power Purchase Agreement as if such transferee were the Seller thereunder, and will include in any deed or other instrument of conveyance a statement that the conveyance is subject to the terms of the Declaration.

6.2 In view of the accommodation by Commonwealth to the request of Dartmouth and the Lenders to forebear recording the Commonwealth Mortgage until both the First Mortgage and the Second Mortgage have been recorded, Dartmouth agrees that it shall remove or cause to be removed, within a reasonable time, any intervening liens with respect to the Unit or the Site (other than the Second Mortgage) that arise between the time of recording the First Mortgage and the time of recording the Commonwealth Mortgage.

6.3 Dartmouth agrees not to amend or modify the Declaration without the express written consent of each of the parties hereto.

6.4 In the event of a casualty to the Unit, Dartmouth agrees as follows:

6.41 It will apply, or will allow the application of, Net Proceeds (as such term is defined in the Power Purchase Agreement) to the prompt repair, restoration, modification, or improvement of that portion of the Unit damaged or destroyed by such casualty, unless the parties hereto agree that such repair, restoration, modification, or improvement is not practicable under the circumstances, in accordance with Article Seven hereof; and

6.42 In the event that, in accordance with Article Seven hereof, the application of such Net Proceeds is insufficient to effect such repair, restoration, modification, or improvement, it will provide such additional funds as are necessary to complete such repair, restoration, modification, or improvement, such additional funds to be obtained in compliance with the Loan Agreement, to the extent applicable.

ARTICLE SEVEN. Application of Insurance Proceeds.

7.1 For the purposes of this Article Seven, the following terms shall have the following meanings:

7.11 "Independent Engineer" means the "Consulting Engineer" as defined in the Loan Agreement;

7.12 "Actual In-Service Date" shall have the meaning set forth therein in the Power Purchase Agreement;

7.13 "Legal Requirements" means all laws, statutes, codes, acts, ordinances, orders, judgments, rules, regulations, permits, licenses, directives, and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials, and officers applicable to or affecting the Unit;

7.14 "Total Debt Coverage Ratio" shall have the meaning set forth therein in the Loan Agreement.

7.2 Prior to the Actual In-Service Date, the use of casualty insurance proceeds shall be governed by the terms of the Loan Agreement and the documents executed in connection therewith.

7.3 From and after the Actual In-Service Date, the Net Proceeds from any insurance on the project shall, subject to Article 7.4 hereof, be applied as set forth in Article 15.4 of the Power Purchase Agreement, and the parties hereto agree that the following sets forth their mutual intent as to the manner in which the provisions of such article are to be interpreted and enforced, notwithstanding any contrary provisions within the Loan Agreement, the Lease, the First Mortgage, the Second Mortgage, or any assignment by Dartmouth of its rights and interest under the Power Purchase Agreement or the Lease.

7.31 Commonwealth recognizes that Dartmouth has assigned its rights and interest under the Power Purchase Agreement to the Lenders as collateral security, and that Westpac, TCW, and their respective agents and representatives (including the Independent Engineer) shall be entitled to participate fully (including, without limitation, in any arbitration procedure), in the process of arriving at a determination of the practicability of repair, restoration, modification, or improvement of the project.

7.32 Each party hereto agrees to act reasonably and in good faith in assessing the practicability of repair, restoration, modification, or improvement of the Unit, and to take into account, *inter alia*, the following factors:

- (a) The extent of the damage to the Unit and the estimated cost of repair, restoration, modification, or improvement of the Unit in its condition prior to the casualty in accordance with all then-applicable Legal Requirements;
- (b) The amount of Net Proceeds and other funds available to pay the costs of such repair, restoration, modification, or improvement;
- (c) The projected operating results of a repaired, restored, modified, or improved project giving effect to all then-applicable Legal Requirements;

(d) The extent of indebtedness outstanding under the Loan Agreement, the remaining term thereof, the projected Total Debt Coverage Ratio over the remaining term, and the Total Debt Coverage Ratio that existed prior to the loss or casualty giving rise to the availability of Net Proceeds;

(e) Commonwealth's current and projected system requirements for energy and capacity;

(f) The interest of Commonwealth's rate payers in full performance of Dartmouth's obligations over the remaining term of the Power Purchase Agreement;

(g) Whether the Lessor has made a general assignment for the benefit of creditors or is generally not paying its debts as such debts become due; any order, judgment, or decree is entered under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or similar law (collectively referred to as the "Bankruptcy Law") of any jurisdiction adjudicating the Lessor bankrupt or insolvent; the Lessor has petitioned, or applied to any tribunal for, or consented to, the appointment of, or taking of possession by, a trustee, receiver, custodian, liquidator, or similar official, of the Lessor, or of any substantial part of the assets of the Lessor, or has commenced a voluntary case under the Bankruptcy Law of the United States or any proceedings relating to the Lessor under the Bankruptcy Law of any other jurisdiction, whether now or hereafter in effect; any such petition or application is filed, or any such proceedings are commenced, against the Lessor and the Lessor by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order for relief is entered in an involuntary case under the Bankruptcy Law of the United States, as now or hereafter constituted, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator, or similar official, or approving the petition in any such proceedings, or decreeing the dissolution or split-up of, or which requires the divestiture of any substantial part of the assets of, the Lessor and such order, judgment or decree remains unstayed and in effect for more than 90 days; and

(h) Whether an Event of Default under the Loan Agreement has occurred and has persisted for a period of thirty (30) days or more prior to the event of casualty.

7.13 Each party hereto agrees that, subject to the provisions of Article 7.14 hereof, there shall be a presumption in favor of practicability of repair, restoration, modification, or improvement of the Unit. Any party taking a contrary position shall bear the burden of demonstrating that such repair, restoration, modification, or improvement is impracticable. In the event that the parties are unable to agree as to the practicability of such repair, restoration, modification, or improvement within a reasonable period of time following a casualty, any party may submit the matter to arbitration in accordance with the provisions of the Power Purchase Agreement. In any such arbitration, the presumptions and burden of proof set forth in this Article 7.13 shall

apply, and the arbitrator or arbitrators shall consider the factors outlined in Article 7.32 above.

7.34 In the event that Dartmouth has been and remains in a default under the Loan Agreement as specified in Article 7.31(b) hereof, which default in the good faith judgment of the Lenders is material and adverse, for a period of thirty (30) days or more prior to the date of the Unit's sale to the Unit, and if such default has not been cured within thirty (30) days of the receipt by Dartmouth of notice of such default, then the presumption in favor of the practicability of repair, restoration, modification, or improvement of the Unit shall shift so that there would be a presumption that Net Proceeds should be applied to the payment of indebtedness outstanding under the Loan Agreement to the extent that the Lenders elect to accelerate Dartmouth's indebtedness by reason of such substantial and material default.

7.4 Notwithstanding the foregoing, the Lenders will not be obligated to make Net Proceeds available for repair, restoration, modification, or improvement of the Unit, and the parties agree that the following factors, if not accessible to ordinary remedy, would render such repair, restoration, modification, or improvement impracticable:

7.41 Construction, equipment, and operation warranties of the type and quality then customarily required in connection with similar restorations by prudent lenders are not then available with respect to such restoration;

7.42 Upon or after the casualty, Dartmouth is unable to obtain adequate casualty or liability insurance for the Unit after using its best efforts to obtain such coverage;

7.43 Prior to, upon, or after the casualty, Commonwealth has repudiated the Power Purchase Agreement or the Power Purchase Agreement has been terminated by reason of Commonwealth's substantial and material breach thereof;

7.44 Prior to, upon, or after the casualty, or after giving effect to the proposed repair, restoration, modification, or improvement, Dartmouth is or will be unable to maintain a Total Debt Coverage Ratio of at least 1.1;

7.45 Upon or after the casualty, Dartmouth is unable to obtain permits or approvals required for the repair, restoration, modification, or improvement of, and the continued operation of, the Unit, after using its best efforts to obtain such permits and approvals; or

7.46 Dartmouth or Commonwealth has made a general assignment for the benefit of creditors or is generally not paying its debts as such debts become due; any order, judgment, or decree is entered under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or similar law (collectively referred to as the "Bankruptcy Law") of any jurisdiction adjudicating Dartmouth or Commonwealth bankrupt or insolvent; Dartmouth or Commonwealth has petitioned, or applied to any tribunal for, or consented to, the appointment of, or taking possession by, a trustee,

receiver, custodian, liquidator or similar official of Dartmouth or Commonwealth, or of any substantial part of the assets of Dartmouth or Commonwealth, or commenced a voluntary case under the Bankruptcy Law of the United States or any proceedings relating to Dartmouth or Commonwealth under the Bankruptcy Law of any other jurisdiction, whether now or hereafter in effect; any such petition or application is filed, or any such proceedings are commenced, against Dartmouth or Commonwealth, and said party for any not indicate its approval thereof, without thereto or acquiescence therein, or an order for relief is entered in an involuntary case under the Bankruptcy Law of the United States, as now or hereafter constituted, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, or increasing the dissolution or split-up of, or which requires the divestiture of any substantial part of the assets of, Dartmouth or Commonwealth and such order, judgment or decree remains unstayed and in effect for more than 90 days.

7.5 All Net Proceeds paid to, held by, or deposited with the Lenders may in the discretion of the Lenders be paid to, held by, or deposited with the Lenders' designee (as provided in the Loan Agreement). All Net Proceeds to be disbursed for repair, restoration, modification, or improvement of the Gail shall be disbursed by the Lenders or their designee upon such reasonable terms and conditions as the Lenders may establish.

7.6 The provisions of this Article Seven are solely for the benefit of the Lenders, the Lessor, Commonwealth, and Dartmouth and their respective successors and assigns, and nothing contained herein shall be deemed to confer upon any person other than the Lenders, the Lessor, Commonwealth, and Dartmouth and their respective successors and assigns any right to insist on or to enforce the performance or observance of any of the obligations contained herein.

ARTICLE EIGHT: Miscellaneous Provisions.

8.1 This Accommodation Agreement may be executed by one or more of the parties hereto on any number of separate counterparts, and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

8.2 Except as provided in Article Five hereof, if one party hereto fails to execute this Accommodation Agreement, then this Accommodation Agreement shall nonetheless be valid, binding, and enforceable against the other parties hereto.

8.3 This Accommodation Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Massachusetts.

8.4 If any provision of this Accommodation Agreement is held or deemed to be, or shall in fact be, illegal, unenforceable, or unenforceable, the same shall not affect any other provision contained herein, in the Power Purchase

Agreement, or the Declaration, nor shall it render any such provision invalid, inoperative or unenforceable in any event whatsoever.

8.5 This Accommodation Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title.

8.6 Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, or by hand or permitted delivery at the addresses specified below or at such other addresses as may be specified in writing by the party in question.

To Dartmouth: Dartmouth Power Associates Limited Partnership
c/o BDL/Dartmouth, Ltd.
8 Newbury Street, Suite 5
Boston, Massachusetts 02116
Attention: James Gordon, President

To Commonwealth: Commonwealth Electric Company
2422 Cranberry Highway
Wareham, Massachusetts 02571
Attention: President

(with a copy to: Michael F. Dodson, Esq.
Rich. May, Blodau & Sheerty, P.C.
294 Washington Street
Boston, Massachusetts 02108)

To the Lessor: Old Fall River Realty Trust
c/o James Gordon, Trustee
8 Newbury Street
Boston, Massachusetts 02116

To the Lenders: Westpac Banking Corporation
225 West Washington
Chicago, Illinois 60606
Attention: Jane A. Bok,
Special Industries Group

Trust Company of the West
350 California Street, Suite 3275
San Francisco, California 94111
Attention: D. Michael Merrill

Notices given hereunder shall be deemed to have been given upon receipt or any refusal to accept.

8.7 All of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of and be binding upon their respective successors and assigns.

In witness whereof, the parties hereto have caused this Agreement to be executed as a sealed instrument by their respective officers or representatives thereunto duly authorized, all as of the date first above written.

OLD FALL RIVER REALTY TRUST,
a Massachusetts trust

By *[Signature]*
Its *[Signature]*

DARTMOUTH POWER ASSOCIATES LIMITED
PARTNERSHIP, a Massachusetts limited
partnership

By its sole General Partner:

DMG/DARTMOUTH, INC.,
a Massachusetts corporation

By *[Signature]*
Its President.

SENIOR LENDERS

WESTPAC BANKING CORPORATION (on its own behalf and as agent
hereunder for the Senior Lenders)

By *[Signature]*
Its *[Signature]*

SUBORDINATED LENDER

TRUST COMPANY OF THE WEST (not in its individual capacity, but solely as
set forth in the Loan Agreement)

By _____
Its _____

COMMONWEALTH ELECTRIC COMPANY,
a Massachusetts corporation

By

Its

ATTEST: [Signature]

THE COMMONWEALTH OF MASSACHUSETTS }
THE COUNTY OF SUFFOLK }

Personally appeared before me Thomas S. Gordon
President of DMI/Dartmouth, Inc., general partner of
Dartmouth Power Associates Limited Partnership, a signer and sealer of the
foregoing instrument, to me known as being thereunto duly authorized, and
acknowledged the same to be the free act and deed of DMI/Dartmouth, Inc.,
acting in its capacity as general partner of Dartmouth Power Associates
Limited Partnership, and to be the free act and deed of said Dartmouth Power
Associates Limited Partnership.

Thomas S. Gordon
Notary Public

Dated: October 20, 1990

My Commission Expires 11/1/91

THE COMMONWEALTH OF MASSACHUSETTS }
THE COUNTY OF SUFFOLK }

Personally appeared before me DONALD J. WOLANSKI
Vice President of Commonwealth Electric Company, a signer and
sealer of the foregoing instrument, to me known as being thereunto duly
authorized, and acknowledged the same to be the free act and deed of said
Commonwealth Electric Company.

Donald J. Wolanski
Notary Public

Dated: Oct. 30, 1990

My Commission Expires July 25, 1991

THE COMMONWEALTH OF MASSACHUSETTS

THE COUNTY OF SUFFOLK

Personally appeared before me James S. Girdner
James S. Girdner of Old Fall River Realty Trust, a signer and sealer
 of the foregoing instrument, to me known as being thereunto duly authorized,
 and acknowledged the same to be the free act and deed of said Old Fall River
 Realty Trust.

Notary Public

Dated: October 30, 1990My Commission Expires 7/2/94

THE COMMONWEALTH OF MASSACHUSETTS

THE COUNTY OF SUFFOLK

Personally appeared before me James S. Girdner
James S. Girdner of Westpac Banking Corporation, a signer and
 sealer of the foregoing instrument, to me known as being thereunto duly
 authorized, and acknowledged the same to be the free act and deed of said
 Westpac Banking Corporation.

Notary Public

Dated: October 30, 1990My Commission Expires 7/2/94

THE COMMONWEALTH OF MASSACHUSETTS

THE COUNTY OF SUFFOLK

Personally appeared before me _____
 _____ of Trust Company of the West, a signer and sealer
 of the foregoing instrument, to me known as being thereunto duly authorized,
 and acknowledged the same to be the free act and deed of said Trust
 Company of the West.

Notary Public

Dated: _____, 1990

My Commission Expires _____

confidential
 Darian King
 power-transitions.com
 Aug 25, 2025 8:37 PM EDT

042564750150

APPENDIX A

Copies of the Original Power Purchase Agreement and the Amendment

See the following:

power-transitions.com
Aug 25, 2025 8:37 PM EDT

042564750150

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Darlan King
power-transitions.com
Aug 25, 2025 8:37 PM EDT

POWER PURCHASE AGREEMENT

Agreement entered into this 10th (5th) day of September, 1988, by and between Commonwealth Electric Company, a Massachusetts corporation with offices located at 3411 Community Highway, Weymouth, Massachusetts (the "Company"), and Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership with its principal place of business at 8 Newbury Street, Suite 1, Boston, Massachusetts (the "Seller").

The Seller plans to construct, own, and operate an electric generation facility, utilizing two gas turbines and a supplementary fired waste heat boiler with a dual inlet steam turbine, together with heating and other integral equipment, which will be capable of generating approximately one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW) of electricity (the "Unit"). The Unit will be located at a site in the Town of Dartmouth, Massachusetts, which will be owned by the Seller, more particularly described in Appendix A attached hereto (the "Site"). The Seller wishes to sell and deliver and the Company wishes to purchase and take delivery of a portion of the electricity produced by the Unit, pursuant to the terms and conditions as set forth in this Agreement.

Therefore, the parties, each in consideration of the agreements of the other, hereby agree as follows.

ARTICLE 1. Definitions.

When used with initial capitalizations, whether in the singular or in the plural, the following terms shall have the following meanings.

Actual In-Service Date shall mean the date upon which the Seller shall have both (i) produced electricity while operating the Unit at or above an average of ninety percent (90%) of the Design Capacity for five (5) consecutive days, and (ii) delivered the Company's Entitlement of such electricity to the Company.

Adjusted Capacity for each Seasonal Period shall be the greater of (i) the seasonal Capacity as determined by the first Capacity Audit performed during each Seasonal Period following the Actual In-Service Date, or (ii) the Design Capacity.

Billing Period shall mean any calendar month in which the Unit produces electricity pursuant to this Agreement and for which the Company is obligated to pay for such electricity produced for such month pursuant to this Agreement.

Capacity shall mean the maximum dependable load carrying ability in kilowatts of the Unit during the applicable Seasonal Period (exclusive of capacity required for Unit use). Capacity shall be determined by the NEPOOL Operations Committee in accordance with NEPOOL Criteria, Rules and Standards ("CRS") No. 4. In the event that CRS 4 ceases to be established, or if the Company ceases participation in NEPOOL, the Company may impose

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Darian King
power-transitions.com
Aug 25, 2025 8:37 PM EDT

reasonable substitute standards that would have the same effect as this CRS in determining Capability.

Capability Audit shall mean a test of the Unit's Capability conducted periodically pursuant to the provisions of Section 4.12 of the NBPOL Agreement and CRS 4, on any property insured requirements thereafter created from time to time during the term of this Agreement.

Capacity Reliance shall mean the extent, if any, to which the audited Capability of the Unit is less than the Adjusted Capability.

Company's Indifference shall mean that percentage of Unit Capacity equal to the ratio of the Contract Capacity to the Adjusted Capability.

Contract Capacity shall mean fifty thousand kilowatts (50,000 kW).

Delivered Energy shall mean, for each Billing Period, the Company's portion of the kilowatt-hours metered during the Billing Period pursuant to Article 7 hereof.

Delivery Point shall mean the point at which the Unit shall be interconnected with the Company's system, in accordance with an interconnection agreement to be agreed to by the Seller and the Company.

Design Capacity shall mean one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW), at fifty-nine (59) degrees Fahrenheit.

FERC shall mean the Federal Energy Regulatory Commission.

Force Majeure shall include those events set forth in Article 10.1 hereof.

Good Utility Practice shall mean the practice, methods, and acts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expediency. With respect to the Unit, Good Utility Practice includes but is not limited to taking reasonable steps to ensure the following:

- (1) That adequate materials, resources, and supplies, including fuel, are available to meet the Unit's needs;
- (2) That sufficient operating personnel are available and are adequately experienced, trained, and licensed as necessary to operate the Unit properly and efficiently, and who are capable of responding to emergency conditions whether caused by events on or off the Site;
- (3) That preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable long term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

- (4) That appropriate monitoring and testing are performed to ensure that equipment is functioning as designed;
- (5) That equipment is not operated recklessly, or in a manner that is unsafe to system, the general public, or the environment, or without regard to defined limitations such as steam pressure, temperature and moisture content, chemical content of make-up water, flood conditions, safety inspection requirements, operating voltage, current, frequency, rotational speed, polarity, synchronization, or control system limits;
- (6) That equipment will function properly under both normal and emergency conditions; and
- (7) That the Unit is operated in conformance with the applicable NEPOOL GRS and Operating Procedures, and NEPEX dispatch instructions.

MDPU shall mean the Massachusetts Department of Public Utilities.

NEPEX shall mean the central dispatching agency, as defined in Section 15.22 of the NEPOOL Agreement, operating through such satellite dispatching centers as the NEPOOL Management Committee may determine to be appropriate.

NEPOOL shall mean the New England Power Pool.

NEPOOL Agreement shall mean the New England Power Pool Agreement, dated September 1, 1971, as amended.

Proposed In-Service Date shall be July 1, 1992.

Seasonal Period shall mean either the summer period, June through September, or the winter period, October through May, as appropriate.

System Emergency shall mean an imminent condition on the Company's or a neighboring utility's system that is likely to result in significant disruption of service or is likely to endanger life or property.

Testing Period shall mean any period of time during which the Unit is being tested and may produce electric energy prior to the Actual In-Service Date.

Test Power shall mean any electric energy produced by the Unit during the Testing Period.

ARTICLE 2. Sale of Power.

2.1 The Seller agrees to sell and deliver and the Company agrees to purchase and take delivery of the Company's Entitlement and related energy produced by the Unit during the term of this Agreement.

2.2 The Unit shall be staffed, operated, and maintained in a manner consistent with the standards applicable to generating facilities owned

and operated by participants in NEPOOL, as such standards may be in effect from time to time during the term of this Agreement. The Seller also agrees to make the Unit available for NEPOOL dispatch in accordance with the provisions of Section 12.3 of the NEPOOL Agreement.

2.3 In addition to the foregoing, the Seller shall undergo periodic Capability Audits upon the request of NEPOOL or of the Company. In the event that the Unit demonstrates a Capacity Deficiency in excess of two thousand kilowatts (2,000 kW), the Company may assess the Seller an offset charge each month, which shall be equal to one-twelfth (1/12) of the sum of the Capacity Responsibility Adjustment Charge, plus the Capacity Responsibility Deficiency Charge, established from time to time by NEPOOL, pursuant to the provisions of Section 6.4 of the NEPOOL Agreement, multiplied by such Capacity Deficiency.

2.4 During the Testing Period, the Unit may generate Test Power. The Company agrees to take and pay for any Test Power offered for sale, up to the Company's Entitlement and related energy, subject to the following conditions:

2.4.1 The tests conducted during the Testing Period shall be performed in accordance with Good Utility Practice;

2.4.2 The administrative committee established pursuant to this agreement shall be kept informed of operations during the Test Period; and

2.4.3 The Company shall pay for any Test Power monthly at a price determined pursuant to the Company's generally available Rate F-1 "Power Purchase Rate" (MDPU No. 182) or the generally available replacement thereof.

ARTICLE 3. Effective Date and Term.

3.1 This Agreement shall become effective when all necessary approvals have been received from the FERC and from the MDPU, in a form acceptable to both parties; provided, however, that the Company's obligation to purchase the Company's Entitlement and related energy (other than pursuant to Article 2.4) shall not commence until the Actual In-Service Date. Unless sooner terminated in accordance with any applicable provision hereof, this Agreement shall remain in full force and effect until the twenty-fifth (25th) anniversary of the Actual In-Service Date.

3.2 If all necessary permits or licenses to build and operate the facility have not been obtained, or construction of the Unit has not commenced, within twenty-four (24) months following the date first above-written, or if, in the reasonable judgment of either party exercised not sooner than twenty-four (24) months following the date first above written, the Actual In-Service Date is likely to occur later than twenty-four (24) months after the Proposed In-Service Date, either party may terminate this Agreement upon sixty (60) days written notice to the other.

ARTICLE 4. Security Deposit

- 4.1 Within thirty (30) days following the date that this Agreement is approved by the MDCU, the Seller shall deliver to the Company seven hundred fifty thousand dollars (\$750,000) as a security deposit (the "Security Deposit"). The Security Deposit is calculated as the product of (i) fifty thousand kilowatts (50,000 kW), which is the Contract Capacity, and (ii) fifteen dollars (\$15) per kilowatt. The Company shall hold the Security Deposit in an interest-bearing savings account.
- 4.2 If, prior to the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, or if this Agreement is terminated in accordance with the provisions of Article 3.12, the entire Security Deposit shall be returned to the Seller after payment to the Company of accumulated interest and a percentage of the principal equal to the ratio of the elapsed time between Agreement execution and the cancellation date to the total time between Agreement execution and Proposed In-Service Date; provided, however, that if the reason for such cancellation, abandonment, or termination is the failure of the PERC to approve or accept this Agreement, in a form acceptable to both parties, then the entire Security Deposit plus any accumulated interest shall be returned to the Seller.
- 4.3 If, after the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, the entire Security Deposit plus any accumulated interest shall be paid to the Company; provided, however, that if the reason for such cancellation, abandonment, or termination is the inability or refusal of the Company to interconnect, the entire Security Deposit plus any accumulated interest shall be returned to the Seller.
- 4.4 If the Actual In-Service Date occurs on or before the Proposed In-Service Date, the entire Security Deposit plus any accumulated interest shall be returned to the Seller.
- 4.5 If the Actual In-Service Date occurs within twenty-four (24) months after the Proposed In-Service Date, the entire Security Deposit and any accumulated interest through the Proposed In-Service Date shall be paid to the Seller and any interest accumulated after the Proposed In-Service Date shall be paid to the Company; provided, however, that if the reason for the occurrence of the Actual In-Service Date after the Proposed In-Service Date is the inability or refusal of the Company to interconnect, any interest accumulated after the Proposed In-Service Date shall also be paid to the Seller.
- 4.6 If the Actual In-Service Date does not occur within twenty-four (24) months after the Proposed In-Service Date, the entire Security Deposit plus any accumulated interest shall be paid to the Company and the Agreement shall be terminated according to the provisions of Article 3.2.

ARTICLE 5. Purchase Price

From and after the Actual In-Service Date, the Company shall pay to the

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 Seller each Billing Period, in accordance with the provisions of Article 3 of this Agreement, the sum of the Monthly Capacity Charge and the Monthly Energy Charge, as determined pursuant to Appendix B attached hereto. In calculating the Monthly Energy Charge, sales shall be rounded to the nearest one-hundredth of one-cent (\$0.0001 per kilowatt-hour and shall be multiplied by the Delivered Energy for the prior Billing Period. If the Actual In-Service Date does not fall on the first day of the Billing Period in which such Date occurs, then the Monthly Capacity Charge for such first Billing Period shall be prorated appropriately. Sales or other ~~as follows~~ taxes upon the sale of electricity pursuant to this Agreement shall be borne by the Company.

ARTICLE 6. Delivery by the Seller.

- 6.1 The Seller shall exert all reasonable efforts consistent with Good Utility Practice to cause the Unit to be capable of operating and producing electric energy at or near normal seasonal Capability on a continuous twenty-four (24) hour basis for the full term of this Agreement.
- 6.2 Electric energy generated by the Unit shall be delivered to the Company at the Delivery Point and shall be in the form of three (3) phase, sixty (60) hertz, alternating current at approximately one hundred fifteen thousand (115,000) volts nominal (the "Nominal Voltage"). However, in no event shall said Nominal Voltage be less than one hundred fifteen thousand volts (115 kV), nor shall electricity be delivered at greater than five (5) percent above the Nominal Voltage, nor shall the frequency vary by more than one hundredth (.01) hertz from sixty (60.00) hertz except for unavoidable momentary fluctuations.
- 6.3 The Seller may from time to time withdraw the Unit from service and cease to supply electric energy to the Company as necessary to perform scheduled or unscheduled maintenance or repair upon the Unit. The Seller shall comply with the provisions of NERPOOL Operating Procedure No. 5 as in effect from time to time when planning any scheduled maintenance or repair upon the Unit. The Seller shall give the Company such notice as may be practicable in the circumstances when withdrawing the Unit from service for unscheduled maintenance or repair.

ARTICLE 7. Meters and Metering.

- 7.1 The Company shall review and approve the metering installations required to record the quantities of electricity purchased from the Seller. Such metering equipment shall be capable, ~~inter alia~~, of providing data required to determine kilowatt-hours per hour purchased during each hour of the month as well as total kilowatt-hours purchased each month under the terms of this Agreement. The Seller shall install, own, operate, and maintain such metering equipment, which equipment shall be located at the Seller's high voltage bus or buses. If, for any reason, it is impractical to install meters at such bus or buses, appropriate adjustments shall be made to reflect the actual amount of electric energy that would have been recorded by meters located at such bus or buses.

- 7.3 The Seller shall maintain the accuracy of all metering equipment installed pursuant hereto by regular testing and calibration in comparison to recognized standards. The metering equipment shall be sealed, and the Seller will comply with any reasonable request of the Company with regard to the presence of the Company's representative when such seals are to be broken or when the meters are to be inspected, tested, or adjusted. The Company may request at any time a test of the accuracy of any metering equipment installed pursuant hereto and shall bear the costs thereof in the event that said requests are made more frequently than once in each twelve (12) months. The results of all meter calibrations or tests, regardless of whether performed at the Company's request, shall be open to examination by the Company at all reasonable times.
- 7.3 Any meter tested and found to register less than or equal to one half of one percent (0.5%) above or below the recognized comparative standard shall be considered correct and accurate. If the metering fails to operate or, as a result of such tests, the metering equipment is found to be defective or inaccurate, the Seller shall restore it to a condition of accuracy or replace it. In such event, appropriate adjustments shall be agreed to by the Seller and the Company and reflected in the next monthly statement of the Seller rendered pursuant to Article 8.1. Such adjustments shall correct all measurements made by the defective or inaccurate meter for either (i) the actual period during which inaccurate measurements were made, if determinable to the mutual satisfaction of the Company and the Seller, or (ii) if such period is not determinable, for a period equal to one-half of the time elapsed since the last prior test, but in no event greater than twelve (12) months.
- 7.4 Other provisions of this Article notwithstanding, the Company may elect to install its own metering equipment in supplement to the Seller's metering equipment. Should any metering equipment installed by the Seller fail to register the amount of electric energy delivered to the Company during any period, the Company's metering equipment shall, if so installed, be used to determine the amount of energy so delivered. If the Company wishes its metering equipment to be so used, the Company agrees to operate, maintain, and read such equipment according to the standards established by this Article with respect to the Seller's metering equipment. The Seller agrees, upon the request of the Company, to provide a suitable location at the Site for installation of the Company's meters at no cost to the Company.
- 7.5 Upon the written request of the Company, the Seller shall install, use, operate, and maintain, pursuant to the provisions of this Article, such telemetering equipment and data circuits as the Company may reasonably require for the transmission of various metered values to its operations center. The design equipment and data circuits shall be approved by the Company prior to their installation by the Seller.

ARTICLE 8. Billing and Payment.

- 8.1 The Seller shall render monthly statements for the Billing Period then most recently ended within ten (10) working days following the receipt

by the Company of all actual metered values for such Billing Period. The monthly statement shall detail the amount of Delivered Energy during such Billing Period. Any amount payable hereunder not paid within thirty (30) days from the date of receipt by the Company of all actual metered values for the Billing Period shall be subject to a late payment charge at the annual rate of two (2) percentage points over the current interest rate on prime commercial loans then in effect at the First National Bank of Boston from the date of receipt of such monthly statement until the date of payment.

8.2 In the event that any data required for billing purposes hereunder are unavailable when required for such billing, the unavailable data may be estimated by the Company, subject to any required adjustment based upon actual data, in a subsequent Billing Period within the following twelve (12) months.

8.3 Neither the Company nor the Seller shall have the right to challenge any monthly statement rendered or received hereunder, to invoke arbitration of the same, or to bring any court or administrative action of any kind questioning the propriety of said monthly statement, after a period of one (1) year from the date such monthly statement was rendered. In the event that any such monthly statement depends in whole or part upon estimated data, this one (1) year limitation period shall be deemed to begin in the Billing Period in which such estimated data are adjusted to actual.

ARTICLE 9. Governmental Regulation.

9.1 This Agreement shall be submitted by the Company to the MDPU in accordance with the regulations of the MDPU, and by the Seller to the FERC in accordance with the regulations of the FERC as set forth at 18 C.F.R. Part 35.

9.2 Each party hereto shall be responsible for taking all necessary actions to satisfy any regulatory requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such party hereunder.

9.3 This Agreement and all rights and obligations of the parties hereunder are subject to applicable state and federal laws and duly promulgated orders and duly authorized actions of governmental authorities.

ARTICLE 10. Liability and Force Majeure.

10.1 The parties hereto shall be excused from performing hereunder, and shall not be liable in damages or otherwise, if and to the extent that they are unable to do so or are prevented from doing so by an event of Force Majeure, including, without limitation, by statute or regulation, or by action or inaction of any court or public authority having or purporting to have jurisdiction in the premises; or by reason of storm,

flood, fire, earthquake, explosion, civil disturbances, labor disputes, act of God or the public enemy, restraint by a court or regulatory agency, or any other cause, whether or not similar thereto, beyond the reasonable control of the affected party. Each party shall have the obligation to operate in accordance with Good Utility Practices at all times and to use diligent effort to overcome and remove any cause of failure to perform; provided, however, that neither party shall be required to settle any labor dispute on terms that, in the sole judgment of the party involved in such dispute, are contrary to its interests, so long as such party is acting in good faith and otherwise in compliance with applicable labor laws and regulations.

- 10.2 Neither the Company nor the Seller shall, in any event, be liable to the other or to any third party for any consequential, indirect, or special damages to persons or property, whether arising in tort, contract, or otherwise, by reason of this Agreement or any services performed or undertaken to be performed by the Company or the Seller hereunder.
- 10.3 Whenever the Company's system or the systems with which it is directly or indirectly interconnected experiences a System Emergency, or whenever it is necessary or desirable to aid in the restoration of service on its system or on the systems with which it is directly or indirectly interconnected, the Company may, in its reasonable judgment, curtail or interrupt the taking of electric energy hereunder, provided such curtailment or interruption shall continue only for so long as is reasonably necessary. Such curtailment, interruption, or reduction shall not be deemed to be a default by the Company nor shall the Company be liable therefor to the Seller or to any other party.
- 10.4 The Company and the Seller agree that each shall be responsible for the electricity on its respective side of the Delivery Point and shall indemnify, save harmless, and defend the other against all claims, demands, costs, or expenses for loss, damage, or injury to persons or property in any manner directly or indirectly arising from, connected with, or growing out of the presence, use, or transmission of electricity over the wires, cables, devices, or apparatuses owned by it. The Company and the Seller each assumes full responsibility in connection with the service rendered hereunder for its respective wires, cables, and other devices used in connection with such service. Each party hereto shall be solely liable for all claims of its own employees arising from any worker's compensation laws.
- 10.5 Neither by inspection, by non-rejection, nor in any other way does either party give any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of any equipment, apparatus, or devices installed on the other party's premises.

ARTICLE 11. Governing Law.

The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts.

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ARTICLE 12. Arbitration

12.1 In the case of any dispute between the parties with respect to the interpretation of this Agreement or the performance of the same, either party may give notice in writing to the other of its desire to submit such questions to arbitration and may designate an arbitrator. Within thirty (30) days after the receipt of such notice the other party may, in writing, serve upon the party invoking such arbitration a notice designating an arbitrator or its behalf. The two arbitrators so chosen shall, within twenty (20) days after the appointment of the second arbitrator, in writing, designate a third arbitrator. Upon the failure of the party notified to appoint the second arbitrator within such time, the party invoking such arbitration may proceed with the single arbitrator. If the first and second arbitrators are unable to agree on a third arbitrator within twenty (20) days of the appointment of the second arbitrator, the first and second arbitrator shall invoke the services of the American Arbitration Association to appoint a third arbitrator. This third arbitrator shall, to the extent practicable, have special competence and experience with respect to the subject matter under consideration. An arbitrator so appointed shall have full authority to act pursuant to this Article. No arbitrator, whether chosen by a party hereto or appointed, shall have the power to amend or add to this Agreement.

12.2 The party calling the arbitration shall, within twenty (20) days after either the failure of the other party to name an arbitrator, or the appointment of the third arbitrator, as the case may be, fix, in writing, a time and a place of hearing, to be not less than twenty (20) days from the delivery of notice to the other party. The arbitrator or arbitrators (the "Arbitrators") shall, thereupon, proceed promptly to hear and determine the controversy pursuant to the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules conflict with the then current provisions of the laws of the Commonwealth of Massachusetts relating to arbitration, such conflict shall be governed by the then current provisions of such laws. The Arbitrators shall fix a time within which the matter shall be submitted to them by either or both of the parties, and shall render a decision within ten (10) days after receiving the final submission from the parties unless, for good reasons to be certified by them in writing, the Arbitrators extend such time. The decision of the single arbitrator, or two of the three arbitrators, shall be taken as the arbitration decision. Such decision shall be made in writing and in duplicate, and one copy shall be delivered to each of the parties. The Arbitrators, by their award, shall determine the manner in which the expenses of the arbitration shall be borne, except that each party shall pay the costs of its own counsel. Each party shall accept and abide by the arbitration decision. The award of the Arbitrators shall be final except as otherwise provided by applicable law. Judgment upon such award may be entered by the prevailing party in any court having jurisdiction thereof, or application may be made by such party to any such court for judicial acceptance of such award and an order of enforcement.

ARTICLE 13. Insurance.

- 13.1 From and after the Actual In-Service Date, the Seller shall (i) keep the Unit insured by means of a policy or policies of insurance protecting against loss or damage to the Unit by fire, lightning, and other casualties normally insured against with a uniform standard extended coverage endorsement, and (ii) maintain liability insurance as described in Appendix C attached hereto. Such insurance is to be at all times in amounts not less than that reasonably required by the Company. The Company shall be the named insured in these policies, which policies shall contain a waiver of subrogation in favor of the named insured. All policies, or copies thereof together with a certificate from the insurers evidencing that the policies are currently in force, shall be delivered to the Company.
- 13.2 Such insurance shall be provided by policies that shall be written by such companies and in such form as shall be generally commercially available and acceptable to the Company, such acceptance not to be unreasonably withheld; shall be primary and without right to contribution from other insurance that may be available; shall provide that, with respect to the Company, the insurance shall not be invalidated by any action or inaction by the Seller including, without limitation, any representation made by or on behalf of the Seller in the procurement of such insurance; and shall provide that such insurance shall not be cancelled or amended without at least thirty (30) days' prior written notice to the Company.
- 13.3 Not less than thirty (30) days prior to the expiration date of each policy furnished by the Seller pursuant to this Article, the Seller will deliver to the Company a renewal policy or policies accompanied by evidence of payment of the premium therefor.
- 13.4 In the event of a loss occurring after completion of the construction of the Unit, the amount of any proceeds of insurance described in this Article remaining after deducting all expenses (including attorney fees) incurred in the collection of such proceeds from the gross proceeds thereof (the "Net Proceeds") shall be applied to the prompt repair, restoration, modification, or improvement of that portion of the Unit damaged or destroyed by such casualty, unless the Seller and the Company have agreed that such repair, restoration, modification, or improvement is not practicable under the circumstances.

ARTICLE 14. Preservation of the Unit.

- 14.1 The Seller in its sole discretion may sell or otherwise dispose of any machinery, equipment, or other personal property constituting part of the Unit that the Seller determines has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary, provided that (i) substitute property having equal or greater utility, but not necessarily the same function, in the operation of the Unit is installed at the Unit and such removal and substitution would not materially impair the efficiency of operation of the Unit, adversely affect the structural integrity or electrical output of the Unit, or change the nature of the

Unit to the extent that it would not constitute the type of electricity generation facility operated prior to such replacement; and (ii) the prior written consent of the Company is obtained, which consent shall not be unreasonably withheld; provided, however, that such consent shall not be required for removal and substitution made during ordinary and routine repair and maintenance. The Seller shall promptly report to the Company each such removal, substitution, sale, or other disposition. In addition, not less often than semi-annually, the Seller shall make available to the Company's representatives on the administrative committee described in Article 13.4 all records with respect to prior dispositions and substitutions, together with information as to planned dispositions and substitutions during the next six months.

- 14.2 The Seller shall pay or cause to be paid all taxes, payments in lieu of taxes, assessments, and other charges now or hereafter levied against the Unit or any part thereof, together with any penalties or interest on any of the foregoing, and upon request of the Company, the Seller shall exhibit to the Company receipts for the payment of such charges prior to the date when they would become delinquent; the foregoing to be subject, however, to the right of the Seller and other parties in interest to contest in good faith the levying of such charges.
- 14.3 At the time of providing security to the Company pursuant to Article 15 hereof, the Seller shall warrant that good record and marketable title to the Site and to the Unit is held by the Seller (subject only to any mortgages, liens, leases, or other encumbrances existing as of record and copies of which have been provided to the Company). The Seller shall not enter into any transaction involving the transfer, sale, or lease of the Site or the Unit, or any interest therein, without the prior written consent of the Company in each case obtained, which consent shall not be unreasonably withheld. Such transfer, sale, or lease shall be in such form as to assure that the Company's right to receive the electric output of the Site and Unit pursuant to the terms of this Agreement shall apply against an entity that might thereby obtain title to or possession of the Site or Unit.
- 14.4 The Seller will maintain the Unit, or cause the Unit to be maintained, in accordance with Good Utility Practice, will not commit or suffer any waste thereof or the conduct of any nuisance or unlawful occupation or business on, or use of, the Unit, and will comply, or cause compliance, with all statutes, ordinances, and requirements of any governmental authority relating to the Unit; and the Seller at its expense shall provide the Company with a report on an annual basis prepared by a nationally recognized firm of consulting engineers, chosen by the Seller and approved by the Company, such approval not to be unreasonably withheld, attesting to the fact that the Unit is being maintained in accordance with Good Utility Practice. If substantial items affecting long-term efficient operation of the Unit that are described in any such annual report as being in need of correction are not corrected within six months following such annual report, the Company may withhold payment of the Monthly Capacity Charge component of the Total Purchase Price, with such amounts to be held in escrow by the Company until the cited item has been corrected, upon which correction the escrowed funds shall be released to the Seller. Notwithstanding the foregoing, if any such

correction is not made within twelve (12) months from the date of such Annual report, the Company may elect to cause such correction to be made and the approved funds shall be applied to cover the costs of such correction.

- 14.5 The Company and any persons authorized by the Company shall have the right to enter and inspect the Unit at all reasonable times upon reasonable prior written notice to the Seller, and to examine all operating records and maintenance records.

ARTICLE 15 Security of Continued Performance

In order to secure such complete performance of the Seller's obligations as is necessary for the Company to provide service to its ratepayers, the Seller, prior to the Actual In-Service Date, shall provide to the Company security in the form and scope set forth below:

- 15.1 Mortgage and Security Agreement. The Seller shall execute and deliver to the Company a mortgage and security agreement creating liens and security interests in the Unit, the Site, all improvements upon the Site, and all rents, profits, income, and other benefits derived from the foregoing, subordinate only to the lien of the institutional or unaffiliated lenders securing amounts lent for the construction or permanent financing or refinancing of the Unit. Such liens and security interests of the Company shall secure (i) all amounts paid by the Company to the Seller pursuant to this Agreement in excess of the Company's actual avoided costs and (ii) performance of Seller's obligations under this Agreement for the full anticipated term thereof, including all damages resulting from the Seller's failure to perform such obligations. Such mortgage and security agreement will be in form and substance acceptable to the Company.

- 15.2 Declaration of Easements, Covenants, and Restrictions. The Seller shall cause to be granted to the Company an unencumbered declaration of easements, covenants, and restrictions encumbering the Site for a period equal to the anticipated full term of this Agreement (the "Declaration"). The Declaration shall grant to the Company easements for access to the Site and for the placement and operation of facilities thereon (which shall not interfere with the rights of the Seller to design, construct, and operate the Unit), as well as create restrictions and covenants to the effect that if any electricity is produced at the Site during the term of the Declaration, the Company's entitlement therein shall not be tendered or sold except to the Company in accordance with this Agreement. The Declaration shall reserve to the Seller the right to grant other easements, so long as such other easements do not interfere with the rights of the Company. The Declaration shall be in form and substance acceptable to the Company and shall run with the Site and be binding upon the successors of the Seller and heirs to the benefit of the Company and its successors.

- 15.3 Accommodation Agreement. The Seller shall cause any lender of funds to the Seller for the acquisition of the Site or Unit (the "Lender") to execute and deliver an Accommodation Agreement, under which such

Lender shall agree: (i) to make its own interests subject to the Declaration described above; (ii) to bind the Agreement to the extent the Lender is in possession of the Site or Unit; (iii) to transfer interests in the Site or Unit only upon the condition that the transferee become obligated to honor the Agreement from the date of such transfer; and (iv) to avoid interference with the Company's rights hereunder, provided that the Company continues to make payments hereunder to the Seller's successor-in-interest and that the Company otherwise performs in accordance with this Agreement.

15.4 Letter of Credit. The Seller shall provide, in form and substance acceptable to the Company, an irrevocable letter of credit in favor of the Company. The Seller shall maintain such letter of credit throughout the period during which payments by the Company to the Seller are expected to exceed the Company's anticipated avoided cost for power, and such letter of credit shall be in an amount equal to the expected amount by which such payments will exceed of the Company's anticipated avoided cost for power, according to the following schedule:

from	through	amount
Actual In-Service Date	December 31, 1993	\$1,325,163
January 1, 1993	December 31, 1993	1,562,300
January 1, 1994	December 31, 1994	3,667,878
January 1, 1995	December 31, 1995	7,311,116
January 1, 1996	December 31, 1996	8,515,261
January 1, 1997	December 31, 1997	10,546,631
January 1, 1998	December 31, 1998	9,898,194
January 1, 1999	December 31, 1999	4,918,707
January 1, 2000	December 31, 2000	1,840,690
January 1, 2001	December 31, 2001	3,615,810

ARTICLE 16. Rights of Company with respect to Expansion of Plant and Extension of Unit Life.

The Seller shall not enter into any contract for the sale of electricity from any addition to or expansion of the Unit, or from any other electric generation facilities located at the Site, until and unless (i) the Seller shall have first offered to enter into a contract with the Company on substantially the same business terms as those specified in any proposal or letter of intent between the Seller and any other party with respect thereto and (ii) the Company does not accept such offer within thirty (30) days of the date presented to the Company in writing and enter into a contract reflecting such business terms within sixty (60) days thereafter. Further, should the Seller operate the Unit beyond the term of this Agreement, the Seller shall enter into a contract for the sale of electricity from the Unit or any other electric generation facilities located at the Site only under the conditions set forth in the foregoing sentence. The Seller agrees to keep the Company fully and promptly apprised, through the administrative committee described in Article 17.6, of any plans the Seller may develop for any addition to or expansion of the Unit or the development of any other generation facilities at the Site, which information the Company agrees not to disclose except with the Seller's prior written permission.

ARTICLE 17. Miscellaneous Provisions.

- 17.1 This Agreement shall constitute the entire Agreement between the parties hereto relating to the subject matter hereof and all previous agreements, discussions, negotiations, and correspondence with respect to the subject matter hereof shall be superseded by the execution of this Agreement.
- 17.2 This Agreement may not be modified or amended except in writing, signed by or on behalf of both parties by their duly authorized officers.
- 17.3 In the event that any or all of the NEPOOL standards referred to herein shall cease to be established, or if the Company ceases participation in NEPOOL, the Company may impose reasonable substitute standards that do not materially alter the obligations of the Seller as such obligations existed under the NEPOOL standards.
- 17.4 This Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided however, that no assignment by either party (or any successor or assignee thereof) of its rights and obligations hereunder, except an assignment by the Company of such rights and obligations to a wholly-owned subsidiary or an affiliate wholly-owned by the same holding company, shall be made or become effective without the prior written consent of the other party in each case obtained, which consent shall not be unreasonably withheld. All assignments by the Seller or the Seller's successors and assigns shall be in such form as to assure that the Company's right to receive the electric output of the Site and Unit pursuant to the terms of this Agreement shall apply against any entity that might obtain title to or possession of the Site or Unit.
- 17.5 Notwithstanding any assignments of rights or duties hereunder, neither party shall be relieved of any duties or responsibilities under this Agreement and this Agreement shall continue in accordance with its terms and each party shall be and remain liable to the other under all provisions of this Agreement unless the other party has expressly consented in writing to such release of duties and responsibilities, such consent not to be unreasonably withheld. Further, any payments made by one party to an assignee of the other party or any other entity taken by such party with respect to such assignee shall be in full satisfaction of any duties or responsibilities that the party would otherwise owe to the other party, as if made or taken directly to such other party.
- 17.6 The parties hereto agree to establish an administrative committee, which shall serve informational functions only. Unless otherwise agreed by the administrative committee, such committee shall meet at least once each calendar quarter prior to the Actual In-Service Date and at least twice each year thereafter. The Company and the Seller shall have equal representation upon such committee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers themselves duly authorized as of the day and year first above written.

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP

By [Signature] General Partner, DMP/Development, Inc.

By [Signature]

Its President

COMMONWEALTH ELECTRIC COMPANY

By [Signature]

Its Vice President

APPENDIX A
TO POWER PURCHASE AGREEMENT

Description of the Site

The Site consists of thirty-seven and sixty-one hundredths (37.61) acres in an L-shaped configuration as shown on the Town of Dartmouth Assessors Map as Parcel 67.3.

The Site is primarily vacant woodlands and brush with the exception of a small wooden building in the northwest sector. A portion of the land has been cleared for timber.

The approximate elevation of the Site is one hundred sixty (160) feet above sea level. The Site is basically flat, sloping toward the southwest into wetlands. An Algonquin Gas Transmission Company pipeline bisects the Site in an east-west direction.

APPENDIX-B
TO POWER PURCHASE AGREEMENT

1. Total Purchase Price: Each Billing Period, commencing with the Actual In-Service Date, the Company shall pay to the Seller the sum of the following:

- 1.1 The Monthly Capacity Charge, as defined in and computed in accordance with Section 2 of this Appendix B; and as adjusted in accordance with Section 3 of this Appendix B; and

- 1.2 The Monthly Energy Charge, as defined in and computed in accordance with Section 4 of this Appendix B.

2. Monthly Capacity Charge: The Monthly Capacity Charge shall consist of the sum of the Monthly Capacity Cost, the Monthly Investment Cost, and the Monthly Pipeline Transportation Capacity Demand Cost, all as defined and computed as follows.

- 2.1 Monthly Capacity Cost: The initial Monthly Capacity Cost shall equal one hundred ninety-two thousand, seven hundred six dollars (\$192,706). The Monthly Capacity Cost shall be subject to the following adjustments:

- 2.1.1 Following the first month after the Actual In-Service Date, the Monthly Capacity Cost shall be adjusted quarterly to reflect changes in the GNP Implicit Price Deflator, such changes to be measured from the month of the Actual In-Service Date. The GNP Implicit Price Deflator is revised quarterly and is published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business.

- 2.1.2 In the event that NIPLEX or the Company requests in excess of one hundred (100) stops and one hundred (100) starts of the Unit in any calendar year, the Seller may include the additional operation and maintenance costs that it incurs as a direct result of such excess stops and starts, as such costs are determined by the firm of consulting engineers described in Article 14.4 of this Agreement.

- 2.2 Monthly Investment Cost: The Monthly Investment Cost shall equal six hundred ninety-seven thousand, one hundred eighty-six dollars (\$697,186).

- 2.3 Monthly Pipeline Transportation Capacity Demand Cost: The Monthly Pipeline Transportation Capacity Demand Cost shall equal the product of 0.2562 (which is equal to the Contract Capacity divided by the Design Capacity) and the sum of the following firm transportation demand charges:

- 2.3.1 The applicable and approved NOVA pipeline transportation capacity demand rate, expressed in dollars per million British

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Thermal Units (MMBTU), multiplied by the appropriate amount of gas, as such rate is on file with the appropriate regulatory authorities;

3.3.2 The applicable and approved TransCanada pipeline transportation capacity demand rate, expressed in dollars per million British Thermal Units (MMBTU), multiplied by the appropriate amount of gas, as such rate is on file with the appropriate regulatory authorities; and

3.3.3 The applicable and approved pipeline transportation capacity demand rate contained in the United States Domestic Pipeline Tariff (as defined in Section 5 of this Appendix B), expressed in dollars per million British Thermal Units (MMBTU), multiplied by the appropriate amount of gas, as such rate is on file with the applicable regulatory authorities.

3. **Bonus or Penalty Cost Adjustment:** A bonus or penalty cost adjustment shall be made to the Monthly Capacity Cost or to the Monthly Capacity Charge, based on the ability of the Seller to operate the Unit as measured on a moving, twelve month, cumulative equivalent availability factor basis. This adjustment shall be made pursuant to the following formula:

If EAF is less than .85,

$$\text{Adjustment} = \left(\left(\frac{\text{EAF}}{.85} \right) - 1 \right) \times \text{Monthly Capacity Charge}$$

If EAF is equal to or greater than .85,

$$\text{Adjustment} = \left(\left(\frac{\text{EAF}}{.95} \right) - 1 \right) \times \text{Monthly Capacity Cost}$$

Where EAF = Equivalent Availability Factor

$$\text{EAF} = \frac{\text{EAH}}{\text{Hours in Period}}$$

EAH = Equivalent Available Hours

EAH = sum, over all hours in period, of $\frac{\text{megawatts available in hour}^*}{\text{Seasonal Maximum Net Claimed Capacity Rating in Hour}^{**}}$

* The megawatts available in an hour shall reflect Seasonal Maximum Claimed Capacity, adjusted only for non-temperature related outages and/or limitations.

** Seasonal Maximum Net Claimed Capacity shall be established pursuant to NEPOOL CMS 4, "Rating and Auditing of Generating Capacity."

Example:

	Hour 1	Hour 2	Hour 3
available MW	150	150	150
minimum net	150	150	150
EAH	150	150	150
RAF	150	150	150

RAF = 1,500 - 500

RAF = 1,000

Monthly Energy Charge. The Monthly Energy Charge shall consist of the product of (a) the Delivered Energy for the prior Billing Period, expressed in kilowatt-hours; and (b) the sum of the Variable Fuel Supply Rate and the Variable Fuel Transportation Throughput Rate, expressed in dollars per kilowatt-hour (\$/kWh), both as defined and computed as follows.

4.1 Variable Fuel Supply Rate: The Initial Variable Fuel Supply Rate, as of December 31, 1993, is set equal to the following:

4.1.1 One dollar and thirty-five cents per million British Thermal Units (\$1.35/MMBTU); divided by

4.1.2 One (1) minus the appropriate quantity, expressed as a decimal, of "pipeline" and "unaccounted for" gas, as included in the applicable and approved commodity charges; multiplied by

4.1.3 The Adjusted Heat Rate. The Adjusted Heat Rate is equal to eight thousand, five hundred eighty three British Thermal Units per kilowatt-hour (8,583 BTU/kWh), expressed in millions of British Thermal Units per kilowatt-hour (i.e., 0.008583 MMBTU/kWh), and is equal to the Unit heat rate of eight thousand three hundred seventy-four British Thermal Units per kilowatt-hour (8,374 BTU/kWh) multiplied by the sum of one (1) plus a degradation of two and one-half (2.5) percent.

The Initial Variable Fuel Supply Rate shall be adjusted monthly to reflect the proportional change in the following Index, which uses the year 1993 as its base:

	Weighting	12 mo. avg.
Tennessee CD-6	25%	\$2.56/MMBTU
Algonquin F-1	25%	2.165
Alberta Market Price	50%	1.329
Weighted Cost		\$1.024/MMBTU

4.2 Variable Fuel Transportation Throughput Rate: The Variable Fuel Transportation Throughput Rate shall equal the Adjusted Heat Rate, multiplied by the sum of the following firm commodity throughput rates:

4.2.1 The NOVA commodity throughput rate, expressed in dollars per million British Thermal Units (MMBTU), as such rate is on file with the appropriate regulatory authorities;

4.2.2 The TransCanada commodity throughput rate, expressed in dollars per million British Thermal Units (MMBTU), as such rate is on file with the appropriate regulatory authorities; and

4.2.3 The commodity throughput rate contained in the United States Domestic Pipeline Tariff (as defined in Section 5 of this Appendix B), expressed in dollars per million British Thermal Units (MMBTU), as such rate is on file with the appropriate regulatory authorities.

5. For purposes of this Appendix B, the United States Domestic Pipeline Tariff shall be the tariff or tariffs for each of the pipeline companies and local distribution companies transporting natural gas from the Canadian border to the Unit's meter station. In the event that firm transportation is unavailable to the unit's meter station upon the Actual In-Service Date, the United States Domestic Pipeline Tariff shall reflect the most recently filed charges with the Canadian and United States regulatory agencies to transport gas to the Unit's meter station.

6. Illustration of projected Total Purchase Price assuming a 50% segment (50 MW) allocation at ninety-one percent (91%) capacity:

Monthly Capacity Cost [initial amount]:	\$182,708	[*0.5862 c/kwh*]
Monthly Investment Cost [fixed amount]:	\$97,188	[*1.0290 c/kwh*]
Monthly Pipeline Demand Cost [assuming total of transportation capacity demand charges = \$1,229,390]:	393,466	[*1.1946 c/kwh*]
CAPACITY CHARGE [unadjusted; see §3]:	\$1,229,390	[*3.8638 c/kwh*]

Variable Fuel Supply Rate
(assuming index adjustment and
accounting for "pipeline
gas" amounts):

\$471.138** 1.4216 c/kWh

Variable Fuel Transportation
Throughput Rate
(assuming size of pipeline
throughput rates):

138,790** 0.1605 c/kWh

= 3.4190/MWH(TU):

\$591.050** 1.7823 c/kWh

ENERGY CHARGE:

\$591.050** 1.7823 c/kWh

TOTAL PURCHASE PRICE: \$1,873,256 [15.0450 c/kWh]

* calculated by dividing the actual dollar amount by the following:
(365 days/year)(1/12 year/month)(24 hours/day)(.91)(50,000 kW)

** calculated by multiplying the actual c/kWh rate by the following:
(365 days/year)(1/12 year/month)(24 hours/day)(.91)(50,000 kW)

Liability Insurance

From and after the Actual In-Service Date, the Seller shall take out, carry, and maintain, or cause to be taken out, carried, and maintained, comprehensive general liability insurance, including automobile and contractual liability, and liability arising out of aircraft or watercraft, if applicable, with a combined single limit per occurrence of at least five million dollars (\$5,000,000) applicable to bodily injury, sickness or death, and loss of or damage to property, subject to an aggregate limit of not less than five million dollars (\$5,000,000) for products and completed operations. Endorsements shall be included for X, C, and U hazards (bursting, collapse, and underground property damage), broad form property damage, and personal injury in addition to bodily injury.

5-10-17-00000000000000000000

AMENDMENT TO POWER PURCHASE AGREEMENT

Agreement, dated as of this third (3d) day of August, 1980, by and between Commonwealth Electric Company, a Massachusetts corporation with offices located at 2421 Cranberry Highway, Wareham, Massachusetts (the "Company"), and Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership with its principal place of business at 8 Newbury Street, Suite 1, Boston, Massachusetts (the "Seller"), to Power Purchase Agreement, by and between the Company and the Seller, dated as of September 9, 1980 (the "Agreement").

SECTION ONE. Recitals.

1.1 The Company and the Seller entered into the Agreement, pursuant to which the Seller agreed to sell and deliver and the Company agreed to purchase and take delivery of a portion of the electric capacity and related energy to be produced by an electric generation facility (the "Unit"), which is to be constructed, owned, and operated by the Seller, at a site in Dartmouth, Massachusetts (the "Site"). In accordance with applicable law, the Agreement was submitted by the Company to the Massachusetts Department of Public Utilities (the "DPU") for approval, which approval was received by order dated March 30, 1980; and was submitted by the Seller to the Federal Energy Regulatory Commission (the "FERC"), which agency is in the process of reviewing the Agreement as of the date hereof.

1.2 As set forth in the Agreement, the Unit was to utilize two gas turbines and was to be capable of generating approximately one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW) of electricity (the "Original Design Capacity").

1.3 Subsequent to the execution of the Agreement, the Seller determined, and duly notified the Company, that the Unit will utilize a single gas turbine and will be capable of generating approximately sixty-seven thousand, six hundred kilowatts (67,600 kW) of electricity.

1.4 Also as set forth in the Agreement, the Company was to purchase a portion of the electric capacity and related energy produced by the Unit equal to fifty megawatts (50 MW) divided by the Original Design Capacity (the "Original Estimation").

1.5 Subsequent to the execution of the Agreement and the determination by the Seller to reduce the capability of the Unit as described above, the Seller offered to sell and deliver to the Company approximately seventeen thousand, six hundred kilowatts (17,600 kW) in addition to the Original Estimation, such that the Company would purchase all of the electricity produced by the Unit. The Company has determined that the purchase of such additional electricity would benefit its ratepayers and would facilitate the administration of the Agreement, and accordingly the Company has accepted such offer of the Seller.

1.6 By virtue of the determination of the Seller to decrease the capability of the Unit and the acceptance by the Company of the Seller's offer to purchase

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the entire output of the proposed Unit. Several provisions in the Agreement must be modified. These provisions include definitional sections, the section governing the amount of the security deposit to be delivered by the Seller, the section governing the billing mechanism, the section governing the letter of credit to be delivered by the Seller, and the section setting forth the mechanism for calculating the price to be paid under the Agreement.

1.7 Although both the Seller and the Company have understood that the Unit was to be subject to economic dispatch by the New England Power Pool ("NEPOOL"), a provision governing such dispatchability was inadvertently omitted from this Agreement and the parties desire to insert such a provision into the Agreement. In addition, the parties desire to insert a provision into the Agreement protecting the Company and its employees from any income tax liability that the Company might incur as a result of its accepting any contributed property from the Seller.

1.8 The Seller has indicated to the Company that it has made substantial progress with respect to securing necessary financing for the construction and operation of the Unit. Such progress notwithstanding, the Seller has requested that it be permitted to defer delivering to the Company the security deposit required pursuant to the Agreement until sixty (60) days following the approval of this Amendment by the NEPPU, and that such security deposit be in the form of a letter of credit in lieu of cash. As an accommodation to the Seller, the Company has agreed to grant these requests of the Seller.

1.9 Accordingly, the Company and the Seller, each in consideration of the foregoing and of the agreements of the other, hereby agree as hereinafter provided.

SECTION TWO. The second introductory paragraph of the Agreement is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

The Seller plans to construct, own, and operate an electric generation facility, utilizing a single gas turbine and a supplementary-fired waste heat boiler with a dual inlet steam turbine, together with housings and other integral equipment, which will be capable of generating approximately sixty-seven thousand, six hundred kilowatts (67,600 kW) of electricity (the "Unit"). The Unit will be located at a site in the Town of Barnstable, Massachusetts, which will be owned by the Seller, more particularly described in Appendix A attached hereto (the "Site"). The Seller wishes to sell and deliver and the Company wishes to purchase and take delivery of all of the electricity produced by the Unit, pursuant to the terms and conditions set forth in this Agreement.

SECTION THREE. Article 1 of the Agreement is hereby amended in accordance with the following:

2.1 The definition of Actual In-Serve Data is amended by deleting "the Company's Entitlement" from such definition.

3.1 The definition of Company's Entitlement is deleted in its entirety.

3.2 The definition of Contract Capacity is deleted in its entirety.

3.4 The definition of Delivered Energy is amended by deleting "the Company's portion of" from such definition.

3.5 The definition of Design Capacity is amended by deleting "one hundred sixty-eight thousand, eight hundred kilowatts (168,800 kW)" from such definition and substituting "sixty-seven thousand, six hundred kilowatts (67,600 kW)" in lieu thereof.

3.6 The following definition is to be inserted immediately before the definition of FERC:

Economic Dispatch shall mean the operation of the Unit in accordance with such procedures as may be established by NEPOOL from time to time to foster the objective of satisfying the energy requirements of the participants of NEPOOL at the lowest practicable cost.

SECTION FOUR. Article 2.1 of the Agreement is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

The Seller agrees to sell and deliver and the Company agrees to purchase and take delivery of all electric capacity and related energy produced by the Unit during the term of this Agreement; provided, however, that in no event shall the Company be obligated to purchase and take delivery of electric capacity and related energy in excess of the Design Capacity.

SECTION FIVE. Article 2.4 of the Agreement is hereby amended by deleting "up to the Company's Entitlement and related energy," from such article.

SECTION SIX. The following is to be inserted into the Agreement as Article 2.5:

The Unit shall be subject to Economic Dispatch at the direction of the Company or its designee. The Unit shall also be subject to changes in the level of its output at the direction of the Company or its designee, provided that such changes are within the Unit's reasonable design limitations.

2.5.1 If the Seller fails to dispatch the Unit as called for by the Company, then the Company shall calculate the unrecovered

incremental production costs or losses that are attributable to such failure of the Seller (the "Incremental Production Cost Penalty"). The Company shall also not pay for any electric capacity or energy produced at the Unit as a result of the Seller's failure to comply with the Company's calls pursuant to this Article 3.5. The Company shall deduct any Incremental Production Cost Penalty from any payments due the Seller for any electric capacity and energy purchased by the Company during the Billing Period ("Net Billing Amount"). In the event that the Net Billing Amount for a Billing Period is due to the Company, such Net Billing Amount shall be billed to the Seller and the Seller shall reimburse the Company, therefor, according to the same standards as are established for payments to the Seller.

2.5.2 The Incremental Production Cost Penalty shall be the difference between (i) the production costs that the Company experienced during the period of the Seller's failure to dispatch the Unit as called for by the Company, and (ii) the production costs that the Company would have experienced during such period had the Seller complied with the Company's call to dispatch the Unit.

SECTION SEVEN. Article 4 of the Agreement is hereby amended by deleting it in its entirety and inserting the following in lieu thereof:

- 4.1 Within sixty (60) days following the date that the MBPU approves the amendment to this Agreement dated as of August 3, 1990, the Seller shall deliver to the Company an irrevocable letter of credit in favor of the Company (the "Security Deposit Letter of Credit"), from an issuer and in form and substance acceptable to the Company, in the amount of one million, two hundred twenty-eight thousand, six hundred seven dollars (\$1,228,607) as a security deposit (the "Security Deposit"). The Security Deposit is calculated as the sum of (i) one million, fourteen thousand dollars (\$1,014,000, the "Principal"), which is the product of sixty-seven thousand, six hundred kilowatts (67,600 KW, which is the Design Capacity) and fifteen dollars (\$15) per kilowatt; and (ii) two hundred fourteen thousand, six hundred seven dollars (\$214,607, the "Interest Component"), which is approximately equal to the simple interest that would accrue on the Principal between the date of this Agreement (i.e., September 5, 1989) and the Proposed In-Service Date (i.e., July 1, 1991) at a rate of seven and one-half percent (7½) per annum.
- 4.2 If, prior to the Proposed In-Service Date, the project is cancelled or abandoned or this Agreement is terminated, or if this Agreement is terminated in accordance with the provisions of Article 3.2, the Company may draw under the Security Deposit Letter of Credit an amount equal to a percentage of the Interest Component plus a percentage of the Principal, which percentage in both cases shall be equal

to the ratio of (i) the elapsed time between the date of this Agreement and the cancellation date, to (ii) the total time between the date of this Agreement and the Proposed In-Service Date; provided, however, that if the reason for such cancellation, abandonment, or termination is the failure of the FERC to approve or accept this Agreement, in a form acceptable to both parties, the Company shall deliver to the holder of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.

- 4.3 If, after the Proposed In-Service Date, the project is abandoned or abandoned on this Agreement is terminated, the Company may draw upon the entire Security Deposit Letter of Credit; provided, however, that if the reason for such cancellation, abandonment, or termination is the inability or refusal of the Company to interconnect, the Company shall deliver to the holder of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.
- 4.4 If the Actual In-Service Date occurs on or before the Proposed In-Service Date, the Company shall deliver to the holder of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.
- 4.5 If the Actual In-Service Date occurs within twenty-four (24) months after the Proposed In-Service Date, the Company may draw under the Security Deposit Letter of Credit an amount equal to a percentage of the Interest Component, which percentage shall be equal to the ratio of (i) the elapsed time between the Proposed In-Service Date and the Actual In-Service Date, to (ii) the total time between the date of this Agreement and the Proposed In-Service Date; provided, however, that if the reason for the occurrence of the Actual In-Service Date after the Proposed In-Service Date is the inability or refusal of the Company to interconnect, the Company shall deliver to the holder of the Security Deposit Letter of Credit a notice of cancellation of such letter of credit.
- 4.6 If the Actual In-Service Date does not occur within twenty-four (24) months after the Proposed In-Service Date, the Company may draw upon the entire Security Deposit Letter of Credit and may terminate this Agreement according to the provisions of Article 3.2.

SECTION EIGHT. Article 5 of the Agreement is hereby amended by correcting the spelling of the word "calculating" found at the beginning of the fifth (5th) line of such article.

SECTION NINE. Article 9.1 of the Agreement is hereby amended by deleting the third sentence of such article in its entirety and inserting the following in lieu thereof:

Any amount payable hereunder not paid within thirty (30) days (or, if such date is not a working day, then by the next working day thereafter) from the date of receipt by the Company of all actual netted values for the billing period shall be subject to a late payment charge at the annual rate of two (2) percentage points over the current interest rate on prime commercial loans then in effect at the First National Bank of Boston from the date of receipt of such monthly statement until the date of payment.

SECTION TEN. Article 15.2 of the Agreement is hereby amended by deleting "the Company's Entitlement thereto" from such definition and substituting "such electricity" in lieu thereof.

SECTION ELEVEN. Article 15.4 of the Agreement is hereby amended by deleting the schedule currently contained in such article and substituting the following in lieu thereof:

From	Through	Amount
Actual In-Service Date	December 31, 1993	\$0
January 1, 1994	December 31, 1994	\$379,306
January 1, 1995	remainder of term of Agreement	\$0

SECTION TWELVE. The following is to be inserted into the Agreement as Article 17.7:

The Seller shall reimburse the Company for any costs relating to income tax liabilities incurred by the Company as a result of its acceptance of any contributed property from the Seller.

SECTION THIRTEEN. Appendix B to the Agreement is hereby amended in accordance with the following:

13.1 Article 2.1 of Appendix B is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

Monthly Capacity Cost: The initial Monthly Capacity Cost shall equal the product of the Design Capacity and three thousand, eight hundred fifty-four dollars and twelve cents per megawatt-month (\$3,854.12/MW-mo.). The Monthly Capacity Cost shall be subject to the following adjustments.

13.2 Article 2.2 of Appendix B is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

Monthly Investment Cost: The Monthly Investment Cost shall equal

the product of the Design Capacity and thirteen thousand, nine hundred forty-three dollars and seventy-two cents per megawatt-month (\$13,943.72/MW-mo.).

13.3 Article 2.3 of Appendix B is hereby amended by deleting "the product of 0.2962 (which is equal to the Contract Capacity divided by the Design Capacity) and" from such article.

13.4 Article 3 of Appendix B is hereby amended by deleting the example currently contained in such article and substituting the following in lieu thereof:

Example:	Hour 1	Hour 2	Hour 3
available MW:	64	86	65
maximum net:	67.6	67.6	67.6

$$EAF = \frac{64}{67.6} + \frac{86}{67.6} + \frac{65}{67.6} = 2.005$$

$$EAF = \frac{2.005}{3} = .668$$

13.5 Article 6 of Appendix D is hereby amended by deleting it in its entirety and substituting the following in lieu thereof:

Illustration of projected Total Purchase Price assuming delivery of sixty-seven thousand, six hundred kilowatts (67,600 kW) at a ninety-one percent (91%) availability:

Monthly Capacity Cost [initial amount: \$3054.12/MW x 67.6 MW]:	\$207,538.51	[= 0.3054/kWh*]
Monthly Investment Cost [fixed amount: \$13,943.72/MW x 67.6 MW]:	\$941,525.47	[= 3.0900/kWh*]
Monthly Pipeline Demand Cost [assuming total of transportation capacity demand charges = \$311,965]:	\$311,965.00	[= 1.3846/kWh*]
CAPACITY CHARGE [unadjusted; gas \$3]:	\$1,735,058.98	[= 1.6438/kWh*]

Variable Fuel Supply Rate [assuming commodity rate of \$1.425/MMBTU following index adjustment and accounting for "pipeline gas" amounts: .00023 MMBTU/kWh x \$1.425/MMBTU]:	\$549,262.50**	1.2231/kWh
--	----------------	------------

Variable Fuel Transportation
Throughput Rate

(assuming size of pipeline

throughput rates =

424,000 BTU / (0.0056)

MMBTU/kWh x 10.42 (MMBTU):

161,062.29**

0.36054/kWh

ENERGY CHARGE:

\$0.1125/TP

\$1.50304/kWh

TOTAL PURCHASE PRICE:

\$2,449,226.77

[* = 5.4742/kWh*]

* calculated by dividing the actual dollar amount by the following:
(365 days/yr.)(1/12 yr./mo.)(24 hrs./day)(.01)(67,000 kW)** calculated by multiplying the actual, unrounded \$/kWh rate by the
following: (365 days/yr.)(1/12 yr./mo.)(24 hrs./day)(.01)(67,000 kW)

SECTION FOURTEEN. The Company shall submit this Amendment to the MDPU, and the Seller shall submit this Amendment to the FERC, for the approval of each of the MDPU and the FERC. This Amendment shall become effective upon the receipt of such approvals in form and substance acceptable to the Company and the Seller.

In witness whereof, the Company and the Seller have caused this Amendment to be duly executed as of the day and year first above written.

DARTMOUTH POWER ASSOCIATES LIMITED PARTNERSHIP,
By DMI/Dartmouth, Inc., its General Partner,

By

Its

COMMONWEALTH ELECTRIC COMPANY,

By

Its

Reviewed & Received Nov. 2, 1991 at 4:30 PM

Attest: John L. Small, Register

Page 8

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Form 2



Commonwealth
of Massachusetts

Division 13-500
Department of
Environmental
Management
Section: Wetlands and Transmission
Corridor

Certificate of Compliance
Massachusetts Wetlands Protection Act, G.L. c. 131, §40 and
the Dartmouth Wetlands Protection Bylaw

From: the Dartmouth Corporation (Issuing Authority)
William C. Tenney, Jr., P.E. 1284 Soldiers Field Rd.
To: Dartmouth Gas Transmission Co. Boston, MA 02116
Name: Address:

Date of issuance: October 30, 1991

This Certificate is issued for work regulated by an Order of Conditions issued to Richard A. Chisholm,
Dartmouth Gas, dated 11/18/88, authorized by the Dartmouth Corporation.

1. ☒ It is hereby certified that the work regulated by the above-mentioned Order of Conditions has
been satisfactorily completed.
2. ☐ It is hereby certified that only the following portions of the work regulated by the above-men-
tioned Order of Conditions have been satisfactorily completed. (If the Certificate of Compliance
does not include the entire project, specify what portions are completed.)
3. ☐ It is hereby certified that the work regulated by the above-mentioned Order of Conditions was
never commenced. The Order of Conditions has lapsed and is therefore no longer valid. No future
work subject to regulation under the Act may be commenced without filing a new Notice of Intent
and receiving a new Order of Conditions.

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William C. Penney, Jr., A.B.
 Attorney at Law
 Certificate of Chain Sale

STATE NO. 15-580

4. The Certificate shall be recorded in the Registry of Deeds and the Land Court for the District of Columbia, and the land is located. The Order was originally recorded on 10/13/93 at the Registry of Deeds, Book 2071, Page 404.

5. The following conditions of the Order shall survive (delete any conditions contained in the First Order, such as maintenance or monitoring, which are to survive for a longer period.)

Issued by the Georgetown Conservation Commission

Signature: Donald P. Smith

Donald P. Smith

Donald P. Smith

Donald P. Smith

When asked by the Conservation Commission this Certificate must be signed by a majority of its members. On this 28th day of October, 1993, before me personally appeared Donald P. Smith, known to be the person executed in and who executed the foregoing instrument and acknowledged that he executed the same as his free will and deed.

Donald P. Smith 28th day of October, 1993
 Notary Public for the District of Columbia
 Received & Recorded 10/29/93 by me, Notary Public
 Attest: John E. Smith Registrar
 Given on behalf of and subject to the Georgetown Conservation Commission

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12/07/95 03:00 DOC. 23468

*Ext. Amended Zoning
Variance
12/11/96
3783-291*

October 17, 1995

DARTMOUTH, MASSACHUSETTS

I, Eleanor J. White, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and exact photocopies of a decision of the Dartmouth Board of Appeals concerning an amendment to a prior decision for Dartmouth Power Associates Limited Partnership owned by Old Fall River Realty Trust and located at 1 Energy Road, North Dartmouth, MA and filed in the office of the Town Clerk on Tuesday, September 26, 1995.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Petitioner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:

Eleanor J. White

ELEANOR J. WHITE
TOWN CLERK OF DARTMOUTH

CASE NUMBER #1995-35
PAGE 11

BK 3578 PG 178



OFFICE OF THE
BOARD OF APPEALS

Town of Dartmouth

400 Slocum Road • P.O. Box 79399
North Dartmouth, Massachusetts 02747

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OFFICE TELEPHONE 990-0723
TOWN OF DARTMOUTH

DECISION TO BOARD OF APPEALS HEARING CASE #1995-35

AMENDMENT FOR DARTMOUTH POWER ASSOCIATES CASE #1991-10 & #1990-35 PRESENT CASE NUMBER #1995-35

There was a Board of Appeals hearing open to the public held in MEETING ROOM #304, TOWN OFFICE BUILDING, 400 SLOCUM ROAD, NORTH DARTMOUTH, MA, on Monday, September 18, 1995 at 8:30 P.M. on the application of Dartmouth Power Associates, who is asking for an amendment of prior variances and special permits from the zoning bylaws of the Town of Dartmouth concerning property owned by Old Fall River Realty Trust and located at 1 Energy Road, North Dartmouth, MA. Permission is requested to allow for the upgrade in the present facility consisting of a "Peaking Unit" with fuel storage tank and 125' stack, also construct a 40'x 95' enclosure for the "Chiller System". PLAT: 67, LOT: 9.

DECISION

It was the unanimous decision of the Board to grant the requested amended variance to the petitioner, Old Fall River Realty Trust/Dartmouth Power Associates Limited Partnership.

The following conditions and restrictions shall apply:

1. Dartmouth Power Associated Limited Partnership/Old Fall River Realty Trust shall be in full compliance with submitted Procedural and Factual Summary, Findings and Decision entitled "Variance Decision For Second Amendment To Variance Granted to Old Fall River Realty Trust, Case Number 1995-35, Page 1 thru 6 and hereby signed by Attorney Joseph L. Cosentino, Chairman". See attached.

2. Dartmouth Power shall be in full compliance with submitted covenant entitled "Exhibit A to Second Amendment To A Special Permit and Variance, Pages 1 thru 3 signed by Covenantor James S. Gordon". See attached.

CASE NUMBER #1995-35
PAGE 9

BK 3578 PG 179

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VARIANCE DECISION FOR SECOND AMENDMENT TO VARIANCE
GRANTED TO
OLD FALL RIVER REALTY TRUST
(Applicant)

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OFFICE OF TOWN CLERK
TOWN OF DARTMOUTH

CASE NUMBER 1995-35

1. PROCEDURAL AND FACTUAL SUMMARY

The Town of Dartmouth Zoning Board of Appeals granted a variance to Old Fall River Realty Trust for use of two parcels of land located in North Dartmouth as a nominal 68 megawatt power production facility and appurtenant improvements. Said variance was case number 1990-33, filed with the office of the Town Clerk on October 4, 1990. This Variance was amended by a decision of the Board of Appeals filed with the Town Clerk on September 25, 1991 as Case Number 1991-10.

Old Fall River Realty Trust, One Energy Road, North Dartmouth, Massachusetts 02747, filed an application with the Board of Appeals on June 20, 1995 to amend said variance a second time.

The Application seeks authorization to construct an expansion of the existing power plant. That expansion is referred to as the "Peaking Unit" and the "Chiller System." When added to the existing power plant, the combined facility is referred to as the "Project". The Project is defined and limited by an amendment to Variance Condition 18, as amended by paragraph 6, below.

The variance authorized in case number 1990-33 granted relief from the height restriction on said Parcel under Section 14.402 of the zoning bylaw, and incorporated various plans and other documents submitted and exhibited as conditions on the grant of the variance. The original variance provides, in particular, (i) that there should be no expansion of the power production facility or its appurtenances (Condition 18), (ii) that only the amount of water required to operate and maintain the nominal 68 mw gas-fired power plant as set forth in the plans submitted to the Town would be utilized by the Applicant (Condition 19(a)); and (iii) that any additional water available to DPA under its Water Agreement but not actually used for the proposed 68 mw nominal plant would not be available for any expansion of the project (Condition 19(c)).

The application for amendment was noticed by publication and by mailing to "Parties in Interest" as that term is defined in M.G.L. c.40A, Section 11 and by posting on the Property.

BK 3578 PG 180

The Board of Appeals heard testimony at a public hearing held on July 19, 1995 and on September 7, 1995. The hearing was continued on September 18, 1995 to September 25, 1995, at which date the hearing was closed.

The Board also received written materials and plans regarding the proposed amendment, including the submissions from the Applicant:

- A. Application form, including a summary of the proposed amendment.
- B. Drawings showing the location of the proposed Peaking Unit and Chiller System.
- C. Letter dated August 4, 1995 from Mitchell H. Jacobs enclosing a Non-Major Comprehensive Plan Approval Application (Transmittal No. 91377) and attaching a letter dated July 28, 1995 from Earth Tech addressing environmental impacts and recommended performance standards. The Board also received correspondence from the Planning Board and the Department of Public Works.

2. FINDINGS

The Board finds that the development, construction and operation of the proposed Peaking Unit and Chiller System will not affect the Board's findings in the Variance, as amended to date. Specifically, the Board finds as follows:

2.1 With regard to circumstances related to soil conditions, shape or topography and especially affecting such land but not affecting generally the zoning district in which it is located:

2.1.1 The Board reaffirms the findings in case no. 1990-33 and 1991-10. The present power production facility is located on approximately a ten acre parcel of land west of the wetlands and south of the gas pipeline. The pipeline transects the Applicant's parcel and the parcel located north of the pipeline is proposed to remain vacant. Because of the pipeline and the wetlands constraints, and because of the isolated location of the entire parcel of land the expansion of the power production facility with the addition of the Peaking Unit and Chiller System is consistent with the zoning by-law for this land.

2.2 With regard to the issue that literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise:

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TOWN OF FAIRHURST

BK 3578 PG 181

2.2.1 The hardship with respect to the original 42 acre parcel (now 32 acres) was previously established. The Applicant's land area surrounding the existing power

production facility cannot realistically be utilized for anything other than a power plant.

2.3 With regard to the granting of desirable relief without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law:

2.3.1 The relief sought would permit the Applicant to utilize the power plant site more efficiently and to generate more electric power at peak times, which is arguably in the general public good. Because the power plant, even with the addition of the Peaking Unit and the Chiller System, will continue to operate within the limits of the Water Agreement and the air and noise environmental standards previously approved, the Board finds that there is no substantial detriment to the public good in allowing the new systems to be constructed.

Although the addition of a new 125 foot high stack for the Peaking Unit will create a visual impact that is potentially a detriment to the public good, the Board notes that it will be shorter than the existing 172 foot high stack and smaller in diameter, and, thus, the visual impact will be less than that of the existing stack. The Board finds that the construction of this smaller stack will not be a substantial detriment to the public good and will not derogate from the intent or purpose of the by-law.

The Applicant has agreed to be bound by the existing, previously approved standards for water, noise and air pollution impacts. The Applicant's consultant, Earth Tech has confirmed this data. Therefore, the Board finds that there will be no substantial detriment to the public good.

Finally, the Applicant proposes to amend the Covenant to evidence its willingness to pay additional annual revenue to the Town of Dartmouth by providing that commencing on the Peaking Unit Approval Date and the Chiller System Commencement Date (as defined the Amendment to Covenant attached hereto as Exhibit "A"), the annual gift required in the Covenant shall be increased by the amount(s) set forth in said Exhibit A, and in the manner specified therein. The Board finds that this will be in the public good by expanding the Town's industrial tax base without requiring additional services from the Town.

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TOWN OF DARTMOUTH
OFFICE OF TOWN CLERK

BK 3578 PG 182

3. DECISION

3.1 Based upon the findings presented above, the Zoning Board of Appeals herewith unanimously votes to grant the requested second amendment of variance to the Applicant to allow the development, construction, and operation of the Peaking Unit and the Chiller System as if the Peaking Unit and the Chiller System were included a part of the original plans. Any limitations in Conditions 18, 19(a) and 19(c) of the original Variance are amended to the extent necessary to add the Peaking Unit and the Chiller System, and the new fuel tank of 126,000 gallons, as defined in paragraph 6, below.

The grant of the variances is subject to the following specific conditions:

1. Paragraph 1 of the Variance (1990-33) is modified on page 1, in the fourth line from the bottom of the page, by adding at the end of the sentence "The Project is a nominal 68 megawatt electric power plant, fueled by natural gas." the words "and may include the Peaking Unit and the 126,000 gallon fuel storage tank, the Chiller System, and the related appurtenances."
2. The Project must receive permission or approval as to the following other regulatory matters prior to applying for a building permit for the Peaking Unit and Chiller System and their related appurtenances including the 126,000 fuel storage tank:
 - A. Approval from the Massachusetts Department of Environmental Management of DPA's Non-Major Comprehensive Plan Approval Application dated October, 1994 (Transmittal No. 91377), provided such approval shall not permit the Applicant to exceed the limitations expressed in this Variance or in the Special Permit.
3. The Peaking Unit and Chiller System, when operated in conjunction with the existing power plant, shall continue to meet the standards set forth in the original Special Permit by the Board of Selectmen and the original Variance, including, without limitation, the Air Quality Monitoring Standards (5.2.1 of the Special Permit ("SP")), the Noise Monitoring Standards (5.2.2 of the SP) and the Water Limit (5.2.10 of the SP).
4. The permitted heights for the new structures shall be:
maximum allowed in zoning bylaw, except one stack for the Peaking Unit, which may be 125 feet.

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BK 3578 PG 183

All construction shall be in substantial accord with plans submitted to the Board.

5. An additional fuel storage tank is permitted, not to exceed 126,000 gallons of storage capacity.
6. Condition 18 in the original Variance grant (1990-33) is deleted. New Condition 18 is added as follows:

18.) The Project and any element thereof shall be constructed substantially in accord with the plans and information submitted to the Board. Notwithstanding the foregoing, (x) the original nominal 68 megawatt power production facility shall not exceed a nominal 68 megawatt power output, (y) the combined operation of the original power plant, the Peaking Unit and the Chiller System shall not exceed 100 megawatts, and (z) the Peaking Unit shall not be operated more than 2500 hours per any twelve (12) month period. There will be no further expansion of the Project.
7. Condition 19 a) of the original Variance grant is modified by deleting in line 2 the words "nominal 68 megawatt gas fired power plant" and by inserting in its place the word "Project." Condition 19 c) is modified by deleting in line 4 the words "nominal 68 megawatt plant" and by inserting in its place the word "Project."
8. The Board of Selectmen on September 25, 1995, signed a Second Amendment to Special Permit. The Board of Appeals will rely on the conditions and modifications stipulated by the Board of Selectmen as providing adequate and appropriate protection for the Town. Accordingly, the modifications and conditions numbered 1 through 10, inclusive, in said Second Amendment to Special Permit signed by the Board of Selectmen on September 25, 1995 (File No. SP 90-1) are hereby incorporated by reference in this grant of variance.

Variance 1990-33, as amended by 1991-10, including all conditions and covenants and agreements shall, except as expressly amended herein, continue in full force and effect.

This grant of amendment of variance shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Bristol County (S.D.) Registry of Deeds and indexed in the Grantor Index under the name of the owner of record or is recorded and noted on the Owner's Certificate of Title.

SEP 26 4 26 PM '95

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BK 3578 PG 184

The fee for recording or registering shall be paid by the owner or applicant.

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after date of filing of such notice in the office of the Town Clerk.

If the rights authorized by the grant of these variances are not exercised within one (1) year of the date of grant, they shall lapse; provided, however, that the granting authority in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such granting authority prior to the expiration of such one (1) year period. If the granting authority does not grant such extension within thirty (30) days of the date of application therefor, and upon the expiration of the original one (1) year period, such rights may be re-established only after notice and a new hearing pursuant to the provisions of said Section 17.

Copies of the complete minutes of this hearing are available, upon request, at the office of the Board of Appeals.

TOWN OF DARTMOUTH
BOARD OF APPEALS

By Joseph Z. Cventin
Chairman

bch/SpAmd.DPA 9/25/95

6

RECEIVED
SEP 26 4 26 PM '95
OFFICE OF TOWN CLERK
TOWN OF DARTMOUTH

BK 3578 PG 185

Copy - I hold the original signed
copy pending appeal.

[Signature] 09/25/95

**EXHIBIT A TO SECOND AMENDMENT TO SPECIAL PERMIT
AND VARIANCE**

AMENDMENT TO COVENANT

The Covenant dated October 2, 1990 as recorded in the Bristol County (S.D.) Registry of Deeds in Book 2564, Page 84, by Dartmouth Power Associates Limited Partnership ("DPA"), a Massachusetts limited partnership with its principal place of business at One Energy Road, North Dartmouth, Massachusetts to the Town of Dartmouth, a municipal corporation having its usual place of business at 400 Slocum Road, North Dartmouth, Massachusetts 02747 is hereby amended as follows:

1. In the first unnumbered paragraph of said Covenant, in line 6, delete "watt" and insert "megawatt". After the word "plant" at the end of said line 6, add the following:

".....as permitted in a Special Permit from the Dartmouth Selectmen dated October 2, 1990 and recorded in Bristol County (S.D.) Registry of Deeds, Book 2559, page 0276, and a first amendment thereto recorded in Book 2808, page 0220, and a Second Amendment to Special Permit recorded herewith; and a Variance granted by the Dartmouth Zoning Board of Appeals recorded in said Deeds Book 2559, page 317, and a First Amendment thereto in Book 2808, page 213, and a Variance Decision For Second Amendment recorded herewith."

2. In paragraph 4, add the following additional paragraphs at the end thereof:

In connection with a Second Amendment to Special Permit dated September 25, 1995 and a Variance Decision for a Second Amendment (Case No. 1995-35) also dated September 25, 1995, (together called the "Second Amendment"), DPA has agreed to make a further annual gift to the Town of Dartmouth, as follows:

A. Definitions.

"Peaking Unit" and "Chiller System" shall mean the Peaking Unit and Chiller System, respectively, described in the Second Amendment.

"Peaking Unit Approval Date" shall mean the date of approval of the air emission testing of the Peaking

BK 3578 PG 186

Unit by the Massachusetts Department of Environmental Protection.

"Chiller System Approval Date" shall mean the date of approval of the construction of the Chiller System evidenced by the signature of the Building Commissioner of the Town of Dartmouth.

"Peaking Unit Base Amount" shall mean the sum of \$110,000., provided, however, that if the Peaking Unit Approval Date has not occurred by July 1, 1998, the base amount shall be increased by 2.5% for each fiscal year commencing July 1, 1998, but only up to and including the Peaking Unit Approval Date.

"Chiller System Base Amount" shall mean the sum, of \$10,000., provided, however, that if the Chiller System Approval Date has not occurred by July 1, 1998, the base amount shall be increased by 2.5% for each fiscal year commencing July 1, 1998, but only up to and including the Chiller System Approval Date.

B. Terms. The Gift Base described in the Covenant shall be increased by the amount of the Peaking Unit Base Amount commencing with the fiscal year beginning after the Peaking Unit Approval Date and by the amount of the Chiller System Base Amount commencing with the fiscal year beginning after the Chiller System Approval Date. Once the payments attributable to the Peaking Unit and/or the Chiller System have commenced, the said Base Amount thereof shall be increased for twenty (20) successive years by two and one half percent (2.5%) in each succeeding fiscal year, and shall not increase thereafter; provided, however, that notwithstanding the foregoing, the said Base Amounts shall be reduced by ten percent (10%) in each year beginning with the reduction of the Annual Gift (after the 25th Annual Gift) as set forth in the Covenant, and shall terminate concurrently with the Annual Gift.

"The covenantor shall seek no abatement for Annual Taxes in any fiscal year in which Annual Taxes are equal to or less than the Annual Gift due for that fiscal year."

3. In paragraph 8, in line 3, before the word "constitutes", add "and all amendments thereto"

In all other respects, the Covenant is hereby ratified and confirmed.

Aug 25, 2025 8:37 PM EDT

BK 3578 PG 187

IN WITNESS WHEREOF, Dartmouth Power Associates Limited Partnership has caused this Amendment to the Covenant to be executed as a sealed instrument by James S. Gordon, President of EMI Dartmouth, Inc., its General Partner, hereunto duly authorized this 25th day of September, 1995.

COVENANTOR

Dartmouth Power Associates Limited Partnership, By EMI Dartmouth, Inc. its General partner

By: James S. Gordon
James S. Gordon, President

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

September 25, 1995

Then personally appeared the above-named James S. Gordon and acknowledged the foregoing instrument to be the free act and deed of EMI Dartmouth Power, Inc. and Dartmouth Power Associates Limited Partnership, before me,

[Signature]
Notary Public

My commission expires: Aug 29, 1997

bch/CovAmd.DPA 9/25/95

BK 3578 PG 201
12/07/95 03:05 DOC. 23470

**EXHIBIT A TO SECOND AMENDMENT TO SPECIAL PERMIT
AND VARIANCE**

AMENDMENT TO COVENANT

The Covenant dated October 2, 1990 as recorded in the Bristol County (S.D.) Registry of Deeds in Book 2564, Page 84, by Dartmouth Power Associates Limited Partnership ("DPA"), a Massachusetts limited partnership with its principal place of business at One Energy Road, North Dartmouth, Massachusetts to the Town of Dartmouth, a municipal corporation having its usual place of business at 400 Slocum Road, North Dartmouth, Massachusetts 02747 is hereby amended as follows:

1. In the first unnumbered paragraph of said Covenant, in line 6, delete "watt" and insert "megawatt". After the word "plant" at the end of said line 6, add the following:

".....as permitted in a Special Permit from the Dartmouth Selectmen dated October 2, 1990 and recorded in Bristol County (S.D.) Registry of Deeds, Book 2559, page 0276, and a first amendment thereto recorded in Book 2808, page 0220, and a Second Amendment to Special Permit recorded herewith; and a Variance granted by the Dartmouth Zoning Board of Appeals recorded in said Deeds Book 2559, page 317, and a First Amendment thereto in Book 2808, page 213, and a Variance Decision For Second Amendment recorded herewith."

2. In paragraph 4, add the following additional paragraphs at the end thereof:

In connection with a Second Amendment to Special Permit dated September 25, 1995 and a Variance Decision for a Second Amendment (Case No. 1995-35) also dated September 25, 1995, (together called the "Second Amendment"), DPA has agreed to make a further annual gift to the Town of Dartmouth, as follows:

A. Definitions.

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"Peaking Unit Approval Date" shall mean the date of approval of the air emission testing of the Peaking

BK 3578 PG 202

Unit by the Massachusetts Department of Environmental Protection.

"Chiller System Approval Date" shall mean the date of approval of the construction of the Chiller System evidenced by the signature of the Building Commissioner of the Town of Dartmouth.

"Peaking Unit Base Amount" shall mean the sum of \$110,000., provided, however, that if the Peaking Unit Approval Date has not occurred by July 1, 1998, the base amount shall be increased by 2.5% for each fiscal year commencing July 1, 1998, but only up to and including the Peaking Unit Approval Date.

"Chiller System Base Amount" shall mean the sum, of \$10,000., provided, however, that if the Chiller System Approval Date has not occurred by July 1, 1998, the base amount shall be increased by 2.5% for each fiscal year commencing July 1, 1998, but only up to and including the Chiller System Approval Date.

B. Terms. The Gift Base described in the Covenant shall be increased by the amount of the Peaking Unit Base Amount commencing with the fiscal year beginning after the Peaking Unit Approval Date and by the amount of the Chiller System Base Amount commencing with the fiscal year beginning after the Chiller System Approval Date. Once the payments attributable to the Peaking Unit and/or the Chiller System have commenced, the said Base Amount thereof shall be increased for twenty (20) successive years by two and one half percent (2.5%) in each succeeding fiscal year, and shall not increase thereafter; provided, however, that notwithstanding the foregoing, the said Base Amounts shall be reduced by ten percent (10%) in each year beginning with the reduction of the Annual Gift (after the 25th Annual Gift) as set forth in the Covenant, and shall terminate concurrently with the Annual Gift.

"The covenantor shall seek no abatement for Annual Taxes in any fiscal year in which Annual Taxes are equal to or less than the Annual Gift due for that fiscal year."

3. In paragraph 8, in line 3, before the word "constitutes", add "and all amendments thereto"

In all other respects, the Covenant is hereby ratified and confirmed.

BK 3578 PG 203

IN WITNESS WHEREOF, Dartmouth Power Associates Limited Partnership has caused this Amendment to the Covenant to be executed as a sealed instrument by James S. Gordon, President of EMI Dartmouth, Inc., its General Partner, hereunto duly authorized this 25th day of September, 1995.

COVENANTOR

Dartmouth Power Associates Limited Partnership, By EMI Dartmouth, Inc. its General partner

By: James S. Gordon
James S. Gordon, President

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

September 25, 1995

Then personally appeared the above-named James S. Gordon and acknowledged the foregoing instrument to be the free act and deed of EMI Dartmouth Power, Inc. and Dartmouth Power Associates Limited Partnership, before me,

Raymond C. Lantz, Jr.
Notary Public

My commission expires: August 29, 1997

bch/CovAmd.DPA 9/25/95

Raymond C. Lantz, Jr., Notary Public
My commission expires: August 29, 1997

BK 3578 PG 204

CERTIFICATE OF VOTE

OF

EMI DARTMOUTH, INC.

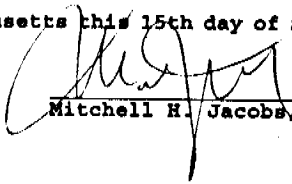
I, Mitchell H. Jacobs, Clerk of EMI DARTMOUTH, INC., a Massachusetts corporation, do hereby certify that at a special meeting of the Board of Directors and shareholders of the Corporation duly called and held at the office of the Corporation on September 18, 1995, all shareholders and directors being present and voting throughout, the following resolution was unanimously adopted:

VOTED: That the Corporation, as General Partner of Dartmouth Power Associates Limited Partnership, a Massachusetts limited partnership ("DPA"), execute and deliver to the Town of Dartmouth an Amendment to Covenant in connection with the Second Amendment to Special Permit, Board of Selectmen File No. SP90-1, which Covenant relates to the obligation of DPA to make an annual gift to the Town of Dartmouth of up to \$120,000.; and further, that the President of the Corporation be and hereby is authorized and directed to execute said Covenant.

I do further certify that the above Vote has not been altered, amended, rescinded or repealed.

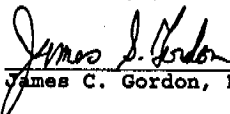
I do further certify that the Corporation is a duly organized Massachusetts corporation; and that the foregoing vote is in accordance with the charter and by-laws of the Corporation; and that James C. Gordon is the duly elected and qualified President of the Corporation and that I am the duly elected and qualified Clerk of the Corporation.

Dated at Dartmouth, Massachusetts this 15th day of September, 1995.



Mitchell H. Jacobs, Clerk

Attested to:



James C. Gordon, President

bch/CertVote.EMI 9/20/95



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

BK 9499 PG 166

09/11/09 10:58 001 23364

Bristol Co. S.D. DEP File Number:

WPA Form 4B - Order of Resource Area Delineation

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
And Dartmouth Wetlands Protection Bylaw

18-2033
Provided by DEP
Dart Power
Assoc

A. General Information

Important:
When filing out
forms on the
computer, use
only the tab key
to move your
cursor - do not
use the return
key.



Note:
Before
completing this
form consult
your local
Conservation
Commission
regarding any
municipal bylaw
or ordinance.

1. **From:** The Dartmouth Conservation Commission
a. Conservation Committee

2. This issuance is for (check one):

- a. ☒ Order of Resource Area Delineation Only
- b. ☐ Order of Resource Area Delineation Subject to Simplified Review
1. ☐ Not Subject to Stormwater Policy
2. ☐ Subject to Stormwater Policy
- c. ☐ Amended Order of Resource Area Delineation

3. **To: Applicant:**

Timothy Fagan Dartmouth Power Associates, LP
a. First Name b. Last Name c. Company

One Energy Rd
d. Mailing Address

Dartmouth MA 02747
e. City/Town f. State g. Zip Code

4. **Property Owner (if different from applicant):**

a. First Name b. Last Name c. Company

d. Mailing Address

e. City/Town f. State g. Zip Code

5. **Project Location:**

One Energy Rd Dartmouth
a. Street Address b. City/Town

Map 67 Lot 9
c. Assessor Map/Plot Number d. Parcel/Lot Number

Latitude and Longitude (note: electronic filers 41 40' 238656" 70 59' 55.2222"
will click for GIS locator): e. Latitude f. Longitude

6. **Dates:** 1/8/09 9/1/09 9/3/09
a. Date Notice of Intent filed b. Date Public Hearing Closed c. Date of Issuance

7. **Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:**

Existing Conditions Plan 8/4/09
a. Title b. Date

c. Title d. Date



Massachusetts Department of Environmental Protection
 Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 4B - Order of Resource Area Delineation

15-2035

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by DEP

And Dartmouth Wetlands Protection Bylaw

Dartmouth

Power Assoc

B. Order of Delineation

1. The Conservation Commission has determined the following (check whichever is applicable):

- a. ☒ **Accurate:** The boundaries described on the referenced plan(s) above and in the Abbreviated Notice of Resource Area Delineation are accurately drawn for the following resource area(s):

1. ☒ Bordering Vegetated Wetlands
2. ☒ Other Resource Area(s), specifically:

Intermittent Stream

- b. ☐ **Modified:** The boundaries described on the plan(s) referenced above, as modified by the Conservation Commission from the plans contained in the Abbreviated Notice of Resource Area Delineation, are accurately drawn from the following resource area(s):

1. ☐ Bordering Vegetated Wetlands
2. ☐ Other Resource Area(s), specifically:

- c. ☐ **Inaccurate:** The boundaries described on the referenced plan(s) and in the Abbreviated Notice of Resource Area Delineation were found to be inaccurate and cannot be confirmed for the following resource area(s):

1. ☐ Bordering Vegetated Wetlands
2. ☐ Other Resource Area(s), specifically:

3. The boundaries were determined to be inaccurate because:

confidential
 Darian King

power-transitions.com

Aug 25, 2025 8:37 PM EDT



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

WPA Form 4B – Order of Resource Area Delineation

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

And Dartmouth Wetlands Protection Bylaw

DEP File Number:

15-2033

Provided by DEP

Dartmouth

Power Assoc

C. Simplified Buffer Zone Review

Work within the Buffer Zone pursuant to the Simplified Review (310 CMR 10.02) requires that you must comply with the following conditions. If your project does not meet these requirements, you are required to either file a Determination of Applicability or Notice of Intent or take other corrective measures as directed by the Conservation Commission.

Simplified Review Conditions:

Work conducted under Simplified Review requires the following:

1. No work of any kind shall occur within any wetland resource areas including Riverfront Area and Bordering Land Subject to Flooding.
2. The inner 0-to-50-foot wide area from the delineated wetland boundary that has a Buffer Zone shall not be disturbed by any work associated with this project, including placement of any stormwater management components.
3. No work shall occur in the Buffer Zone bordering an Outstanding Resource Water (e.g., certified vernal pool, public water supply reservoir or tributary), as defined in 314 CMR 4.00 or border coastal resource areas at 310 CMR 10.25-10.35.
4. No work shall occur in the Buffer Zone adjacent to wetland resources with estimated wildlife habitat (which is identified on the most recent Estimated Habitat Map of State-listed Rare Wetlands Wildlife).
5. Erosion and Sedimentation controls shall be installed and maintained at the 50-foot Buffer Zone line or limit of work (whichever is a greater distance from the resource area) to protect resource areas during construction.
6. If the project is subject to the Massachusetts Stormwater Policy, all work shall be conducted in conformance with an approved Stormwater Management Plan.
7. The Buffer Zone does not contain a slope greater than an average of 15% at its steepest gradient across the 100-foot Buffer Zone.
8. The amount of new impervious surface, in combination with existing impervious surfaces, shall not exceed 40% of the Buffer Zone between 50 and 100 feet.
9. No work is allowed, and no additional NOI or RDA shall be filed, for any work within the 0-to-50-foot Buffer Zone during the three-year term of an Order associated with this application.
10. Prior to any work being undertaken pursuant to this Order, the wetland resource boundary shall be flagged; all boundary delineation flagging should be maintained for the term of the Order.
11. If stormwater management structures are proposed in the Buffer Zone, the stormwater management structures shall be maintained as required in the Stormwater Plan. Such maintenance constitutes an ongoing condition and is not subject to further permitting requirements.
12. If this ORAD involves work as part of a Simplified Review, the ORAD shall be recorded at the Registry of Deeds prior to the commencement of work per the requirements of Section F.
13. Prior to proceeding with any work under Simplified Review, applicants are required to provide written notice to the Commission one week prior to commencing any work.
14. If work authorized under Simplified Review is commenced, no work is allowed, and no additional NOI or RDA may be filed, for any work within the 0-to-50-foot buffer zone during the term of an ORAD associated with this application. If work authorized under Simplified Review is not commenced, then future NOIs or RDAs may be filed for work within the 0-to-50-foot portion of the buffer zone.

—End of Conditions—



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 4B – Order of Resource Area Delineation

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

And Dartmouth Wetlands Protection Bylaw

DEP File Number:

15-2035

Provided by DEP

Dartmouth

Power Assoc

C. Simplified Buffer Zone Review (cont.)

Stormwater Applicability

- ☐ The project is not subject to the Stormwater Policy.
- ☐ The project is subject to the Stormwater Policy and the Stormwater Plan included for the project complies with all stormwater standards.

Ineligibility Determinations

Site Conditions: The applicant is not eligible for Simplified Buffer Zone review and must file a Request for Determination of Applicability or Notice of Intent prior to any work because:

- ☐ Work is within the Buffer Zone of a Coastal Resource Area as defined at 310 CMR 10.25-10.35.
- ☐ The Buffer Zone contains existing slopes greater than an average of 15%.
- ☐ Buffer Zone contains estimated rare wildlife habitat.¹
- ☐ The site borders an Outstanding Resource Water.²

Stormwater

- ☐ The project is subject to the Stormwater Policy and the applicant has not submitted sufficient information to demonstrate compliance with the Stormwater Management Policy. Prior to any work, the applicant must submit plans showing compliance with the standards in the Stormwater Policy, the location of the work, the amount of impervious surface, and the location of erosion controls, to the Commission for its concurrence. (See instructions to ANRAD Form 4A.) The following necessary stormwater information was not submitted by the applicant:

a. _____

- ☐ The project is subject to the Stormwater Policy but the project does not comply with one or more of the stormwater standards (specify which standard(s) not met).

a. Standard # _____

b. Standard # _____

- ☐ Impervious surface exceeds 40% of the area of the Buffer Zone between 50 and 100 feet from the resource area.
- ☐ The applicant did not submit plans depicting adequate erosion and sedimentation controls located at the limit of work or at least 50 feet from any resource areas, whichever will be greater.
- ☐ Work is proposed within 50 feet of a resource area.

Notice to Commission

Any applicant proposing to proceed under Simplified Buffer Zone Review, as specified in 310 CMR 10.02, must provide written notice to the Commission one week prior to any work.

¹ Identified on the most recent Interactive Habitat Map of State-listed Rare Wetlands (Wetlands of the Natural Heritage and Endangered Species Program).

² Certified Wetland Ponds, public water supplies, or inland ACECs as identified in 314 CMR 4.00.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 4B – Order of Resource Area Delineation

15-2033
Provided by DEP
Dartmouth
Power Assoc

Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40
And Dartmouth Wetlands Protection Bylaw

D. Findings

This Order of Resource Area Delineation determines that the Stormwater Plan, if applicable, and the boundaries of those resource areas noted above, have been delineated and approved by the Commission and are binding as to all decisions rendered pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40) and its regulations (310 CMR 10.00). This Order does not, however, determine the boundaries of any resource area or Buffer Zone to any resource area not specifically noted above, regardless of whether such boundaries are contained on the plans attached to this Order or to the Abbreviated Notice of Resource Area Delineation.

The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

If the Abbreviated Notice of Resource Area Delineation was filed as Simplified Review for a Buffer Zone project, the applicant has certified that any work associated with the proposed project meets all eligibility requirements for Simplified Review listed in Section C of this Order. Any work that does not comply with the Simplified Review requirements will require a Notice of Intent or Request for Determination of Applicability.

The applicant is responsible for promptly requesting a Certificate of Compliance following completion of any work allowed pursuant to a Simplified Review or no later than three years from the date of the Order of Resource Area Delineation unless the Order is extended.

Failure to comply with the conditions of this Order is grounds for the Conservation Commission or the Department to take enforcement action.

This Order must be signed by a majority of the Conservation Commission. The Order must be sent by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/regionfindyour.htm>).

E. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate DEP Regional Office to issue a Superseding Order of Resource Area Delineation. When requested to issue a Superseding Order of Resource Area Delineation, the Department's review is limited to the objections to the resource area delineation(s) stated in the appeal request. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.00(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the applicant. Any applicants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding precludes the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order or Determination, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, § 40) and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

WPA Form 4B - Order of Resource Area Delineation

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

And Dartmouth Wetlands Protection Bylaw

DEP File Number:

15-2033

Provided by DEP

Dartmouth

Power Assoc

F. Signatures and Notary Acknowledgement

Please indicate the number of members who will sign this form:

4. Number of Signers

Joseph E. McDonald
Joseph E. McDonald, Chair
Christopher M. Amis
Christopher M. Amis
Edward F. Goss
Edward F. Goss

Michael A. Kufza
Michael A. Kufza, Vice Chair
Richard J. Melton
Richard J. Melton
James Brindley
James Brindley

This Order is valid for three years from the date of issuance.

This Order is issued to the applicant and the property owner (if different) as follows:

☐ by hand delivery on

☒ by certified mail, return receipt requested on

Date

September 3, 2009

Date

Notary Acknowledgement

Commonwealth of Massachusetts County of

Bristol

On this 1st of

September

2009

Before me, the undersigned Notary Public,
personally appeared

Name of Document Signer

proved to me through satisfactory evidence of identification, which was/were

Personal Knowledge of Identity

Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged
to me that he/she signed it voluntarily for its stated purpose.

As member of

Dartmouth
City/Town

Conservation Commission



DONNA M. FARIAS
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 25, 2010

Donna M. Farías
Signature of Notary Public

Donna M Farías

Printed Name of Notary Public

June 25, 2010

My Commission Expires (Date)

Place notary seal and/or any stamp above.

power-transitions.com
Aug 25, 2025 8:37 PM EDT

B3143PG0108

BFO CMR 10.00

Form 1

Commonwealth
of Massachusetts

02/08/94

SEP File No. 15-881

File Number (SEP)

By: Robert K. DonahoeName: Robert K. Donahoe
Energy Management, Inc.On: 02/08/94 at: 02/08/94By: 02/08/94By: 02/08/94By: 02/08/94

Extension Permit

Massachusetts Wetlands Protection Act

G.L. c. 131, §40A

the Dartmouth Wetlands Bylaw

From: the Dartmouth Conservation Commission

Issuing Authority

To: Robert K. Donahoe
Energy Management, Inc.One Energy Road
N. Dartmouth, MA 02747

(NAME)

(ADDRESS)

The Order of Conditions (or Extension Permit) issued on 02/13/94

(date)

to Dartmouth Power Association(name) for work at 1000 BY St. St. 31: 88-94Old 02/13/94 when all (address) is hereby extended for a period of one (1) year(s) from the
date it expires.This Extension Permit will expire on October 12, 1994 (date)

This document shall be recorded in accordance with General Condition 8 of the Order of Conditions.

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Darian Kingpower-transitions.com
Aug 25, 2025 8:37 PM EDT

Robert E. Doolittle Energy Management, Inc.
Boscawen, New York

EX3143RC0109

File No. 19-861

Issued by the New York State Conservation Commission

Signature:

David E. Doolittle

David E. Doolittle

David E. Doolittle

Robert E. Doolittle

Robert E. Doolittle

When issued by the Conservation Commission the Extension Permit must be signed by a majority of its members.

On this 7th day of September, 1981, before me
personally appeared George A. Livingston to the intent to be the
person who caused in and who executed the foregoing instrument and acknowledged that he had executed
the same as his free act and deed.

Robert E. Doolittle June 26, 1986

Notary Public
State of New York
Received & Recorded

ATTEST: *Robert E. Doolittle* ASST. SECRETARY

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300 CDR 12.96

Form #

Commonwealth
of Massachusetts
 RECEIVED
 OCT 26 1994
 Barnstable County

 DEP File No. 15-041
 Date received by DEP 10/25/94
 City/Town Barnstable
 Project Subject to Approval

PARTIAL

Certificate of Compliance

 Massachusetts Wetlands Protection Act, G.L. c. 131, §40 and
 the Barnstable Wetlands Protection Bylaw

 From the Barnstable Conservation Commission Issuing Authority
 Robert E. Donahoe One Energy Road
 To Energy Development, Inc. 160 Barnstable, MA 02542
 (Name) (Address)

 Date of Issuance October 15, 1994

 This Certificate is issued for work regulated by an Order of Conditions issued by Barnstable Power
 Authority dated 10/15/94 and issued by the Barnstable Conservation
Commission.

1. See below Power production facility, roadway & utilities
 It is hereby certified that the work regulated by the above referenced Order of Conditions has
 been satisfactorily completed.
2. X This hereby certifies that only the following portions of the work regulated by the above refer-
 enced Order of Conditions have been satisfactorily completed (if the Certificate of Compliance
 does not include the entire project, specify what portions are included.)
 Donahoe, Roads 12, 14, 15, and construction of Energy Road.
 This Certificate of Compliance does not apply to the Power Plant site nor the
 detention ponds enclosed within the power plant site itself.
3. It is hereby certified that the work regulated by the above referenced Order of Conditions was
 never commenced. The Order of Conditions has been issued and is therefore no longer valid. Its future
 work subject to regulation under the Act may be commenced without filing a new Notice of Intent
 and receiving a new Order of Conditions.

Leave Blank Here

B-1

Effective 1/1/02

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 Darian King
 power-transitions.com
 Aug 25, 2025 8:37 PM EDT

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EK 3382 PG 95

Robert R. Donahoe, Director of the Department of Conservation

Certificate of Compliance, Form 1-61

FILE NO. 15-641

4. XE This certificate shall be recorded in the Registry of Deeds, or the Land Court for the district in which the land is located. The Order was originally recorded on 10/20/95 (date)
in the Registry of Deeds, Book 2104, Page 327.
Revised Order: EK 3382 (date recorded) 2/24/97, Book 2685, Page 187.
5. The following conditions of the Order shall continue: (Set forth any conditions contained in the Final Order, such as terms, instances of monitoring, which are to continue for a longer period.)

Issued by the Department of Conservation Commission.

Signature: [Signature]

[Signature]
[Signature]

[Signature]
[Signature]
[Signature]

When issued by the Conservation Commission this Certificate must be signed by a majority of its members.
On this 18th day of October, 19 95, before me
personally appeared Gerard Franklin to me known to be the
person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Signature]
Notary Public

[Signature]
State of Costa

6/18/96
My commission expires

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Darian King

BK 3771 PG 192

01/15/96 08:37 PM EDT

110 GMR 10.00

DEPT No.

100-001

Form 8

Revised 10/1/90 by 1000

City/Town Barnstable

Station 100-001

Energy Management, Inc.

Commissioner
of Environmental

Certificate of Compliance
Massachusetts Wetlands Protection Act, G.L. c. 131, §40 A
the Barnstable Wetlands Protection Bylaw

From, Barnstable Conservation Commission Issuing Authority

Robert E. Bonham

One Energy Road

to, Energy Management, Inc.

Box Barnstable, MA 01917

(Name)

(Address)

Date of Issuance November 5, 1996

This Certificate is issued for work regulated by 90/1045 of Conditions issued

Barnstable Power Associates

to, Energy Management, Inc. dated 2/22/91 (revised)

and issued by the Barnstable Conservation Commission

Project: power production facility, associated access road, detention basin & embankment on 100-001

1. ☒ It is hereby certified that the work regulated by the above-referenced order of conditions has been satisfactorily completed.
2. ☐ It is hereby certified that only the following portions of the work regulated by the above-referenced order of conditions have been satisfactorily completed: (if the Certificate of Compliance does not include the entire project, specify what portions are completed.)
3. ☐ It is hereby certified that the work regulated by the above-referenced order of conditions was never commenced. The order of conditions has expired and is therefore no longer valid. No future work subject to regulation under the Act may be commenced without filing a new Notice of Intent and receiving a new order of conditions.

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Aug 25, 2025 8:37 PM EDT

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BK 3783 PG 291

12/10/96 12:35 PM EST 2025
Printed On: 2.8.

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Aug 25, 2025 8:37 PM EDT

DARTMOUTH, MASSACHUSETTS

I, Eleanor J. White, Town Clerk of the Town of Dartmouth, hereby certify that the attached pages are true and correct photocopies of a decision of the Dartmouth Board of Appeals concerning an extension of a variance in Case Number #1995-356, filed by Dartmouth Power Associates and located at 1 Emergy Road, North Dartmouth and filed in the Office of the Town Clerk on Monday, November 18, 1996. Case Number #1995-356.

Further, I certify that twenty days have elapsed since the decision was filed in this office, and that no appeal has been filed in accordance with Section 11 and 17 of Chapter 40A of the Massachusetts General Laws.

Pollitiner has been advised that they must provide the office of the Town Clerk with the book and page in which this decision was recorded at the Registry of Deeds.

Attest:

Eleanor J. White

ELEANOR J. WHITE
TOWN CLERK OF DARTMOUTH



CASE NUMBER 1996-356
PAGE 8

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Aug 25, 2025 8:37 PM EDT



OFFICE OF THE
BOARD OF APPEALS

Town of Dartmouth

430 Market Road • P.O. Box 79109
North Dartmouth, Massachusetts 02742

BK 3783 PG 292

RECEIVED

Aug 18 2 34 PM '96

DECISION FOR BOARD OF APPEALS HEARING #1995-288

EXTENSION FOR AMENDED VARIANCE FOR DARTMOUTH TOWNS ASSOCIATED
CASE NUMBER 1995-288
SCORE: 35/38, PAGE: 171

There was a Board of Appeals hearing open to the public held in MEETING ROOM #338, COAN OFFICE BUILDING, 433 SLOOM ROAD, NORTH DARTMOUTH, MA, on Monday, November 4, 1996, at 7:15 P.M. on the application of Dartmouth Power Associates, who is seeking a time extension for a variance from the zoning bylaws of the Town of Dartmouth concerning property owned by Fall River Realty Trust and located at 1 Moody Road, North Dartmouth. Permission is requested to allow the petitioner extend the time allotted to construct the chiller system and peaking unit in Case Number #1995-28. PLAN: 87, LOT: 9.

Present were Chairman Joseph Constantino, William Whipp and Raymond Souza.

DECISION

It was the unanimous decision of the Board of Appeals to grant the requested six month extension to the petitioner, Dartmouth Power Associates.

The Board finds that, owing to conditions especially affecting the parcel, but not affecting generally, the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or zoning bylaws would involve substantial hardship, financial or otherwise, to the petitioner.

The Board finds that desirable relief may be granted in the matter without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning bylaws.

In variance or special, or any extension, modification or renewal thereof, shall have effect until a copy of the decision bearing the certification of the Town Clerk that 30 days have elapsed and no appeal has been filed or that if said appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

The fee for recording or registering shall be paid by the owner or applicant.

CASE NUMBER 1995-288
PAGE 8

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BK 3783 PG 293

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A, and shall be filed within 30 days after date of filing of such notice in the office of the Town Clerk.

If the rights envisioned by a variance are not exercised within one year of the date of grant of such variance, they shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.

Copies of the complete minutes of this hearing are available, upon request, at the office of the Board of Appeals.

Joseph L. Cosentino
JOSEPH L. COSENTINO
CHAIRMAN

CASE NUMBER 1986-348
PAGE 7

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25163

GRANT OF EASEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Bristol

TRACT No. 2-3-11

WHEREAS, Algonquin Gas Transmission Company, hereinafter called "Algonquin", a Tennessee corporation, having its principal place of business at 1004 Oakridge Field Road, Dayton, Hamilton County, (Mississippi), has been granted by Matthew P. Rogers and Joseph Rogers, wife and husband,

a permanent right-of-way and easement for the laying, construction, operation, maintenance, alteration, replacement, repair and removal of a pipeline or pipelines with valves, flowmeters and other appurtenant facilities for the transmission of natural gas and oil by pipeline located on any lands, present or subsurface which may be transported

through a pipeline, over, under, across and upon lands situated in the Town

of Dartmouth, situated in the County, Commonwealth of Massachusetts,

said lands being the same portions conveyed to Renewal, Dartmouth

by deed from ALGONQUIN GAS CO., INC.

dated NOVEMBER 3, 1992 and recorded with

Bristol (S.B.) County Registry of Deeds in Book 1871 Page 8532

and grant of easement being dated April 25, 1992 and recorded with Bristol (S.B.) County

Registry of Deeds, in Book 1049 Page 459 and

WHEREAS, Algonquin has constructed a pipeline through the premises herein described and will construct a second pipeline and it is desirable that the existing easement right-of-way be modified and enlarged to accommodate said pipeline to a total width of 115.7 (150) feet, consisting

of a strip of land ten (10) feet in width generally northerly at

and a strip of land twenty (20) feet in width generally northerly at

and in such case adjoining and parallel to the first pipeline as presently located in the ground.

NOW THEREFORE, in consideration of the sum of SEVENTY THOUSAND AND 00/100

Dollars (\$77,000) paid, the undersigned

Renewal, Dartmouth

hereby grant, with certain exceptions, to said Algonquin Gas Transmission Company, its successors and assigns, a permanent right of way and easement over a strip of land twenty (20) feet in

width, lying generally northerly at, and parallel to and adjoining the present right of way, with

rights to install an additional pipeline or pipelines and such rights therein as set forth in the original grant now

recorded there, and the hereafter use of a strip of land fifteen (15) feet in width, parallel and contiguous with,

and northerly at the herein granted right of way to be used during construction of the second pipeline

only. The second pipeline may be installed within the original right of way. Physical damages which may arise

from or be incident to construction of the second pipeline have been fully paid.

It is mutually understood and agreed that the person executing this grant is without authority from Algonquin to make any agreement in respect of the subject matter hereof and herein expressed.

By execution of this grant, Algonquin agrees that its right of ingress and egress over the lands described herein shall be limited whenever feasible to the right of way itself and any such and ways existing at the time of the particular exercise of this right.

WITNESS my're hand and seal, this 19 day of November, 1996.

Signed and Sealed in the Presence of:

Ray J. O'Rourke

M. Arnold W. C. M. 1996
Notary Public
for the State of Massachusetts

ATTEST:

Notary

In consideration of \$1.00 and other considerations, I, the undersigned, hereby join in the execution of the above and foregoing grant and consent to the enjoyment by the Grantee therein of the rights granted by said grant.

Dated this 19 day of November, 1996.

Tenant Grantor

This instrument prepared by Robert J. Rogers
Robert J. Rogers

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Darian King
power-transitions.com
Aug 25, 2025 8:37 PM EDT

Indivious

COMMONWEALTH OF MASSACHUSETTS

Bristol 11-19-18
This personify appeared the document Michael A. Miller attested
~~Michael A. Miller~~

and acknowledged the foregoing instrument to me and said, before me.

May 26, 2018
Notary Public

Witnessed & Recorded
Attest

Notary Public
19 11-19-18 11:19 PM
Notary Public
COMMONWEALTH OF MASSACHUSETTS



W1996#0371

power-transitions.com
Aug 25, 2025 8:37 PM EDT

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BRISTOL

PLAT NO. 0-3-9 AND 0-3-10

WHEREAS, Algonquin Gas Transmission Company, hereinafter called "Algonquin", a Delaware corporation, having its principal place of business at 1384 Soldiers Field Road, Boston, Suffolk County, Massachusetts, has been granted a permanent right of way and easement for the laying, construction, operation, maintenance, allocation, replacement, repair and removal of a pipeline or pipelines with valves, tie-ins and other appurtenant facilities for the transmission of natural gas and all by-products thereof as any liquids, gases or substances which can be transported through a pipeline, over, under, across and upon lands situated in the town of Barnstable, Bristol County, Commonwealth of Massachusetts, said lands being the same premises conveyed to William F. Perry and Humberto Hoopes by deed from Rancal P. Fortado and Joseph P. Fortado dated February 9, 1966 and recorded with Bristol County S.D. Registry of Deeds, in Book 1511, Page 146 and by deed from Daniel M. Gifford and Olive M. Gifford, husband and wife, dated February 9, 1966 and recorded with Bristol County S.D. Registry of Deeds, in Book 1511, Page 141, aforesaid permanent right of way and easement granted by Joseph Fortado, Jr., s/o/s/ Jose Fortado, Jr., said grant of easement being dated April 21, 1962 and recorded with Bristol S.D. Registry of Deeds, in Book 1048, Page 457 and by Daniel M. Gifford and Olive M. Gifford, husband and wife, said grant of easement being dated May 10, 1967 and recorded with Bristol S.D. Registry of Deeds, in Book 1556, Page 199 and

WHEREAS, Algonquin has constructed a pipeline through the premises herein described and will construct a second pipeline and it is desirable that the aforesaid permanent right of way be modified and enlarged to accommodate said pipelines to a total width of fifty (50) feet, consisting of a strip of land ten (10) feet in width generally westerly of, and a strip of land forty (40) feet in width generally easterly of, and in each case adjoining and parallel to the first pipeline as presently installed in the ground and generally as delineated in Drawing No. 1-110 attached hereto and made a part hereof.

NOW KNOW YE, in consideration of the sum of Fifty Five and no/100 Dollars (\$55.00) paid, to the undersigned William F. Perry and Humberto Hoopes, hereinafter referred to as Grantor (whether one or more), hereby grant, with quitclaim covenants, to said Algonquin Gas Transmission Company, its successors and assigns, a permanent right of way and easement over a strip of land twenty (20) feet in width, lying generally westerly of, and parallel to and adjoining the present right of way, with rights to install an additional pipeline or pipelines and with rights therein

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Darian King

582064 PR0311

as set forth in the original grant mentioned above, and the temporary use of a strip of land fifteen (15) feet in width, parallel and contiguous with, and southerly of the herein granted right of way to be used during construction of the second pipeline only. The second pipeline may be installed within the original right of way. Physical damage which may arise from or be incident to construction of the second pipeline have been fully paid.

Algonquin agrees, upon written notification from Grantor, to allow construction of paved street(s), road(s), driveway(s), and parking lot(s) over and across Algonquin's right of way at location(s) to be specifically described in Engineer's Plans and Profiles which are to be included with said written notification and which will specify no reduction in coverage, nor an increase in coverage over seven (7) feet, subject to approval by Algonquin. Algonquin hereby agrees to respond to written notification by Grantor of aforementioned Engineer's Plans and Profiles within ninety (90) days from Algonquin's receipt of same.

Algonquin agrees, upon written notification from Grantor, to allow construction of underground utilities to cross over Grantor's right of way provided they are designed to clear pipeline(s) by no less than 18" at location(s) to be specifically described in detailed plans showing location and elevations subject to approval by Algonquin. Algonquin hereby agrees to respond to written notification within ninety (90) days from Algonquin's receipt of same.

Algonquin agrees to indemnify and hold Grantor harmless from the claims and demands of all parties arising out of Algonquin's negligence, installation, maintenance or operation of its pipelines at this location.

It is mutually understood and agreed that the person executing this grant is without authority from Algonquin to make any agreement in respect of the subject matter hereof not herein expressed.

By acceptance of this grant, Algonquin further agrees that its right of ingress and egress over the lands described herein shall be confined whenever feasible to the right of way itself and any roads and ways existing at the time of the particular exercise of this right.

WITNESS our hands and seals this 23rd day of Dec. 1986.

Signed and Sealed in the presence of:

John A. Halloran

John A. Halloran

Gilbert T. Perry
Gilbert T. Perry

Harold R. Rogers
Harold R. Rogers

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Darian King

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Aug 25, 2025 8:37 PM EDT

SK 2064 MC 0312

COMMONWEALTH OF MASSACHUSETTS

Boston, on December 23, 1986.

Then personally appeared the above-named Gilbert T. Barry and acknowledged the foregoing instrument to be his free act and deed, before me.

John A. Halloran
Notary Public

My Commission expires Jan 16, 1992

COMMONWEALTH OF MASSACHUSETTS

Boston, on December 23, 1986.

Then personally appeared the above-named Humberto Souza and acknowledged the foregoing instrument to be his free act and deed, before me.

John A. Halloran
Notary Public

My Commission expires Jan 16, 1992

Received & Recorded Dec 15 1986 at 9 PM, 54/1000, M.

Attest: John Jones Registered

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