

**Outline for the Presentation on Article 10 of  
the Public Service Law versus SEQR, New York  
State Bar Association, Environmental Law  
Section, January 31, 2014**

Presenters:

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<b>Topic</b>	<b>Time</b>	<b>Presenter</b>
Brief introduction to Article 10 of the Public Service Law; and Certificating of gas-fired, electric generating power plants under Article 10 versus state and local permitting and environmental review under SEQR	20 minutes	Sam Laniado, Esq.
Certificating of wind turbines under Article 10 in comparison to state and local permitting and environmental review under SEQR	15 minutes	James A. Muscato, Esq.
DEC's role in the Article 10 process vs. its role in the SEQR process	10 minutes	Lawrence H. Weintraub, Esq.
Questions, comments and discussion	5 minutes	Moderator

State Environmental Quality Review (SEQR)  
FINDINGS STATEMENT  
March 3, 2010

Pursuant to Article 8 - State Environmental Quality Review Act (SEQR) of the Environmental Conservation Law and 6 NYCRR Part 617, the NYS Department of Environmental Conservation (DEC), as Lead Agency, makes the following findings.

**Name of Action:** Hounsfield Wind Farm, Galloo Island, Town of Hounsfield, Jefferson County, New York

**Project Sponsor:** Upstate NY Power Corporation

Acceptance date of final environmental impact statement: December 23, 2009

FEIS is available at: <http://www.dec.ny.gov/permits/54687.html>

Alternative site: <http://upstatenypower.com/feis.html>

**Summary Description of Action:**

Upstate NY Power Corporation (“the Project Sponsor” or “Upstate Power”) is proposing construction of a 246 megawatt (MW)<sup>1</sup> wind-powered electrical generation facility (the “project”) on Galloo Island in the Town of Hounsfield, Jefferson County.

The project development area consists of 1,934 acres of land and is privately owned. Project components include the following structures and activities:

1. Construction and operation of 82 wind turbine generators (WTG). The proposed WTG will be a 3.0 MW generator with a 90 meter blade rotor diameter and a hub height of 80 meters, for a total maximum height of 125 meters (410 feet) from blade tip to ground.
2. Installation and operation of associated 34.5 KV electrical collection lines connecting all WTG to an on-island electrical substation. The electrical collection lines will be both above ground and below ground.
3. Construction of 18.3 miles of private service roads (up to 38 feet wide) between each WTG.
4. Construction of one permanent meteorological (met) tower, approximately 80 meters in height.
5. Construction of a temporary offloading facility for initial delivery of equipment, labor and materials during the time when the permanent slip is under construction.
6. Construction of a permanent slip channel and offloading/storage area, which together make the offloading facility, to allow for delivery and storage of materials and equipment.
7. Construction of three temporary construction staging areas with a combined total land area between 15 and 20 acres.

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<sup>1</sup> These findings describe a new preferred alternative developed through analysis of the DEIS and FEIS records, indicating that wind turbine generators (WTG) # 2 and # 3, together with associated access roads and electrical collection lines, as described in the FEIS project layout, would constitute a “direct take” of habitat that supports a state-listed threatened species, the Upland Sandpiper. This is more fully discussed in Section 9, Avian Species, and Section 18, Alternatives.

8. Construction of a temporary concrete batch plant.
9. Construction of a woody mulch area for disposal of cleared vegetation.
10. Construction of sediment basins for erosion and stormwater control.
11. Construction of operation and maintenance facilities.
12. Construction of permanent and temporary housing facilities for construction, operation and maintenance staff. Permanent residential facilities include two three-story structures of 12 units each, and a community building housing kitchen and dining facilities, infirmary, laundry and recreational facilities. Temporary housing consists of 4 modular buildings, each having 32 rooms.
13. Construction of a potable and fire protection lake water intake system.
14. Construction of a sewage treatment system.
15. Construction of an auxiliary power generating system.
16. Construction of a helicopter pad and garage.

In addition, Upstate Power intends to construct a transmission line to deliver power generated by the Galloo Island wind generation facility to the electrical grid, together with substations for connection to the electrical grid and other related facilities. The transmission line, substations, and connection facilities are subject to review by the New York State Public Service Commission (PSC) under Public Service Law Article VII. While DEC is a statutory party to the Article VII proceeding (Public Service Law §124), it does not have jurisdiction over the transmission line, substations and connection facilities (Public Service Law §130). At the same time, actions of the Public Service Commission under Public Service Law Article VII are excluded from review under the State Environmental Quality Review Act (SEQR) pursuant to ECL §8-0111(5)(b) and (6 NYCRR §617.5(c) (35). The Department of Public Service (DPS) maintains a public website for all information regarding that agency’s review of this Article VII application, at <http://documents.dps.state.ny.us/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=09-t-0049>. DPS staff have been active in the review of the wind turbines on Galloo Island and DEC has been an active participant in the review of the transmission line.

**Location:** The proposed project is located on Galloo Island in eastern Lake Ontario, approximately 5.6 miles west of the closest mainland shoreline (Stony Point in the Town of Henderson) and approximately 12 miles west of the Village of Sackets Harbor, Town of Hounsfield, Jefferson County, New York. (See Attachment # 1, Site Location, and Attachment # 2, Revised Project Layout).

**Agency Jurisdiction(s):** Under the Environmental Conservation Law, the following DEC permit approvals are required for this project:

DEC Project No.	Description of DEC Permits	Statutory and Regulatory Authority
6-2238-00193/00001	P/C/I SPDES – Surface Discharge	ECL Article 17 and 6 NYCRR Part 750

DEC Project No.	Description of DEC Permits	Statutory and Regulatory Authority
6-2238-00193/00002	Freshwater Wetlands	ECL Article 24 and 6 NYCRR Part 663
6-2238-00193/00004	Water Quality Certification	Section 401 of the Clean Water Act and 6 NYCRR Part 608
6-2238-00193/00006	Excavation & Fill in Navigable Waters	ECL Article 15 and 6 NYCRR Part 608
6-2238-00193/00010	Incidental Take Permit for State-Listed Threatened and Endangered Species	ECL Article 11
GP-0-10-001	SPDES General Permit for Stormwater Discharges from Construction Activities	ECL Article 17 Titles 7 & 8 and ECL Article 70
GP-0-06-002	SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities	ECL Article 17 Titles 7 & 8 and ECL Article 70
	State Air Facility Permit (or Registration) for Temporary Power Generators during project construction	ECL Article 19 and 6 NYCRR Part 201

**State Environmental Quality Review (SEQR) Process.**

Attachment # 3 is a chronology of SEQR milestones that have led to development of these findings. Principal documents related to this SEQR review have been made available on the DEC website at: <http://www.dec.ny.gov/permits/54687.html>, and the Upstate NY Power Corp. website at: <http://upstatenypower.com/SEQRA.html>. Additionally, all SEQR were made available for public review at the following local repositories:

- Town of Hounsfield, Office of the Town Clerk
- Hay Memorial Library, Sackets Harbor
- Henderson Free Library, Henderson

## **Facts and Conclusions in the EIS Relied Upon to Support the Decision**

In developing this SEQR Findings Statement, the DEC has reviewed and considered the following documents:

- *Draft Environmental Impact Statement (DEIS) for the Hounsfield Wind Farm*, accepted February 27, 2009.
- *Final Environmental Impact Statement (FEIS) for the Hounsfield Wind Farm*, issued December 23, 2009.
- *Town of Hounsfield Planning Board SEQR Findings Statement*, adopted January 6, 2010.
- *Engineer's Report for: Wastewater Infrastructure Improvements on Galloo Island, Hounsfield Wind Farm Project, Jefferson County, New York*, May 2009, URS Corporation.
- *Joint Application for Permit for the Hounsfield Wind Farm Project*, January 2010, C&S Engineers, Inc.
- *Endangered/Threatened Species License Application, Supplemental Material*, Upstate NY Power Corp., February 10, 2010.

DEC is required to consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS in its SEQR Findings Statement. Under Environmental Conservation Law section 8-0109, DEC is required to choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process. Here, the findings begin by setting out the public need and benefits of the project. In the case at hand, the public need and benefits of the project themselves further environmental protection goals related to reduction of green house gases. The findings then set out the categories of resources affected by the project and any significant impacts that the project may have on them. Under each of these headings, DEC has set forth how such impacts have been avoided and if not avoided then mitigated to the maximum extent practicable. DEC then balanced and weighed the residue of impacts against the public need and benefits of the project or social, economic and other essential considerations.

DEC finds that the project has been designed to avoid, or where not completely avoided, minimize and mitigate adverse environmental impacts revealed through the EIS process. DEC also finds that the social, economic and other essential considerations underlying the project are considerable even when balanced against the residue of impact in the preferred alternative. The following facts and conclusions are provided in support of DEC's issuance of a positive SEQR Findings Statement.

### **1. Public Need and Benefits.**

The public need and benefits of the project are best understood with reference to the climate change and energy issues facing the State of New York.

- a. The project will help the State achieve its goal of reducing carbon emissions that contribute to climate change.

Global climate change is one of the most important environmental challenges of our time. There is scientific consensus that human activity is increasing the concentration of greenhouse gases (GHGs) in the atmosphere and that this, in turn, is leading to serious climate change. By its nature, climate change will continue to affect the environment and natural resources of the State of New York.<sup>2</sup> In response, Governor Paterson's Executive Order 24 establishes a goal to reduce GHG emissions eighty percent by the year 2050, and includes a goal to meet 45% of New York's electricity needs through improved energy efficiency and clean renewable energy by 2015.<sup>3</sup> Emissions of CO<sub>2</sub> account for an estimated 88% of the total annual GHG emissions in New York State. The overwhelming majority of these emissions — estimated at 250 million tons of CO<sub>2</sub> equivalent per year — result from fuel combustion. Overall, fuel combustion accounts for approximately 88.3% of total GHG emissions.

- b. The Project will help the State achieve the goals of the 2009 State Energy Plan.<sup>4</sup>

State Energy Law §6-104 requires the State Energy Planning Board to adopt a State Energy Plan.<sup>5</sup> The New York State Energy Plan contains a series of policy objectives. Among these objectives is to increase the use of energy systems that enable the State to significantly reduce greenhouse gas (GHG) emissions while stabilizing energy costs and improving the State's energy independence through development of in-state energy supply resources. The State Energy Plan recognizes that wind energy projects will play a role in fulfilling this objective.

Based on the State Energy Plan, other public benefits of the project include the following:

- i. Production and use of in-state energy resources can increase the reliability and security of energy systems, reduce energy costs, and contribute to meeting climate change and environmental objectives.
- ii. To the extent that renewable resources and natural gas are able to displace the use of higher emitting fossil fuels, relying more heavily on these in-state resources will also reduce public health and environmental risks posed by all sectors that produce and use energy.

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<sup>2</sup>New York State Department of Environmental Conservation. *Assessing Energy Use and Greenhouse Gas Emissions in Environmental Impact Statements*. July 15, 2009. <http://www.dec.ny.gov/regulations/56552.html>.

<sup>3</sup> New York State. *Executive Order No 24: Establishing A Goal To Reduce Greenhouse Gas Emissions Eighty Percent By The Year 2050 And Preparing A Climate Action Plan*. August 6, 2009. [http://www.state.ny.us/governor/executive\\_orders/xeorders/eo\\_24.html](http://www.state.ny.us/governor/executive_orders/xeorders/eo_24.html).

<sup>4</sup> State Energy Planning Board. *2009 State Energy Plan*. December 2009. <http://www.nysenergyplan.com/stateenergyplan.html>.

<sup>5</sup> State Energy Law §6-104(5) provides: "The state energy plan shall provide guidance for energy-related decisions to be made by the public and private sectors within the state. Any energy-related action or decision of a state agency... shall be reasonably consistent with the forecasts and the policies and long-range energy planning objectives and strategies contained in the plan....A state agency... may take official notice of the most recent final state energy plan adopted by the board prior to any final energy-related decision by such agency...."

- iii. By focusing energy investments on in-state opportunities, New York can reduce the amount of dollars “exported” out of the State to pay for energy resources.
- iv. By re-directing those dollars back into the State economy, New York can start to increase its economic competitiveness with other states that are less dependent on energy supply imports to support their local economies.<sup>6</sup>
- v. Increasing the percentage of energy derived from renewables will reduce the net retail price of electricity for all customers.
- vi. Renewable energy helps to reduce price volatility of energy supplies. Renewable energy contributes to the reduction of energy price volatility in the long-term.

## **2. Topography, Geology and Soils**

### *a. Potential Impacts.*

- 1) The FEIS project layout included a proposed a borrow pit on the northeast portion of Galloo Island, between WTGs 71 and 72, approximately 2.1 acres in size, with an additional 3 acres of affected land for processing, stockpiles, a loading area, and sediment basins. This activity would have required a permit from the DEC under Article 23 of the Environmental Conservation Law (ECL) – Mined Land Reclamation, however the Project Sponsor has revised the project to eliminate the need for this borrow pit.
- 2) Impacts to bedrock are anticipated from blasting during construction. Blasting of bedrock will be required for the construction of turbine foundations, portions of the electrical connection lines, and for construction of the slip channel. Bedrock that is excavated will be reused on the island as material for the roads and aggregate for the concrete batch plant. Given the proposed turbines’ distance from the mainland, there should be no blasting-related impacts to the mainland.
- 3) Soils at the proposed access roads and turbine locations generally do not present significant engineering or development constraints. Soil disturbance from all anticipated construction activities will total approximately 300 acres. Of this total, approximately 159 acres will be converted to built facilities (such as roads, crane pads and structures), while the remaining soils will be restored to pre-construction conditions and stabilized following completion of construction. Only temporary, minor impacts to topography and geology are expected as a result of construction activities.

### *b. Discussion and Findings.*

- 1) Because the Project Sponsor has eliminated the need for the proposed borrow pit, no further discussion of impacts related to this component of the project is warranted.
- 2) Project components have been sited to avoid or minimize, to the maximum extent practicable, temporary and permanent impacts to topography, geology, and soils. The topography of the island limits some of the locations where WTGs can be located. In particular, WTGs will be constructed at least 75 feet or more from the shoreline cliffs to ensure that sufficient counterweight is available to maintain the structural integrity of the foundation. Additional potential adverse environmental impacts associated with soil disturbance (erosion, sedimentation, compaction) have been minimized by siting turbines in relatively level locations where practicable and using existing roads for turbine

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<sup>6</sup> Ibid.

access wherever possible. The Project Sponsor has undertaken steps to minimize the amount of blasting required on the island. All necessary blasting will be subject to oversight by an environmental monitor. In addition, use of Best Management Practices in the revised blasting plan set forth in Appendix L of the FEIS will further reduce adverse impacts.

3) Excavated materials from all construction activities will be stockpiled during construction and subsequently reused on site for re-grading or re-vegetation. Topsoil will be segregated and replaced on top of existing ground surface. Geotechnical investigations will be conducted before construction to confirm DEIS/FEIS conclusions regarding depth to bedrock and surficial and bedrock geology, and to assist in finalizing foundation design. Blasting for the excavation of tower foundations will comply with the blasting plan. Impacts to soils will be further minimized by the following measures:

- Prior to the commencement of construction activities, erosion and sediment control practices will be installed and implemented in accordance with the requirements in the Stormwater Pollution Prevention Plan ("SWPPP") and SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001). Coverage under GP-0-10-001 must be obtained prior to the commencement of construction activity.
- Following construction, all temporarily disturbed areas will be stabilized and restored as specified in the SWPPP.
- Adherence to Best Management Practices to avoid or control erosion and sedimentation, stabilize disturbed areas, and minimize the potential for spills of fuels or lubricants, as set forth in the SWPPP.
- Contractors and subcontractors will be given copies of the final construction documentation and plans, which will contain all applicable soil protection, erosion control, and soil restoration measures.

### **3. Land and Land Use**

#### *a. Potential Impacts.*

1) Galloo Island consists of 1,966 acres, with approximately 1,936 acres currently under control of a single private owner. At its closest point the island is approximately 5.6 miles from the mainland of New York State. The current land uses are open space and recreational. Land use on the island involves intensive management to maintain an abundant deer population, including production and storage of feed. Upon obtaining all required approvals for the construction and operation of the project, the Project Sponsor will purchase the privately owned portion of the island and will become the sole landowner for the project. The project will permanently occupy approximately 159 acres of land on Galloo Island with structures such as WTGs, roads, housing and the operations center. The project will additionally impact approximately 141 acres of land temporarily for construction activities, laydown areas and the concrete batch plant.

2) The Lake Ontario shoreline facing Galloo Island includes rural, historic, tourism, residential and farm-oriented land uses. No physical changes to these mainland uses will occur as a result of the project. The Hounsfield Wind Farm is sited on an island in the midst of open water. This location



will allow the project to be seen at a number of locations along the lake shore, but its appearance will be greatly diminished in scale due to the distance of more than six miles (at most locations more than 10 miles) from the shore.

3) A small portion of Galloo Island is owned by the State of New York. This land along the southern end of the Island and near Gill Harbor is designated as State Wildlife Management Area. DEC does not actively manage these areas at this time. Based on the revisions to the project, no facilities or improvements will be placed on New York State Land on Galloo Island. There is also a small parcel controlled by the United States Government. No project facilities or improvements will be located on this parcel.

4) The isolated and remote location and lack of public docking facilities on the island has severely limited use of the publicly owned portion of the island. In recent years the public has used Galloo Island as a location for safe harbor for boats during severe storms and for shore dinners during charter fishing trips. During project operation, DEC does not expect that the project will impair these uses or that there will be additional impacts on regional land use.

#### *b. Discussion and Findings.*

1) Following the completion of construction, areas temporarily impacted by construction will be restored to the extent practicable. This will include returning land to preconstruction contours and reseeded, resulting in 141 acres of temporarily impacted land returned to pre-construction conditions.

2) The change in the visual setting to inventoried visual and cultural resources along the Lake Ontario shoreline as a result of the introduction of WTGs into the visual landscape will be offset by mitigation measures designed to enhance the public's enjoyment of these resources at one or more of these locations. These offset projects, which are proposed to enhance the visitor experience at nearby cultural sites, are discussed more fully in Section 13 below.

3) A *Management Plan for the Lake Ontario Islands Wildlife Management Areas*, developed by DEC Region 6 Fish and Wildlife staff in 2002, states that limited habitat management actions have been considered for DEC lands on Galloo Island. On these sites, the agency has considered establishment of perennial wildlife food and cover along with minor clearing and dressing to accommodate wildlife related use. DEC will revise this management plan to reference management activities conducted as part of the wind energy project to improve habitat, such as invasive species control and grassland habitat management.

4) Upstate Power has agreed to allow Gill Harbor, the North Pond area and, if available, the permanent slip, to be utilized as locations of safe harbor for boats during severe weather events.

### **4. Agricultural Resources**

#### *a. Potential Impacts.*

1) The majority of land on the island is not classified as prime farmland and is not suitable for agricultural production. However, the project development area contains approximately 164 acres of active agricultural lands located on the northeast portion of the island. Production includes

alfalfa, grains and hay which are used solely to support the abundant deer population on the island. Short-term construction related impacts to agricultural lands will include soil compaction due to vehicular traffic, clearing, grading, trenching and excavation.

2) Long-term impacts include the cessation of agricultural production to support the deer population which, if not actively maintained as grassland, would allow for succession to other cover types. Project components, primarily the re-located substation, will convert approximately 15.15 acres of active agricultural land to built uses.

*b. Discussion and Findings.*

1) Impacts to agricultural soils from construction activities will be minimized by restricting project equipment and access to designated construction boundaries. Soil erosion will be minimized through the implementation of erosion control measures detailed in the SWPPP referenced above. Topsoil within the designated construction boundaries will be stripped and segregated. Stripped topsoil will be stockpiled immediately adjacent to the work area and separated from other excavated materials to avoid mixing. Following construction, all disturbed agricultural areas will be de-compacted to a depth of 18 inches with a deep ripper or chisel plow. In areas where the topsoil is stripped, soil decompaction shall be conducted prior to topsoil replacement. Stones and rocks larger than 4 inches in diameter will be removed from the surface of the subsoil prior to replacement of topsoil. The topsoil will be restored to the original depth and contours to the maximum extent practicable. Any rock excavated for the burial of electrical connection lines or other uses in the agricultural fields will be removed from these areas or reused on site for foundation aggregate or road bed material.

2) Agricultural land that will not be permanently converted to built uses will be left fallow and may be available for future use either for agriculture or managed as wildlife habitat. The existing deer population on Galloo Island will be reduced to a more sustainable population level once intensive management is ended. Methods to control the deer population will be conducted in accordance with guidance from the DEC Region 6 Division of Fish & Wildlife.

## **5. Freshwater Wetlands and Protected Surface Waters**

*a. Potential Impacts.*

1) The project will have impacts on New York State regulated wetlands and wetland buffers, however the revised project layout presented in the FEIS has reduced the area of impacts from the original project layout presented in the DEIS. Total impacts to regulated wetlands from directly filling wetlands, or permanent cover type conversion from forested wetland to closely maintained, mowed habitat will total approximately 0.219 acres (this is a reduction of 0.381 acres from the DEIS layout). This includes the clearing and permanent conversion of 0.007 acres of emergent wetland and 0.047 acres of deciduous forested wetland, and the direct filling of 0.078 acres of emergent wetland and 0.087 acres of deciduous forested wetland. In addition, the project will also impact DEC-regulated wetland adjacent areas, including 1.130 acres of forested adjacent area (due to permanent clearing through these forest areas to build access roads and maintain electrical collection lines) and 0.695 acres of non-forested adjacent area. Adjacent area impacts will total 1.85 acres (this is a reduction of 2.007 acres from the DEIS layout). The Project Sponsor has agreed to provide acceptable compensatory mitigation for permanent impacts to freshwater wetlands. A

Conceptual Wetlands Mitigation Plan is included as Appendix E in the FEIS. Construction activities that will impact wetlands require permit authorization from the U.S. Army Corps of Engineers (USACE) and DEC under Article 24 of the Environmental Conservation Law— Freshwater Wetlands, and a Water Quality Certification under Section 401 of the federal Clean Water Act.

2) One stream on Galloo Island will be crossed by a road through the installation of a culvert. The stream carries a DEC “C” classification, indicating that it is not protected under ECL Article 15. The stream will be permanently impacted by the placement of three culverts at one location for development of an access road, resulting in a temporary impact of 26.6 linear feet (0.011 acre) and a permanent impact of 105.8 linear feet (0.037 acre). The current proposal for the three culverts includes burying one culvert below grade at the stream’s thalweg (the lowest point in the stream channel) to provide unrestricted flow at low water conditions. This activity requires permit authorization from the U.S. Army Corps of Engineers (USACE) and DEC under the Freshwater Wetlands Act, and a Water Quality Certification under Section 401 of the federal Clean Water Act.

*b. Discussion and Findings.*

1) In developing its facility design and site plan, the Project Sponsor has almost completely avoided wetland and stream impacts within the project footprint. The locations of project components were selected to avoid or minimize wetland and stream disturbance. The Project Sponsor has achieved such avoidance by locating WTGs away from wetlands, including forested wetlands, and crossing wetlands at the narrowest points wherever possible. The wetland delineation report prepared for the DEIS identified 361 acres of freshwater wetlands within the 1,966 acre area of Galloo Island, or approximately 18% of the surface area of the island. The proposed project footprint has avoided these areas entirely except for approximately 1/5 acre of wetland fill and forest conversion impacts, and less than 2 acres of wetland adjacent area impact. To further minimize the effects of construction activities on wetlands, the Project Sponsor will install sediment and erosion control measures as part of their construction activities (also see discussion under section on Water Resources - Surface Water Quality and Storm Water Management). The freshwater wetlands permits that are being issued require that these measures be implemented, inspected and maintained during construction. Permanent vegetation must be established on all disturbed areas once construction activities are completed. Compliance with these permit conditions will ensure that impacts to wetlands will be minimized to the maximum extent practicable. To mitigate permanent unavoidable impacts to wetlands that will result from project construction, the applicant will create 0.558 acres of wetland (a 1:2.5 ratio of loss to creation), and 3.65 acres of protected forested adjacent area (a 1:2 ratio of loss to creation). The mitigation as proposed will allow the project to meet requirements of the Freshwater Wetlands Act (Article 24 of the ECL) and 6NYCRR Part 663.

2) To protect stream water quality, perimeter erosion and sediment control measures will be installed around any area to be disturbed. This will include upslope diversion fences, downslope silt fences, or stake-less measures (where limited overburden soils are present) and construction of temporary sediment traps or permanent ponds where required. Burying one of the three culverts at the stream’s thalweg will benefit invertebrates and herpetofauna by allowing unrestricted passage during low water conditions.

## **6. Water Resources - Surface Water Quality and Storm Water Management**

### *a. Potential Impacts*

1) The Project Sponsor has proposed an offloading facility on the south side of the island, which will include a temporary offloading facility (ramp with fill, and associated dolphin piers), a permanent offloading facility (slip), a floating breakwater and three offshore mooring points.

The temporary offloading facility will be used during construction of the permanent facility. It will require 2,250 cubic yards of excavation and 4,300 cubic yards of fill, an articulating ramp, supports for the ramp, hydraulic pistons to raise and lower the ramp, and two free-standing dolphins to guide and secure vessels. The design life of the temporary facility will not exceed three years.

After the permanent offloading facility is completed, the temporary facility will be decommissioned. The fill and dolphins will be removed, and the articulating ramp will be relocated or, if appropriate, incorporated into the permanent offloading facility. The permanent offloading facility will be built to a 14 foot minimum water depth. The total volume of excavation required to create the slip is approximately 80,000 cubic yards, with approximately 70 percent of the excavation onshore (56,000 cubic yards), and 30 percent (24,000 cubic yards) offshore. Three temporary free swinging moorings will be deployed in the open water near the island. A 100 foot wide concrete apron will flank both sides of the slip structure. The apron will be sloped to capture surface water prior to it being discharged into Lake Ontario. A floating breakwater system will be used to inhibit or reduce short-term wave action. Construction of these facilities requires permit authorization from DEC under Article 15 of the ECL – Excavation and Fill in Navigable Waters, USACE, and the NYS Office of General Services (OGS) for operation of the docking facility affecting underwater lands of the State of New York.

2) A water intake pipe will be installed in the lake to provide for fresh water supply to the residential units and operations & maintenance facility. The water intake pipe consists of approximately 575 linear ft of 18-inch diameter ductile iron pipe. The pipe will be buried in an excavated trench approximately three feet below the lake bottom until it reaches a water depth of 15 feet. Beyond this point the pipe will lay on the lake bottom. At the inlet location, the pipe will be buried and terminated at a 6 foot diameter precast concrete pipe section set vertically. The top of the precast section will be set at the 30-foot intake depth (Elevation 213.0 ft).

The concrete batch plant, sewage and wastewater treatment plants will have no point source discharges to the wetlands, small stream or pond on Galloo Island. All sewage and waste water will be collected and treated through a sewage treatment plant prior to discharge to Lake Ontario. The Project Sponsor has designed a wastewater treatment system to accommodate the construction phase, when much more sewage will be generated, and transition to the long term operation and maintenance (“O&M”) phase, when the maximum number of people on site at any one time is estimated to be 50 people. The system will consist of a septic tank and intermittent sand filter and is depicted in Appendix B of the DEIS. The final design of the system will be reviewed by DEC as a permit condition under Article 17 of the ECL - SPDES permit for Private, Commercial or Institutional (P/C/I) Facilities. A conventional sewer pipe and manhole system will convey the discharge from the treatment area to a drop manhole near the cliff at the shoreline. From the drop manhole, buried underwater piping will continue out to the discharge point in the lake. Due to the relatively low flow rate for this system, the pipe will terminate with a single outlet point. The outlet

will consist of a 90-degree ductile iron elbow and a length of vertical pipe to terminate at Elevation 228.0 ft (15 ft of depth at low water level).

Construction of the on-land portions of the water intake and wastewater discharge lines will be by conventional methods, with the exception that much of the trench excavation will likely be in rock. Depending upon the degree of weathering of the rock, various methods may be required, but it is not expected that blasting will be required for the pipe trenches. Weathered rock will most likely be removed with a backhoe and standard excavation bucket. If necessary, a ripping tooth and/or a hoe ram will be used. In extreme situations, a rotary rock cutting head may be required on the backhoe. Underwater pipe excavation will be performed from one or more barges equipped with excavation equipment. Excavation will proceed from the shore to the inlet or outfall structure. A single equipment barge with an excavator will be used if a conventional bucket can penetrate the rock. More likely, a second barge with an excavator with a hoe ram will be required to break the rock so it can be removed with the other excavator.

3) Installation of turbine foundations and crane pads, with associated roads, buried interconnect line, and construction staging areas, together with permanent meteorological (met) towers, substation, workers' residences and operations & maintenance facility, will permanently occupy approximately 159 acres of land. In addition, approximately 141 acres of land will be subject to temporary disturbance resulting from construction activities, laydown areas and the concrete batch plant. Soil disturbance from construction activities can create conditions where stormwater runoff increases soil erosion and carries sediment into wetlands and streams. In accordance with the requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001), a SWPPP must be developed to address these concerns as well as post-construction stormwater runoff from permanently developed areas. Coverage under GP-0-10-001 must be obtained prior to the commencement of construction activity.

4) A number of activities proposed to be conducted during construction and operation of the project have been determined to be industrial activities as defined in 40 CFR §122.26(b)(14)(i-ix and xi) for purposes of coverage under the SPDES Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activities (GP-0-06-002). All general requirements of GP-0-06-002 are applicable to drainage areas discharging stormwater associated with any covered industrial activity. Sector-specific requirements included in Part VIII of the permit apply to the specific drainage areas in which activities are conducted, and the outfalls discharging stormwater from those drainage areas. The activities identified as meeting the criteria for industrial activities include:

- Maintenance, Cleaning and Fueling at Water Transportation facilities.
- Concrete Batch Plant.
- Land Transportation.

*b. Discussion and Findings.*

1) Construction of the offloading facility will include measures to minimize adverse impacts to surface water quality and aquatic organisms. Sediment basins will be constructed to allow suspended sediment to settle out of stormwater and water from dewatering operations before being

discharged. A *Conceptual Blasting Plan for Construction of the Galloo Island Offloading Facility* has been developed for implementation during in-water construction. The plan includes turbidity controls consisting of a floating turbidity barrier in Lake Ontario that will surround the excavation area in the lake. The barrier consists of a heavy duty mono-filament filter fabric tensioned, ballasted, and secured with a series of heavy, galvanized steel tension cables, ballast chains, and anchor chains. This system will help reduce any impacts from turbidity and also help, to some extent, to keep fish from the blasting area. Before blasting, the Project Sponsor will conduct an aquatic survey in conjunction with a detailed geotechnical investigation. These surveys and investigations will gather important baseline data as to the current condition (prior to blasting or construction), and this data will be used by the aquatic ecologist performing the monitoring of the blasting and excavation as well as by the Blaster-In-Charge in designing the final detailed blasting plan. The plan will conform to the State of Alaska Department of Fish and Game's *Blasting Standards for the Protection of Fish*<sup>7</sup> (Alaska Standards) to determine the exclusion zone for aquatic organisms that provides protection from excessive water pressure from blasting. DEC has determined that the method for calculating the exclusion zone contained in the Alaska standards will provide adequate protection from blast pressure to aquatic organisms. The Project Sponsor will submit a final blasting plan based on the aquatic survey and geotechnical investigation to the DEC for review and approval, as a condition of permit authorization. A post construction offshore aquatic survey will also be performed to ascertain the extent to which, if any, the underwater environment will have been altered by the blasting and construction of the offloading facility.

Other Best Management Practices that will reduce impacts from the construction of the slip include the following:

- Only daylight shots will be allowed. Many aquatic species are more mobile during at nighttime. Performing only daylight shots will reduce the potential for negative impacts, especially on species such as Walleye, which tend to feed in shallower water at night. This is also an added safety measure for the persons performing the blasting.
- Use of detonation cords will be limited to reduce the potential for large shock waves in the lake water.
- Blasts will have a 25-millisecond delay interval between decks of the same hole and large separations of holes with sequential separations of 9 milliseconds or greater; sequential timing intervals of less than 9 milliseconds will be avoided. The delay in the timing intervals between detonations of charges is done to reduce the additive effect on compression waves and particle velocities in order to stay within the Alaska Standards, which limit over pressures to 2.7 pounds per square inch (psi) and peak particle velocity to 0.5 inches per second (ips).

2) The water intake line will include a screen cap to prevent debris, fish, and other organisms from entering the intake. The cap will consist of a barrack frame which will support a finer screen with 2 millimeter maximum openings. The proposed configuration will limit through-screen velocity for combined fire protection and potable water maximum flows, to less than 0.5 feet per second. The sanitary system outflow will conform to State established standards, as detailed in the SPDES

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<sup>7</sup> Alaska Department of Fish and Game. *Blasting Standards for the Protection of Fish*. February 15, 1991. [http://www.habitat.adfg.alaska.gov/tech\\_reports/standards\\_techniques/akdofg%20blasting%20standards.pdf](http://www.habitat.adfg.alaska.gov/tech_reports/standards_techniques/akdofg%20blasting%20standards.pdf).

permit for a point source discharge. These permits establish criteria for both effluent limits and testing standards following the construction of the wastewater treatment system. Prior to lakebed disturbance associated with construction of the water intake and discharge lines, an aquatic survey will be conducted to gather important baseline data as to the current condition (prior to construction), and this data will be used by the aquatic ecologist performing the monitoring of the excavation. A post construction offshore aquatic survey will also be performed to ascertain the extent to which, if any, the underwater environment has been altered by the construction of the discharge line. Permit conditions will include seasonal restrictions for construction and turbidity limits for all underwater excavation.

3) The Project Sponsor will be utilizing and conforming to the applicable requirements of the State Pollutant Discharge Elimination System (SPDES) General Stormwater Permit for Construction Activities (GP-0-10-001), including development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP will include erosion and sediment controls and post-construction stormwater management practices. The requirements include submission of a Notice of Intent (NOI) form for the general permits. The submission of the NOI forms will obligate the Project Sponsor to comply with the terms and the conditions of the general permit.

4) To obtain coverage under MSGP, a complete Notice of Intent (NOI) must be submitted to the Department at least 30 days prior to commencement of industrial activities. Coverage may be modified to include activities/outfalls as they commence, and eliminate requirements when associated activities cease by submitting a Notice of Intent or Termination (NOI/T).

## **7. Groundwater**

### *a. Potential Impacts.*

The project will add only small areas of impervious surface, which will be dispersed throughout the project development area, and will have a negligible effect on groundwater recharge. Construction of the proposed project could result in certain localized impacts to groundwater. Project construction and operation on the island could impact groundwater particularly from accidental spills or releases of petroleum products during construction or operation.

### *b. Discussion and Findings.*

In accordance with best management practices the project will operate under an active Spill Prevention Control, Countermeasures and Containment Plan (SPCC) as per federal requirements for facilities (Appendix B of the FEIS) that store and handle petroleum products. DEC permits issued for project construction will include a condition that the SPCC be submitted to the DEC Region 6 Spills Engineer for review and final approval. All measures and requirements included in the approved plan will be enforceable conditions of DEC permits. Dewatering may be required to facilitate construction of foundations. If this is necessary the groundwater pumped from excavations will be handled in accordance with SPDES GP-0-10-001 requirements and the procedures detailed in the SWPPP (Appendix D of the DEIS).

## 8. Flora and Fauna

### *a. Potential Impacts.*

The DEIS included reports of studies to identify what types of flora and fauna exist on Galloo Island. An Ecological Resources Survey evaluated the types of habitat on the island and approximate acreage. Agricultural (164 acres), forested (613 acres), open field (783 acres), rocky shoreline (30 acres), wetlands (350 acres) and developed (29 acres) areas were identified. Impacts to wetlands and the rocky shoreline were avoided to the extent practicable. The project will permanently impact the following acres and percentage of island habitats: agricultural (15 acres, 9.3%), forested (66 acres, 10.8%), open field (72 acres, 9.2%), rocky shoreline (0.03 acres, 0.1%), wetlands (0.19 acres, 0.1%) and developed areas (4.7 acres, 16.3%). The permanent impacts from the construction of the project are approximately 159 acres which is approximately 8.08% of the total land area (1,966 acres) of the island.

Plant species were also noted in the various habitat types. Two state-listed threatened species were identified, Rock Cress and Troublesome Sedge. The Rock Cress was found along the cliffs on the north side of the island and will not be affected by the construction or operation of the project. Troublesome Sedge was ubiquitous across the island in most habitat types. Since individual plant locations were not identified it is likely some individuals will be impacted by the project. However, because this species is abundant throughout the island, the potential disturbance to a small number of individuals is not a significant impact.

Two invasive species were also found across the island, Canada thistle and pale swallow-wort. Canada thistle is an invasive species found in many locations in New York State. Pale swallow-wort is an invasive species of particular concern for several reasons. Currently the spread of pale-swallow-wort is fairly limited, although there are certain locations on the mainland that are impacted, including Robert G. Wehle State Park. Construction on the island, if not carefully done, could spread pale swallow-wort to uninvaded sites on the island and mainland.

The study also noted animals that were seen on the island, including deer, coyote, vole and other small mammals. Although some individual animals will be displaced during construction, and perhaps during operation, no significant impacts to other mammals will occur. The existing deer herd on Galloo Island is currently managed to maintain a population above the natural carrying capacity of the island. The Project Sponsor will cull the existing deer herd to prevent overcrowding on the island once active management to maintain the large deer herd ceases.

A number of amphibians and reptiles were noted on the island; however none were rare or unique. Turtle trapping was also done to identify turtles on the island. Following the original survey of limited trapping, DEC requested an additional study focusing on the potential presence of Blanding's turtles (a state-listed threatened species). The survey involved 21 nights of searches for evidence of Blanding's turtles nesting, and deployment of 300 trap-nights in habitat that would be good for Blanding's turtles. No evidence of Blanding's turtle on Galloo Island was found, and DEC has determined that no further surveys for this species are warranted. Other than incidental killing of a small number of individual amphibians or reptiles no significant impacts are expected to occur.



## *b. Discussion and Findings.*

In developing its facility design and site plan, the Project Sponsor has reduced impacts to flora and fauna, and has developed a plan to improve habitat on the island through implementation of a pale swallow-wort control program in open and forest understory areas. Compared to the original proposed layout presented in the DEIS, the revised project layout in the FEIS reduced permanent impacts to forested areas by approximately 13 acres through collocation of certain roads and the electrical connection system. The Project Sponsor has proposed a pale swallow-wort control plan (Appendix F of the FEIS). This goal of this plan is to prevent spread of this invasive species to uninvaded sites on the mainland, and reduce the areal coverage of this species on Galloo Island. The Project Sponsor will implement a mowing protocol to ensure that areas that are currently open field are maintained as grassland habitat to provide opportunity for use by grassland bird species. The currently managed deer herd will be culled in accordance with DEC Region 6 Fish & Wildlife guidance.

## **9. Avian species**

### *a. Potential Impacts.*

The DEIS and FEIS contain extensive surveys of avian species that use the island for breeding, nesting, feeding, or that migrate across the island during spring and fall migration periods, and include almost two full years of survey data, beginning in the Fall of 2007 through the Fall of 2009. Summaries of these reports and potential adverse impacts are discussed below.

### **Winter Bird Surveys**

#### ***2007-2008 Winter Bird Survey (DEIS Appendix P.2)***

The 2007-2008 Winter Bird Survey was conducted from November 28, 2007 – March 10, 2008. No prior winter bird surveys are known to have been conducted on Galloo Island. This survey identified raptor species, specifically Rough-legged Hawks, Red-tailed Hawks, Bald Eagles, Golden Eagle, Cooper's Hawk, Northern Harrier, Snowy Owl, Northern Strike and Northern Raven. No Short-eared Owls were observed. The 2007-2008 Winter Bird Survey suggests that Galloo Island is involved with winter raptor concentrations that periodically occur in the grasslands proximal to northeastern Lake Ontario. While large numbers of wintering waterfowl were documented in the waters surrounding the island, very little transit of any waterfowl species was observed crossing the island. Very few landbirds were observed on Big Galloo during the winter 2007-2008 surveys. However, the landbirds observed included the Horned Lark and Cooper's Hawk, both listed as species of Special Concern in New York State.

#### ***2008-2009 Winter Bird Survey (FEIS Appendix H)***

The 2008-2009 winter avian survey was conducted from November 12, 2008 – March 12, 2009. Bald Eagles were found in lower numbers than observed in the winter of 2007-2008. The winter 2008-2009 winter survey found high daily counts of one American Kestrel, two Cooper's Hawks, and two Northern Harriers. Two Snowy Owls were also observed. No Short-eared Owls were observed. Similar to 2007-2008, Northern Raven and Northern Shrike were seen in small numbers throughout this survey. Numbers of waterfowl were significantly lower during this survey than the

2007-2008 survey but the general species pattern seemed to be similar. The second winter bird survey (2008-2009) supports the conclusion reached in the 2007-2008 report that Galloo Island is involved with the winter raptor concentration phenomenon that periodically occurs in the grasslands proximal to northeastern Lake Ontario, but is variable from year to year. The surveys did document Northern Harrier, a New York State listed species, but in lower ratios than other nearby regions. There also appears to be significant annual variation in winter season waterfowl numbers on Galloo Island. Landbirds were relatively scarce in both winter surveys.

### **Nocturnal Radar Migrant Surveys**

#### ***Spring 2008 Radar Survey Report (DEIS Appendix P.4)***

During spring 2008, nocturnal radar surveys of bird and bat flight activity at the Hounsfield Wind Farm Project area were conducted. Radar surveys are used to count the number of flying migrants passing over the site, and how high they fly, but cannot be used to determine the species of the migrants, or whether they are birds or bats. The overall mean passage rate for the entire survey period was 624 (plus or minus 55) targets per kilometer per hour (t/km/hr). About 19 percent of the targets flew below 125 meters (the maximum turbine height) and varied by night from 4 to 48 percent. The percentage of targets flying below turbine height is very similar to most studies conducted at inland sites during spring mitigation periods. The results of the spring radar surveys fall within the range of other surveys conducted in the Northeast that used the same methods, data analysis procedures and equipment.<sup>8</sup> Since on all nights the targets were evenly distributed around the radar (within its range) it is likely that there is a broad front migration pattern rather than channeling to any part of the island.

#### ***Fall 2008 Radar Survey Report (DEIS Appendix P.5)***

Nocturnal radar surveys were also conducted during Fall 2008. Radar efforts were supplemented by ceilometer/night vision visual surveys. The overall mean passage rate for the fall survey period was 281 (plus or minus 10) t/km/hr. Hourly, nightly, and seasonal mean flight heights showed trends similar to other inland studies with varying topography. The results of the fall surveys fall within the range of other surveys conducted in the Northeast that used the same methods, data analysis procedures and equipment.<sup>9</sup> The fall study, similar to the spring study, indicates a broad front migration rather than channeling to any particular part of the island.

### **Avian Acoustic Survey**

#### ***2008 Acoustic Study of Avian Night Migration (DEIS Appendix P.7)***

Acoustic monitoring was conducted to determine if there are species on the island that would not be detected during visual observations. The study documented avian flight calls from the lower stratum of the atmosphere (< 700 m) for 10 hours a night beginning around sunset. The data revealed flight calls of two cryptic species that are difficult to detect in diurnal surveys, and which were not detected in other avian surveys on Galloo Island in 2008: Common Moorhen and Least Bittern. The data also suggest that there is gull activity over Big Galloo all night long during the breeding

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<sup>8</sup> New York State Department of Environmental Conservation. *Publicly Available Radar Results for Proposed Wind Sites in New York*. May 29, 2008. [http://www.dec.ny.gov/docs/wildlife\\_pdf/radarwindsum.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/radarwindsum.pdf) .

<sup>9</sup> Ibid.

season, and that it increases substantially toward dusk and dawn. These data along with the altitude and passage rate data from the diurnal movement study indicate that gulls might constitute a significant portion of the targets documented in the spring radar study.

### **Breeding Bird Surveys**

#### ***2008 Breeding Bird Study (DEIS Appendix P.3)***

A breeding bird study was carried out on Galloo Island during the spring and summer 2008. The breeding birdlife on Galloo Island is dominated by common species such as American Robin, Eurasian Starling, Yellow Warbler and House Wren – generally similar to the composition of common breeding species on the mainland. New York State-listed species detected in this study include three species listed as Threatened (Northern Harrier, Upland Sandpiper, Bald Eagle) and five species listed as Special Concern (Common Loon, American Bittern, Cooper’s Hawk, Common Nighthawk, Whip-poor-will). In addition, the Black-billed Cuckoo, Bobolink, and Canada Warbler are included on the USFWS’s 2002 Birds of Conservation Concern list for the Lower Great Lakes/St. Lawrence Plain region, which includes Big Galloo Island. No Federally listed birds were documented in the 2008 Big Galloo breeding bird survey.

#### ***2009 Breeding Bird Study (FEIS Appendix H)***

A second year of breeding bird surveys was conducted on Galloo Island in 2009. The following species detected in the 2009 breeding bird study are New York State-listed: Pied-billed Grebe (Threatened), Bald Eagle (Threatened), Northern Harrier (Threatened), Upland Sandpiper (Threatened), Common Loon (Special Concern), American Bittern (Special Concern), Cooper’s Hawk (Special Concern). The additional intensive surveying in the 2009 breeding season produced strong circumstantial evidence that Northern Harrier and Upland Sandpiper were involved with breeding activity on Galloo in 2009. Upland Sandpiper activity consistent with nesting was observed in a native grassland area in the vicinity of WTGs #2 and #3. While no young Upland Sandpipers were noted in summer 2009, the observation of territorial behavior of one adult in this area is strongly suggestive of breeding activity. No federally listed bird species were documented in the 2009 survey and no other New York State-listed grassland birds were documented except for Northern Harrier and Upland Sandpiper. In regard to other breeding birds, the 2009 survey indicated that most species showed very similar patterns of abundance from 2008 to 2009.

### **Diurnal Bird Movement Surveys**

#### ***2008 Diurnal Bird Movement Study (DEIS Appendix P.6)***

Diurnal bird movement surveys were carried out from late March through mid-November, 2008. The goal was to assess avian flight activity and flight characteristics (e.g., altitude & direction) over the island with particular attention toward the Little Galloo Island colonial waterbirds -- gulls, Caspian Tern, and Double-crested Cormorant. Flight activity of all species above 30 meters above ground level was noted. The 2008 study found that Little Galloo colonial waterbirds made regular feeding flights across Big Galloo Island.

### ***2009 Diurnal Bird Movement Study (FEIS Appendix H)***

The 2009 Diurnal Bird Movement Study used a protocol similar to that used in 2008 survey, with five survey points added in accordance with DEC recommendations. The additional data provided by the 2009 Diurnal Bird Movement Study showed passage rates over Big Galloo Island for Caspian Terns, Ring-billed Gulls and Double-crested Cormorants as peaking in early June through early July. The data from the 2009 study of diurnal bird movement over Big Galloo Island confirms the general avian flight patterns documented in the 2008 diurnal bird movement study and supports the idea that these are annual patterns. This includes the passage rates, flight altitudes, and temporal activity patterns of gulls, Double-crested Cormorants, and Caspian Terns that nest on nearby Little Galloo Island.

### ***Ecological Resource Survey - Avian Species Observations (DEIS Appendix N)***

Field surveys were conducted during various periods of time from November 2007 to September 2008. During this survey a total of 116 species of birds were observed in various habitat types. Most of the species were common and widespread throughout New York State, except for nine species. These include the Peregrine Falcon, Short-eared Owl, Bald Eagle, Northern Harrier, American Bittern, Sharp-shinned Hawk, Red-headed Woodpecker, and Cerulean Warbler. Bird species observed in the upland forested areas included Wild Turkey, Northern Flicker, Wood Thrush, Gray Catbird, Cedar Waxwing, Black-and-white Warbler, Rose-breasted Grosbeak and American Goldfinch. Avian species in the mixed forest wetland areas were Great Horned Owl, Downy Woodpecker, Eastern Wood-pewee, Blue Jay and House Wren. Most of the northern portion of the island contained these habitat types and avian species.

### **Summary of potential impacts.**

The studies described above were reviewed to assess the potential for adverse impacts to avian species from construction and operation of the Hounsfield Wind Farm. Adverse impacts can include direct mortality from construction activities or from blade strikes during operation; displacement from loss of habitat to built uses; or avoidance of habitat by species sensitive to the change in landscape (particularly the presence of tall structures).

### ***Impact to Shorebirds***

Galloo Island has higher shorebird usage than interior areas in New York State (except those proximal to inland shorebird staging areas like Montezuma National Wildlife Refuge) but lower than coastal sites along the eastern Lake Ontario shore. The level of shorebird activity on Galloo Island indicates that risk of shorebird collision with wind turbines is likely to be greater than at mainland wind project sites.

### ***Impact to Waterfowl***

The Hounsfield Wind Farm would appear to have lower risk to waterfowl than a nearby site like Wolfe Island, but would have greater risk than an inland wind energy site like Maple Ridge that has less waterfowl feeding flight activity. The latter project does have a local population of Canada Geese and Mallards, and a few of these species have been documented as fatalities there.

### ***Impact to Raptors***

Winter bird surveys confirmed that winter raptors aggregate on Galloo Island when food is available. Collision fatalities of raptors have been noted at wind projects in North America and Europe, however in North America most raptor fatalities have been documented in the western half of the continent. Based on periodic winter raptor concentration, collision risk (especially Rough-legged and Red-tailed Hawks) can be expected to be greater in the winter on Galloo Island than at mainland wind farms in New York State. On the other hand, the Hounsfield wind project may have lower overall raptor mortality during the migration periods (especially spring) than other sites in the northeastern coastal region of Lake Ontario. Based on the 2008 data, Galloo may have the highest usage of wintering Bald Eagles of any currently proposed or existing wind project site in New York State. On the basis of these observations, there may be a higher collision risk for Bald Eagles, particularly in February and March, than exists at other New York wind projects.

### ***Impact to Little Galloo Colonial Waterbirds***

Diurnal bird movement studies documented that the colonial nesters on Little Galloo Island make regular foraging flights over Galloo Island. Collision fatalities of Ring-billed Gulls might occur at the Hounsfield project if gulls continue to make foraging flights across the Island once the project is built. The potential for Caspian Tern collision fatalities was assessed by reviewing European studies of similar species near wind farms. One study in particular showed that a tern species of similar size to the Caspian Tern (Sandwich Tern) did experience collision mortality, though not at a level that threatened the viability of the nearby colony. The data and analysis provided in the FEIS indicate that the risk to Caspian Tern at this site would likely be less than for those species studied in Europe. Therefore this is not a significant impact. Based on the lower trans-island flight altitude noted for Double-crested Cormorants, it is not expected that collision mortality would be high for this species. The Double-crested Cormorant nesting population on Little Galloo is managed by DEC to be around 1,500 pairs.

### ***NY Threatened & Endangered Species***

Golden Eagle (*NY: Endangered*) - In addition to its threatened listing in New York State, this species is federally protected by the Bald & Golden Eagle Protection Act. The species is an uncommon migrant through the region and a rare winter and summer visitor. The Hounsfield wind project would introduce collision risk for the occasional Golden Eagle that may visit Galloo Island.

Short-eared Owl (*NY: Endangered*) - It is possible that in some years Short-eared Owls overwinter on Galloo as there is suitable habitat and, especially in high vole years, there is prey. This species would theoretically be at some risk of collision with wind turbines on Galloo during migration and during the breeding season, if the species did attempt to nest on the island, however wintering birds would be unlikely to be involved in wind turbine collisions because of their low-altitude foraging behavior. Construction of the project may also lead to a decrease potential breeding habitat, and may discourage some nomads from accessing the island, either for foraging or nesting.

Peregrine Falcon (*NY: Endangered*) - One individual was seen on several occasions in late summer and early fall 2008. The species is an uncommon migrant through the region and a rare winter and summer visitor. The Hounsfield wind project would introduce collision risk for the occasional Peregrine Falcon that may visit Galloo Island.

Bald Eagle (*NY: Threatened*) - In addition to its threatened listing in New York State, this species is federally protected by the Bald & Golden Eagle Protection Act. Bald Eagles were present year round on Galloo in 2008. There were no active nests or other evidence of breeding. The closest active nests are east of Sacket's Harbor, New York (> 20 km). The most likely collision risk appears to be during the late winter months when the ice-edge attracts numbers of eagles. The Hounsfield wind project would have a greater risk to wintering Bald Eagles than other currently operating or proposed wind energy projects in New York, but evidence suggests the numbers of eagles at risk would be low. To date there are no confirmed collision fatalities of Bald Eagles at wind projects, although there is one unconfirmed report of a Bald Eagle collision fatality at a wind farm near Lake Erie.

Northern Harrier (*NY: Threatened*) - Surveys conducted on Galloo Island produced evidence that Northern Harrier was involved in breeding activity on the island. The observation of three young Harriers on August 20-21 is evidence of successful 2009 breeding of this species on Galloo. This species would be at some risk of collision with wind turbines on Galloo. Construction of the project may also lead to a decrease potential breeding habitat, and may discourage some nomads from accessing the island, either for foraging or nesting.

Upland Sandpiper (*NY: Threatened*) - The Upland Sandpiper has a small breeding presence on Galloo and is anticipated to be a regular migrant in small numbers. Two individuals, presumed to be a pair attempting to breed, were documented in the grasslands at the southern end of the island during the 2008 breeding bird survey. Calls from a single bird (presumed to be a migrant) were recorded during late September in the acoustic monitoring survey. Additional surveys in 2009 produced evidence that Upland Sandpiper was involved in breeding activity on Galloo. While no young Upland Sandpipers were noted in summer 2009, the observation of territorial behavior of one adult in the southern grassland area is strongly suggestive of breeding activity. The Hounsfield wind project would introduce a new collision hazard in the vicinity of their breeding site. Construction of the project may also lead to a decrease potential breeding habitat, and may discourage some nomads from accessing the island, either for foraging or nesting.

### ***New York State Species of Special Concern***

Nine species listed of special concern in NY were documented as migrants, possible breeders, and/or occasional visitors to Galloo: Common Loon, American Bittern, Cooper's Hawk, Sharp-shinned Hawk, Common Nighthawk, Whip-poor-will, Redheaded Woodpecker, Horned Lark, and Cerulean Warbler. None were confirmed breeding on Galloo and only one or two individuals were observed except for Horned Lark (a flock of 10 birds were seen in winter bird study) and Common Nighthawk (6 migrants were seen in late May). These species could be subject to minor collision risk.

### ***Impact to Birds on the Mainland***

There is no evidence or theoretical grounds for indicating that the Hounsfield wind energy project will have any impact to bird populations on the mainland, including the Point Peninsula Bird Conservation Area.

*b. Discussion and Findings.*

DEC has determined that the project layout as proposed in the FEIS would result in a “take” of habitat that supports state-listed threatened or endangered grassland bird species, particularly the Short-eared Owl (*Asio flammeus*), Northern Harrier (*Circus cyaneus*) and Upland Sandpiper (*Bartramia longicauda*). The 2009 Breeding Bird Survey confirmed a 58-acre grassland habitat area at the south end of the island (the “southern grassland area”) is a likely nesting area for the state-listed threatened species Upland Sandpiper and potentially Northern Harrier. The Project Sponsor had originally proposed two turbines, WTG #2 and #3, together with associated access roads and electrical collection lines, within this habitat. The DEIS project layout shows that this would have permanently converted 2.91 acres of the southern grassland area to built uses. A revised layout presented in the FEIS was proposed that would have limited the area of disturbance to approximately 1.03 acres, by relocating access roads and electrical collection lines. DEC determined, however, that any permanent disturbance within this 58-acre southern grassland area would result in a “direct take” of Upland Sandpiper habitat. The Project Sponsor has submitted a revised layout that eliminates all development within the 58-acre southern grassland area, including WTG # 2 and # 3, and associated access roads and electrical collection lines. This revised 82-turbine layout minimizes of the risk for “direct take” of the southern grassland area habitat. DEC has additionally determined that WTGs proposed in close proximity to the southern grassland area would result in an indirect take of a portion of the grassland habitat by virtue of turbines (#1, #4, #7, and #8) placed adjacent to but not within the southern grassland. The Project Sponsor will provide mitigation for this indirect loss of 58 acres of Upland Sandpiper habitat on Galloo Island by providing 250 acres of suitable habitat, through easement or fee title, on the mainland. This mitigation acreage, together with conditions set forth in the Article 11 permit described below, will avoid, minimize or mitigate adverse impacts, and result in a net conservation benefit for the state-listed grassland bird species. Conditions of the Article 11 permit will include:

- If any active threatened or endangered bird species nests are discovered within a construction, ground clearing or grading site, the Regional DEC Natural Resources Supervisor will be notified and the nest site will be avoided until notice to continue construction at that site is granted.
- Seasonal limitations will be placed on construction activities in grassland areas (outside of the 58-acre southern grassland area) unless a DEC-approved biologist/ornithologist is present on site to monitor the presence of threatened or endangered bird species. All grassland habitat temporarily modified during construction will be restored to quality grassland habitat.
- Grasslands on the island will be mowed on a three year rotational cycle, to prevent their succession to shrubland or forest. Mowing will occur only after active nesting season by the state-listed species.
- An Invasive Species Control Program, in particular to curtail pale swallow-wort, will be carried out during the construction and operation of the wind farm. The goal of the plan is to reduce the areal coverage of pale swallow-wort in open areas and forest under-story by 20% per year each year for five years. By removing areas of pale swallow-wort and seeding with appropriate native vegetation the project will make more potential habitat areas available for mammal and avian species.

- If the “incidental take” of state-listed threatened or endangered species exceeds limits established in the Article 11 permit, the permittee will immediately consult with DEC to re-evaluate the conditions of the permit with regard to avoidance and mitigation measures.

In addition to measures identified to address mortality and/or displacement of state-listed species, the Project Sponsor has included a number of Best Management Practices in the design of the project to reduce overall avian collision risks. These Best Management Practices include the following:

- Guy wire supports to met towers are a known source of high collision risk to birds. The permanent met tower at the project will be a free-standing tower without guy wires. Five temporary meteorological (guyed monopole) towers are anticipated to be removed by 2011.
- WTGs and met towers are designed with a single large diameter tubular tower (steel monopole), rather than lattice tower, which reduces the perching opportunities for birds. WTGs will be painted in white, off-white or a pale color to be readily visible to migrating birds.
- To the extent practicable, electrical collection lines will be buried to reduce both habitat impacts and collision risks.
- Overhead lines will comply with Avian Power Line Interaction Committee Guidelines for insulation and spacing to reduce the impact on birds.
- Most species of nocturnal migrant songbirds are attracted (to varying degrees) to artificial lights. Unnecessary lighting will be turned off after evening activity hours of people residing on the island. Any required lighting will be shielded and pointed in the downward direction to minimize bird attraction.
- Fragmentation of habitat has been minimized to the extent practicable through the design and layout of the project features. Fragmentation has been further minimized by the redesigned layout of the project in the FEIS. The layout reduces habitat fragmentation by collocating electrical collection lines and access roads in a number of locations. The substation was also moved to the agricultural area located at the eastern edge of the island, resulting in reduced impacts to forested areas by 12.78 acres.
- The Project Sponsor will cull the existing artificially high deer population on Galloo Island, and maintain a deer herd that does not exceed the natural carrying capacity of the island. Carcasses resulting from culling will be removed so that they do not encourage congregation of raptors.

## **10. Bats**

### *a. Potential Impacts.*

In order to assess the effects of the project on the bat population of Galloo Island, preconstruction field monitoring was conducted in accordance with study protocol reviewed and accepted by DEC, and a bat risk assessment was prepared. The survey of bats on Galloo Island involved collecting data by two methods:



## 1) Acoustic monitoring.

This method uses monitors to listen for bat calls. Interpretation of calls recorded by these monitors can be used to estimate the level of bat activity and determine generally what types of bats are in the vicinity of the monitor. The study identified a number of bat species that use Galloo Island, including hoary bats and big brown bats. The acoustic monitoring detected 5.3 calls per detector per hour.

## 2) Mist netting.

This method uses nets to capture bats in flight for direct observation and identification. The mist netting effort found little brown bat and silver-haired bat.

Bat habitat included a colony in a barn on the island and various forested areas of the island. No state or federally listed bats were found on the island. Construction-related impacts to bats are anticipated to be limited to incidental injury and mortality (if any) due to construction activity and vehicular movement, habitat disturbance/loss associated with the clearing of forests and earth-moving activities, and displacement due to increased noise and human activities. None of the construction-related impacts described above will be significant enough to affect local populations of any bat species. There is some collision mortality risk to bats, particularly migratory tree bats, from operation of the project. Migratory bat activity on Galloo Island was found to be similar to other wind development sites in terms of the temporal and altitudinal distribution of bat activity. Most of the bat activity occurs near the ground and was highest during the summer months relative to the migratory season. Based on these studies, it was determined that fatality numbers at the project site are likely to be similar in composition but higher in magnitude (on a per turbine basis) compared to other wind projects sites in the northeastern United States.

### *b. Discussion and Findings.*

1) The FEIS project layout reduced the amount of forest impact through the collocation of roads and ECS, and relocation of the substation from a forested area to the agricultural land on the eastern end of the island. These changes reduced impacts to forest-areas by approximately 13 acres.

2) White Nose Syndrome (WNS) has drastically reduced local and regional populations of many of New York's bat species, particularly *Myotis* spp, and some of these may become candidates for becoming state-listed threatened or endangered species. Because of this decline in bat population, mortality from wind turbines is more of a concern now than what was the case just a few years ago before the presence of WNS. The combined effect of WNS and mortality from wind turbines warrants continued and vigilant monitoring to determine the overall impacts to all bat species in New York.

## **11. Post-construction monitoring and Operational Management**

The Project Sponsor will be required to prepare a Post-Construction Monitoring Plan for Birds and Bats. A draft plan was included as Appendix I of the FEIS. The final plan will be developed in consultation with DEC and the United States Fish and Wildlife Service that meets conditions of DEC permits required for development of the project. The two basic components of the plan are a three-year collision fatality survey and a three year bird habituation and avoidance study. The

fatality study will encompass searches for bird and bat carcasses at turbines to estimate mortality. The habituation and avoidance study will recreate the pre-construction diurnal movement and breeding bird surveys to estimate how the presence of turbines impacts the use of the area by birds. A post-construction winter raptor study will also be done to compare winter raptor use of the island to baseline data collected and included in the DEIS/FEIS. Assessments of impacts related to turbine-caused bat mortalities will also recognize that White-nose Syndrome (WNS) has resulted in a serious decline of certain bat species in New York State. The final plan will include a requirement that any if mortality of any bird or bat species exceeds pre-construction estimates, or if there is mortality to any state- listed threatened or endangered species, the Project Sponsor will consult with DEC to determine if additional study and/or mitigation are required. Such measures may include:

- Research to identify the factors contributing to the mortality (e.g., weather conditions, time of year) and if this was an isolated incident or a pattern of risk.
- Increase survey frequency.
- Increase reporting frequency.
- Additional behavior or movement studies, above what was detailed in the Post Construction Monitoring Plan, depending on the species involved.
- Additional offsite mitigation for grassland bird species or Bald Eagle.
- Consultation with DEC to determine if some of the following operational controls such as, early alert, repellent techniques, blade feathering or turbine shutdown will be required. These operational controls will be considered after exhausting reasonable efforts to determine the cause of mortality and the establishment of a pattern of risk, as determined through discussion with DEC, and determining that other actions cannot sufficiently reduce the magnitude of the impact. In such circumstances, the Project Sponsor may be required to implement technically and economically feasible operational controls to reduce the identified impacts. Such operational controls may include, but would not be limited to, reducing operations at certain times of day, under certain meteorological conditions, or other periods of time identified as high risk; increasing the cut-in speed, or feathering turbine blades during periods of high risk for bats.

## **12. Fish and Aquatic Species**

### *a. Potential Impacts.*

Lake Ontario is an important habitat for a number of fish and aquatic species, and provides sport fishing for walleye, smallmouth bass, largemouth bass, brown trout, Chinook salmon, Coho salmon, Atlantic salmon, northern pike, and a stocked lake trout population. The most significant concerns for impacts to fish and aquatic species from construction of the Hounsfield wind farm would arise during construction of the temporary and permanent boat slips, water intake line and wastewater discharge line. Details regarding construction of these project components are described in Section 6 of these findings.

Located near Galloo Island are several Significant Coastal Fish and Wildlife Habitats. In particular, the shoals near Stony Island are regionally significant for lake trout and smallmouth bass spawning. These habitats will not be impacted by the construction or operation of the wind generation project on Galloo Island. Potential impacts associated with the proposed underwater transmission cable route through this area will be assessed in the Public Service Law Article VII process before the Public Service Commission.

*b. Discussion and Findings.*

Potential impacts to fish and other aquatic species will be reduced by construction and operational Best Management Practices described in Section 6 of these findings.

### **13. Visual, Historic and Cultural Resources**

*a. Potential Impacts.*

1) The DEIS and FEIS provided analyses of the potential for change in the visual setting according to the DEC visual policy. The most significant visual impacts anticipated resulting from construction and operation of the project are the foreground views from the island itself or near island views from Lake Ontario. Turbines that are close to the viewer (i.e., less than 1.5 miles), will heighten a project's contrast with the landscape in color, line, texture, form, and especially scale. Persons observing Galloo Island from coastal vantage points will view the project from far background distance (5.6 miles and greater). Turbine structures will decrease in visibility, clarity and perceived importance with increasing distance away from the turbines. The viewshed analysis demonstrates that views of the project will be substantially limited at shoreline locations. Nonetheless, this project will result in a change to the visual setting on the horizon from vantage points along the Lake Ontario shore, including scenic and historic resources of statewide significance.

In the assessment of visual impacts to inventoried resources, DEC relied primarily upon comments from the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), the SHPO, the New York State Department of Public Service (DPS), the Town of Hounsfield and the Village of Sackets Harbor. OPRHP identified concerns for potential impacts on six state park facilities. These were identified as Wehle State Park, Chaumont Boat Launch, Westcott Beach, Sackets Harbor Battlefield, Stony Creek Boat Launch, and Southwick Beach State Park. Of the six park locations identified, the visual analysis in the DEIS identified only five as having potential views of the wind farm (Stony Creek Boat Launch was determined to not have visibility to the proposed project).

In making an assessment regarding visual impacts, DEC policy requires staff to verify the potential significance by comparing the “qualities of the resource” and “the juxtaposition...of the proposal as the guide for the determination.” The example used in the policy is that of a cooling tower plume interfering with the view from a state park overlook.<sup>10</sup> Using this criterion, the visibility of the project to the Chaumont Boat Launch would not be considered an adverse impact because the main function of this facility is boat access not necessarily related to the quality of the visual experience at that location. The other four park resources identified by OPRHP (Wehle State Park, Westcott

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<sup>10</sup> Ibid.

Beach, Southwick Beach, and Sackets Harbor Battlefield) all have one or more features where the visual environment is an important element of the visitors' experience. Westcott Beach (12.4 miles) and Southwick Beach (13.3 miles) provide for visual overlook and interpretation (though it should be noted that at Southwick Beach, the overlook already provides a direct view to the Nine Mile Point Nuclear Power Plant). Robert Wehle Park includes two overlook locations with a relatively close mainland view (5.6 miles) to Galloo Island. Sackets Harbor Battlefield State Historic Site includes a view to Galloo Island, although from a far background distance of more than 12 miles. In addition to the resources identified by OPRHP, the SHPO, the Town of Hounsfield and the Village of Sackets Harbor also identified the historic Madison Barracks complex as an inventoried visual resource with a direct, albeit distant, view to Galloo Island (13.4 miles).

DEC concurs that, at the inventoried resources identified above with visibility to the project, the change in the visual setting created by the project may detract from public enjoyment of those features where the view to the horizon on Lake Ontario is an important component (overlooks and historic settings). This impact is most pronounced at the Sackets Harbor Battlefield Historic Site and Madison Barracks. These sites use the existing vista looking out to Galloo Island as part of their historic museum programs. The visible turbine field will be an additional modern visual element in the background of this existing vista. Although this feature will alter the landscape on the horizon, it is not the first, and would not be the only, modern alteration that has occurred at these historic settings. The view from these locations includes other modern elements such as modern watercraft on the lake, residential development across Black River Bay in the Town of Brownfield, with both daytime and nighttime visibility, new residential development contiguous to the battlefield site including nighttime street lighting and modern transportation features within the battlefield.

DEC also recognizes that the proposed wind power project development differs from other development activity in that the turbines are required to be removed, and the resulting views to Galloo Island will revert to its prior condition, if and when the project is decommissioned. In this sense, the change in visual setting may be considered long-term – possibly twenty to forty years, but temporary when considered against the full sweep of time that this historical viewshed has existed.

The Galloo Island Lighthouse was also identified as a listed historic resource which will experience a direct foreground view to the project. While it is clear that the viewshed at the lighthouse site will be dramatically altered, the site is currently in private ownership, does not have approved public access, and is not located on any designated scenic transportation routes, other than recreational boat traffic on the lake. Therefore, although the magnitude of the change in visual setting is large at this location, the impact to the public is very small, especially when compared to the number of visitors to mainland resources such as the Sackets Harbor Battlefield and the Madison Barracks sites.

2) Impacts to historic resources are closely related to the visual impact assessment, since properties listed or eligible for listing in the State and National Registers of Historic Places are included on the list of "inventoried" visual resources in the DEC visual policy. The June 23, 2009 SHPO letter (FEIS Appendix Q) determined that approximately 238 resources listed or eligible for listing on the State or National Registers of Historic Places are located within the area surveyed in accordance

with that agency's guidelines.<sup>11</sup> Within the survey area, SHPO identified several key receptors where visual impacts should be carefully assessed. These include the Galloo Island Lighthouse Complex, the Sackets Harbor Battlefield, the Madison Barracks Complex, and the Sackets Harbor Village Historic District. The SHPO indicated that the visual assessment provided in the DEIS sufficiently assessed these resources. The SHPO's assessment concluded that, although the full extent of potential impacts for the proposed undertaking cannot be assessed absent the as of yet unsubmitted survey data for the transmission line portion of the project, sufficient information does exist to determine that under 36CFR Part 800.5(v) the undertaking will have an adverse effect on cultural resources.

3) A Phase IB Cultural Resources Investigation involved surface inspection and shovel testing in selected portions of the project area designed to meet the requirements of the SHPO for surveys of archeological resources. No prehistoric artifacts were found on Galloo Island. Four historic sites were identified and all were associated with the discovery of partial structures or foundations. The proposed project layout avoids three of these sites. One of the sites is at the site of the proposed permanent boat slip; therefore this site cannot be avoided by project re-design.

*b. Discussion and Findings.*

1) The Project Sponsor has explored means to minimize visual impacts including assessing potential options for camouflage or disguise including a review of different colors for the WTGs, and minimizing FAA-required lighting. However, direct mitigation of visual impacts from the project is difficult, particularly at this project site which, as the SHPO has pointed out, is unlike previously evaluated wind farm projects, being sited on an island in the midst of open water, with a much higher visibility potential than previously reviewed mainland based projects. DEC's Visual Policy states that after all traditional mitigation strategies have been employed staff should pursue offsets and decommissioning to help achieve the balancing required by SEQR. Correction of an existing aesthetic problem identified within the viewshed of a proposed project or enhancing the setting may qualify as an offset or compensation for residual project impacts, after traditional mitigation measures have been applied. The notion here is to improve the experience of visitors at these sites by enhancing their visual and interpretive elements.

Since practicable means to further mitigate these distant views have not been identified, DEC has evaluated potential visual offset mitigation proposals provided by OPRHP and the Town of Hounsfield/Village of Sackets Harbor. These are included in Appendix Q of the FEIS. DEC has determined that the following proposed offset measures will create a net visual improvement, will add to the visitors' experience and appreciation of the resources, and are therefore the preferred mitigation offsets.

- Sackets Harbor Battlefield State Historic Site. OPRHP recently acquired 40 waterfront acres of the original War of 1812 Battle of Sackets Harbor battlefield site. Plans are underway to open the new property to visitors and to provide improved access and interpretation. A new interpretive plan to incorporate the new acquisition into the existing Battlefield storyline and define appropriate interpretive media will be developed. New walking trails, with design and fabrication of new directional and interpretive signage, will be required. A new, permanent

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<sup>11</sup> New York State Historic Preservation Office. *New York State Historic Preservation Office Guidelines for Wind Farm Development Cultural Resources Survey Work*. March 8, 2006. <http://www.nysparks.com/shpo/environmental-review/documents/CulturalResourceSurveyGuideWindProjects.pdf>.

archaeology exhibit will be developed in the Historic Site's farmhouse to chronicle the archaeology work that has been conducted at this archaeologically rich property over the past decades. Visitors to the Sackets Harbor Battlefield State Historic Site will be able to enjoy an improved experience at the battlefield notwithstanding the far distant view of the turbine field on Galloo Island.

- Pickering Beach Museum. Located adjacent to the Sackets Harbor State Historic Site near Lake Ontario, the Museum is in the Village Core National Register Historic District, Sackets Harbor Heritage Area and Sackets Harbor Local Waterfront Revitalization Program area. With the assistance of New York State and the Sackets Harbor Historical Society, the Village completed a major restoration of the house. However, there was not sufficient funding to complete renovation of the cottage and much needed work on the extensive collection. Completion of this project would improve the visual setting at the Battlefield site by restoring a deteriorated historic structure and enhance the interpretive experience for visitors.
- Robert G. Wehle State Park. Project work would include improvements to picnic areas and amenities along the scenic bluffs on Lake Ontario, trail improvements, attention to ADA requirements, and directional and interpretive signage. New interpretive themes to be addressed and interpreted include the extensive military history of the park, geology, natural history, and resource management (in particular invasive species such as swallow-wort). Here again, visitors to Robert G. Wehle State Park will be able to enjoy an improved visitor experience along the shoreline of the park notwithstanding the far distant view of the turbine field on Galloo Island.
- Stone Hospital at Madison Barracks. Located overlooking Lake Ontario (with a direct line-of-sight to Galloo Island), the Stone Hospital is in the Madison Barracks National Register Historic District, Sackets Harbor Heritage Area and Sackets Harbor Local Waterfront Revitalization Program area. With funding from New York State and private foundations, significant progress has been made to restore the exterior masonry structure and the imminent threat of collapse of this historic building has been averted. But substantial work still remains, including replacement of the roof and complete renovation of the interior. When completed, the Stone Hospital will house a Military Heritage Center which will provide an enhanced interpretive experience at this historic structure within the viewshed.
- Westcott Beach State Park. The park's scenic overlook provides a commanding and sweeping view of Lake Ontario. The existing panoramic interpretive signage that interprets this view is proposed to be re-done to include the Hounsfield Wind Farm as a new feature in this viewscape. Upgrades to the landscape and hardscape at this site, plus continuing maintenance such as tree trimming, will improve and preserve public access to this scenic overlook, thereby improving the net visual and interpretive experience at the site.

DEC will require, as a condition of permits issued for construction of the wind generation project, that the Project Sponsor develop a visual impact offset mitigation plan that includes the offset mitigation activities identified above, or an alternative of greater or equal significance that meets DEC Visual Policy qualifications for visual offsets.

2) Because the project requires permits from the U.S. Army Corps of Engineers (USACE), the project is subject to review under Section 106 of the National Historic Preservation Act. As stated

above, the June 23, 2009 SHPO letter (FEIS Appendix Q) determined the undertaking will have an adverse effect on cultural resources. Based on SHPO's determination that the project may result in an adverse effect, the Project Sponsor will enter into a Memorandum of Agreement ("MOA") with SHPO and the USACE as part of the Section 106 process. With respect to visual impacts to historic structures/properties, as stated in the SHPO letter, direct impact mitigation of impacts to these resources is not feasible. Therefore, alternative offset mitigation is proposed. The Project Sponsor is proposing to provide funding for one or more of the following projects suggested by the Town (Included in Appendix Q of the FEIS) to be included in the MOA prepared pursuant to the Section 106 process:

- Renovation and restoration of National Register of Historic Places Listed ("NRL") District Schoolhouse #19 located in the Sulphur Springs Cemetery, Hounsfield, New York.
- Repair and restoration of the NRL Sulphur Springs Cemetery, Hounsfield, New York.
- Repair and restoration of the Lakeside Cemetery, Hounsfield, New York.
- Repair and restoration of the Military Cemetery, Village of Sackets Harbor, New York.
- Upgrades to historic exhibits at the East Hounsfield Library, Hounsfield, New York.
- Production and installation of historic markers at historic locations in the Village of Sackets Harbor and Town of Hounsfield, New York.
- Renovation and preservation of the Pickering Beach Cottage Museum, Hounsfield, New York.
- Restoration and preservation of historically significant exhibits for the Pickering Beach Cottage Museum, Hounsfield, New York.
- Repair of the Sackets Harbor Bank Building, Sackets Harbor, New York.
- Rehabilitation and restoration of Stone Hospital, Sackets Harbor, New York.

DEC notes that this discussion of mitigation related to Section 106 above is appropriate under SEQR only for the limited portion of the project subject to SEQR review, and does not result from a full analysis of impacts associated with the entire undertaking, i.e., the transmission line. Any further discussion of avoidance or reduction of adverse effects can only be undertaken after the full survey information for the proposed transmission portion of the undertaking is submitted to the parties involved in the Section 106 process and the full scope of the affects on historic/cultural resources is assessed for the entire undertaking.

3) A letter from SHPO, dated April 8, 2009 (FEIS Appendix Q), recommended that each of four identified archeological sites be avoided, as they may contribute to the ability to interpret the history of the island, but if at any of these sites avoidance is not feasible, the SHPO recommended that a Phase II investigation be conducted. Three of the four sites have been avoided. DEC will require a Phase II investigation be conducted at the proposed boat slip location prior to construction as a condition in DEC permits for the project. In addition to providing the basis for historical off-set

projects, the MOA will contain an Avoidance Plan which will include a number of measures to ensure protection of archeologically sensitive resources such as:

- Temporary fencing will be installed demarking a 50-foot buffer from the archeological sites and marked with signs indicating “Sensitive Area/No Access”.
- Final construction plans will include a notation regarding the avoidance measures for the archeological areas.
- The preconstruction meeting will include a discussion regarding the avoidance measures for the archeological areas.
- The SHPO Human Remains Discovery Protocol will be included in the construction plans for the Engineer-in-Charge in the unlikely event that human remains are encountered during construction.
- The SHPO Plan for Unanticipated Discoveries will be included in the construction plans for the Engineer-in-Charge.

#### **14. Decommissioning**

##### *a. Potential Impacts.*

In its findings for this project, dated January 6, 2010, the Town of Hounsfield Planning Board determined that the potential for adverse impacts exists if the project is not completed, is abandoned, or reaches the end of its useful life. The Project Sponsor has provided a decommissioning plan that is set out in Appendix U of the DEIS. No changes were made to it in the FEIS. DEC finds that decommissioning plan presented in the DEIS is adequate to restore the site at the end of the useful life of the project.

#### **15. Mandated FAA Lighting**

##### *a. Potential Impacts.*

While aviation obstruction lights on communications towers are common visible nighttime elements, the high concentration of red flashing lights over a relatively large area is somewhat unique to wind farms. Aviation obstruction lighting is relatively low intensity and does not create atmospheric illumination (sky glow); however a number of red lights flashing in unison will be conspicuous and discordant with the current dark nighttime conditions at this point on the horizon. The magnitude of this impact will depend on how many lighted turbines are visible and existing ambient lighting conditions present within any particular view. According to the DEIS, twenty-three of the WTG for the project will be constructed with the FAA mandatory lighting. This represents turbines along the outer perimeter of the island which are proposed to be spaced no more than a half mile apart. The FAA mandated lighting will have a 2,000 candela intensity, the minimum intensity allowed by the FAA. All FAA lighting will be red and will flash simultaneously to minimize disturbance to the night landscape. Visual simulations provided in the FEIS demonstrated that the FAA lighting will be visible along much of the coastline depending on the season and meteorological conditions, though the lights will be distant and a background feature.



The FAA lighting would also be visible from certain locations within the five New York State Parks in the region.

*b. Discussion and Findings.*

All lighting (including turbines and the helipad location) will be kept to the minimum recommended by the FAA. New FAA guidelines do not require daytime lighting for turbines painted “bright white”, and allow for nighttime lighting of perimeter turbines only, at a maximum spacing of 0.5 mile. Medium or low intensity pulsing red lights will be used at night, rather than white or red strobes, or steady burning red lights. Lighting at the substation will be kept to a minimum. In comparison to existing wind power projects, it should be noted that nighttime visibility/visual impacts by the project may be reduced due to new FAA guidelines (issued on February 1, 2007) that result in fewer aviation warning lights than required on earlier projects.

## **16. Air Resources**

*a. Potential Impacts.*

Temporary impacts to air quality could occur during project construction as a result of both emissions from temporary generators, the concrete batch plant and from the generation of fugitive dust during earth moving activities and travel on unpaved roads. These impacts are anticipated to be minor, temporary, and localized.

*b. Discussion and Findings.*

A dust control plan will be implemented to minimize the amount of dust generated by construction activities. In addition, the Project Sponsor will be obtaining the requisite air permit from the DEC for operation of the temporary diesel generators to be used as the electrical power supply on the island during construction. These will remain on the island as an emergency back-up power supply. The Project Sponsor will obtain generators manufactured after 2007 with modern emissions controls which meet current air quality emissions standards.

## **17. Noise**

*a. Potential Impacts.*

The proposed project area is located approximately 3.5 miles from Stony Island, to the east of Galloo Island in Lake Ontario, and 5.6 miles from the nearest mainland shoreline, Point Peninsula in the Town of Lyme. In response to comments on the DEIS, a noise propagation study was conducted to assess potential noise impacts at the nearest shoreline locations including South Shore Road Extension in Lyme, Beach Road in Lyme, Flanders Road in Lyme, Fox Island Road on Fox Island, Pillar Point in Brownsville, the shoreline of Stony Island, and the on-island Worker Housing area. The study is included as Appendix N of the FEIS. The modeling results indicated that the maximum noise level resulting from operation of the wind turbines would be 32.5 dBA at the closest shoreline location (South Shore Road Extension ), 40.6 dBA at the shore of Stony Island, and 58.1 dBA at the location of the proposed worker housing complex.

Because the study did not include field measurements of ambient noise levels at these locations, DEC agreed that ambient noise levels developed by field measurements at a similar offshore wind project (the Cape Wind Project) could be used to estimate ambient sound levels at the five shoreline receptors. The ambient Leq sound level selected for this analysis was 50.7 dBA. Using this ambient noise level as the basis for analysis, the study concluded that at the closest shoreline location (South Shore Road Extension), the additive effect of the 32.5 dBA noise level generated by the wind turbines on Galloo Island would result in a noise level of 50.8 dBA, or an increase of 0.1 dBA. Similarly, at the shore of Stony Island, the additive effect of the 40.6 dBA noise level generated by the wind turbines on Galloo Island would result in a noise level of 51.1 dBA, or an increase of 0.4 dBA. The predicted maximum outdoor sound level at the worker housing area on Galloo Island is 58.1 dBA, which is in compliance with the OSHA action level of 85 dBA. An outdoor sound level of 58 dBA is typical for an urban area and does not interfere with outdoor activities at the worker residential buildings.

The study also modeled the levels of low-frequency noise expected from the project and determined that at the Stony Island and shoreline locations, there will be no perceptible infrasound (20 Hz and below) resulting from operation of the Hounsfield wind farm.

#### *b. Discussion and Findings.*

DEC has received comments disagreeing with the use of the 50.7 dBA ambient noise level from the Cape Wind project at the shoreline locations chosen for this study. In particular, commentators have pointed out that under certain atmospheric conditions, the wind speed at turbine blade height may be fast enough to operate the turbines (thus generating turbine noise) while surface winds may be slight or nonexistent, resulting in a lower ambient noise level. It has been suggested that under these conditions, 25 dBA may be more representative of night-time ambient noise levels. In fact, Table 1, *Common Indoor and Outdoor Sound Levels*, included in this study, shows 25 dBA as what one would experience in a quiet rural area – nighttime, or an empty concert hall. Using a standard noise combination calculator,<sup>12</sup> if a theoretical ambient sound level of 25dBA were chosen for this analysis, the combined effect of the wind turbine noise level (32.5 dBA) that would be heard at the closest shoreline location (South Shore Road Extension), together with an ambient of 25 dBA, would be a noise level of 33.2 dBA, or an increase of 8.2 dBA above the ambient. Despite the theoretical 8.2 dBA increase under this scenario, it should be noted that the resulting sound level of 33.2 dBA is shown in the table as somewhere between a quiet bedroom at night and quiet suburb – nighttime (also note that in the DEC noise guidelines, this level is equivalent to “library (soft whisper)” and “very quiet.”<sup>13</sup>) Furthermore, DEC noise policy does not state, contrary to common interpretation, that an increase of 6 dBA above the ambient sound level is an absolute threshold for determination of adverse impact. In the discussion of the increase in dBA in a non-industrial setting, the policy states, “In non-industrial settings the SPL (the “sound pressure level” or noise level resulting from combination of all noise sources) should probably not exceed ambient noise by more than 6 dBA at the receptor. An increase of 6 dBA may cause complaints. There may be occasions where an increase in SPLs of greater than 6 dBA might be acceptable. The addition of

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<sup>12</sup> Spirax Sarco Inc., Blythewood, SC. *Combined Noise Source & Distance Calculator*. [http://www.snapfour.com/CombinedNoise\\_Calculations.aspx](http://www.snapfour.com/CombinedNoise_Calculations.aspx).

<sup>13</sup> New York State Department of Environmental Conservation. *Assessing and Mitigating Noise Impacts- Program Policy # DEP-00-1*. February 2, 2001. <http://www.dec.ny.gov/permits/6224.html>.

any noise source, in a nonindustrial setting, should not raise the ambient noise level above a maximum of 65 dB(A).”<sup>14</sup>

Wolfe Island Wind Farm, which has been in operation since June 2009, employs a noise complaint management protocol to investigate and mitigate noise-related complaints related to operation of the wind farm. This protocol includes an interview with the affected individuals, recording of related weather data at the time of the complaint, and mechanical evaluation of the turbines likely to be the cause of the noise complaint. If the problem persists, sound measurements are taken to compare noise levels at the receptor site to the Ontario action level for wind-generator noise at receptor locations (40 dBA). Since the time this facility commenced operation, two noise complaints have been received by the project operator, both from residents in close proximity to wind turbines. The wind farm operator has not received noise-related complaints from the mainland in Kingston, Ontario, or from the American side of the St. Lawrence River. These mainland locations are 4-7 kilometers from the operating windfield, with mostly water surface in between.<sup>15</sup>

On the basis of modeling projections prepared for this project, and current experience with a similarly-sited wind project in the region, DEC finds that the potential for a significant increase in noise levels at the receptor locations on the mainland, even assuming a theoretical “worst case” scenario that might occur for limited periods of time under a specific set of atmospheric conditions, is not significant and does not warrant further evaluation or mitigation at this time.

## **18. Alternatives**

The purpose of an alternatives assessment is to explore project alternatives that either avoid or reduce identified environmental impacts. For the Hounsfield wind project, the primary impacts of concern are visual and potential mortality to avian and bat resources. The DEIS/FEIS included a description and evaluation of the “no action” alternative, alternative project design/layout, alternate project scale and magnitude, and alternative technologies. An additional alternative has resulted from the DEC requirement, described in the FEIS, for the Project Sponsor to obtain an Article 11 incidental take permit for state-listed threatened and endangered species on Galloo Island.

### No Action.

A “No Action” alternative was reviewed to assess the effect of the project not being built. The DEIS stated that if the project were not built, there would be no impacts to wetlands, no excavation of soils or blasting, no mortality to avian or bat resources, and there would be no new visual impacts.

If the project were not built, the State would lose the opportunity for adding a significant source of clean, renewable energy to New York’s energy mix that would lessen the State’s dependence on imported fossil fuels. There would also be a lost opportunity to reduce the emissions of greenhouse gases, SO<sub>2</sub> and NO<sub>x</sub>. Finally, the no action alternative would be contrary to the State’s goals in the RPS program, since the project site represents one of the best wind resources in the State. There would also be no benefits to the town, county and school district from PILOT payments. Also, the

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<sup>14</sup> Ibid.

<sup>15</sup> Personal Communication, Mr. Garry Perfect, Canadian Renewable Energy Corp., Wolfe Island, Ontario, January 27, 2010.

approximately 200 temporary and 24 permanent jobs would be lost. On balance, the ‘No Action’ alternative is not a reasonable alternative.

#### 98-turbine project.

The Project Sponsor also assessed a “maximum build-out” on the island which would allow for the construction of 98 wind turbines. While the maximum build-out would result in the creation of more renewable energy and contribute more in PILOT revenues than the DEIS project layout, the impacts to wetlands and forest land would increase dramatically, and potential for mortality to avian and bat resources, including impact to state-listed threatened and endangered species, would be increased. The net increase of renewable energy and PILOT revenues do not justify the loss of approximately 25 acres of wetlands and the increased potential for mortality to avian and bat species. On balance, the 98-turbine alternative is not a reasonable alternative.

#### 51-turbine project.

This alternative would only provide incremental reductions in visibility of the project and impacts to avian and bat resources. The wind turbines would be visible almost to the same degree as the selected 82-turbine layout. From the mainland, especially, there would be no appreciable visual difference between having 51 or 82 turbines on the horizon. As to other impacts, they have been adequately avoided or minimized. There is no real environmental gain in reducing the number of turbines at Galloo Island. A decrease in the number of turbines would come at a cost of 93 MW of renewable energy that could theoretically be produced as well as a loss of significant local economic benefits. The 51-turbine alternative does not significantly reduce impacts sufficient to balance the loss of renewable energy and the public policies that favor the development of such energy resources.

#### 8-turbine project.

This alternative would avoid all impacts to wetlands and other sensitive habitat on the island. Under this alternative the Project Sponsor would erect 8 turbines. Like the No Action alternative, this alternative was rejected as the State would lose the benefits of renewable energy and the proportionate decrease in local economic benefits. This alternative would result in a decrease of 228 installed MW capacity (representing 90.5% of the potential capacity). Given the embedded costs of constructing the project, and the loss of renewable energy, the 8-turbine alternative is neither reasonable nor practicable. It is also, on balance, not a desirable alternative from the perspective of public need.

#### Lower turbine height.

A lower turbine height was assessed in the DEIS. This alternative was assessed primarily to determine if lowering turbine heights would have any effect on the potential visual impact of the project. DEC has concluded that a lower turbine height would not significantly reduce the visual impacts of the project. The DEIS project layout proposed maximum tip height of 125 m (410 feet), while the smallest GE 1.5 MW wind turbine has a maximum tip height of 103.5 m (339.5 feet). Because of the clear line of site from water based or shoreline views the shorter turbine would not result in a significant reduction to visual impacts. As shown in Figures 3.6-1 and 3.6-2 of the DEIS, the reduction of 21.5 m (approximately 70.5 feet) in the tip height (a change of 17.2%) would not

significantly alter the views that would be most impacted (within 5 miles of the island). Additionally, due to the distance from land the turbines as proposed are minimally visible and therefore the impact is extremely low as noted in Section 2.6 of the DEIS. Therefore requiring the Project Sponsor to use a turbine with a lower height would not significantly reduce the visual impacts of the project. A reduction in the turbine height would result in a significant loss in power output. The total installed capacity of the 82 3.0 MW turbines in the preferred project layout is 246 MW. If a 1.5 MW turbine is used, the efficiency of the project in producing energy would be halved to 123 MW of installed capacity. This would result in an inefficient use of the site's unique wind resource while not significantly reducing impacts. On balance, the benefit of this alternative does not outweigh its shortcomings in terms of the amount of renewable electricity that could be produced.

#### 84-turbine alternative layout.

An alternative to the DEIS project layout was evaluated as part of the FEIS based on agency comments on the DEIS. The FEIS project layout focused on a redesigned layout of the project components, particularly the WTG layout, the substation location, and co-location of the electrical collection lines with roads. The result of this layout was to further avoid or minimize impacts by:

- Reducing impacts to forested land by moving the substation from a forested area to an area currently in agricultural fields.
- Protecting NYS owned land by relocating WTG 1 and associated improvements to property owned by Galloo Island Corporation.
- Avoiding a potential archeologically significant area by relocating WTG 3.
- Meeting the 1.5 tip height setback from any aboveground transmission line components or the substation by shifting 4 WTGs.
- Allowing for a 1.5 tip height setback from the back-up power generation facilities by shifting 2 WTGs.
- Reducing impacts to forested areas (by 6,780.9 linear feet and 12.78 acres) by relocating 22,000 linear feet of electrical collection lines to co-locate with roads.
- Avoiding a potential archeologically significant location by making minor adjustments to the footprint of the temporary off-loading facility.

Although this alternative layout did reduce impacts identified in the FEIS, it was deemed less desirable than the 82 –turbine layout which resulted in a further reduction in the potential for impact to the Upland Sandpiper, which is a state-listed threatened species.

#### 82-turbine project.

This selection of the 82-turbine project is based on the following information: Results of the 2009 Breeding Bird Survey, included as an additional study in the FEIS, confirmed the presence and likely breeding activity of a state-listed threatened species, the Upland Sandpiper, within a native

grassland area at the south end of the island. The FEIS project layout proposed to limit permanent disturbance to this grassland habitat to approximately 1.03 acres by relocating access roads to WTG # 2 and # 3. This was a reduction of 1.88 acres from the 2.91 acres of proposed disturbance in the DEIS project layout. Upon further analysis, DEC determined that the proposed 1.03 acre of disturbance within this native grassland area constitutes a “direct take” of the state-listed species. In addition to direct loss of habitat, the presence of proposed project elements, particularly tall turbine structures, may result in future avoidance of this nesting habitat by this and other grassland bird species. Identification of these impacts resulted in a DEC determination that the project sponsor must obtain a permit under ECL Article 11 to address potential impacts of the project to state-listed threatened and endangered species. DEC further determined that in order to demonstrate avoidance of a “direct take” of this state-listed species, WTGs # 2 and # 3, and all associated access roads, must be removed from the project layout, and furthermore that no future permanent disturbance be conducted in this area (the “No Build”) area. The Project Sponsor has submitted an application under Article 11 that includes the following changes to the 84-turbine alternative:

- 1) WTG # 2 and # 3, with associated access roads and electrical connection lines, are eliminated from the “No-Build” zone.
- 2) The location of several turbines in close proximity to the “No Build” zone to reduce impacts to this area.
- 3) 250 acres of offset mitigation is provided through acquisition and management of Upland Sandpiper habitat on the mainland.

DEC has determined that this revised 82-turbine layout is the alternative that avoids or minimizes adverse environmental impacts to the maximum extent practicable and is consistent with social, economic and other essential considerations.

## **19. Coastal Zone Consistency**

The project is located within the “coastal area” of New York State. *See* 19 NYCRR 600.2(h). The project is subject to a final EIS. Therefore, DEC, as lead agency in the review of the project, must make a written finding that the project is consistent with the applicable policies set forth in 19 NYCRR 600.5 (Coastal Policies).

The Coastal Policies include 44 policies divided into 11 categories as follows: Development; Fish and Wildlife; Flooding and Erosion Hazards; General Safeguards; Public Access; Recreation; Historic and Scenic Resources; Agriculture; Energy and Ice Management; Water and Air Resources; and Wetlands. The project’s consistency with the policies is assessed in Section 2.17 of the FEIS and in Appendix O of the FEIS (which contains the Consistency Assessment Form or “CAF” and a complete statement of the Coastal Policies).

DEC concurs with the findings of consistency and discussion for coastal policies 1-5, 11, 12, 14, 15, 17, 18-22 for the reasons set out in the coastal assessment contained in the FEIS. With regard to Policies 1-5, DEC further notes that the essence of these policies is to encourage dynamic and working waterfronts. The project is consistent with the policies as it will create economic activity, particularly during the construction phase, to the Port of Oswego, and, to a less extent, Henderson Harbor, as staging areas for construction.

A number of coastal policies have parallels in DEC's core jurisdictions and hence are also the subject of extensive discussion in these findings. These are the following policies: Fish and Wildlife policies 7 and 8; Water and Air Resources policies 30, 32-39, and 43; and Wetlands policy 44. DEC incorporates the discussion of these resource areas and potential impacts of the project by reference. DEC finds that the project is consistent with such policies.

The discussion of policies 23 and 25 in the FEIS (relating to historic and scenic resources) and policy 26 (agriculture) is supplemented with the discussion of impacts to those areas in these findings. DEC finds the project is consistent with those policies.

Coastal Policies 6, 9, 10, 13, 16, 24, 28, 29, 40 through 42 are not applicable. Policy No. 2 is most probably irrelevant as the project uses the shoreline incidentally only for purposes of access to the island where the wind turbines will be located.

Policies 27 and 29 relating to energy deserves special mention. For the DEC and perhaps other agencies, consistency review with respect to development of wind power along the coastlines is a relatively new area of environmental assessment. As a result, DEC looks to the general coastal policies of the Federal government which appear to foster wind development.

The United States Department of Commerce, National Oceanic and Atmospheric Administration, which administers the Coastal Zone Management Act at the Federal level, has made the judgment that the development of wind and other energy resources in the coastal areas being a high national priority consistent with the protection of other coastal resource.<sup>16</sup>

At the State level, the closest analogy would be the State's coastal policies for Long Island Sound (19 NYCRR 600), albeit relating to a different water body. They provide the following policy with respect to the development of wind power in Long Island Sound:

- (2) Promote alternative energy sources that are self-sustaining, including solar and wind powered energy generation.
  - (i) In siting such facilities, avoid interference with coastal resources, including migratory birds, and coastal processes.

Alternative energy and wind power in particular are therefore recognized by the Federal and State coastal agencies as beneficial uses of the State's coastal areas. Coastal policies, however, recognize that development of coastal wind resources may come at a price in terms of impacts to other coastal resources such as migratory birds. DEC, through the FEIS and these findings, has paid very close attention to avian impacts. In DEC's judgment, as set out earlier in these findings, avian impacts have been mitigated or avoided to the maximum extent practicable, as set out earlier in these findings. The same applies to impacts to other coastal resources such as scenic qualities. Accordingly, DEC finds that the project is consistent with the State's coastal policies.

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<sup>16</sup> U.S. Department of Commerce, National Oceanic and Atmospheric Administration, *Energy and Government Facility Siting*, October 12, 2007. [http://coastalmanagement.noaa.gov/ene\\_gov.html](http://coastalmanagement.noaa.gov/ene_gov.html).

## 20. Growth Inducing Aspects

The Project Sponsor evaluated the potential for the project to cause secondary (residential or commercial) growth in the project area. During project construction the work force will mostly stay on Galloo Island and will be transported to the Island from Sackets Harbor. With the exception of shift changes and time-off, there will be little impact associated with the construction crew on the mainland. Secondary effects may accrue to service businesses that provide commodities used by workers such as food, clothing, household items and personal need items etc. However, it is not anticipated that new businesses will be developed solely to support construction of the project. A permanent increase of up to 50 people (workers and families) will represent an approximate 1.5% increase in population. The increase from the permanent workforce is anticipated to be absorbed locally. Therefore, the project as currently proposed will not create demand for significant growth and therefore, mitigation is not necessary.

## 21. Cumulative Impacts

Cumulative impacts occur when multiple actions affect the same resource(s).<sup>17</sup> DEC reviewed cumulative impacts with respect to avian and bat species and visual impacts as only those two resources were likely to be the subject of cumulative impacts.

### *a. Avian and Bat Impacts.*

Cumulative impacts to avian and bat populations were reviewed by DEC using study results from this project as well as publicly available data and studies from the proposed Cape Vincent Wind Farm, the proposed St. Lawrence Wind Power Project, the proposed Horse Creek-Clayton Wind Project, the proposed Roaring Brook Wind Project, and the operational Maple Ridge and Wolfe Island Wind Power Projects.

The project in combination with other wind farms may introduce cumulative risk to migrating avian and bat species as individuals move across Northern New York and Southwestern Ontario or migrate northward from Lake Ontario to northern Ontario. Migration through this area would expose avian and bat species to hazards from each wind farm they encounter along their route.

Based on post-construction study results from the Maple Ridge Wind Farm, potential for cumulative impacts may exist for Red-Tail Hawks and Sharp-shinned Hawks as they migrate throughout the region. In addition, cumulative impacts would occur to Caspian Terns if the Cape Vincent Wind Farm projects are built in addition to the Hounsfield Wind Farm. These impacts have the potential to become cumulative but would not significantly threaten the viability of the species in the region. Wind farm projects located near water have the likelihood of cumulatively impacting Ring-billed Gull populations. However, the population of Ring-billed Gulls is currently increasing and the overall viability of this species will not be significantly impacted. While impacts may occur to waterbirds, these species are populous in nature. Thus, any impact that may occur is not expected to affect species viability.

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<sup>17</sup> Department of Environmental Conservation, SEQR Handbook, Determining Significance, <http://www.dec.ny.gov/permits/47716.html>



Relatively low displacement impacts will be experienced by breeding birds on Galloo Island with the potential exception of the Upland Sandpiper. This impact will be minimized by removal of two turbines in the revised 82-turbine layout and mitigated through acquisition and management of 250 acres of Upland Sandpiper habitat on the mainland, as described earlier. These actions can be expected to result in a net conservation benefit to grassland bird species such as the Upland Sandpiper.

DEC anticipates that impacts to bat species from the construction and operation of the project are likely to be similar in composition to other wind farms in New York State. Collision mortality risk to bat species observed in the project development area may be additive, particularly for the three migratory species that move throughout the region. Given the recent development of White Nose Syndrome (WNS) which has drastically reduced local and regional populations of many of New York's bat species, mortality from wind turbines is more of a concern now than what was the case just a few years ago before the presence of WNS. The combined effect of WNS and mortality from wind turbines dictates that DEC require vigilant post construction monitoring at all wind energy sites in order to track any changes in bat abundance and mortality. Should higher levels of mortality be disclosed than predicted DEC will require adaptive operational management measures to be implemented.

#### *b. Visual Impacts*

DEC considered the potential cumulative visual impacts that may arise from interactions between the impacts of the project and nearby projects of Maple Ridge and Roaring Brook from the perspective of the Seaway Trail Scenic Byway (Route 3) in the Town of Henderson, New York. No cumulative visual impacts are expected from the three projects as their viewsheds do not overlap. Visual simulations from the Seaway Trail toward the Maple Ridge and Roaring Brook Wind Farms have not been conducted; however these projects are located approximately 28 miles from the Seaway Trail Scenic Byway at their closest points in the Town of Henderson, New York.

Cumulative visibility of the project and the Upstate Power Transmission Line was reviewed in the FEIS. There is a portion of views from the lake that have potential visibility of both the transmission line and the project. However, it is very unlikely that a viewer from these in-water locations would see both the major transmission line and the WTG simultaneously, as one view would be to the northwest and the other to the southeast of a viewer located between Robert G. Wehle State Park and Stony Island. Very little area on the mainland will have views of both the transmission line and wind farm. There is the possibility from some locations of a simultaneous view of the transmission line and project. These areas of cumulative visibility are generally along Henderson Harbor. Two of these locations are along the Seaway Trail at the intersection of Route 3 and Route 178 and along Route 3 north of this intersection. However, at these locations the wind farm would be nearly 10 miles away and partially screened by Stony Island. Neither of these locations is visible from the Seaway Trail Scenic Byway Overlook.

In the FEIS, DEC described the potential cumulative visual impact of the build-out of all existing and formally proposed wind projects in the Lake Ontario/St. Lawrence River region (Hounsfield Wind Farm, St. Lawrence Windpower, Cape Vincent Wind Farm, Horse Creek Wind Farm, and Wolfe Island Wind Farm). If all projects formally proposed at this time were to be built, it would result in approximately 350 utility-scale wind generating turbines spread throughout the region, each likely exceeding 390 feet in height. While not continuously visible, wind-generating turbines

would be a dominant and widespread visual feature from local roadways, homes and various places of interest. Turbines would also be visible on the horizon from vantage points on Lake Ontario and the St. Lawrence River along approximately 50 miles of waterway, from Clayton west and south to Southwick Beach State Park in Jefferson County. At this time only the Wolfe Island project has been completed and applications for permits have been received by DEC for 53-turbine St. Lawrence Windpower project in the Town of Cape Vincent.

It should also be noted that in the context of cumulative analysis, the proposed wind turbines on the mainland present a larger foreground visual impact than those proposed on Galloo Island, therefore the scale of the visual impact from the Galloo Island project will be different than for a mainland-based wind project. Nonetheless the Galloo Island turbines, although distant, would represent a change to the visual setting on the horizon at vantage points along the Lake Ontario shore. These changes have been identified in the DEIS and FEIS, and DEC has determined that mitigation identified in these findings would provide reasonable offsets for the anticipated change in visual setting that will result from this project. Furthermore, in these findings, DEC must balance such visual changes against the benefits of bringing additional renewable energy into the State's electric grid.

DEC is aware that the New York Power Authority (NYPA) has issued a request for proposals (RFP) for the development of offshore wind power projects in the New York State waters of Lake Erie and/or Lake Ontario.<sup>18</sup> However, at this time, no details are available regarding any specific proposals for wind power projects in the Great Lakes; therefore any discussion of these would be purely speculative in the context of this cumulative review. Specific project proposals that are developed in response to the RFP would be subject to the SEQR process, including consideration of cumulative impacts.

### Transmission Line

DEC has included a discussion of DEC's regulatory jurisdiction regarding the transmission line in the summary description of the action in these findings. As set out on page 2, the transmission line is excluded from SEQR as it is subject to review under Article VII of the Public Service Law and is therefore considered a Type II action under 6 NYCRR 617.5(c)(35) (actions requiring a certificate of environmental compatibility and public need under articles VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate). Nonetheless, Department of Public Service staff have actively participated in the SEQR review and DEC is a statutory party to the transmission line proceeding. The Department of Public Service has commenced a proceeding wherein the impacts of the transmission line are being reviewed as well as alternative routes. The information provided in the DEIS/FEIS was provided for informational purposes only. Therefore, no findings can or will be made regarding impacts from the transmission line in this record.

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<sup>18</sup> New York Power Authority. *NYPA President Kessel Calls for Proposals to Develop the First Fresh Water Wind Energy Initiative in the Nation: Increasing Emissions-Free Wind Power Will Contribute to Cleaner Air and Job Growth*. December 1, 2009. <http://www.nyopa.gov/press/2009/091201.htm>.

CERTIFICATION OF FINDINGS TO APPROVE/FUND/UNDERTAKE

Name of Action: Hounsfield Wind Farm  
Upstate NY Power Corporation  
Project Number: 6-2238-00193

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6 NYCRR 617.9, this Statement of Findings certifies that:

1. The requirements of 6NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable; including effects disclosed in the environmental impact statement, and;
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.
4. Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

New York State Department of Environmental Conservation  
625 Broadway, Albany, New York 12233-1750

\_\_\_\_\_/s/\_\_\_\_\_  
Signature of Responsible Official

Jack A. Nasca  
Name of Responsible Official

Chief, Energy Projects & Management  
Title of Responsible Official

March 3, 2010  
Date

cc: Other Involved agencies, interested parties, and the applicant: Refer to project service lists

Materials Supporting Presentation  
On  
Public Service Law Article 10  
And The  
State Environmental Quality Review Act  
Concerning Proposed Generation Facilities

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New York State Bar Association  
Environmental Law Section Meeting  
January 31, 2014  
New York City

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## **DPS STAFF GUIDANCE ON PREPARING A PUBLIC INVOLVEMENT PLAN**

Article 10 of the Public Service Law empowers the State of New York Board on Electric Generation Siting and the Environment (Siting Board) to issue Certificates of Environmental Compatibility and Public Need (Certificate) authorizing the construction of major electric generating facilities. On July 17, 2012, the Siting Board adopted regulations to implement Article 10. The regulations include requirements that are intended to “ensure that the Board is aware of the concerns of stakeholders” and to encourage stakeholder participation throughout the certification process.

One of the key element of the regulations is the requirement that applicants develop and implement a Public Involvement Program (PIP). Section 1000.4 of the regulations specifies that the program must include:

- (1) consultation with the affected agencies and other stakeholders;
- (2) pre-application activities to encourage stakeholders to participate at the earliest opportunity;
- (3) activities designed to educate the public as to the specific proposal and the Article 10 review process, including the availability of funding for municipal and local parties;
- (4) the establishment of a website to disseminate information to the public;
- (5) notifications; and
- (6) activities designed to encourage participation by stakeholders in the certification and compliance process.

Potential applicants should note that a PIP should be designed to facilitate public participation at all phases of the Article 10 process, from pre-application through certification and compliance.

The regulations require an applicant to submit a written plan describing its proposed program to DPS for review at least 150 days prior to submission of a preliminary scoping statement. DPS Staff will provide specific comments to the applicant if it finds the proposed plan is inadequate. This guidance memorandum offers suggestions that potential applicants should consider in developing PIP plans. Every project and every community will have its own characteristics and public information needs, and DPS encourages potential applicants to tailor their proposals accordingly.

A fundamental first step in designing a Public Involvement Program is determining who are the stakeholders who may be affected by the proposed project. Governmental agencies, such as local planning boards, are among the stakeholders that a PIP plan should identify. Attachment 1 to this document is a generic list of the kinds of agencies that may be affected by a project; applicants should identify the specific agencies that they propose to include in their program. Attachment 2 is a generic sample plan for an applicant's outreach to a host municipality that may be useful when developing a Public Involvement Program plan.

Broader outreach activities should also be included in the Public Involvement Program plan to show that the requirements of Section 1000.4 will be met.

## **IDENTIFICATION OF STAKEHOLDERS**

### **No. Recommendation:**

1. In order to identify the communities and groups that may be affected by the proposed project, the Public Involvement Program plan (Plan) should provide:
  - (a) a general description of the proposed project including: size, location, fuel source, and major related facilities;
  - (b) the location of interconnections, including the identification of municipalities crossed by any interconnections;
  - (c) the location of reasonable alternative sites, where applicable; and
  - (d) a preliminary Study Area and description of major routes of transportation for construction and operation (including transport of fuel for facility, if applicable).

If the proposed project is a variant of another project that was previously presented to the public in the same geographic area, the project description should identify the differences between the two projects in order to facilitate the identification of stakeholders.

2. The Plan should list the stakeholders that the applicant has already identified as likely to be affected by the project and describe the applicant's prior outreach to those parties.
3. The Plan should also describe the methodology to be used for identifying additional stakeholders, such as:
  - (a) affected agencies;
  - (b) other stakeholders that may be affected by the construction and operation of the facility including:
    - (i) host landowners; and
    - (ii) adjacent landowners; and
    - (iii) other affected individuals, groups and organizations; and
  - (c) whether environmental justice communities will be affected by the proposal.

## **LANGUAGE ACCESS**

### **No. Recommendation:**

4. The Plan should identify language(s) other than English spoken:
  - (a) according to United States Census data by 5,000 or more persons residing in any 5-digit zip code postal zone in which any portion of such zone is located within the preliminary Study Area for the proposed facility, giving the source of data used; and
  - (b) by a significant population of persons residing in close proximity to the proposed facility, alternative locations and interconnections not captured above.
5. If languages other than English are identified above, the Plan should identify:
  - (a) how documents will be translated into languages other than English; and
  - (b) what provision will be made for communicating with those members of the public at public meetings.

**IDENTIFICATION OF GOALS & METHODS FOR SPECIFIC CONSULTATIONS****No. Recommendation:**

6. The PIP must provide for consultations with affected agencies and other stakeholders. An applicant's Plan should describe the consultations that the applicant will undertake, what the goals of those consultations are, and the points in the process at which the applicant will engage in those consultations.
7. The Plan should describe the applicant's approach to communicating with affected agencies and other stakeholders. For each affected agency and other stakeholder specific consultation identified above, the Plan should:
  - (a) identify the methods of outreach to be used;
  - (b) contain an outreach schedule with approximate dates, times and locations;
  - (c) identify who will be doing the outreach along with their contact information; and
  - (d) provide a methodology to measure the success of the outreach.
8. If an environmental justice community will be affected by the proposal, the Plan should provide specific measures to address environmental justice outreach issues throughout all phases of the Article 10 process.

**TRACKING OF PUBLIC INVOLVEMENT PROGRAM ACTIVITIES****No. Recommendation:**

9. The Plan should include provisions for tracking the Public Involvement Program activities to be conducted over the course of the Article 10 process and the applicant's response to any feedback that it receives from stakeholders. This may be accomplished by preparing summaries of stakeholder interactions, comments, and questions. The Plan should also provide for recording any actions taken by the applicant in response to stakeholder feedback. The program should be fashioned so that it is easy to track the applicant's progress towards achieving its public involvement goals. The reports should be posted on the Applicant's website and filed with the Siting Board Secretary for posting in the case file.



## WEBSITE

### No. Recommendation:

10. The Plan should include:
  - (a) a description of:
    - (i) an established project website including website address; or
    - (ii) a schedule for developing a website to disseminate information to the public;
  - (b) a schedule or outline for updating the website;
  - (c) a statement of the lead time that will be provided for the posting of notices of future outreach events; and
  - (d) a description of the content that will be provided on the website.
  
11. The Plan should provide that the website will:
  - (a) be written in plain language and when appropriate, translated into other languages for comprehension by non-English speaking stakeholders identified under Recommendation No.4 above;
  - (b) be easily navigated;
  - (c) contain contact information for the Applicant (e-mail, telephone number and mailing address);
  - (d) provide links to:
    - (i) the Siting Board Article 10 Public Information Coordinator;
    - (ii) the Siting Board home page; and
    - (iii) case-specific documents;
  - (e) include information on the Article 10 process;
  - (f) explain the Intervenor Funding process (including stating the specific dollar amounts of funding that will be available for each phase of the project);
  - (g) contain project-specific information;
  - (h) contain a map of the proposed facility and alternate facility locations and interconnections; and
  - (i) provide a schedule that lists:
    - (i) dates/times/locations for in-person outreach events; and
    - (ii) key milestone dates, such as date when the application will be filed.

## PUBLIC CONSULTATIONS AND OUTREACH

### No. Recommendation:

12. The Plan should:
  - (a) identify general outreach activities that will take place prior to submittal of the application, which may include mailings, open houses, meetings, seminars/webinars, etc., to inform, engage, and solicit input from the agencies, local community, general public, and other stakeholders;
  - (b) identify how information relative to events open to the public will be disseminated;
  - (c) include material to educate the public as to the specific proposal, including project technology, location of facilities, proposed study area, outline of the scope of studies to be provided in the application, etc.;

- (d) include educational material relative to the Article 10 review process and the goals of the Public Involvement Program;
  - (e) include material to educate the public on how it may become involved in each step of the Article 10 review process;
  - (f) include educational material on Intervenor Funding (including stating the specific dollar amounts of funding that will be available for each phase of the project); and
  - (g) explain how this information will be disseminated to the local community, general public, and other stakeholders.
13. Aspects of a project's design or the technology to be used may change over the course of the Article 10 process. A PIP Plan should explain how the applicant will inform and engage agencies and other stakeholders when such changes occur.

### NOTIFICATIONS

**No.**    **Recommendation:**

14. The Plan should describe how the applicant will notify stakeholders of events and activities and of changes or additions to the public outreach program. Notification processes should be designed to ensure all stakeholders receive the information through means that are appropriate to their communities and likely to be effective. The Plan should also ensure that notifications are made in time to allow stakeholders to participate in public outreach and education activities.

### ACTIVITIES TO ENCOURAGE PARTICIPATION

**No.**    **Recommendation:**

15. The Plan should identify:
- (a) pre-application activities designed to encourage stakeholder participation early in the process, with special attention paid to potential environmental justice areas;
  - (b) activities designed to encourage participation by stakeholders in the certification and compliance phases;
  - (c) the goals of these activities;
  - (d) methodologies for measuring the success of such activities;
  - (e) a schedule of such activities indicating when and where they will be conducted; and
  - (f) how information relative to events open to the public will be disseminated.

**REQUIRED AGENCY/MUNICIPAL PRE-APPLICATION CONSULTATIONS**

**No. Recommendation:**

16. The Article 10 Regulations require a number of specific consultations with affected agencies and municipalities. The Plan should include a schedule of the required consultations with approximate dates, times and locations and identifying who will be doing the outreach along with their contact information. If a consultation is not applicable to the proposed facility, the schedule should so indicate.
17. The schedule of required consultations should include, if applicable:
- (a) consultation with DPS, NYISO and the local transmission owners to identify applicable requirements to be used to demonstrate the degree of compliance with all relevant applicable reliability criteria of the Northeast Power Coordinating Council Inc., New York State Reliability Council, and the local interconnecting transmission utility, including any criteria regarding blackstart and fuel switching capabilities [16 NYCRR 1001.5(n)];
  - (b) consultation with DPS and the Department of Environmental Conservation (DEC) to develop an acceptable input data set, including modeling for the Applicant's proposed facility and inputs for the emissions analysis, to be used in the simulation analyses [16 NYCRR 1001.8];
  - (c) consultation with the Department of Health (DOH) and DEC to determine a set of non-criteria (i.e. toxic) pollutants to be emitted from the proposed facility [16 NYCRR 1001.17(c)(9)];
  - (d) consultation with DOH and DEC to determine appropriate pollutants for an estimation of the maximum potential air concentrations (short and long term) [16 NYCRR 1001.17(d)(1)];
  - (e) consultation with DOH and DEC to determine appropriate pollutants for a comparison of the maximum predicted air concentrations to ambient air quality standards and guidelines and ambient background concentrations for non-criteria pollutants for both short-term and long-term exposures [16 NYCRR 1001.17(d)(2)];
  - (f) consultation with DOH and DEC to determine if cumulative source impact analyses for any appropriate pollutant in accordance with air permitting requirements and 6 NYCRR Part 487 are warranted [16 NYCRR 1001.17(d)(3)];
  - (g) consultation with the Office of Parks, Recreation and Historic Preservation (OPRHP) to determine if a Phase IB cultural resources study is required [16 NYCRR 1001.20(a)(3)];
  - (h) consultation with OPRHP to determine if a Phase II study based on intensive archaeological field investigations shall be conducted to assess the boundaries, integrity and significance of cultural resources identified in Phase I studies [16 NYCRR 1001.20(a)(4)];
  - (i) consultation with OPRHP and DPS to determine the need for and scope of work for any required Phase II cultural resources study [16 NYCRR 1001.20(a)(4)];
  - (j) consultation with local historic preservation groups to identify sites or structures listed or eligible for listing on the State or National Register of Historic Places within the viewshed of the facility and within the study area [16 NYCRR 1001.20(b)];

- (k) consultation with DEC, DPS, OPRHP, and the Adirondack Park Agency (APA) where appropriate to establish representative viewpoints for the photographic simulations of the facility and interconnections [16 NYCRR 1001.24(b)(4)];
- (l) consultation with the affected school districts to inform the Applicant's estimate of incremental school district operating and infrastructure costs due to the construction and operation of the facility [16 NYCRR 1001.27(f)];
- (m) consultation with the affected municipalities, public authorities, and utilities to inform the Applicant's estimate of incremental municipal, public authority, or utility operating and infrastructure costs that will be incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal, public authority, or utility services during the construction and operation phases of the facility [16 NYCRR 1001.27(g)];
- (n) consultation with the affected local emergency response organizations to inform the Applicant's analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and in that regard identifying any specific equipment or training deficiencies in local emergency response capacity [16 NYCRR 1001.27(k)];
- (o) consultation with the municipalities or other local agencies whose requirements are the subject of the local laws exhibit to determine whether the Applicant has correctly identified all such requirements and to determine whether any potential request by the Applicant that the Board elect to not apply any such local requirement could be obviated by design changes to the proposed facility, or otherwise [16 NYCRR 1001.31]; and
- (p) consultation with the state agencies and authorities whose requirements are the subject of the State Laws and Regulations exhibit to determine whether the Applicant has correctly identified all such requirements [16 NYCRR 1001.32].

### **REQUIRED AIRPORT/HELIPORT PRE-APPLICATION CONSULTATIONS**

#### **No. Recommendation:**

- 18. The Article 10 Regulations require a number of specific consultations related to air transportation impacts. The Public Involvement Plan should include a schedule of the required consultations with approximate dates, times and locations and identifying who will be doing the outreach along with their contact information. If a consultation is not applicable to the proposed facility, the schedule should so indicate.
- 19. The Plan should also, as applicable to project location and design:
  - (a) identify the necessity of consultations with the operators of airports or heliports [16 NYCRR 1000.4(f) & 1001.25(e)&(f)];
  - (b) provide the methodology used to identify the operators;
  - (c) include outreach to inform such operators of the proposed facility and its location prior to the submission of the preliminary scoping statement [16 NYCRR 1000.4(f)];
  - (d) include an informal Department of Defense review of the proposed construction or alteration, in accordance with 32 Code of Federal Regulations, Section 211.7; or a formal Department of Defense review of the proposed construction or alteration in

- accordance with 32 Code of Federal Regulations, Section 211.6 [16 NYCRR 1001.25(f)(1)]; and
- (e) include consultations with operators of airports and heliports that are non-military facilities, including providing a detailed map and description of such construction or alteration to such operators, and a request for review of and comment on such construction or alteration by such operators [16 NYCRR 1001.25(f)(2)].

### **APPLICANT RESPONSE TRACKING TABLE**

**No.**    **Recommendation:**

20.    The Plan should include a table listing by rows each separate DPS staff recommendation set forth in this attachment in one column, and in a second column a statement for each row that either:
- (a) the Applicant has revised the Public Involvement Program plan to incorporate the DPS recommendation (giving the section or page number of the Plan where the revision appears); or
- (b) providing a written explanation as to why the Applicant decided not to incorporate the recommendations.

## ATTACHMENT 1

**GENERIC LIST OF AGENCY STAKEHOLDERS FOR  
PUBLIC INVOLVEMENT PLANS AND OUTREACH**

**MUNICIPALITIES WITHIN PROJECT STUDY AREA**

County, Town, City, Village officials – chief executive officer(s), planning offices, etc.

**PUBLIC AIRPORT and HELIPOINTS** – owners/operators within required distances

**NEW YORK STATE AGENCIES**

NYS Dept of Agriculture and Markets – agricultural lands, agricultural districts, impact avoidance and mitigation measures

NYS Dept of Environmental Conservation – environmental justice rules, air emissions, natural resources, ecologic resources, bird and bat studies, stormwater planning, open space conservation planning, etc.

NYS Dept of State – coastal resources, coastal zones and inland waterways, local waterfront revitalization plans, south shore estuary reserve office

NYS Office of Parks, Recreation and Historic Preservation – State Historic Preservation Officer, state historic sites, state parks, recreation resources, open space conservation planning, etc.

NYS Division of Homeland Security and Emergency Services – emergency preparedness plans, critical infrastructure impacts, etc.

NYS Dept of Public Service – Public Information Officer, Office of Gas, Electric & Water, Office of Energy Efficiency & Environment, Office of Consumer Policy, as appropriate

NYS Department of Transportation – NYS highway work and occupancy permit requirements, oversize deliveries

NYS Dept of Health – public health issues

Empire State Development Corporation – economic development, Empire Zones

State Legislature -- members of the State Senate and State Assembly representing locations within project study area (depending on timing of the filing of the preliminary Scoping Statement, the identification may need to consider both the current districts and the newly revised districts that take effect in January, 2013).

**REGIONAL or LOCATIONAL AGENCIES**

Adirondack Park Agency for projects within or adjoining Adirondack Park “blue line”

Central Pine Barrens Joint Planning and Policy Commission – for projects in Pine Barrens Preserve areas

Heritage Areas: e.g., Mohawk Valley Heritage Corridor Commission

Hudson River Valley Greenway for projects in Greenway community locations

NYS Office of General Services – for NYS-owned underwater lands

South Shore Reserve Office – for the Long Island South Shore Estuary Reserve area

Thruway Commission/Canal Corporation for projects within transportation corridors

Tug Hill Commission for projects within or adjoining Tug Hill Communities

**FEDERAL AGENCIES**

Dept of Defense Clearinghouse for Energy Development – hazards to military aviation, RADAR/LORAN and communications

Federal Aviation Administration – hazards to aviation, airport

US Army Corps of Engineers – wetlands and navigable waterways

US Fish & Wildlife Service – federally listed endangered species, migratory birds

NOAA –National Marine Fisheries Service – fisheries resources, federally listed endangered marine species

## ATTACHMENT 2

**EXAMPLE**  
**PUBLIC INVOLVEMENT PROGRAM**  
**PLAN COMPONENT**  
**FOR OUTREACH TO HOST TOWN**

In developing a Public Involvement Program plan component for outreach to the host municipality (Town), an applicant should consider its objectives for the outreach to the Town and what type of information it should convey and gather in advancing the application process. An applicant should also be mindful of the objectives and information a Town would want to gain from outreach from an applicant about the project and anticipate them to the best of its ability.

Initial Outreach to Host Town

- a. Describe the goals of consultation:
  - Meet town representatives;
  - Disseminate Information;
  - Request Information that will help advance the PIP process and preparation of the Application; and,
  - Schedule follow up meeting(s) and consultation (s).
- b. Describe the measure of success for the consultation:
  - Consultation would be deemed successful if the information described below in “Disseminate Information” was provided to Town representatives, information was gathered to help advance the PIP process and preparation of the application, and follow up meetings or consultations were either scheduled or will be scheduled (provide more detail).

Disseminate Information

- Project
  - Describe the project and location.
- Describe Article 10 of the Public Service Law.
  - Explain the phases of the Article 10 process.
  - Explain why the project is going through the Article 10 process.
  - Explain the Public Involvement Plan and why the applicant is conducting the outreach.
  - Explain how the Town can participate in each step of the Article 10 process.
  - Describe the available Intervenor Funding – why it is available, how much will be available, when the funds will be available, who is eligible for funding, what the process is for obtaining funding.
- Describe additional consultations and outreach the applicant is conducting, including plans for outreach with Town residents.
- Advise of outreach or activities to encourage participation of the Town and its residents and provide a schedule of any planned activities. Describe the goal of the outreach.
- Provide information to the Town regarding where residents can get additional information on the project and Article 10 and provide the website information.



- If any language other than English is spoken, advise the Town of where information about the project, Article 10 process, and outreach opportunities is available in the other language(s) and describe any specialized outreach opportunities for this group.
- Environmental Justice – advise of any communities identified and specific outreach targeting those Environmental Justice communities.
- Next Steps – describe the next steps in the process, when the Preliminary Scoping will commence and how the Town can Participate.

#### Request Information

- Request contact information for discussion of:
  - Payment in lieu of taxes agreement
  - Highway work agreements
  - Local Laws
    - Follow up activity: consult with representative of the municipality and other local agencies whose requirements are the subject of the local laws exhibit to determine whether the applicant has correctly identified all such requirements and to determine whether the applicant has correctly identified all such requirements and to determine whether any potential request by the applicant that the Board elect to not apply any such local requirements could be obviated by design changes to the proposed facility, or otherwise.
  - Emergency Response Organizations
    - Follow up activity: consult with affected local emergency response organizations to inform the applicant's analysis of whether all contingency plans to be implemented in response to the occurrence of a fire emergency or a hazardous substance incident can be fulfilled by existing local emergency response capacity, and identify any specific equipment or training deficiencies in local emergency response capacity.
  - Environmental Impact Review
    - Follow up activity:
      - Disclose potentially significant adverse environmental and health impact resulting from the construction and operation of the proposed facility including an identification of particular aspects of the environmental setting that may affect the Town.
      - Request the Town to advise of any additional material environmental impacts or effects of the project on the Town based on the description provided.
  - Chief Executive or Chief Financial Officer
    - Follow up activity: Inform the Town of the applicant's estimated incremental municipal operating and infrastructure costs incurred for police, fire, emergency, water, sewer, solid waste disposal, highway maintenance and other municipal services during the construction and operation phases of the facility.
- Request contact information for interest groups or community leaders.
- Inquire which news sources are used by the Town for official notices and whether any specific rules apply for notice for town meetings.

ARTICLE 10 [Enacted August 4, 2011]

SITING OF MAJOR ELECTRIC GENERATING FACILITIES

SECTION 160. DEFINITIONS.

SECTION 161. GENERAL PROVISIONS RELATING TO THE BOARD.

SECTION 162. BOARD CERTIFICATE.

SECTION 163. PRE-APPLICATION PROCEDURES.

SECTION 164. APPLICATION FOR A CERTIFICATE.

SECTION 165. HEARING SCHEDULE.

SECTION 166. PARTIES TO A CERTIFICATION PROCEEDING.

SECTION 167. CONDUCT OF HEARING.

SECTION 168. BOARD DECISIONS.

SECTION 169. OPINION TO BE ISSUED WITH DECISION.

SECTION 170. REHEARING AND JUDICIAL REVIEW.

SECTION 171. JURISDICTION OF COURTS.

SECTION 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.

SECTION 173. APPLICABILITY TO PUBLIC AUTHORITIES.

**SECTION 160. Definitions.**

Where used in this article, the following terms, unless the context otherwise requires, shall have the following meanings:

1. "MUNICIPALITY" MEANS A COUNTY, CITY, TOWN OR VILLAGE LOCATED IN THIS STATE.
2. "MAJOR ELECTRIC GENERATING FACILITY" MEANS AN ELECTRIC GENERATING FACILITY WITH A NAMEPLATE GENERATING CAPACITY OF TWENTY-FIVE THOUSAND KILOWATTS OR MORE, INCLUDING INTERCONNECTION ELECTRIC TRANSMISSION LINES AND FUEL GAS TRANSMISSION LINES THAT ARE NOT SUBJECT TO REVIEW UNDER ARTICLE SEVEN OF THIS CHAPTER.
3. "Person" means any individual, corporation, public benefit corporation, political subdivision, governmental agency, municipality, partnership, co-operative association, trust or estate.
4. "Board" means the new york state board on electric generation siting and the environment, which shall be in the department and consist of seven persons: the chair of the department, who shall serve as chair of the board; the commissioner of environmental conservation; the commissioner of health; the chair of the new york state energy research and development authority; the commissioner of economic development and two ad hoc public members, both of whom shall reside within the municipality in which the facility is proposed to be located, except if such facility is proposed to be located within the city of new york, then all ad hoc members shall reside within the community district in which the facility is proposed to be located. One ad hoc member shall be appointed by the president pro tem of the senate and one ad hoc member shall be appointed by the speaker of the assembly, in accordance with subdivision two of section one hundred sixty-one of this article. The term of the ad hoc public members shall continue until a final determination is made in the particular proceeding for which they were appointed.
5. "Certificate" means a certificate of environmental compatibility and public need authorizing the construction of a major electric generating facility issued by the board pursuant to this article.
6. "Fuel waste byproduct" shall mean waste or combination of wastes produced as a byproduct of generating electricity from a major electric generating facility in an amount which requires storage or disposal and, because of its quantity, concentration, or physical, chemical or other characteristics, may pose a substantial present or potential hazard to human health or the environment.
7. "Nameplate" means a manufacturer's designation, generally as affixed to the generator unit, which states the total output of such generating facility as originally designed according to the manufacturer's original design specifications.
8. "Public information coordinator" means an office created within the department which shall assist and advise interested parties and members of the public in participating in the siting and certification of major electric generating facilities. The duties of the public information officer shall include, but not be limited to: (a) implementing measures that assure full and adequate public participation in matters before the board; (b) responding to inquiries from the public for information on how to participate in matters before the board; (c) assisting the public in requesting records relating to matters before the board; (d) ensuring all interested persons are provided with a reasonable opportunity to participate at public meetings relating to

matters before the board; (e) ensuring that all necessary or required documents are available for public access on the department's website within any time periods specified within this article; and (f) any other duties as may be prescribed by the board, after consultation with the department.

9. "Local parties" shall mean persons residing in a community who may be affected by the proposed major electric generating facility who individually or collectively seek intervenor funding pursuant to sections one hundred sixty-three and one hundred sixty-four of this article.

**SECTION 161. GENERAL PROVISIONS RELATING TO THE BOARD.**

1. The board, exclusive of the ad hoc members, shall have the power to adopt the rules and regulations relating to the procedures to be used in certifying facilities under the provisions of this article, including the suspension or revocation thereof, and shall further have the power to seek delegation from the federal government pursuant to federal regulatory programs applicable to the siting of major electric facilities. The chairperson, after consultation with the other members of the board exclusive of the ad hoc members, shall have exclusive jurisdiction to issue declaratory rulings regarding the applicability of, or any other question under, this article and rules and regulations adopted hereunder and to grant requests for extensions or amendments to or transfers of certificate terms and conditions, provided that no party to the proceeding opposes such request for extensions or amendments within thirty days of the filing of such request. Regulations adopted by the board may provide for renewal applications for pollutant control permits to be submitted to and acted upon by the department of environmental conservation following commercial operation of a certified facility. The board shall not accept any pre-application preliminary scoping statement or application for a certificate, or exercise any powers or functions until the department of environmental conservation has promulgated rules and regulations required by paragraphs (f) and (g) of subdivision one of section one hundred sixty-four of this article and section 19-0312 of the environmental conservation law; provided however that the board shall be authorized to adopt rules and regulations required by this article.

2. Upon receipt of a pre-application preliminary scoping statement under this article, the chair shall promptly notify the governor, the president pro tem of the senate, the speaker of the assembly, the chief executive officers representing the municipality and the county in which the facility is proposed to be located, and, if such facility is proposed to be located within the city of new york, the mayor of the city of new york, as well as the chairperson of the community board and the borough president representing the area in which the facility is proposed to be located. One ad hoc member shall be appointed by the president pro tem of the senate and one ad hoc member shall be appointed by the speaker of the assembly from a list of candidates submitted to them, in the following manner. If such facility is proposed to be located outside of the city of new york, the chief executive officer representing the municipality shall nominate four candidates and the chief executive officer representing the county shall nominate four candidates for consideration. If such facility is proposed to be located outside of the city of new york and in a village located within a town, the chief executive officer representing the town shall nominate four candidates, the chief executive officer representing the county shall nominate four candidates, and the chief executive officer representing the village shall nominate four candidates for consideration. If such facility is proposed to be located in the city of new york, the chair person of the community board, the borough president, and the mayor of the city of new york shall each nominate four candidates for consideration. Nominations shall be submitted to the president pro tem of the senate and the speaker of the assembly within

fifteen days of receipt of notification of the pre-application preliminary scoping statement. In the event that the president pro tem of the senate does not appoint one of the candidates within thirty days of such nominations, the governor shall appoint the ad hoc member from the list of candidates. In the event that the speaker of the assembly does not appoint one of the candidates within thirty days of such nominations, the governor shall appoint the ad hoc member from the list of candidates. In the event that one or both of the ad hoc public members have not been appointed within forty-five days, a majority of persons named to the board shall constitute a quorum.

3. In addition to the requirements of the public officers law, no person shall be eligible to be an appointee to the board who holds another state or local office. No member of the board may retain or hold any official relation to, or any securities of an electric utility corporation operating in the state or proposed for operation in the state, any affiliate thereof or any other company, firm, partnership, corporation, association or joint-stock association that may appear before the board, nor shall either of the appointees have been a director, officer or, within the previous ten years, an employee thereof. The ad hoc appointees shall receive the sum of two hundred dollars for each day in which they are actually engaged in the performance of their duties pursuant to this article plus actual and necessary expenses incurred by them in the performance of such duties. The chairperson shall provide such personnel, hearing examiners, subordinates and employees and such legal, technological, scientific, engineering and other services and such meeting rooms, hearing rooms and other facilities as may be required in proceedings under this article. The board under the direction of the chairperson, may provide for its own representation and appearance in all actions and proceedings involving any question under this article. The department of environmental conservation shall provide associate hearing examiners. Each member of the board other than the ad hoc appointees may designate an alternate to serve instead of the member with respect to all proceedings pursuant to this article. Such designation shall be in writing and filed with the chairperson.

**SECTION 162. BOARD CERTIFICATE.**

1. Following the promulgation of rules and regulations pursuant to paragraphs (f) and (g) of subdivision one of section one hundred sixty-four of this article, and section 19-0312 of the environmental conservation law, no person shall commence the preparation of a site for, or begin the construction of a major electric generating facility in the state, or increase the capacity of an existing electric generating facility by more than twenty-five thousand kilowatts without having first obtained a certificate issued with respect to such facility by the board. Any such facility with respect to which a certificate is issued shall not thereafter be built, maintained or operated except in conformity with such certificate and any terms, limitations or conditions contained therein, provided that nothing herein shall exempt such facility from compliance with federal, state and local laws and regulations except as otherwise provided in this article. A certificate for a major electric generating facility, or an increase in the capacity of an existing electric generating facility by more than twenty-five thousand kilowatts, may be issued only pursuant to this article.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, limitations and conditions contained therein.

3. A certificate issued under this article may be amended pursuant to this section.

4. This article shall not apply:

- (a) to a major electric generating facility over which any agency or department of the federal government has exclusive siting jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such jurisdiction to the exclusion of regulation of the facility by the state;
- (b) to normal repairs, replacements, modifications and improvements of a major electric generating facility, whenever built, which do not constitute a violation of any certificate issued under this article and which do not result in an increase in capacity of the facility of more than twenty-five thousand kilowatts;
- (c) to a major electric generating facility
  - (i) constructed on lands dedicated to industrial uses,

- (ii) the output of which shall be used solely for industrial purposes, on the premises, and
- (iii) the generating capacity of which does not exceed two hundred thousand kilowatts; or
- (d) to a major electric generating facility if, on or before the effective date of the rules and regulations promulgated pursuant to this article and section 19-0312 of the environmental conservation law, an application has been made for a license, permit, certificate, consent or approval from any federal, state or local commission, agency, board or regulatory body, in which application the location of the major electric generating facility has been designated by the applicant; or if the facility is under construction at such time.

5. Any person intending to construct a major electric generating facility excluded from this article pursuant to paragraph (b), (c), or (d) of subdivision four of this section may elect to become subject to the provisions of this article by delivering notice of such election to the chair of the board. This article shall thereafter apply to each electric generating facility identified in such notice from the date of its receipt by the chair of the board. For the purposes of this article, each such facility shall be treated in the same manner as a major electric generating facility as defined in this article.



**SECTION 163. PRE-APPLICATION PROCEDURES.**

1. Any person proposing to submit an application for a certificate shall file with the board a preliminary scoping statement containing a brief discussion, on the basis of available information, of the following items:

- (a) description of the proposed facility and its environmental setting;
- (b) potential environmental and health impacts resulting from the construction and operation of the proposed facility;
- (c) proposed studies or program of studies designed to evaluate potential environmental and health impacts, including, for proposed wind-powered facilities, proposed studies during pre-construction activities and a proposed period of post-construction operations monitoring for potential impacts to avian and bat species;
- (d) measures proposed to minimize environmental impacts; and
- (e) where the proposed facility intends to use petroleum or other back-up fuel for generating electricity, a discussion and/or study of the sufficiency of the proposed on-site fuel storage capacity and supply; and
- (f) reasonable alternatives to the facility that may be required by paragraph (i) of subdivision one of section one hundred sixty-four of this article;
- (g) identification of all other state and federal permits, certifications, or other authorizations needed for construction, operation or maintenance of the proposed facility; and
- (h) any other information that may be relevant or that the board may require.

2. Such person shall serve copies of the preliminary scoping statement on persons enumerated in paragraph (a) of subdivision two of section one hundred sixty-four of this article and provide notice of such statement as provided in paragraph (b) of such subdivision in plain language, in english and in any other language spoken as determined by the board by a significant portion of the population in the community, that describes the proposed facility and its location, the range of potential environmental and health impacts of each pollutant, the application and review process, and a contact person, with phone number and address, from whom information will be available as the application proceeds.

3. To facilitate the pre-application and application processes and enable citizens to participate in decisions that affect their health and safety and the environment, the department and such person shall provide opportunities

for citizen involvement. Such opportunities shall encourage consultation with the public early in the pre-application and application processes, especially before any parties enter a stipulation pursuant to subdivision five of this section. The primary goals of the citizen participation process shall be to facilitate communication between the applicant and interested or affected persons. The process shall foster the active involvement of the interested or affected persons.

4. (a) Each pre-application preliminary scoping statement shall be accompanied by a fee in an amount equal to three hundred fifty dollars for each thousand kilowatts of generating capacity of the subject facility, but no more than two hundred thousand dollars, to be deposited in the intervenor account established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the hearing examiner's direction to defray pre-application expenses incurred by municipal and local parties (except for a municipality submitting the pre-application scoping statement) for expert witness, consultant, administrative and legal fees. If at any time subsequent to the filing of the pre-application the pre-application is substantially modified or revised, the board may require an additional pre-application intervenor fee in an amount not to exceed twenty-five thousand dollars. No fees made available under this paragraph shall be used for judicial review or litigation. Any moneys remaining in the intervenor account upon the submission of an application for a certificate shall be made available to intervenors according to paragraph (a) of subdivision six of section one hundred sixty-four of this article.
- (b) pre-application disbursements from the intervenor account shall be made in accordance with rules and regulations established pursuant to paragraph (b) of subdivision six of section one hundred sixty-four of this article which rules shall provide for an expedited pre-application disbursement schedule to assure early and meaningful public involvement, with at least one-half of pre-application intervenor funds becoming available through an application process to commence within sixty days of the filing of a pre-application preliminary scoping statement.

5. After meeting the requirements of subdivisions one through three of this section, and after pre-application intervenor funds have been allocated by the pre-hearing examiner pursuant to paragraph (b) of subdivision four of this section, such person may consult and seek agreement with any interested person, including, but not limited to, the staff of the department, the department of environmental conservation and the department of health, as appropriate, as to any aspect of the preliminary scoping statement and any study or program of studies made or to be made to support such application. The staff of the department, the department of environmental conservation, the department of health, the person proposing to file an application, and any other interested person may enter into a stipulation setting forth an agreement on any aspect of the preliminary scoping statement and the studies or program of studies to be conducted. Any such person proposing to submit an application for a certificate shall serve a copy of the proposed stipulation upon all persons enumerated in paragraph (a) of subdivision two of section one hundred sixty-four of this article, provide notice of such stipulation to those persons identified in paragraph (b) of such subdivision, and afford the public a reasonable opportunity to submit comments on the stipulation before it is executed by the interested parties. Nothing in this section, however, shall bar any party to a hearing on an application, other than any party to a pre-application stipulation, from timely raising objections to any aspect of the preliminary scoping statement and the methodology and scope of any stipulated studies or program of studies in any such agreement. In order to attempt to resolve any questions that may arise as a result of such consultation, the department shall designate a hearing examiner who shall oversee the pre-application process and mediate any issue relating to any aspect of the preliminary scoping statement and the methodology and scope of any such studies or programs of study. Upon completion of the notice provisions provided in this section, such hearing examiner shall, within sixty days of the filing of a preliminary scoping statement, convene a meeting of interested parties in order to initiate the stipulation process.

**SECTION 164. APPLICATION FOR A CERTIFICATE.**

1. An applicant for a certificate shall file with the board an application, in such form as the board may prescribe containing the following information and materials:

- (a) a description of the site and a description of the facility to be built thereon; including available site information, maps and descriptions, present and proposed development, source and volume of water required for plant operation and cooling, anticipated emissions to air, including but not limited to federal criteria pollutants and mercury, anticipated discharges to water and groundwater, pollution control equipment, and, as appropriate, geological, visual or other aesthetic, ecological, tsunami, seismic, biological, water supply, population and load center data;
- (b) an evaluation of the expected environmental and health impacts and safety implications of the facility, both during its construction and its operation, including any studies, identifying the author and date thereof, used in the evaluation, which identifies
  - (i) the anticipated gaseous, liquid and solid wastes to be produced at the facility including their source, anticipated volumes, composition and temperature, and such other attributes as the board may specify and the probable level of noise during construction and operation of the facility;
  - (ii) the treatment processes to reduce wastes to be released to the environment, the manner of disposal for wastes retained and measures for noise abatement;
  - (iii) the anticipated volumes of wastes to be released to the environment under any operating condition of the facility, including such meteorological, hydrological and other information needed to support such estimates;
  - (iv) conceptual architectural and engineering plans indicating compatibility of the facility with the environment;
  - (v) how the construction and operation of the facility, including transportation and disposal of wastes would comply with environmental health and safety standards, requirements, regulations and rules under state and municipal laws, and a statement why any variances or exceptions should be granted;
  - (vi) water withdrawals from and discharges to the watershed;
  - (vii) a description of the fuel interconnection and supply for the project; and

- (viii) an electric interconnection study, consisting generally of a design study and a system reliability impact study;
- (c) such evidence as will enable the board and the commissioner of environmental conservation to evaluate the facility's pollution control systems and to reach a determination to issue therefor, subject to appropriate conditions and limitations, permits pursuant to federal recognition of state authority in accordance with the federal clean water act, the federal clean air act and the federal resource conservation and recovery act, and permits pursuant to section 15-1503 and article nineteen of the environmental conservation law;
- (d) where the proposed facility intends to use petroleum or other back-up fuel for generating electricity, evidence and an evaluation on the adequacy of the facility's on-site back-up fuel storage and supply;
- (e) a plan for security of the proposed facility during construction and operation of such facility and the measures to be taken to ensure the safety and security of the local community, including contingency, emergency response and evacuation control, to be reviewed by the board in consultation with the new york state division of homeland security and emergency services and in cities with a population over one million, such plan shall also be reviewed by the local office of emergency management;
- (f) in accordance with rules and regulations that shall be promulgated by the department of environmental conservation for the analysis of environmental justice issues, including the requirements of paragraphs (g) and (h) of subdivision one of this section, an evaluation of significant and adverse disproportionate environmental impacts of the proposed facility, if any, resulting from its construction and operation, including any studies identifying the author and dates thereof, which were used in the evaluation;
- (g) a cumulative impact analysis of air quality within a half-mile of the facility, or other radius as determined by standards established by department of environmental conservation regulations, that considers available data associated with projected emissions of air pollutants, including but not limited to federal criteria pollutants and mercury, from sources, including, but not limited to, the facility, facilities that have been proposed under this article and have submitted an application determined to be in compliance by the board, existing sources, and sources permitted but not yet constructed that were permitted sixty or more days prior to the filing of the application under title v of the clean air act, provided that such analysis and standards shall be in accordance with rules and regulations that shall

be promulgated by the department of environmental conservation pursuant to this paragraph;

- (h) a comprehensive demographic, economic and physical description of the community within which the facility is located, within a half-mile radius of the location of the proposed facility, compared and contrasted with the county in which the facility is proposed and with adjacent communities within such county, including reasonably available data on population, racial and ethnic characteristics, income levels, open space, and public health data, including available department of public health data on incidents of asthma and cancer provided that such description and comparison shall be in accordance with rules and regulations promulgated pursuant to paragraph (f) of this subdivision;
- (i) a description and evaluation of reasonable and available alternate locations to the proposed facility, if any; a description of the comparative advantages and disadvantages as appropriate; and a statement of the reasons why the primary proposed location and source, as appropriate, is best suited, among the alternatives considered, to promote public health and welfare, including the recreational and other concurrent uses which the site may serve, provided that the information required pursuant to this paragraph shall be no more extensive than required under article eight of the environmental conservation law;
- (j) for proposed wind-powered facilities, the expected environmental impacts of the facility on avian and bat species based on pre-construction studies conducted pursuant to paragraph (c) of subdivision one of section one hundred sixty-three of this article; and a proposed plan to avoid or, where unavoidable, minimize and mitigate any such impacts during construction and operation of the facility based on existing information and results of post-construction monitoring proposed in the plan;
- (k) an analysis of the potential impact that the proposed facility will have on the wholesale generation markets, both generally and for the location-based market in which the facility is proposed, as well as the potential impact of the proposed facility on fuel costs;
- (l) a statement demonstrating that the facility is reasonably consistent with the most recent state energy plan, including, but not limited to, impacts on fuel diversity, regional requirements for capacity, electric transmission and fuel delivery constraints and other issues as appropriate, including the comparative advantages and disadvantages of reasonable and available alternate locations or properties identified for power plant construction, and a statement of the reasons why the

proposed location and source is best suited, among the alternatives identified, to promote public health and welfare;

- (m) such other information as the applicant may consider relevant or as may be required by the board.

Copies of the application, including the required information, shall be filed with the board and shall be available for public inspection; and

2. Each application shall be accompanied by proof of service, in such manner as the board shall prescribe, of:

- (a) a copy of such application on

- (i) each municipality in which any portion of such facility is to be located as proposed or in any alternative location listed. Such copy to a municipality shall be addressed to the chief executive officer thereof and shall specify the date on or about which the application is to be filed;

- (ii) each member of the board;

- (iii) the department of agriculture and markets;

- (iv) the secretary of state;

- (v) the attorney general;

- (vi) the department of transportation;

- (vii) the office of parks, recreation and historic preservation;

- (viii) a library serving the district of each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed;

- (ix) in the event that such facility or any portion thereof as proposed or in any alternative location listed is located within the adirondack park, as defined in subdivision one of section 9-0101 of the environmental conservation law, the adirondack park agency; and

- (x) the public information coordinator for placement on the website of the department; and

- (b) a notice of such application on

- (i) persons residing in municipalities entitled to receive a copy of the application under subparagraph (i) of paragraph (a) of this subdivision. Such notice shall be given by the publication of a summary of the application and the date on or about which it will be filed, to be published under regulations to be promulgated by the board, in such form and in such newspaper or newspapers, including local community and general circulation newspapers, as

will serve substantially to inform the public of such application, in plain language, in english and in any other language spoken as determined by the board by a significant portion of the population in the community, that describes the proposed facility and its location, the range of potential environmental and health impacts of each pollutant, the application and review process, and a contact person, with phone number and address, from whom information will be available as the application proceeds;

- (ii) each member of the state legislature in whose district any portion of the facility is to be located as proposed or in any alternative location listed; and
- (iii) persons who have filed a statement with the secretary within the past twelve months that they wish to receive all such notices concerning facilities in the area in which the facility is to be located as proposed or in any alternative location listed.

3. Inadvertent failure of service on any of the municipalities, persons, agencies, bodies or commissions named in subdivision two of this section shall not be jurisdictional and may be cured pursuant to regulations of the board designed to afford such persons adequate notice to enable them to participate effectively in the proceeding. In addition, the board may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons and file proof thereof as the board may deem appropriate.

4. The board shall prescribe the form and content of an application for an amendment of a certificate to be issued pursuant to this article. Notice of such an application shall be given as set forth in subdivision two of this section.

5. If a reasonable and available alternate location not listed in the application is proposed in the certification proceeding, notice of such proposed alternative shall be given as set forth in subdivision two of this section.

6. (a) Each application shall be accompanied by a fee in an amount
- (i) equal to one thousand dollars for each thousand kilowatts of capacity, but no more than four hundred thousand dollars,
  - (ii) and for facilities that will require storage or disposal of fuel waste byproduct, an additional fee of five hundred dollars



for each thousand kilowatt of capacity, but no more than fifty thousand dollars shall be deposited in the intervenor account, established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the board's direction, to defray expenses incurred by municipal and other local parties to the proceeding (except a municipality which is the applicant) for expert witness, consultant, administrative and legal fees, provided, however, such expenses shall not be available for judicial review or litigation.

If at any time subsequent to the filing of the application, the application is amended in a manner that warrants substantial additional scrutiny, the board may require an additional intervenor fee in an amount not to exceed seventy-five thousand dollars. The board shall provide for notices, for municipal and other local parties, in all appropriate languages. Any moneys remaining in the intervenor account after the board's jurisdiction over an application has ceased shall be returned to the applicant.

(b) notwithstanding any other provision of law to the contrary, the board shall provide by rules and regulations for the management of the intervenor account and for disbursements from the account, which rules and regulations shall be consistent with the purpose of this section to make available to municipal parties at least one-half of the amount of the intervenor account and for uses specified in paragraph (a) of this subdivision. In addition, the board shall provide other local parties up to one-half of the amount of the intervenor account, provided, however, that the board shall assure that the purposes for which moneys in the intervenor account will be expended will contribute to an informed decision as to the appropriateness of the site and facility and are made available on an equitable basis in a manner which facilitates broad public participation.

**SECTION 165. HEARING SCHEDULE.**

1. After the receipt of an application filed pursuant to section one hundred sixty-four of this article, the chair of the board shall, within sixty days of such receipt, determine whether the application complies with such section and upon finding that the application so complies, fix a date for the commencement of a public hearing. The department of environmental conservation shall advise the board within said sixty day period whether an application filed pursuant to paragraph (b) of subdivision four of this section contains sufficient information meeting the requirements specified under subparagraphs (i) through (iv) of such paragraph to qualify for the expedited procedure provided for in such paragraph. No later than the date of the determination that an application complies with section one hundred sixty-four of this article, the department of environmental conservation shall initiate its review pursuant to federally delegated or approved environmental permitting authority. The chair of the board may require the filing of any additional information needed to supplement an application before or during the hearings.

2. Within a reasonable time after the date has been fixed by the chair for commencement of a public hearing, the presiding examiner shall hold a prehearing conference to expedite the orderly conduct and disposition of the hearing, to specify the issues, to obtain stipulations as to matters not disputed, and to deal with such other matters as the presiding examiner may deem proper. Thereafter, the presiding examiner shall issue an order identifying the issues to be addressed by the parties provided, however, that no such order shall preclude consideration of additional issues or requests for additional submissions, documentation or testimony at a hearing which warrant consideration in order to develop an adequate record as determined by an order of the board. The presiding examiner shall be permitted a reasonable time to respond to any and all interlocutory motions and appeals, but in no case shall such time extend beyond forty-five days.

3. All parties shall be prepared to proceed in an expeditious manner at the hearing so that it may proceed regularly until completion, except that hearings shall be of sufficient duration to provide adequate opportunity to hear direct evidence and rebuttal evidence from residents of the area affected by the proposed major electric generating facility. To the extent practicable, the place of the hearing shall be designated by the presiding examiner at a location within two miles of the proposed location of the facility.

4. (a) except as provided in paragraph (b) of this subdivision, proceedings on an application shall be completed in all respects in a manner consistent with federally delegated or approved environmental permitting authority, including a final decision by the board, within twelve months from the date of a determination by the chair that an application complies with section one hundred sixty-four of this article; provided, however, the board may extend the deadline in extraordinary circumstances by no more than six months in order to give consideration to specific issues necessary to develop an adequate record. The board must render a final decision on the application by the aforementioned deadlines unless such deadlines are waived by the applicant. If, at any time subsequent to the commencement of the hearing, there is a material and substantial amendment to the application, the deadlines may be extended by no more than six months, unless such deadline is waived by the applicant, to consider such amendment.

(b) proceedings on an application by an owner of an existing major electric generating facility to modify such existing facility or site a new major electric generating facility adjacent or contiguous to such existing facility, shall be completed in all respects in a manner consistent with federally delegated or approved environmental permitting authority, including a final decision by the board, within six months from the date of a determination by the chair that such application complies with section one hundred sixty-four of this article, whenever such application demonstrates that the operation of the modified facility, or of the existing facility and new facility in combination, would result in:

(i) a decrease in the rate of emission of each of the relevant siting air contaminants. For facilities that are partially replaced or modified, the percentage decrease shall be calculated by comparing the potential to emit of each such contaminant of the existing unit that is to be modified or replaced as of the date of application under this article to the future potential to emit each such contaminant of the modified or replacement unit as proposed in the application. For facilities that are sited physically adjacent or contiguous to an existing facility, the percentage decrease shall be calculated by comparing the potential to emit of each such contaminant of the existing facility as of the date of application under this article, to the

- future potential to emit each such contaminant of the existing and new facility combined as proposed in the application;
- (ii) a reduction of the total annual emissions of each of the relevant siting air contaminants emitted by the existing facility. The percent age reduction shall be calculated by comparing (on a pounds-per-year basis) the past actual emissions of each of the relevant siting air contaminants emitted by the existing facility averaged over the three years preceding the date of application under this article, to the annualized potential to emit each such contaminant of the modified facility or of the combined existing and new facility as proposed in the application;
  - (iii) introduction of a new cooling water intake structure where such structure withdraws water at a rate equal to or less than closed-cycle cooling; and
  - (iv) a lower heat rate than the heat rate of the existing facility.

The applicant shall supply the details of the analysis in the application and such supporting information, as may be requested by the board or, in the exercise of federally delegated or approved environmental permitting authority, the department of environmental conservation, necessary to show compliance with the requirements of subparagraphs (i) through (iv) of this paragraph. The board may extend the deadline in extraordinary circumstances by no more than three months in order to give consideration to specific issues necessary to develop an adequate record. The board shall render a final decision on the application by the aforementioned deadlines unless such deadlines are waived by the applicant. If, at any time subsequent to the commencement of the hearing, there is a material and substantial amendment to the application, the deadlines may be extended by no more than three months, unless such deadline is waived by the applicant, to consider such amendment.

5. If an application for an amendment of a certificate proposing a change in the facility is likely to result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility, a hearing shall be held in the same manner as a hearing on an application for a certificate. The board shall promulgate rules, regulations and standards under which it shall determine whether hearings are required under this subdivision and shall make such determinations.

**SECTION 166. PARTIES TO A CERTIFICATION PROCEEDING.**

1. The parties to the certification proceedings shall include:
  - (a) the applicant;
  - (b) the department of environmental conservation;
  - (c) the department of economic development;
  - (d) the department of health;
  - (e) the department of agriculture and markets;
  - (f) the new york state energy research and development authority;
  - (g) the department of state;
  - (h) the office of parks, recreation and historic preservation;
  - (i) where the facility or any portion thereof or of any alternate is to be located within the adirondack park, as defined in subdivision one of section 9-0101 of the environmental conservation law, the adirondack park agency;
  - (j) a municipality entitled to receive a copy of the application under paragraph (a) of subdivision two of section one hundred sixty-four of this article, if it has filed with the board a notice of intent to be a party, within forty-five days after the date given in the published notice as the date for the filing of the application; any municipality entitled to be a party herein and seeking to enforce any local ordinance, law, resolution or other action or regulation otherwise applicable shall present evidence in support thereof or shall be barred from the enforcement thereof;
  - (k) any individual resident in a municipality entitled to receive a copy of the application under paragraph (a) of subdivision two of section one hundred sixty-four of this article if he or she has filed with the board a notice of intent to be a party, within forty-five days after the date given in the published notice as the date for filing of the application;
  - (l) any non-profit corporation or association, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups or to promote the orderly development of any area in which the facility is to be located, if it has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application;
  - (m) any other municipality or resident of such municipality located within a five mile radius of such proposed facility, if it or the resident has

filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application;

- (n) any other municipality or resident of such municipality which the board in its discretion finds to have an interest in the proceeding because of the potential environmental effects on such municipality or person, if the municipality or person has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application, together with an explanation of the potential environmental effects on such municipality or person; and
- (o) such other persons or entities as the board may at any time deem appropriate, who may participate in all subsequent stages of the proceeding.

2. The department shall designate members of its staff who shall participate as a party in proceedings under this article.

3. Any person may make a limited appearance in the proceeding by filing a statement of his or her intent to limit his or her appearance in writing at any time prior to the commencement of the hearing. All papers and matters filed by a person making a limited appearance shall become part of the record. No person making a limited appearance shall be a party or shall have the right to present testimony or cross-examine witnesses or parties.

4. The presiding officer may for good cause shown, permit a municipality or other person entitled to become a party under subdivision one of this section, but which has failed to file the requisite notice of intent within the time required, to become a party, and to participate in all subsequent stages of the proceeding.

**SECTION 167. CONDUCT OF HEARING.**

1. (a) The hearing shall be conducted in an expeditious manner by a presiding examiner appointed by the department. An associate hearing examiner shall be appointed by the department of environmental conservation prior to the date set for commencement of the public hearing. The associate examiner shall attend all hearings as scheduled by the presiding examiner and shall assist the presiding examiner in inquiring into and calling for testimony concerning relevant and material matters. The conclusions and recommendations of the associate examiner shall be incorporated in the recommended decision of the presiding examiner, unless the associate examiner prefers to submit a separate report of dissenting or concurring conclusions and recommendations. In the event that the commissioner of environmental conservation issues permits pursuant to federally delegated or approved authority under the federal clean water act, the federal clean air act and the federal resource conservation and recovery act, or section 15-1503 and article nineteen of the environmental conservation law, the record in the proceeding and the associate examiner's conclusions and recommendations shall, insofar as is consistent with federally delegated or approved environmental permitting authority, provide the basis for the decision of the commissioner of environmental conservation whether or not to issue such permits.

(b) the testimony presented at a hearing may be presented in writing. Oral testimony may be presented at any public statement hearing conducted by the board for the taking of unsworn statements. The board may require any state agency to provide expert testimony on specific subjects where its personnel have the requisite expertise and such testimony is considered necessary to the development of an adequate record. All testimony and information presented by the applicant, any state agency or other party shall be subject to discovery and cross-examination. A record shall be made of the hearing and of all testimony taken and the cross-examinations thereon. The rules of evidence applicable to proceedings before a court shall not apply. The presiding examiner may provide for the consolidation of the representation of parties, other than governmental bodies or agencies, having similar interests. In the case of such a consolidation, the right to counsel of its own choosing shall be preserved to each party to the proceeding provided that the consolidated group may be required to be heard through such reasonable number of counsel as the presiding examiner shall determine. Appropriate regulations shall be issued by the board to provide for prehearing discovery procedures by parties to a proceeding, consolidation of the representation of parties, the exclusion of irrelevant, repetitive, redundant or immaterial evidence, and the review of rulings by presiding examiners.

2. A copy of the record including, but not limited to, testimony, briefs and hearing testimony shall be made available by the board within thirty days of the close of the evidentiary record for examination by the public, and shall be made available on the department's website.

3. The chair of the board may enter into an agreement with an agency or department of the united states having concurrent jurisdiction over all or part of the location, construction, or operation of a major electric generating facility subject to this article with respect to providing for joint procedures and a joint hearing of common issues on a combined record, provided that such agreement shall not diminish the rights accorded to any party under this article.

4. The presiding examiner shall allow testimony to be received on reasonable and available alternate locations for the proposed facility, alternate energy supply sources and demand-reducing measures, provided notice of the intent to submit such testimony shall be given within such period as the board shall prescribe by regulation, which period shall be not less than thirty nor more than sixty days after the commencement of the hearing. Nevertheless, in its discretion, the board may thereafter cause to be considered other reasonable and available locations for the proposed facility, alternate energy supply sources and, where appropriate, demand-reducing measures.

5. Notwithstanding the provisions of subdivision four of this section, the board may make a prompt determination on the sufficiency of the applicant's consideration and evaluation of reasonable alternatives to its proposed type of major electric generating facility and its proposed location for that facility, as required pursuant to paragraph (i) of subdivision one of section one hundred sixty-four of this article, before resolution of other issues pertinent to a final determination on the application; provided, however, that all interested parties have reasonable opportunity to question and present evidence in support of or against the merits of the applicant's consideration and evaluation of such alternatives, as required pursuant to paragraph (i) of subdivision one of section one hundred sixty-four of this article, so that the board is able to decide, in the first instance, whether the applicant's proposal is preferable to alternatives.



**SECTION 168. BOARD DECISIONS.**

1. The board shall make the final decision on an application under this article for a certificate or amendment thereof, upon the record made before the presiding examiner, including any briefs or exceptions to any recommended decision of such examiner or to any report of the associate examiner, and after hearing such oral argument as the board shall determine. Except for good cause shown to the satisfaction of the board, a determination under subdivision five of section one hundred sixty-seven of this article that the applicant's proposal is preferable to alternatives shall be final. Such a determination shall be subject to rehearing and review only after the final decision on an application is rendered.

2. The board shall not grant a certificate or amendment thereof for the construction or operation of a facility, either as proposed or as modified by the board, without making explicit findings regarding the nature of the probable environmental impacts of the construction and operation of the facility, including the cumulative environmental impacts of the construction and operation of related facilities such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines, including impacts on:

- (a) ecology, air, ground and surface water, wildlife, and habitat;
- (b) public health and safety;
- (c) cultural, historic, and recreational resources, including aesthetics and scenic values; and
- (d) transportation, communication, utilities and other infrastructure.

Such findings shall include the cumulative impact of emissions on the local community including whether the construction and operation of the facility results in a significant and adverse disproportionate environmental impact, in accordance with regulations promulgated pursuant to paragraph (f) of subdivision one of section one hundred sixty-four of this article by the department of environmental conservation regarding environmental justice issues.

3. The board may not grant a certificate for the construction or operation of a major electric generating facility, either as proposed or as modified by the board, unless the board determines that:

- (a) the facility is a beneficial addition to or substitution for the electric generation capacity of the state; and

- (b) the construction and operation of the facility will serve the public interest; and
- (c) the adverse environmental effects of the construction and operation of the facility will be minimized or avoided to the maximum extent practicable; and
- (d) if the board finds that the facility results in or contributes to a significant and adverse disproportionate environmental impact in the community in which the facility would be located, the applicant will avoid, offset or minimize the impacts caused by the facility upon the local community for the duration that the certificate is issued to the maximum extent practicable using verifiable measures; and
- (e) the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement, including, but not limited to, those relating to the interconnection to and use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way, which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality. The board shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation or other local action issued thereunder.

4. In making the determinations required in subdivision three of this section, the board shall consider:

- (a) the state of available technology;
- (b) the nature and economics of reasonable alternatives;
- (c) environmental impacts found pursuant to subdivision two of this section;
- (d) the impact of construction and operation of related facilities, such as electric lines, gas lines, water supply lines, waste water or other sewage treatment facilities, communications and relay facilities, access roads, rail facilities, or steam lines;
- (e) the consistency of the construction and operation of the facility with the energy policies and long-range energy planning objectives and strategies contained in the most recent state energy plan;

- (f) the impact on community character and whether the facility would affect communities that are disproportionately impacted by cumulative levels of pollutants; and
- (g) such additional social, economic, visual or other aesthetic, environmental and other considerations deemed pertinent by the board.

5. The department or the commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the board's order.

6. A copy of the board's decision and opinion shall be served on each party electronically or by mail.

7. Following any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease, provided, however, that the permanent board shall retain jurisdiction with respect to the amendment, suspension or revocation of a certificate.

**SECTION 169. OPINION TO BE ISSUED WITH DECISION.**

In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any local ordinance, law, resolution, regulation or other action issued thereunder or any other local standard or requirement which would be otherwise applicable is unreasonably burdensome pursuant to paragraph (e) of subdivision three of section one hundred sixty-eight of this article, it shall state in its opinion the reasons therefor.

**SECTION 170. REHEARING AND JUDICIAL REVIEW.**

1. Any party aggrieved by the board's decision denying or granting a certificate may apply to the board for a rehearing within thirty days after issuance of the aggrieving decision. Any such application shall be considered and decided by the board and any rehearing shall be completed and a decision rendered thereon within ninety days of the expiration of the period for filing rehearing petitions, provided however that the board may extend the deadline by no more than ninety days where a rehearing is required if necessary to develop an adequate record. The applicant may waive such deadline. Thereafter such a party may obtain judicial review of such decision as provided in this section. A judicial proceeding shall be brought in the appellate division of the supreme court of the state of new york in the judicial department embracing the county wherein the facility is to be located or, if the application is denied, the county wherein the applicant has proposed to locate the facility. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a final decision by the board upon the application for rehearing together with proof of service of a demand on the board to file with said court a copy of a written transcript of the record of the proceeding and a copy of the board's decision and opinion. The board's copy of said transcript, decision and opinion, shall be available at all reasonable times to all parties for examination without cost. Upon receipt of such petition and demand the board shall forthwith deliver to the court a copy of the record and a copy of the board's decision and opinion. Thereupon, the court shall have jurisdiction of the proceeding and shall have the power to grant such relief as it deems just and proper, and to make and enter an order enforcing, modifying and enforcing as so modified, remanding for further specific evidence or findings or setting aside in whole or in part such decision. The appeal shall be heard on the record, without requirement of reproduction, and upon briefs to the court. No objection that has not been urged by the party in his or her application for rehearing before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of fact on which such decision is based shall be conclusive if supported by substantial evidence on the record considered as a whole and matters of judicial notice set forth in the opinion. The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court

and by the court of appeals as expeditiously as possible and with lawful precedence over all other matters.

2. The grounds for and scope of review of the court shall be limited to whether the decision and opinion of the board are:

- (a) in conformity with the constitution, laws and regulations of the state and the united states;
- (b) supported by substantial evidence in the record and matters of judicial notice properly considered and applied in the opinion;
- (c) within the board's statutory jurisdiction or authority;
- (d) made in accordance with procedures set forth in this article or established by rule or regulation pursuant to this article;
- (e) arbitrary, capricious or an abuse of discretion; or
- (f) made pursuant to a process that afforded meaningful involvement of citizens affected by the facility regardless of age, race, color, national origin and income.

3. Except as herein provided article seventy-eight of the civil practice law and rules shall apply to appeals taken hereunder.

**SECTION 171. JURISDICTION OF COURTS.**

Except as expressly set forth in section one hundred seventy of this article and except for review by the court of appeals of a decision of the appellate division of the supreme court as provided for therein, no court of this state shall have jurisdiction to hear or determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under this article or to stop or delay the construction or operation of a major electric generating facility except to enforce compliance with this article or the terms and conditions issued thereunder.

**SECTION 172. POWERS OF MUNICIPALITIES AND STATE AGENCIES.**

1. Notwithstanding any other provision of law, no state agency, municipality or any agency thereof may, except as expressly authorized under this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility with respect to which an application for a certificate hereunder has been filed, including pursuant to paragraph (e) of subdivision three of section one hundred sixty-eight of this article, any such approval, consent, permit, certificate or condition relating to the interconnection to or use of water, electric, sewer, telecommunication, fuel and steam lines in public rights of way, provided that this article shall not impair or abrogate any federal, state or local labor laws or any otherwise applicable state law for the protection of employees engaged in the construction and operation of such facility; provided, however, that in the case of a municipality or an agency thereof, such municipality has received notice of the filing of the application there for;

and provided further, however, that the department of environmental conservation shall be the permitting agency for permits issued pursuant to federally delegated or approved authority under the federal clean water act, the federal clean air act and the federal resource conservation and recovery act. In issuing such permits, the commissioner of environmental conservation shall follow procedures established in this article to the extent that they are consistent with federally delegated or approved environmental permitting authority. The commissioner of environmental conservation shall provide such permits to the board prior to its determination whether or not to issue a certificate. The issuance by the department of environmental conservation of such permits shall in no way interfere with the required review by the board of the anticipated environmental and health impacts relating to the construction and operation of the facility as proposed, or its authority to deny an application for certification pursuant to section one hundred sixty-eight of this article, and, in the event of such a denial, any such permits shall be deemed null and void.

2. The adirondack park agency shall not hold public hearings for a major electric generating facility with respect to which an application hereunder is filed, provided that such agency has received notice of the filing of such application.



**SECTION 173. APPLICABILITY TO PUBLIC AUTHORITIES.**

The power authority of the state of new york, the green island power authority and the long island power authority shall be subject to all provisions of this article for major electric generating facilities which any such authority builds or causes to be built. For generating facilities which are not major electric generating facilities, none of the above named authorities shall be permitted to serve as lead agency for purposes of environmental review pursuant to the provisions of the environmental conservation law.

OTHER PARTS OF THE ENABLING LEGISLATION

S 13. The opening paragraph and paragraph (b) of subdivision 5 of section 8-0111 of the environmental conservation law, as added by chapter 612 of the laws of 1975, are amended to read as follows:

The requirements of this article shall not apply to:

(b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law; or

S 14. Section 17-0823 of the environmental conservation law, as added by chapter 801 of the laws of 1973, is amended to read as follows:

**S 17-0823. Power plant siting.**

In the case of a major steam electric generating facility, as defined in section one hundred forty of the public service law, for the construction or operation of which a certificate is required under the former article eight of the public service law, or a major electric generating facility as defined in section one hundred sixty of the public service law, for the construction or operation of which a certificate is required under article ten of the public service law, such certificate shall be deemed a permit under this section if issued by the state board on electric generation siting and the environment pursuant to federally delegated or approved environmental permit authority. Nothing herein shall limit the authority of the department of health and the department to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility or major electric generating facility and to enforce applicable provisions of the public health law and this article and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation. In such case all powers, duties, obligations and privileges conferred upon the department by this article shall devolve upon the new york state board on electric generation siting and the environment. In considering the granting of permits, such board shall apply the provisions of this article and the act.

S 15. Paragraph j of subdivision 2 of section 19-0305 of the environmental conservation law, as amended by chapter 525 of the laws of 1981, is amended to read as follows:

j. Consider for approval or disapproval applications for permits and certificates including plans or specifications for air contamination sources and air cleaning installations or any part thereof submitted consistent with the rules of the department, and inspect the installation for compliance with the plans or specifications; provided that in the case of a major steam electric generating facility, as defined in former section one hundred forty of the public service law, for which a certificate is required pursuant to the former article eight of the public service law, or a major electric generating facility as defined in section one hundred sixty of the public service law, for which a certificate is required pursuant to article ten of the public service law, such approval functions may be performed by the state board on electric generation siting and the environment, as defined in the public service law, pursuant to federally delegated or approved environmental permitting authority, and such inspection functions shall be performed by the department. Nothing herein shall limit the authority of the department of health and the department to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of the public health law and this chapter and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation.

**S 16.** Paragraph (e) of subdivision 3 of section 49-0307 of the environmental conservation law, as added by chapter 292 of the laws of 1984, is amended to read as follows:

(e) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to the former article eight of the public service law, or a major electric generating facility or repowering project which has received a certificate of environmental compatibility and public need pursuant to article ten of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law, provided that such certificate contains a finding that the public interest in the

conservation and protection of the natural resources, open spaces and scenic beauty of the adirondack or catskill parks has been considered.

**S 17.** Section 1014 of the public authorities law, as amended by chapter 446 of the laws of 1972, is amended to read as follows:

S 1014. Public service law not applicable to authority; inconsistent provisions in other acts superseded. The rates, services and practices relating to the generation, transmission, distribution and sale by the authority, of power to be generated from the projects authorized by this title shall not be subject to the provisions of the public service law nor to regulation by, nor the jurisdiction of the department of public service. except to the extent article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein, and article ten of the public service law applies to the siting of a major electric generating facility as defined therein, and except to the extent section eighteen-a of the public service law provides for assessment of the authority for certain costs relating thereto, the provisions of the public service law and of the environmental conservation law and every other law relating to the department of public service or the public service commission or to the environmental conservation department or to the functions, powers or duties assigned to the division of water power and control by chapter six hundred nineteen of the laws of nineteen hundred twenty-six, shall so far as is necessary to make this title effective in accordance with its terms and purposes be deemed to be superseded, and wherever any provision of law shall be found in conflict with the provisions of this title or inconsistent with the purposes thereof, it shall be deemed to be superseded, modified or repealed as the case may require.

**S 18.** Paragraph c of subdivision 8 of section 1020-c of the public authorities law, as amended by chapter 7 of the laws of 1987, is amended to read as follows:

c. Article seven of the public service law shall apply to the authority's siting and operation of a major transmission facility as therein defined and article ten of the public service law shall apply to the authority's siting and operation of a major electric generating facility as therein defined.

**S 19.** Section 1020-s of the public authorities law, as added by chapter 517 of the laws of 1986, is amended to read as follows:

**S 1020-s.** Public service law generally not applicable to authority; inconsistent provisions in certain other acts superseded.

1. The rates, services and practices relating to the electricity generated by facilities owned or operated by the authority shall not be subject to the provisions of the public service law or to regulation by, or the jurisdiction of, the public service commission, except to the extent (a) article seven of the public service law applies to the siting and operation of a major utility transmission facility as defined therein, (b) article ten of such law applies to the siting of a generating facility as defined therein, and (c) section eighteen-a of such law provides for assessment for certain costs, property or operations.

2. The issuance by the authority of its obligations to acquire the securities or assets of LIILCO shall be deemed not to be "state action" within the meaning of the state environmental quality review act, and such act shall not be applicable in any respect to such acquisition or any action of the authority to effect such acquisition.

**S 20.** The state finance law is amended by adding a new section 97-kkkk to read as follows:

**S 97-kkkk. Intervenor account.**

1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance an account to be known as the intervenor account.

2. Such account shall consist of all revenues received from siting application fees for electric generating facilities pursuant to sections one hundred sixty-three and one hundred sixty-four of the public service law.

3. Moneys of the account, following appropriation by the legislature, may be expended in accordance with the provisions of sections one hundred sixty-three and one hundred sixty-four of the public service law. Moneys shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the chair of the public service commission.

**S 21.** The environmental conservation law is amended by adding a new section 19-0312 to read as follows:

**S 19-0312.** Power plant emissions and performance standards.

1. Definitions.

As used in this section:

a. "mercury" means elemental, oxidized, and particle-bound mercury in source emissions.

b. "major electric generating facility" means any electricity generating facility with a nameplate capacity of twenty-five thousand kilowatts or more.

2. Any major electric generating facility shall demonstrate compliance with all applicable emission requirements established by the department for the purpose of complying with all state and federal air quality requirements, including requirements for sulfur dioxide, nitrogen oxides, mercury, carbon dioxide and particulate matter of less than 2.5 microns. Such facility must also comply with other applicable department air quality requirements relating to offsetting of emissions.

3. No later than twelve months after the effective date of this section, the commissioner shall promulgate rules and regulations targeting reductions in emissions of carbon dioxide that would apply to major electric generating facilities that commenced construction after the effective date of the regulations.

**S 23. Severability.**

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**S 24.** This act shall take effect immediately; provided that nothing in this act shall be construed to limit any administrative authority, with respect to matters included in this act, which authority existed prior to the effective date of this act. Within twelve months of the effective date of this act, all rules and regulations required pursuant to this act shall be adopted. Prior to the adoption of such rules and regulations by the New York state board on electric generation siting and the environment and the department of environmental conservation required under this act, nothing in this act shall affect the right to apply for a permit pursuant to the environmental conservation law including article 8 therein, or other applicable laws, to operate an electric generating facility with a nameplate generating capacity of twenty-five thousand kilowatts or more.

**The Fund for Municipal and Local Parties:  
A Guide to Intervenor Funding Pursuant to  
Article 10 of the Public Service Law**

**Important General Guidance**

This guidance document provides information about the availability of intervenor funds in the Article 10 process for the siting of major electric generating facilities in New York State. The siting process is conducted by the New York State Board on Electric Generation Siting and the Environment (Siting Board). As a consequence of the timing requirements discussed below, it is important that parties interested in obtaining intervenor funds work quickly to assemble their requests as soon as the Preliminary Scoping Statement or Application is filed by an applicant. Parties should consider commencing the preparation of their requests as soon as they become aware of the potential that a Preliminary Scoping Statement or Application may be filed. However, funding requests will not be accepted until called for by the Presiding Examiner.

**The Fund for Municipal and Local Parties**

Article 10 applicants are required to provide funds to be used to defray certain expenses incurred by municipal and local parties as they participate in the pre-application scoping process and in the proceeding before the Siting Board to consider the Article 10 Application. The funds, known as "intervenor" funds, are provided by the assessment of fees on the applicant.

"Intervenor" is a name used to refer to a party that joins an ongoing case or proceeding as a third-party for the protection of an interest. Some intervenors join as a matter of right established in the Article 10 statute; others are permitted to join at the discretion of the Presiding Examiner or the Siting Board.

Not all intervenors are eligible for intervenor funds; only "municipal and local parties" are eligible. Eligible "municipal parties" include any county, city, town or village located in New York State that may be affected by the proposed major electric generating facility. The Presiding Examiner must reserve at least 50% of the funds for potential awards to municipalities. Eligible "local parties" include persons residing in a community who may be affected by the proposed major electric generating facility. Such persons may seek intervenor funding either individually or collectively. Local parties are eligible to receive up to 50% of the funds.

**Amount of Funds - Pre-application Stage**

An applicant submitting a Preliminary Scoping Statement is assessed an intervenor fee equal to \$350 per megawatt (MW) up to a cap of \$200,000. For example, for a 100-megawatt facility, the pre-application intervenor fee would be \$35,000 (100 x \$350). If the applicant makes a substantial revision to its Preliminary Scoping Statement, the Siting Board may require an additional fee in an amount not to exceed \$25,000.

**Amount of Funds - Application Stage**

An applicant submitting an Article 10 Application is assessed an intervenor fee equal to \$1,000 per megawatt (MW) up to a cap of \$400,000. For example, for a 100-megawatt facility, the pre-application intervenor fee would be \$100,000 (100 x \$1,000). If the applicant makes a revision to its Application requiring substantial additional scrutiny, the applicant will be assessed an additional intervenor fee equal to \$1,000 per megawatt (MW) of the proposed project, as amended, but no more than \$75,000. The presiding examiner may increase the level of the additional intervenor fee up to the maximum level of \$75,000 if the presiding examiner finds circumstances require a higher level of intervenor funding in order to ensure an adequate record. In addition, for facilities that will require storage or disposal of fuel waste byproduct, an additional intervenor fee will be assessed at the application phase of \$500 per megawatt (MW), but no more than an additional \$50,000.

**Use of Funds**

Intervenor funds can be used to defray expenses incurred by eligible municipal and local parties in the pre-application scoping process and in the proceeding before the Siting Board to consider the Application. They can be used to pay for expert witnesses, consultants, administrative costs (such as document preparation and duplication) and legal fees. No intervenor funds may be used to pay for appeals of Siting Board decisions or other matters before a court.

During the Pre-application Stage, the Presiding Examiner will award funds on an equitable basis when it is determined that the funds will be used to make an effective contribution to review of the Preliminary Scoping Statement and the development of an adequate scope of the Application to be submitted, and will provide early and effective public involvement. During the Application Phase, the Presiding Examiner will award funds on an equitable basis when it is determined that the funds will be used to contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility, and will facilitate broad participation in the proceeding.

**Notice of Availability of Funds & Deadline for Funding Requests**

Upon the payment of intervenor fees by the Article 10 Applicant at various stages, the Presiding Examiner or the Secretary to the Siting Board will issue a notice indicating the availability of intervenor funds and providing a schedule and related information describing how interested municipalities and local parties may make requests for the funds. Subject to the availability of funds, the Presiding Examiner may fix additional dates for submission of fund requests.

Requests for funds must be submitted to the Presiding Examiner no later than 30 days after the issuance of the notice of availability. Eligible municipal and local parties may request funds by filing the requests with the Secretary of the Siting Board and submitting a copy to the Presiding Examiner and to the other parties to the proceeding.



### **Requests for Intervenor Funds**

Parties preparing requests for funds are encouraged to submit their requests using a standard format as may be provided for that purpose either on the Siting Board Website [["http://www.dps.ny.gov/SitingBoard/"\]](http://www.dps.ny.gov/SitingBoard/) or by the Presiding Examiner. A request for intervenor funds must contain:

1. a statement of the number of persons and the nature of the interests the requesting party represents;
2. a statement of the availability of funds (without intervenor funding) from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds (from other sources);
3. the amount of funds being sought;
4. to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;
5. if known, the name of any other interested person or entity who may, or is intending to, employ such expert;
6. a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;<sup>1</sup>
7. if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;
8. a statement as to the result of any effort made to encourage the Article 10 Applicant to perform any proposed studies or evaluations and the reason it is believed that an independent study is necessary; and
9. a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.

The Presiding Examiner is required to examine each request for funds to determine whether the request complies with the above rules. A request for intervenor funds that does not comply fully with each requirement of the rules will not be granted. Providing a complete request for funds in the first instance will abbreviate the process of obtaining a grant of funds and will avoid successive filings and rulings, which otherwise may be necessary and will delay the award of funds. If the party believes a regulatory provision is not applicable to its circumstances, the party should explicitly state this contention in its funding request, and also explain why the provision is not applicable.

<sup>1</sup> [Note: In addressing this provision, a party must provide more than a recitation of the regulatory language in a conclusory statement to the effect that "each person identified above will contribute to a complete record." Instead, the party must specify in what manner, or specifically how, its participation will contribute to a complete record in this proceeding. For example, a party might identify, if applicable, that it has a unique concern or interest, not addressed by other parties, that it intends to study or otherwise address on the record, and specify how the party plans to address the issue. For the pre-application stage, a party might identify the need to hire an expert to better define the scope of appropriate studies that should be included in the application to remedy a deficiency uniquely identified by the party in the scope described in the Preliminary Scoping Statement.]

**Conferences to Consider Funding Requests**

At the Pre-application Stage, an initial conference to consider fund requests will be convened by the Presiding Examiner between 45 days and 60 days after the filing of a Preliminary Scoping Statement. At the Application Stage, a similar initial conference may be convened. Anyone interested in receiving notices of such conferences may subscribe to the service list established for the case. At any conference held to consider fund requests, intervenors should be prepared to discuss their funding requests and the award of funds. At any pre-hearing conference that may be held to consider fund requests, the parties should be prepared to discuss their funding requests and the award of funds. Parties are encouraged to consider consolidating their requests with similar funding proposals made by other parties.

**Award of Funds**

After a party submits a funding request, the Presiding Examiner will issue a formal ruling granting or denying the funding request in whole or in part. In making any funding award, the Presiding Examiner is not making any determination on the merits of the issues identified in the award. A party who receives a funding award will then be contacted by the Department of Public Service (DPS) Finance Office and asked to sign Local Assistance Contract documents, which set forth the terms and conditions for providing intervenor funding.

**Disbursement of Funds**

No funds will be disbursed until after the work has been performed and detailed invoices have been submitted to DPS for review by both the Presiding Examiner and the Finance Office. Any moneys remaining in the intervenor account after the Siting Board's jurisdiction over an Application has ceased shall be returned to the applicant.

**Reporting Requirements**

Each party receiving an award of funds must use the awarded funds only for the purposes that have been specified in the particular award of intervenor funding. A party receiving an award of funds must also comply with certain reporting requirements. On a quarterly basis, unless otherwise required by the Presiding Examiner, any party receiving an award of funds shall:

1. provide an accounting of the monies that have been spent; and,
2. submit a report to the Presiding Examiner showing:
  - a) the results of any studies and a description of any activities conducted using such funds;
  - b) whether the purpose for which the funds were awarded has been achieved;
  - c) if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved;
  - d) and why further expenditures are warranted.

## APPENDIX 1

Relevant Excerpts from Article 10 of the Public Service LawSection 160(1)&(9)[Definitions]:

1. "Municipality" means a county, city, town or village located in this state.
  
9. "Local parties" shall mean persons residing in a community who may be affected by the proposed major electric generating facility who individually or collectively seek intervenor funding pursuant to sections one hundred sixty-three and one hundred sixty-four of this article.

Section 163(4)[Pre-Application Procedures]:

4. (A) Each pre-application preliminary scoping statement shall be accompanied by a fee in an amount equal to three hundred fifty dollars for each thousand kilowatts of generating capacity of the subject facility, but no more than two hundred thousand dollars, to be deposited in the intervenor account established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the hearing examiner's direction to defray pre-application expenses incurred by municipal and local parties (except for a municipality submitting the pre-application scoping statement) for expert witness, consultant, administrative and legal fees. If at any time subsequent to the filing of the pre-application the pre-application is substantially modified or revised, the board may require an additional pre-application intervenor fee in an amount not to exceed twenty-five thousand dollars. No fees made available under this paragraph shall be used for judicial review or litigation. Any moneys remaining in the intervenor account upon the submission of an application for a certificate shall be made available to intervenors according to paragraph (a) of subdivision six of section one hundred sixty-four of this article.

(b) Pre-application disbursements from the intervenor account shall be made in accordance with rules and regulations established pursuant to paragraph (b) of subdivision six of section one hundred sixty-four of this article which rules shall provide for an expedited pre-application disbursement schedule to assure early and meaningful public involvement, with at least one-half of pre-application intervenor funds becoming available through an application process to commence within sixty days of the filing of a pre-application preliminary scoping statement.

Section 164(6)[Application for a Certificate]:

6. (a) Each application shall be accompanied by a fee in an amount (i) equal to one thousand dollars for each thousand kilowatts of capacity, but no more than four hundred thousand dollars, (ii) and for facilities that will require storage or disposal of fuel waste byproduct an additional fee of five hundred dollars for each thousand kilowatt of capacity, but no more than fifty thousand dollars shall be deposited in the intervenor account, established pursuant to section ninety-seven-kkkk of the state finance law, to be disbursed at the board's direction, to defray expenses incurred by municipal and other local parties to the proceeding (except a municipality which is the applicant) for expert witness, consultant, administrative and legal

fees, provided, however, such expenses shall not be available for judicial review or litigation. If at any time subsequent to the filing of the application, the application is amended in a manner that warrants substantial additional scrutiny, the board may require an additional intervenor fee in an amount not to exceed seventy-five thousand dollars. The board shall provide for notices, for municipal and other local parties, in all appropriate languages. Any moneys remaining in the intervenor account after the board's jurisdiction over an application has ceased shall be returned to the applicant.

(b) Notwithstanding any other provision of law to the contrary, the board shall provide by rules and regulations for the management of the intervenor account and for disbursements from the account, which rules and regulations shall be consistent with the purpose of this section to make available to municipal parties at least one-half of the amount of the intervenor account and for uses specified in paragraph (a) of this subdivision. In addition, the board shall provide other local parties up to one-half of the amount of the intervenor account, provided, however, that the board shall assure that the purposes for which moneys in the intervenor account will be expended will contribute to an informed decision as to the appropriateness of the site and facility and are made available on an equitable basis in a manner which facilitates broad public participation.

## APPENDIX 2

Relevant Excerpts from the Article 10 Regulations16 NYCRR, Section 1000.10:

## 1000.10 Fund for Municipal and Local Parties

(a) Pre-Application Provisions

- (1) Each pre-application preliminary scoping statement shall be accompanied by an intervenor fee in an amount equal to \$350.00 for each 1,000 kilowatts of generating capacity of the subject facility, but no more than \$200,000.00.
- (2) All intervenor fees submitted with each preliminary scoping statement and application, as well as any intervenor fee required to be submitted when a pre-application scoping statement or application is amended, shall be deposited in an intervenor account, established pursuant to Section 97-kkkk of the State Finance Law.
- (3) Following the filing of a preliminary scoping statement, the Presiding Examiner or the Secretary shall issue a notice of availability of pre-application intervenor funds providing a schedule and related information describing how interested members of the public may apply for pre-application funds. Requests for pre-application funds shall be submitted to the presiding examiner not later than 30 days after the issuance of the notice of the availability of pre-application intervenor funds.
- (4) An initial pre-application meeting to consider fund requests shall be convened within no less than 45 days but no more than 60 days of the filing of a preliminary scoping statement. At any pre-application meeting that may be held to consider fund requests, participants should be prepared to discuss their funding applications and the award of funds. Participants are encouraged to consider the consolidation of requests with similar funding proposals of other participants.
- (5) If the pre-application preliminary scoping statement is substantially modified or revised subsequent to its filing, the Board may require an additional pre-application intervenor fee in an amount not to exceed \$25,000.00. In such circumstances, the presiding examiner may make awards of the additional funds, on an equitable basis, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby providing early and effective public involvement.

- (6) Each request for pre-application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies to other interested persons, as identified by the Secretary or presiding examiner.
- (7) The presiding examiner shall reserve at least 50% of the pre-application funds for potential awards to municipalities.
- (8) Following receipt of initial requests for pre-application funds, the presiding examiner shall expeditiously make an initial award of pre-application funds, and thereafter may make additional awards of pre-application funds, in relation to the potential for such awards to make an effective contribution to review of the preliminary scoping statement, thereby encouraging early and effective public involvement.
- (9) The presiding examiner shall award funds on an equitable basis to participants during the pre-application phase whose requests comply with the provisions of this section, provided use of the funds will make an effective contribution to review of the preliminary scoping statement, and thereby provide early and effective public involvement.
- (10) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.
- (11) On a quarterly basis, unless otherwise required by the presiding examiner, any person receiving an award of funds shall submit to the presiding examiner, and file with the Secretary, a report:
  - (i) detailing an accounting of the monies that have been spent; and
  - (ii) showing:
    - (a) the results of any studies and a description of any activities conducted using such funds;
    - (b) whether the purpose for which the funds were awarded has been achieved; or
    - (c) if the purpose for which the funds were awarded has not been achieved, whether reasonable progress toward the goal for which the funds were awarded is being achieved and why further expenditures are warranted.
- (12) All disbursements from the pre-application intervenor account to any person shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.

- (13)
- (b) Application Provisions
- (1) Each application shall be accompanied by an intervenor fee in an amount:
    - (i) equal to \$1,000 for each 1,000 kilowatts of capacity, but no more than \$400,000.00, and
    - (ii) for facilities that will require storage or disposal of fuel waste byproduct, an additional intervenor fee of \$500.00 for each 1,000 kilowatts of capacity, but no more than an additional \$50,000.00, shall be deposited in the intervenor account.
  - (2) If an amendment of an application is determined by the Chairperson to be a revision as defined in this Part, the application will require substantial additional scrutiny and the applicant shall submit an additional intervenor fee, in the amount equal to \$1,000 for each 1,000 kilowatts of capacity of the proposed project, as amended, but no more than \$75,000.00. The presiding examiner may, however, increase the level of the additional intervenor fee that shall be submitted, up to the maximum level of \$75,000 if the presiding examiner finds circumstances require a higher level of intervenor funding in order to ensure an adequate record for review of the revision to the application.
  - (3) Following an applicant's publication of notice of filing a PSL Article 10 application, the presiding examiner or secretary shall issue a notice of availability of application intervenor funds providing a schedule and related information describing how municipal and local parties may apply for application funds. Requests for application funds shall be submitted to the presiding examiner within 30 days after the issuance of the notice of the availability of application intervenor funds.
  - (4) The presiding examiner shall award funds during the application phase on an equitable basis to municipal and local parties whose requests comply with the provisions of this section, so long as use of the funds will contribute to a complete record leading to an informed decision as to the appropriateness of the site and the facility and will facilitate broad participation in the proceeding.
  - (5) The presiding examiner shall reserve at least 50% of the intervenor funds for potential awards to municipalities.
  - (6) Any municipality or local party (except an applicant) may request funds from the intervenor account to defray expenses for expert witness, consultant, administrative or legal fees (other than in connection with judicial review).

- (7) Each request for application funds shall be filed with the Secretary and submitted to the presiding examiner, with copies provided to all other parties.
- (8) At any pre-hearing conference that may be held to consider fund requests, the parties should be prepared to discuss their funding applications and the award of funds. Parties are encouraged to consider the consolidation of requests with similar funding proposals of other participants.
- (9) Subject to the availability of funds, the presiding examiner may fix additional dates for submission of fund requests.
- (10) On a quarterly basis, unless otherwise required by the presiding examiner, any party receiving an award of funds shall submit to the presiding examiner and file with the Secretary a report:
  - (i) detailing an accounting of the monies that have been spent; and
  - (ii) showing:
    - (a) the results of any studies and a description of any activities conducted using such funds;
    - (b) whether the purpose for which the funds were awarded has been achieved; if the purpose for which the funds were awarded has not been achieved; whether reasonable progress toward the goal for which the funds were awarded is being achieved; and why further expenditures are warranted.
- (11) Disbursement of Funds
  - (i) All disbursements from the application intervenor account to any party shall be made by the Department of Public Service upon audit and warrant of the Comptroller of the State on vouchers approved by the Chairperson or a designee. All such vouchers must include a description and explanation of all expenses to be reimbursed.
  - (ii) All vouchers must be submitted for payment not later than six months after any withdrawal of an application or the Board's final decision on an application (including a decision on rehearing, if applicable).
  - (iii) Following withdrawal or final Board decision on an application, any funds that have not been disbursed shall be returned to the applicant.



(c) General Provisions

- (1) Each request for funds shall contain:
- (i) a statement of the number of persons and the nature of the interests the requesting party represents;
  - (ii) a statement of the availability of funds from the resources of the requesting party and from other sources and of the efforts that have been made to obtain such funds;
  - (iii) the amount of funds being sought;
  - (iv) to the extent possible, the name and qualifications of each expert to be employed, or at a minimum, a statement of the necessary professional qualifications;
  - (v) if known, the name of any other interested person or entity who may, or is intending to, employ such expert;
  - (vi) a detailed statement of the services to be provided by expert witnesses, consultants, attorneys, or others (and the basis for the fees requested), including hourly fee, wage rate, and expenses, specifying how such services and expenses will contribute to the compilation of a complete record as to the appropriateness of the site and facility;
  - (vii) if a study is to be performed, a description of the purpose, methodology and timing of the study, including a statement of the rationale supporting the methodology and timing proposed, including a detailed justification for any proposed methodology that is new or original explaining why pre-existing methodologies are insufficient or inappropriate;
  - (viii) a statement as to the result of any effort made to encourage the applicant to perform any proposed studies or evaluations and the reason it is believed that an independent study is necessary; and
  - (ix) a copy of any contract or agreement or proposed contract or agreement with each expert witness, consultant or other person.
- (2) If the matter has not been assigned to a presiding examiner, the Secretary shall act as an interim examiner until a presiding examiner has been assigned to the matter.

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on February 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
Maureen F. Harris  
James L. Larocca  
Gregg C. Sayre

CASE 11-E-0593 - Petition of Cricket Valley Energy Center, LLC  
for an Original Certificate of Public  
Convenience and Necessity and for an Order  
Providing for Lightened Regulation.

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY AND ESTABLISHING LIGHTENED RATEMAKING REGULATION

(Issued and Effective February 14, 2013)

BY THE COMMISSION:

INTRODUCTION

In this order, the Commission grants a Certificate of Public Convenience and Necessity (certificate or CPCN) to Cricket Valley Energy Center, LLC (Cricket Valley) for the construction of a combined cycle, natural gas-powered 1,000 megawatt (MW) electric generating facility on an inactive industrial site located in the Town of Dover, Dutchess County, New York (facility or project). The Commission also grants applicant's motion for an expedited proceeding pursuant to 16 NYCRR 21.10 and approves a lightened regulatory regime for the new facility. The new facility is expected to provide cost effective electricity with lower emissions than many existing generation facilities. The facility may also act as a replacement for generation forced to retire due to environmental

or other regulatory factors. Further, the facility is expected to provide black-start services and to rehabilitate an inactive industrial site and provide economic growth for Dutchess County and the Town of Dover.

#### NOTICE

On November 9, 2011, Cricket Valley published notice of its petition and motion for an expedited proceeding in the Poughkeepsie Journal, a newspaper of general circulation in the vicinity of the project. On December 19, 2011, the Secretary issued a Notice of Procedural Conference which was held before Administrative Law Judge (ALJ) Michelle L. Philips in Albany, New York on January 12, 2012. A Notice of Proposed Rulemaking (Notice) concerning the petition for lightened regulatory regime was published in the State Register on December 21, 2011 [11-E-0593SP1]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding that Notice expired on February 2, 2012. Public comments regarding the project are summarized below.

#### PROCEDURAL CONFERENCE AND RULING

As explained in the December 19, 2011 notice, the purposes of the January 12, 2012 procedural conference were to discuss a schedule for the proceeding, identify major issues and address other pertinent procedural issues. Petitioner and Department of Public Service Staff (Staff) attended the conference. No other parties were present. On August 27, 2012, ALJ Philips issued a ruling indicating that no additional public hearing would take place and that Staff would function in an advisory capacity to the Commission.

THE PETITIONPetitioner

Cricket Valley, a limited liability company and single purpose entity formed in 2009 under the New York Limited Liability Company Law, will construct, own and operate the facility. Cricket Valley is an affiliate of Advanced Power AG (Advanced Power), an energy development company headquartered in Zug, Switzerland, with its central office in London. Marubeni Power International, Inc. (Marubeni) also owns a 20% interest in Cricket Valley.<sup>1</sup> Advanced Power Services (NA) Inc., a subsidiary of Advanced Power, located in Boston, Massachusetts, manages Advanced Power's North American operations. The petition includes a certified copy of Cricket Valley's certificate of formation in New York.

According to the petition, Advanced Power has developed more than 9,400 MW of power generation projects. Through various subsidiaries, Advanced Power developed two 420 MW facilities that went into commercial operation in 2011. Advanced Power also indicates that it has under development a number of projects in Europe (totaling 4,240 MW) and a 350 MW combined-cycle gas-fired generation facility in Massachusetts.

Advanced Power and a subsidiary of General Electric Company, GE Energy LLC (GE) have entered into a Joint Development Agreement for the development of the Cricket Valley facility. GE will supply its latest 7FA gas turbine technology and the steam turbines for the project. GE will manufacture the steam turbine and generators in Schenectady, New York. General Electric will provide maintenance services for facility

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<sup>1</sup> Case 11-E-0593, Cricket Valley Energy Center, LLC, Notice Of Purchase of Interest, (March 1, 2012).

the New York State Transmission System and the Connecticut transmission system. The specific reinforcements to enable Cricket Valley to connect to the transmission system will be determined in the NYISO 2011 Class Year study which is now underway and will determine the full cost of interconnection for which Cricket Valley will be responsible.

Natural gas will be the only type of fuel used at the facility, except for blackstart operation and testing and backup fire pump testing, both of which will consume low sulfur diesel fuel. The petition indicates that natural gas will be supplied via a new 500 foot long, 12 inch gas pipeline from the Iroquois Gas Transmission (Iroquois) natural gas pipeline, just north of the facility. The new pipeline will be installed, owned and operated by Iroquois. The maximum daily natural gas requirement at full power output, including duct firing, is approximately 192,971 dekatherms per day. Cricket Valley states that they have not yet entered into a transportation contract for pipeline capacity, but are in negotiations with Iroquois and established holders of firm capacity on Iroquois (both primary firm and secondary firm)<sup>3</sup> to meet the full firm capacity needs of the project. The petition indicates that the use of natural gas as the sole fuel source, excluding blackstart, will avoid the environmental impacts and risks associated with the use of

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<sup>3</sup> It is important to note that secondary firm capacity is not equivalent to primary firm capacity, and while superior to pure interruptible transportation capacity which is the first transportation service to be curtailed, secondary firm is still subject to a reduced allocation or even complete interruption during peak periods. Actual, year round, natural gas availability will be subject to the specific mix of primary and secondary firm capacity established by the contractual agreements between Cricket Valley and established firm holders of capacity on Iroquois.

alternative back-up fuels.<sup>4</sup>

Cricket Valley states that the facility can serve as replacement generation for plant closings related to recent environmental regulations regarding emissions and will act to displace existing less efficient plants. Cricket Valley explains that the proposed facility is consistent with the current State Energy Plan since it will provide more cost-effective electricity with lower emissions than many existing plants - with or without the retirement of the Indian Point nuclear electrical generating facilities.

Cricket Valley states that the project will rehabilitate an inactive industrial site and provide economic growth for Dutchess County and the Town of Dover without a significant burden on municipal services. Cricket Valley estimates that the project will directly create approximately 300 construction jobs and 28 permanent jobs during operation. It also estimates that the project will induce secondary benefits of an additional 2,202 full-time equivalent jobs during construction and upon completion, 56 full-time equivalent jobs. Cricket Valley anticipates providing the Town of Dover significant financial resources through taxes and a building permit fee.

Cricket Valley indicates that the facility is also projected to produce cost production savings of \$241 million statewide from 2015 to 2020. Cricket Valley also expects the facility to provide significant congestion cost benefits.

#### Proposed Facility Location

Cricket Valley indicates that it chose the site because it is located adjacent to existing electric and gas

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<sup>4</sup> The blackstart generators are limited to 500 hours of operation per year for readiness testing.

transmission facilities; its distance from residential dwellings will limit impacts on those residences; and local zoning and site characteristics provide positive attributes for site redevelopment. The proposed facility will be located on 185 acres, bordered by New York State Route 22 to the east, by industrially zoned property owned by Howlands Lake Partners, LLC to the south; and the Con Edison -Pleasant Valley/Long Mountain electric transmission right-of-way, that also contains the Iroquois natural gas pipeline, will border the facility to the north. The Swamp River and a Metro-North rail line transect the facility parcel north to south.

Cricket Valley holds a long-term option to purchase the property, located within the Town of Dover's Industrial/Manufacturing District. Cricket Valley will use an off-site laydown area on Route 22, north of the project development area at approximately the intersection of Old Route 22 (depicted, for example, on DEIS "FIGURE 6.3-1 TRAFFIC IMPACT ASSESSMENT STUDY CORRIDOR") during construction of the facility in an effort to reduce environmental impacts to wetlands adjacent to the main facility site and to retain a larger tree buffer around the facility after construction.

#### Public Outreach

In June 2009, Cricket Valley established a web site ([www.cricketvalley.com](http://www.cricketvalley.com)) in order to provide the public with information concerning the project. In January 2010, Cricket Valley established local advisory groups to involve residents, environmental groups and other interested parties in the development process and promote communication between the developer and the community. In response to some of the concerns expressed by the community, Cricket Valley redesigned the project to include a rooftop water collection system and a

zero liquid discharge water system and developed a traffic plan to minimize congestion during construction.

Cricket Valley had two open houses and participated in other public outreach meetings including two in April and May of 2009 hosted by the Town of Dover. The New York State Department of Environmental Conservation (DEC) held two Draft Environmental Impact Statement scoping meetings in June 2010 and related public comment hearings on June 28 and July 9, 2010. DEC issued a Notice of Completion of a Final Environmental Impact Statement on July 25, 2012.<sup>5</sup>

#### The Lightened Rate Regulation Request

Cricket Valley seeks a lightened regulatory regime similar to that found appropriate for other independent power producers engaged in selling electricity at wholesale. Specifically, Cricket Valley requests that the Commission apply the relevant section of Article 1 and Article 4 of the Public Service Law to its operation with scrutiny and filing requirements consistent with Commission precedent and that the Commission not impose Article 6 requirements except for Public Service Law §119-b.

#### SUMMARY OF PUBLIC COMMENTS

A number of comments were received from residents within the project vicinity. Mr. Dave Harrison of Patterson, New York supports the project because he believes the state will benefit from the project's proposed black start capabilities and his area will benefit from locally sited generation. Mr. Peter Rusciano opposes the project because he believes the proposed

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<sup>5</sup> Available at [http://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/cvnotice.pdf](http://www.dec.ny.gov/docs/permits_ej_operations_pdf/cvnotice.pdf).



exhaust stacks will destroy the value of his home by destroying the view from his residence. Mr. Rusciano also states that emissions from the plant will pollute the local air and that the meteorological data used to predict the project's emission impacts are not representative of local conditions. Mr. Rusciano also states that the plant is not needed and expressed concern about possible future expansion of the project and its possible use of natural gas extracted through high-volume hydraulic fracturing (hydrofracking). Ninety-eight individuals signed a petition opposing the project. The petition states that the project will cause adverse impacts on air quality, soil, water and local real estate values. It also indicates that the meteorological data utilized for emissions modeling was not representative of the topography of the proposed project site and is therefore inaccurate.

#### DISCUSSION

We are authorized to grant a CPCN to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of electric plant is necessary or convenient for the public service. Our rules establish evidentiary requirements for a CPCN application.<sup>6</sup> Specifically, the rules require a description of the plant to be constructed, its estimated cost and the manner in which the cost is to be financed. The rules also required evidence that the proposed project is economically feasible, is in the public interest and that applicant is able to finance the project and render adequate service. We may grant a motion for an expedited proceeding pursuant to 16 NYCRR 21.10 where it appears in the public interest that the public hearings required by PSL §68 be

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<sup>6</sup> 16 NYCRR §21.3.

held on the application, exhibits, prepared testimony and such other information as may be filed by the applicant or other parties and no person, municipality or agency has filed a written objection stating substantive reasons for opposing the motion.

#### State Environmental Quality Review

The DEC acted as Lead Agency and conducted a coordinated review of the proposed facility pursuant to the State Environmental Quality Review Act (SEQRA) contained in Article 8 of the Environmental Conservation Law. The purpose of SEQRA and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7) is to incorporate consideration of the environmental factors into existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires agencies to determine whether the actions they are requested to approve may have a significant impact on the environment. Where an action may have significant adverse environmental impacts, an Environmental Impact Statement (EIS) must be prepared by the Lead Agency or the applicant.

Where an EIS is prepared, the Lead Agency and each other Involved Agency must adopt a formal set of written findings based on the Final EIS (FEIS). The SEQRA Findings Statement of each agency must:

- (i) consider the relevant environmental impacts, facts, and conclusions disclosed in the FEIS;
- (ii) weigh and balance relevant environmental impacts with relevant social, economic, and other considerations;
- (iii) provide the rationale for the agency's decision;

- (iv) certify that the requirements of 6 NYCRR Part 617 have been met; and
- (v) certify that, consistent with social, economic, and other essential considerations, and considering among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures identified as practicable.<sup>7</sup>

Once the findings are adopted, the SEQRA process is complete and the Lead Agency and involved agencies may approve, approve with conditions, or disapprove the proposed project.

In April 2010, DEC determined that the project would have a significant adverse impact on the environment and issued a positive declaration of environmental significance. On May 25, 2011, a Draft EIS (DEIS) as well as draft permits for state air source facility (6 NYCRR 201), freshwater wetlands and water quality certification were made available for public comment. On July 25, 2012, DEC published a Notice of Acceptance in the Environmental Notice Bulletin regarding the FEIS. The FEIS, available at Cricket Valley's website and in hard copy at the Dover Town Hall, the Dover Plains Library and the Cricket Valley Energy Community Office, includes responses to comments on the DEIS and project modifications made to avoid, reduce or mitigate potential adverse impacts.

The record in the SEQRA proceeding contains extensive

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<sup>7</sup> 6 NYCRR §§617.11(c) and (d).

information regarding the potential impacts on air quality and climate, geology, soils, topography, water resources, ecological resources, aesthetics, visual resources, noise, traffic and transportation, socioeconomics, environmental justice, land use and zoning, energy use, greenhouse gas emissions, health, public safety, historic, cultural and archeological resources. The FEIS addresses the potential environmental impacts, and provides protective measures tailored to avoid, minimize, and mitigate the environmental impacts.

In its Findings Statement issued September 26, 2012, DEC concluded that the Cricket Valley project is designed to avoid, or where not completely avoided, minimize and mitigate adverse environmental impacts. Upon consideration of the environmental impacts, facts, and conclusions in the FEIS, we also conclude that the project would avoid and minimize adverse environmental impacts to the maximum extent practicable. We base our conclusions on the various factors described below.

In response to comments regarding the DEIS, Cricket Valley will implement long-term pump-testing and water monitoring programs. The pump-test program, approved by NYSDEC and described in detail in Section 5.4.4 of the DEIS, will monitor neighboring wells, adjacent wetlands and the Swamp River to ensure water consumption during development and operation of the project will have no adverse impact on the Town of Dover's drinking water supply. It has been verified by a third party that the plant's water needs can be sustainably met through the exclusive use of on-site wells and no further demands to existing off-site resources would be necessary (DEIS Appendix 5C). Long-term, deep well testing of the aquifer underlying the site indicate no contamination beyond thresholds for total coliform bacteria which would be treated in accordance with Dutchess County Department of Health requirements. Groundwater

monitoring will continue for the life of the project.

The project's greater thermal efficiencies compared with older and less efficient generation would provide significantly more electric output per unit of fuel. The project also minimizes water consumption through air cooling which will also avoid visual impacts from water plumes. Further, a roof-top rainwater capture system would reduce the need for process water and a zero liquid discharge system would eliminate the need to discharge process water.

The FEIS contains air quality modeling that conforms to recently promulgated, more-stringent emission requirements. Moreover, the emission control devices and strategies to be used by the project represent the most stringent limitation achieved in practice or which can reasonably be expected in practice for a natural gas-fired combined cycle electric generating facility considering the air contaminants that must be controlled. Regarding green house gases, natural gas is less carbon intensive than other fossil fuels and natural gas-fired combined cycle combustion turbines are generally considered among the most efficient in converting fossil fuel to energy. In addition, air dispersion models indicate that adverse air quality impacts at or near the project site and emissions in excess of National Ambient Air Quality Standards, State Ambient Air Quality Standards, or Significant Impact Levels will be avoided. Contrary to some of the public comments received, meteorological information used in the modeling was employed specifically for its similarity to the project location and the data represented a wide range of dispersion conditions.

An Economic Dispatch Analysis using General Electric's electric production simulation tool (GEMAPS®) predicts that the project would reduce regional air pollutant emissions by displacing less efficient power plants. Emissions of NO<sub>x</sub> and SO<sub>2</sub>

would decrease within the New York and the New England and PJM power pool areas and increase slightly in the Ontario power pool area. Carbon dioxide emissions would increase slightly in New York due to an increase of in-state generation but would decrease across the region.

The project also provides additional benefits in that it will utilize a disused former industrial site and extant debris and limited waste associated with the manufacturing operation that once occupied the site (Rasco Industries) will be removed. The project sponsors will also restore and enlarge wetlands on the site while maintaining the integrity of other existing natural resource areas in the project vicinity (e.g. 79 acres of natural area west of the Metro North railroad tracks).

Also, the applicant indicates that there are no known endangered species at the facility site or the off-site laydown area that could be adversely affect by construction and operation. Additionally, Cricket Valley has conducted traffic studies and indicates that the location and utilization of the laydown area will not create traffic problems. It has also conducted archeological studies in the laydown area and did not identify any potential impacts.

The project represents the best alternative among those considered. The "no action" alternative would preclude the benefits associated with the project; the potential improvements to overall generation efficiency, fuel consumption, air emissions would not be achievable. A "demand side management" alternative would not serve the base-load energy demand the project is intended to serve and would also forgo the black start benefits expected from the project. Renewable technologies do not appear to be viable alternatives for this scale of project at this location. Locating the project at the

proposed site will also provide rehabilitation of an inactive industrial site, which would not otherwise be achievable.

On the basis of our consideration of the relevant environmental impacts presented in the FEIS and our review of the documents filed by parties and the submitted comments we conclude that we can make the findings required by ECL §8-0109(8) and 6 NYCRR 617.11(c) and (d).

#### Historic Preservation Review

On September 25, 2009, the project sponsors received a letter from the NYS Historic Preservation Office with a determination of No Adverse Effect to cultural or historic resources in the project vicinity. The project would revitalize a former industrial site and add additional protections and enhancements to natural resources in the area. There are no known or listed historical and cultural resources currently present at the project site that would require special consideration or additional protections during project construction and operation.

The project sponsors identify two historically sensitive properties within five miles of the project site. The Tabor-Wing House, built in 1810, is 4 miles from the project site and was listed on the National Register of Historic Places in 1982. The Dover Plains Second Baptist Church is over four miles from the project site, was built in the 1830s and was listed on the National Register of Historic Places on August 30, 2010.

Section 6.6, 'Cultural Resources,' of the DEIS and the FEIS chronicles the coordination and consultation undertaken by the project sponsors to determine if the potential exists to adversely affect historic and cultural resources. Potential visual effects have been addressed in Section 6.2 of the DEIS

and FEIS. The terrain character and extensive vegetation in the project vicinity make it unlikely that the construction and operation of the facility would result in significant adverse visual effects to sensitive resources, historic or cultural uses.

The requirements of §14.09 of the Parks, Recreation and Historic Preservation Law (regarding consultation among state agencies) are supplanted where a full evaluation of potential cultural resource impacts is performed in accordance with §106 of the National Historic Preservation Act. The New York District of the US Army Corps of Engineers (ACOE) is conducting a §106 cultural resources impact evaluation for a Visual Area of Potential Effect within a 5-mile radius centered on the project site. At the conclusion of the §106 review and consultation process, any cultural or historic impacts identified will be mitigated through a Memorandum of Understanding among the Petitioner, the SHPO and the ACOE. Upon completion of the §106 review, our responsibilities for consultation with the SHPO and consideration of cultural resources impacts will be satisfied.

#### Public Convenience and Necessity

PSL §68 requires an electric corporation to obtain a CPCN prior to the construction of gas or electric plant. We are authorized to grant a CPCN to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that construction of the electric plant is necessary and convenient for the public service. In this regard, our rules establish pertinent evidentiary requirements for a CPCN application. They require, among other matters, a description of the manner in which the costs of the plant to be constructed would be financed, evidence that the proposed enterprise is able to



render adequate service and that the facility is in the public interest.

The Cricket Valley project is in the public interest. It would be a modern generation plant and would incorporate various measures to increase efficiency and capacity and avoid or minimize adverse environmental impacts to the greatest extent practical. These measures include: highly efficient combined cycle technology; air-cooled condensers; a zero liquid discharge system; rooftop rainwater capture; and carefully designed storm water management systems. Its construction at the proposed site will have the added benefit of rehabilitating an idle industrial site and the applicant intends to preserve approximately 75 acres of on-site wetland habitat. As an additional source of power generation in the Hudson Valley, the project will help meet long-term electric system capacity needs and may relieve short term reliability concerns due to generation retirement. Moreover, the project is expected to contribute significantly to the local tax base and to create jobs and associated economic activity and development.

Cricket Valley intends to develop, finance, construct and operate the project as a merchant facility without relying upon cost-of-service rates set by either a Federal or State regulatory entity. The applicant intends to sell capacity, electricity and ancillary services exclusively through the wholesale competitive markets administered by the NYISO. Cricket Valley indicates that it will involve a major institutional equity source to provide a substantial equity investment with the remaining financing to take the form of debt from commercial banks or major energy funds. Cricket Valley expects the project to cost approximately \$1.4 billion. Neither Cricket Valley nor any of its affiliates have any retail customer in New York State.

Cricket Valley's parent company, Advanced Power AG, has considerable experience with plant operation and development including developing more than 9,400 MW of power generation worldwide. Also, Advanced Power has entered into a joint development agreement with a subsidiary of General Electric, GE Energy LLC (GE). GE is a well-known, world leader in supplying power generation and energy delivery technologies. GE will supply the project with the manufacturer's latest gas turbine technology and its steam turbines. Thus, Cricket Valley and Advanced Power, together with their association with GE, appear to have the requisite expertise to obtain project financing and to render adequate service.

Cricket Valley has committed to complying with the relevant design, construction and operational requirements of the National Electric Safety Code, and other applicable engineering codes, standards and requirements. Cricket Valley has proposed that operation of the facility will be done per Utility Standards and the requirements of Con Edison and the NYISO including the Class Year 2011 Annual Transmission Reliability Assessment Study (or such later study as may be applicable). The Applicant has proposed appropriate standards and measures for engineering, design, construction, inspection, maintenance and operation of its authorized electric plant, including features for facility security and public safety; utility system protection; plans for quality assurance and control measures for facility design and construction; utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities; vegetation and facility maintenance standards and practices; emergency response plans for construction and operation; and complaint resolution measures. Based on Cricket Valley's representations and commitments to adopt and enforce reasonable

measures within the proposed areas of operations, the evidence presented in the petition and supplements, we conclude that Cricket Valley will provide safe, reliable and adequate service.

We conclude, based on a thorough review of the record developed here and as part of DEC SEQRA analysis, that the Cricket Valley Project is necessary and convenient for the public service. Accordingly, after holding a hearing on January 12, 2012, as required by PSL §68, we grant Cricket Valley a CPCN along with appropriate conditions to ensure safe, reliable and adequate service.

#### Expedited Proceeding

Cricket Valley moved for an expedited proceeding under 16 NYCRR §21.10. As noted above, notice of Cricket Valley's petition and motion for an expedited proceeding was published in the Poughkeepsie Journal, a newspaper of general circulation in the vicinity of the project, on November 9, 2011. No public comments regarding the motion for an expedited proceeding<sup>8</sup> were received within the ten-day comment period prescribed under our regulations. After a hearing having been held in this proceeding on January 12, 2012, we find, as required by PSL §68, that the construction and operation of the Cricket Valley's proposed electrical generating facility for providing wholesale service as described in the applicant's petition is necessary or convenient for the public service. Accordingly, we grant Cricket Valley's motion for an expedited proceeding.

#### Lightened Ratemaking Regulation

Cricket Valley seeks an order approving a lightened regulatory regime whereby limited provisions of the PSL will be

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<sup>8</sup> One public comment supporting the project was received on November 9, 2011.

applied to it consistent with our previous orders involving Exempt Wholesale Generators (EWGs). Cricket Valley may be lightly regulated in its ownership of the project because it would provide electric service from the facility on a wholesale basis, as a participant in the NYISO competitive markets. The lightened regulatory regime that Cricket Valley requests be applied to its wholesale electrical operation in New York is similar to that afforded to other wholesale generators participating in competitive electrical markets. Its petition is, therefore granted to the extent discussed below.

In the Carr Street and Wallkill Orders,<sup>9</sup> it was concluded that new forms of electric service providers participating in wholesale electric markets would be lightly regulated. Accordingly, in interpreting the PSL, we have examined what reading best carries out the statutory intent and advances the public interest. Under this approach, PSL Article 1 applies to Cricket Valley because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). Cricket Valley, therefore, is subject to provisions such as PSL §§11, 19, 24, 25, and 26, that prevent producers of electricity from taking actions that are contrary to the public interests.<sup>10</sup>

All of Article 2 is restricted by its terms to the provision of service to retail residential customers, and so is inapplicable to wholesale generators such as Cricket Valley.

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<sup>9</sup> Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999); Case 91-E-0350, Wallkill Generating Company, L.P., Order Establishing Regulatory Regime (issued April 11, 1994).

<sup>10</sup> The PSL §18-a assessment is applied against gross revenues earned on PSL-jurisdictional intrastate services. As long as Cricket Valley sells exclusively at wholesale in interstate markets, there are no intrastate revenues and no assessment is collected.

Certain provisions of Article 4 are also inapplicable because they are restricted to retail service.<sup>11</sup>

It was decided in the Carr Street and Wallkill Orders that other provisions of Article 4 would pertain to wholesale generators.<sup>12</sup> Application of these provisions was deemed necessary to protect the public interest. The Article 4 provisions, however, were implemented in a fashion that limited their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest requires. Wholesale generators satisfy the Annual Report filing requirement imposed on them under PSL §66(6) through a format devised for that purpose.<sup>13</sup> This analysis of Article 4 applies to Cricket Valley.

Regarding PSL §69, prompt regulatory action is possible through reliance on representations concerning proposed financing transactions. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because lightly-regulated

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<sup>11</sup> See, e.g., PSL §§66(12), regarding the filing of tariffs required at our option; §66(21), regarding the storm plans submitted by retail service electric corporations; §67 regarding inspection of meters; §72, regarding hearings and rate proceedings; §75, regarding excessive charges; and, §76, regarding rates charged religious bodies and others.

<sup>12</sup> PSL §68 provides for certification of electric plant, but pertains only to construction of new plant (unless such plant is reviewed pursuant to PSL Article VII) or to electricity sales made via direct interconnection with retail customers. PSL §§69, 69-a and 70 provide for the review or securities issuances, reorganizations, and transfers of securities or works or systems, respectively.

<sup>13</sup> Case 11-M-0295, Lightened Ratemaking Regulation - Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation, (issued January 23, 2013).

participants in competitive markets bear the financial risk associated with their financial arrangements.<sup>14</sup>

Regarding PSL §70, it was presumed in the Carr Street and Wallkill Orders that regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."<sup>15</sup> Wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review.<sup>16</sup> Cricket Valley may avail itself of this presumption. Under PSL §§66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Turning to Article 6, several of its provisions adhere to the rendition of retail service. These provisions do not pertain to Cricket Valley because it is engaged solely in the generation of electricity for wholesale.<sup>17</sup> Application of PSL §115, regarding requirements for the competitive bidding of

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<sup>14</sup> See, e.g., Case 10-E-0405, NRG Energy, Inc., Order Approving Financing (issued November 18, 2010); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

<sup>15</sup> Carr Street Order, p. 8; Wallkill Order, pp. 9-10.

<sup>16</sup> In this context, under PSL §§66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

<sup>17</sup> See, e.g., PSL §§112, regarding enforcement of rate orders; 113, regarding reparations and refunds; 114, regarding temporary rates; 114-a, regarding exclusion of lobbying costs from rates; 116, regarding discontinuance of water service; 117, regarding consumer deposits; 118, regarding payment to an authorized agency; 119-a, regarding use of utility poles and conduits; and, 119-c, regarding recognition of tax reductions in rates.

utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, regarding the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

The remaining provisions of Article 6 need not be imposed generally on wholesale generators.<sup>18</sup> These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. However, so long as the wholesale generation market is effectively competitive, or market mitigation measures produce prices aligned with competitive outcomes, as discussed above, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or overly constrain its fluid operation, to the detriment of the public interest.

As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. Cricket Valley has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, we impose the requirements of §§ 110(1) and (2) on Cricket Valley only conditionally, to the extent a future inquiry into its relationships with affiliates becomes necessary.

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<sup>18</sup> These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and water, gas and electric purchase contracts under §110(4).

Finally, notwithstanding that it is lightly regulated, Cricket Valley is reminded that it and the entities that exercise control over the operations of its generation facility remain subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed above and in previous orders.<sup>19</sup> Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>20</sup> to give notice of generation unit retirements,<sup>21</sup> and to report personal injury accidents pursuant to 16 NYCRR Part 125.

The Commission orders:

1. The motion for an expedited proceeding on the application of Cricket Valley Energy Center, LLC (Cricket Valley) is granted.
2. A Certificate of Public Convenience and Necessity is granted, authorizing Cricket Valley to construct and operate an electric plant within New York as described in the body of this Order.
3. Cricket Valley and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

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<sup>19</sup> See, e.g., Case 11-E-0351, Stony Creek Energy LLC, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened Ratemaking Regulation and Approving Financing (issued December 15, 2011).

<sup>20</sup> Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

<sup>21</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).



4. Cricket Valley shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals and file copies of such permits and approvals with the Secretary to the Public Service Commission (Secretary).

5. Cricket Valley shall file with the Secretary final Site Plans and construction drawings for the project including all project components, access roads, and electric lines associated with the Project for review by the Staff of the Department of Public Service (DPS Staff) before the start of construction.

6. Prior to commencing construction of the substation and transmission interconnection, not including minor activities required for testing and development of final engineering and design information, Cricket Valley shall file with the Secretary final design plans and profile drawings of the substation and the transmission interconnection and proof of acceptance of the design by Consolidated Edison Company of New York, Inc. (Con Edison).

7. The authorized electric plant shall be subject to inspection by authorized representatives of DPS Staff pursuant to §66(8) of the Public Service Law.

8. Cricket Valley shall incorporate, and implement as appropriate, the standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized electric plant, including features for facility security and public safety, utility system protection, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for

construction and operational phases, and complaint resolution measures, as presented in its Petition, its Environmental Impact Statement and this Order.

9. Cricket Valley shall file with the Secretary, within three days after commencement of commercial operation of the electric plant, an original and three copies of written notice thereof.

10. The Company shall design, install and maintain ground grids coordinating them with the gas transmission pipelines and to be in full conformance with IEEE 80.

11. Cricket Valley shall file with the Secretary a copy of the System Reliability Impact Study (SRIS) performed in accordance with the New York Independent System Operator's (NYISO) Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission), and all appendices thereto, reflecting the interconnection of the facility.

12. Cricket Valley shall design, engineer, and construct facilities in support of the authorized electric plant in accordance with the NYISO Class Year 2011 Facilities Study (or such later study as may be applicable), and accordance with applicable and published planning and design standards and best engineering practices of NYISO, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations. Specific requirements shall be those required in the SRIS as performed in accordance with the NYISO's OATT and by the Interconnection Agreement (IA) and the facilities agreement with Con Edison.

13. Cricket Valley shall work with Con Edison, and any successor Transmission Owner (as defined in the NYISO Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between the Company and Con Edison),

the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the Con Edison transmission system is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and Con Edison, and any successor Transmission Owner (as defined in the NYISO Agreement). Cricket Valley shall ensure compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and Con Edison criteria.

14. Cricket Valley shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of Con Edison, NYISO, NYSRC, NPCC, NERC and successor organizations.

15. Cricket Valley shall be in full compliance with the applicable reliability criteria of Con Edison, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, the Company shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Commission and Con Edison with a copy of the NYISO notice.

16. Cricket Valley shall file a copy of the following documents with the Secretary:

- (a) All facilities agreements with Con Edison, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO IA );
- (b) the SRIS approved by the NYISO Operating Committee;
- (c) any documents produced as result of the updating of requirements by the NYSRC;

(d) the Relay Coordination Study, which shall be filed not later than six months prior to the projected date for commencement of commercial operation of the facilities; and a copy of the manufacturers' "machine characteristics" of the equipment installed (including test and design data);

(e) a copy of the facilities design studies for the Electric Plant, including all updates (throughout the life of the plant);

(f) a copy of the IA and all updates or revisions (throughout the life of the plant); and

(g) if any equipment or control system with different characteristics is to be installed, the Company shall provide that information to Consolidated Edison and file it with the Secretary at least three months before any such change is made (throughout the life of the plant).

17. Cricket Valley shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, Cricket Valley shall obey dispatch instructions issued by the Con Edison Control Center, or its successor, in order to maintain the reliability of the transmission system.

18. (a) After commencement of construction of the authorized Electric Plant, Cricket Valley shall file with the Secretary and provide to Con Edison a monthly report on the progress of construction and an update of the construction schedule, and file copies of current construction progress reports during all phases of construction. In the event the Commission determines that construction is not proceeding at a

pace that is consistent with Good Utility Practice, and that a modification, revocation, or suspension of the Certificate of Public Convenience and Necessity (Certificate) may therefore be warranted, the Commission may issue a show cause order requiring Cricket Valley to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. Cricket Valley shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate. It shall be a defense in any proceeding initiated pursuant to this condition if the delay of concern to the Commission:

(1) arises in material part from actions or circumstances beyond the reasonable control of Cricket Valley (including the actions of third parties);

(2) is not in material part caused by the fault of Cricket Valley; or

(3) is not inconsistent with a schedule that constitutes Good Utility Practice.

(b) Cricket Valley shall file with the Secretary, no more than four months after the commencement of construction, a detailed progress report. Should that report indicate that construction will not be completed within twenty-four months, Cricket Valley shall include in the report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order

to show cause will not be issued by the Commission, but a hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate.

(c) For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Company is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, NYSRC criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to the Company, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

(d) Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) Cricket Valley electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.

19. Cricket Valley shall work with Con Edison system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment or equipment related to the electrical interconnection of the project to the transmission system, and to ensure that the equipment purchased will be able to withstand most system abnormalities. The technical considerations of interconnecting the electric plant to the transmission facility shall be documented by Cricket Valley and filed with the Secretary and provided to Con Edison prior to the installation of transmission equipment. Updates to the technical information shall be furnished as available (throughout the life of the plant).

20. Cricket Valley shall work with Con Edison engineers and safety personnel on testing and energizing equipment in the authorized substation. A testing protocol shall be developed and provided to Con Edison for review and acceptance. Cricket Valley shall file with the Secretary a copy of the testing design protocol within 30 days of Con Edison's acceptance. Cricket Valley shall make a good faith effort to notify DPS Staff of meetings related to the electrical interconnection of the project to the Con Edison transmission system and provide the opportunity for DPS Staff to attend those meetings.

21. Cricket Valley shall call the Bulk Electric System Section within six hours to report any transmission related incident that affects the operation of the Electric Plant. Cricket Valley shall file with the Secretary a report on any such incident within seven days and provide to Con Edison. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. Cricket Valley shall work cooperatively with Con Edison, NYISO and the NPCC to prevent any future occurrences.

22. Cricket Valley shall make modifications to its Interconnection Facility, if it is found by the NYISO or Con Edison to cause reliability problems to the New York State Transmission System. If Con Edison or the NYISO bring concerns to the Commission, Cricket Valley shall be obligated to address those concerns.

23. If, subsequent to construction of the authorized electric plant, no electric power is generated and transferred out of such plant for a period of more than a year, the Commission may consider the amendment, revocation or suspension of the Certificate.

24. In the event that a malfunction of the authorized electric plant causes a significant reduction in the capability of such plant to deliver power, Cricket Valley shall promptly file with the Secretary and provide to Con Edison copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. Cricket Valley shall provide monthly reports to the Secretary and Con Edison on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, Cricket Valley shall provide a detailed



report to the Secretary, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, Cricket Valley shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

25. No less than 60 days prior to the commencement of operation, Cricket Valley shall file with the Secretary, Operation and Maintenance Plan(s) for the Electric Plant. The company shall file with the Secretary complete documentation of its emergency procedures and list of emergency contacts. Cricket Valley shall file annually with the Secretary an updated copy of its emergency procedures and list of emergency contacts and with documentation of any modifications.

26. Cricket Valley shall file a report with the Secretary, regarding implementation of a Special Protection System, if one is required, which is designed to mitigate possible overloads from certain transmission outages, as well as copies of all studies that support the design of such a system. In addition, Cricket Valley shall provide all documentation for the design of special protection system relays, with a complete description of all components and logic diagrams. Prior to commencement of operations, Cricket Valley shall demonstrate through appropriate plans and procedural requirements that the relevant components of the Special Protection System will provide effective protection.

27. If Cricket Valley participates in the NYISO's Black Start program, Cricket Valley shall demonstrate annually that the unit can be black started. Cricket Valley shall schedule with the NYISO and Con Edison the black start test and demonstrate black start procedures. If the black start test

fails, Cricket Valley shall produce a report describing the test and what actions or changes are being made to the black start equipment and/or procedures. A copy of such report, including sign-off from Con Edison shall be filed with the Secretary. Cricket Valley shall provide the opportunity for DPS Staff to observe the black start testing. Cricket Valley shall effectuate a successful black start annually to qualify for the Black Start program.

28. Cricket Valley shall submit all pipeline transportation contracts to the Department of Public Service Information Access Officer. All submissions should be labeled confidential and include this case number prominently in the name of the filing.

29. Prior to supplying any gas for testing or blow downs at the plant the applicant shall provide a safety program and emergency procedures for the initially supplying any amount of gas to the plant. The applicant shall meet with the Department's Gas Safety Section and review the safety program prior supplying any gas.

30. Before installation of fencing, gates or permanent exterior lighting at the substation, switchyard or O&M building may commence, the Company shall provide revised plan and detail pages as follows for review and acceptance by the director of the Office of Energy Efficiency and the Environment, based on relevant economic, engineering or environmental factors:

- (a) provide fencing and gate designs to demonstrate site security provisions;
- (b) add gate at O&M building entry drive; and,
- (c) revise exterior lighting specifications to indicate full-cutoff fixtures with no drop-down optics

(utilize the "flat glass" option for light trespass control.

31. The Secretary is authorized to extend any deadlines set forth in this order.

32. This proceeding is continued, but will be closed following compliance with the directives set forth herein.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 11-E-0593 - Petition of Cricket Valley Energy Center, LLC  
for an Original Certificate of Public  
Convenience and Necessity and for an Order  
Providing for Lightened Regulation.

Statement of Findings

This statement was prepared in accordance with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA). The New York State Department of Environmental Conservation (DEC) acted as Lead Agency and the Public Service Commission (Commission) is an Involved Agency. The address of the Lead Agency is:

NYS DEC  
Division of Environmental Permits  
625 Broadway, 4<sup>th</sup> Floor  
Albany, New York 12233-1750

The address of the Commission is:

Hon. Jeffrey Cohen  
Acting Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

Questions concerning the quality or content of this document can be directed to Vance A. Barr, Utility Analyst II (Environmental) at 518-402-4873, or to the Commission at the address above.

Description of Project

The proposed project consists of a combined cycle, natural gas-powered 1,000 megawatt (MW) electric generating facility on an inactive industrial site located in Dover, Dutchess County, New York (facility or project). The facility will consist of three combined-cycle generation units, each

consisting of a combustion turbine generator, a heat recovery steam generator (HRSG) with supplemental duct firing and a steam turbine generator. Auxiliary equipment will include a low nitrogen oxide (NO<sub>x</sub>) natural gas-fired auxiliary boiler and four diesel fired blackstart generators, each with a maximum power rating of 3 MW.

The facility will be equipped with emissions control technology including dry low NO<sub>x</sub> burners and selective catalytic reduction technology to control emissions of NO<sub>x</sub> and an oxidation catalyst to control carbon monoxide and volatile organic compounds emissions. A continuous emissions monitoring will be utilized to ensure compliance with applicable emissions standards.

The condensers will be air-cooled to minimize water use and process water will be supplied from new, on-site deep bedrock wells which have been tested to provide adequate water supplies for the facility. A roof-top rainwater capture system will be utilized to supplement water needs and a zero liquid discharge system will recycle and reuse water internally, reducing the need for fresh process water and eliminating the need to discharge any process water.

Several storage tanks will be on-site at the facility, including two 30,000 gallon aqueous ammonia storage tanks with a secondary safety containment area, designed to hold 110% of the entire volume of the aqueous ammonia tanks. A small quantity of ultra-low sulfur diesel (ULSD) fuel and lubricating oils will be stored on sight. All tanks, equipment and vessels containing ULSD fuel and/or lubricating oils will be located inside a concrete safety containment, sump or curbed dike area for spill control.

Two 700 foot long, on-site, overhead 345 kilovolt (kV) transmission lines will be built to connect the project to the

existing Consolidated Edison Company of New York, Inc.'s (Con Edison) 345 kV electrical transmission line located adjacent to the northern property line of the project. A new switchyard and substation, incorporating gas-insulated switchgear to minimize the facility footprint will also be built on site.

Natural gas will be the only type of fuel used at the facility, except for blackstart operation when low sulfur diesel fuel would be used. Natural gas will be supplied via a new 500 foot long, 12 inch gas pipeline from the Iroquois Gas Transmission (Iroquois) natural gas pipeline, just north of the facility. A new gas service line will be constructed.

#### Discussion

A comprehensive environmental review of the project was conducted in conformance with the SEQRA and the DEC acting as Lead Agency. The Commission is an Involved Agency. Following the issuance of a final scoping document on July 16, 2010, a Draft Environmental Impact Statement (DEIS) was made available for public comment on May 25, 2011. Comments on the DEIS were accepted by DEC until August 5, 2011. DEC conducted afternoon and evening public hearings concerning the DEIS on June 28, 2011 and a Saturday hearing on July 9, 2011.

In response to written comments, as well as the comments raised during the public hearings, DEC filed a Final EIS (FEIS) on July 25, 2012. On the same day, a notice of completion was issued and the FEIS was distributed to involved and interested agencies, and to the public.

The record in the SEQRA proceeding contains extensive information regarding the potential impacts on air quality and climate, geology, soils, topography, water resources, ecological resources, aesthetics, visual resources, noise, traffic and transportation, socioeconomics, environmental justice, land use

and zoning, energy use, greenhouse gas emissions, health, public safety, and historic, cultural and archeological resources. The FEIS addresses the potential environmental impacts, and provides protective measures tailored to avoid, minimize and mitigate those impacts. These measures include: highly efficient combined cycle technology; air-cooled condensers; a zero liquid discharge system; rooftop rainwater capture; and carefully designed storm water management systems.

In its Findings Statement, DEC concluded that the Cricket Valley project has been designed, and where necessary, revised, to avoid, minimize, and mitigate adverse environmental impacts. Upon considering the environmental impacts, facts, and conclusions in the FEIS, we also conclude that the project would avoid and minimize adverse environmental impacts to the maximum extent practicable.<sup>22</sup> The basis for our conclusion is the project's design would increase thermal efficiencies and provide significantly more electric output per unit of fuel than an older generation plant, while redeveloping an abandoned industrial site and minimizing impacts on water resources through use of on-site, bedrock aquifer wells for process and consumptive water use, and extensive historic and on-going groundwater monitoring and testing.

Although the project will be a major source of air emissions, carbon dioxide production region wide is expected to decrease. Further, the project is expected to result in other air emissions reductions in New York and region-wide including emissions of NO<sub>x</sub> and SO<sub>2</sub>. Air emissions in general will be

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<sup>22</sup> Other findings pursuant to SEQRA, as extensively discussed in the Findings Statement adopted by DEC, are reasonable and appropriate. Those findings consider the relevant environmental impacts, facts and conclusions as discussed in the FEIS.

minimized through the use of emission control devices and strategies representing the most stringent limitation achieved in practice or which can reasonably be expected in practice.

Impacts on land use at the remote laydown area are expected to be temporary. Permanent impacts will be avoided and temporary impacts will be avoided or minimized by proper handling of top soil, grading of the site and storm water management systems. Impacts to wetlands will be avoided and minimized through construction practices and protective plantings. Plans also call for the creation, restoration or enhancement of approximately 2 acres of wetlands. Further, although, 2 acres of forest will be cleared temporarily during construction, 79 acres of land west of the Metro-North railroad bordering the Swamp River will be preserved from development in perpetuity. The project is not expected to have significant adverse impacts on wildlife or significant habitat areas.

The project represents the best alternative among those considered. The "no action" alternative would preclude the benefits associated with the project. A demand side management alternative would not serve the base-load energy demand the project is intended to serve. A "demand side management" alternative would also forgo the black start benefits expected from the project. Finally, renewable technologies do not appear to be viable alternatives for this scale of project at this location.

Although some adverse environmental impacts may be expected from the project, when those impacts are weighed against the benefits, we concluded that the Cricket Valley project is in the public interest. It would be a modern generation plant and would incorporate various measures to increase efficiency and capacity and avoid or minimize adverse environmental impacts to the greatest extent practicable. Also,



the project is expected to provide economic benefits by creating 750 construction jobs and 25-30 permanent jobs. As an additional source of power generation in the Hudson Valley, the project will help meet long-term electric system capacity needs and may relieve short term reliability concerns due to generation retirement. Moreover, the project is expected to contribute significantly to the local tax base and to create jobs and associated economic activity and development.

### Conclusions

The potential benefits identified in the FEIS outweigh the potential adverse effects that would result from construction and operation of the proposed facilities. The mitigation measures proposed are reasonable responses to identified impacts, and would avoid or minimize the identified adverse effects to the extent practicable.

The Commission certifies that the requirements of SEQRA have been met, based on the procedural measures administered by the Lead Agency, the input of Involved Agencies, and the substantive mitigation of adverse effects based on facility design and the requirements of the agencies findings, the various permits to be issued, and the requirements of the Certificate of Public Convenience and Necessity.

The Commission also certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts would be avoided or minimized to the maximum extent practicable because of the incorporation of conditions requiring appropriate

mitigation measures in the Certificate of Public Convenience and Necessity.

Jeffrey C. Cohen  
Acting Secretary