



July 16, 2021

Via E-mail and Electronic Filing

Hon. Michelle L. Phillips, Secretary,
New York State Public Service Commission
Empire State Plaza,
Agency Building 3
Albany, NY 12223-1350

Re: Case 20-E-0441 – Joint Verified Petition of NRG Astoria Power LLC,
NRG Berrians East Development LLC and Astoria Gas Turbine Power LLC
for Approvals Pursuant to PSL Sections 68, 69 and 70 and for a
Determination of Lightened Regulation

Dear Secretary Phillips:

The PEAK Coalition (which consists of New York City Environmental Justice Alliance, UPROSE, THE POINT CDC, Clean Energy Group, and NYLPI), Sierra Club, and Earthjustice submit the following comments in opposition to the September 3, 2020, Joint Verified Petition (“Petition”) of NRG Astoria Power LLC (NRG Power), NRG Berrians East Development LLC (NRG Berrians), and Astoria Gas Turbine Power (AGTP), (collectively, Petitioners or “NRG”).

The Commission should deny Petitioner’s requests to amend the Certificate of Public Convenience and Necessity (CPCN) under Public Service Law (PSL) § 68(1) and for financing approval under PSL § 69 because the proposed Astoria Replacement Project is not in the public interest: it is unnecessary for reliable electricity service, would lock in the use of fossil fuels at least until 2040 if not beyond in contravention of state energy policy and New York’s Climate Leadership and Community Protection Act (CLCPA), and would cause continued local air pollution in densely populated environmental justice communities. Crucially, in April of this year, after this Petition was filed, the Commission approved local transmission upgrades to resolve reliability issues without constructing new gas plants—including the Astoria Replacement Project—to replace those slated to retire in coming years. Approving the CPCN amendment would be inconsistent with the Commission’s April 2021 decision to approve the transmission upgrades, which rendered the Astoria Replacement Project unnecessary.

In the alternative, the Commission should postpone ruling on the Petition until several other determinations are made. First, the proposed Astoria Replacement project is substantially different from the 2017 project that was deemed exempt from Article 10 review, and Petitioners must go back to the Siting Board to request a determination about whether the current project is

also exempt before the Commission can make a decision on this Petition. Second, the Department of Environmental Conservation (DEC) is currently deciding whether to approve the project's draft Title V air permit and Draft Supplemental Environmental Impact Statement (DSEIS). The agency has raised concerns that the project appears inconsistent with achieving the greenhouse gas (GHG) emissions reductions required by the CLCPA, which may be grounds for denying the permits. Because this project cannot move forward without Title V and other permits—whose prospects under the CLCPA are now in question—the Commission should postpone any decision on this Petition until DEC has made a final determination.

BACKGROUND

Astoria Gas Turbines is a highly polluting peaker plant located in a section of Western Queens packed with gas-fired power plants and locally known as “Asthma Alley.” The existing facility, which has been operating since 1970, operates infrequently and runs for an average of less than three hours at a time, but has high nitrogen oxides (NO_x) emission rates and high overall annual NO_x emissions.¹

Under DEC regulations adopted in December 2019 limiting NO_x pollution, the facility must either stop operating during ozone season, install pollution controls, install nearby battery storage or renewable generation, or decommission entirely by 2023.² Because NO_x contributes to the formation of ground-level ozone, reducing NO_x emissions is critical for New York to meet federal ozone limits under the Clean Air Act.³ Ozone is a serious health hazard, and elevated ground-level ozone can lead to increased mortality from respiratory and cardiovascular diseases.⁴ High ozone days are linked to increased school absenteeism, emergency room visits, and hospital admissions.⁵ In studying the need for new NO_x emissions limits, DEC found that New York's aging peaker plants, like Astoria Gas Turbines, create a significant percentage of area NO_x emissions on days they run.⁶

Petitioners have been seeking to build a new facility at the Astoria Gas Turbines location for a number of years and have proposed various projects, beginning in 2007 with a 1040 MW combined cycle baseload plant (“2007 baseload plant project”). The 2007 baseload

¹ *Opportunities for Replacing Peaker Plants with Energy Storage in New York State*, PSE, <https://www.psehealthyenergy.org/our-work/energy-storage-peaker-plant-replacement-project/new-york/#MapEJ1> (scroll to “Plant Indicator Ranking”; find horizontal bar graphs labelled “Annual NO_x Emissions (Tons)” and “NO_x Emission Rate lbs/MWh”); hover over bar graph titles and click icon that appears to sort data by ascending value; locate “Astoria Gas Turbines” on both graphs and compare to other plants).

² See 6 N.Y.C.R.R. Part 227-3.

³ See Div. of Air Res., Bureau of Air Quality Plan., *New York State Implementation Plan for the 2008 Ozone National Ambient Air Quality Standards: Draft Proposed Revision* (June 2021), https://www.dec.ny.gov/docs/air_pdf/sipseriouso3nysma.pdf.

⁴ Junfeng Zhang et al., *Ozone Pollution: A Major Health Hazard Worldwide*, 10 *Frontiers Immunology* 2518, 1 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6834528/pdf/fimmu-10-02518.pdf>.

⁵ EPA, *Fact Sheet: Final Revisions to the National Ambient Air Quality Standards for Ozone* (2015), https://www.epa.gov/sites/production/files/2015-08/documents/ozone_fact_sheet.pdf.

⁶ Set Nitrogen Oxide (NO_x) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines, 41 N.Y. Reg. 7 (Feb. 27, 2019), <https://docs.dos.ny.gov/info/register/2019/feb27/rulemaking.pdf>.

plant project, which was reviewed under the State Environmental Quality Review Act (SEQRA) with a final EIS completed in 2010,⁷ was never constructed.⁸ In 2017, well before DEC proposed regulations limiting NOx emissions from peaker plants, NRG filed a petition with the PSC seeking a determination that a modified version of the 2010 baseload plant project was exempt from Article 10 review as an extension, continuation, or amendment of a project approved prior to the date Article 10 went into effect.⁹ The 2017 proposal (“2017 peaker plant project”) was for a smaller, 579 MW plant using the same technology but running in simple cycle rather than combined cycle.¹⁰ In June 2019, the PSC determined that the 2017 peaker plant project did not have to be reviewed under Article 10.¹¹

On July 1, 2020, while New York City was still largely closed down due to the coronavirus pandemic, DEC published a notice for public comment on a draft scoping document for a supplemental environmental impact statement (SEIS) related to a proposed new NRG facility at the Astoria Gas Turbines site, to supplement the 2010 EIS prepared for the 2007 baseload plant project.¹² The draft scoping document and NRG website described what appeared to be yet a third, different proposed project: a 437 MW peaking facility with a single unit, different turbine technology from the 2007 and 2017 proposed projects, and the “potential” to run in the future on hydrogen rather than gas.¹³

The current proposal has spurred significant opposition from the community and local elected officials,¹⁴ including most recently Senate Majority Leader Chuck Schumer and the

⁷ See Air Res. Grp., LLC, *Astoria Repowering Project: Final Environmental Impact Statement* (Sept. 22, 2010), [https://www.nrg.com/assets/documents/legal/astoria/final-environmental-impact-statement-\(2010\).pdf](https://www.nrg.com/assets/documents/legal/astoria/final-environmental-impact-statement-(2010).pdf).

⁸ Joint Petition of NRG Astoria Power LLC, NRG Berrians East Development LLC and Astoria Gas Turbine Power LLC to Amend a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, to Approve the Transfer of the Amended Certificate and Lease of Real Property Interests Pursuant to Section 70 of the Public Service Law, to Approve a Financing Pursuant to Section 69 of the Public Service Law, and for a Determination of Lightened Regulation at 9, Petition of NRG Astoria Power, LLC; NRG Berrians East Development, LLC; and Astoria Gas Turbine Power, LLC for Approval of a Transfer Pursuant to PSL Sections 68, 69 and 70 Approvals and Lighted Regulation, Case No. 20-E-0441 (N.Y. Dep’t of Pub. Serv. (NYDPS) Sept. 3, 2020) (Dkt. No. 1), (“Petition”).

⁹ Petition for Declaratory Ruling, Petition of NRG Astoria Power LLC for a Declaratory Ruling that its Proposed Replacement Project is Exempt from Article 10, Case No. 17-F-0451 (NYDPS July 24, 2017) (Dkt. No. 1), (“Petition for Declaratory Ruling”).

¹⁰ *Id.* at 9–10.

¹¹ Declaratory Ruling Concerning Jurisdiction Over Proposed Generating Facilities, Case No. 17-F-0451 (NYDPS June 12, 2019) (Dkt. No. 4), (“Declaratory Ruling”).

¹² See *ENB Region 2 Notices 7/1/2020: Positive Declaration and Public Scoping*, New York State Department of Environmental Conservation (June 30, 2021), https://www.dec.ny.gov/enb/20200701_not2.html.

¹³ See AECOM, *State Environmental Quality Review Act Final Scoping Document: Astoria Replacement Project*, (Sept. 18, 2020), <https://www.nrg.com/assets/documents/legal/astoria/09-18-20AstoriaFinalScope.pdf>; *Astoria Replacement Project*, NRG, <https://www.nrg.com/legal/astoria-peaking-generation-station-project.html> (last viewed July 10, 2021).

¹⁴ Bill Parry, *Western Queen Environmental Activists Host Virtual Game Show to Protest Power Plant*, QNS, Feb. 10, 2021, <https://qns.com/2021/02/western-queens-environmental-activists-host-virtual-game-show-to-protest-power-plant-plan/>.

community's representatives in state and local governments.¹⁵ In March 2021, ten members of Congress representing New York City filed a public comment in this docket opposing the project.¹⁶

In April 2021, months after this Petition was filed, the PSC approved Con Edison's petition to recover costs for transmission upgrades across New York City designed to address projected reliability needs stemming from the anticipated retirement of several peaker plants (including Astoria Gas Turbines) under the new NOx rules.¹⁷ The New York Independent System Operator (NYISO) also rejected the Astoria Replacement Project as a proposed solution to near-term reliability needs arising in 2023 on the basis that it was not clear approvals would be granted in time for the project to be operational by 2023; NYISO instead selected Con Edison's proposed new transmission operating procedures to resolve the issues.¹⁸

Finally, on June 30, 2021, DEC published a notice of completed application for a major modification to the existing facility's Title V air permit, as well as completion of a DSEIS and several other completed permits.¹⁹ In its notice, DEC stated that it had not made a tentative or final decision to issue any permit and that "based on the information currently available, it appears that the proposed Replacement Project would be inconsistent with or would interfere with the attainment of the Statewide GHG emission limits established in the Climate Act."²⁰ A public hearing will be held on the draft permits and DSEIS but had not been scheduled as of the date of these comments.

¹⁵ Tim Balk & Chris Sommerfeldt, Schumer Announces Opposition to 'Bonkers' Plan for Fossil Fuel Plant in Astoria, New York Daily News, July 9, 2021, <https://www.nydailynews.com/news/politics/us-elections-government/ny-nyc-astoria-schumer-opposition-fossil-fuel-plant-20210709-7j6gd5alhvgvzksd3iiv7kxpxm-story.html> ("Schumer, the Senate's top Democrat, said he will use 'all the muscle that I can' to block the 'dastardly' proposal.").

¹⁶ Letter from Alexandria Ocasio-Cortez et al., Reps., U.S. H.R., to Andrew Cuomo, Governor, N.Y., Case No. 20-E-0441 (NYDPS March 22, 2021), <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=20-E-0441&CaseSearch=Search>.

¹⁷ Order Regarding Transmission Investment Petition ("PSC TRACE Order"), Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service ("TRACE Proceeding"), Case No. 19-E-0065 (NYDPS Apr. 15, 2021) (Dkt. No. 300).

¹⁸ NYISO, *Draft Short-Term Reliability Process Report: 2023 Near-Term Reliability Need* (February 2021), <https://www.nyiso.com/documents/20142/19159155/2020%20Quarter%203%20Short%20Term%20Reliability%20Process%20Report.pdf>.

¹⁹ *ENB Region 2 Notices 6/30/2021: Notice of Complete Application, Availability of Draft Permits, Announcement of Public Comment Period, Acceptance of Draft Supplemental Environmental Impact Statement, and Intent to Hold a Public Hearing*, New York State Department of Environmental Conservation (June 30, 2021), https://www.dec.ny.gov/enb/20210630_not2.html.

²⁰ *Id.*

ARGUMENT

I. Before the Commission Can Rule on This Petition, Petitioners Must Secure a Determination That the Current Astoria Replacement Project, Which Is Completely Different from the Previous Project, Is Exempt from Article 10

In their attempt to avoid Article 10 review, Petitioners rely on a 2019 decision by the Siting Board that NRG’s then-proposed repowering project was exempt from Article 10 review because it was a continuation of a 2010 project. However, the 2019 decision, issued before the New York legislature passed the CLCPA, was based on a project markedly different from the company’s new proposal for the Astoria Replacement Project. In 2017, NRG submitted a Petition for Declaratory Ruling to the Siting Board seeking a determination that a modified version of its 2010 replacement project (which went through SEQRA review but was never built) was exempt from Article 10 review under PSL § 162(4)(d).²¹ The replacement project described in the 2017 Petition had more in common with the original 2010 proposed project than the current Astoria Replacement Project. The modifications from the 2010 project described in the 2017 Petition involved reducing the number of turbines from 4 to 3, reducing the overall nameplate capacity from 1040 MW to 579 MW, and proposing that “the units will be operated in simple cycle rather than combined cycle.”²² Otherwise, the turbine technology, fuel, emissions control system and overall design of the 2017 project were the same as the 2010 project. On this basis the Siting Board found that the 2017 project was “an extension, amendment or continuation of the originally proposed project” and Petitioners did not need to seek approval under Article 10.²³

The current Proposal is markedly different from both the 2017 proposal and the 2010 proposal, involving different technology, a different number of turbines, and the potential use of a different, untested, and unproven fuel (combustible hydrogen). The current Project involves a different turbine—the GE H-Class 7HA.03—and involves a single large (437 MW) unit rather than several smaller 193-MW units.²⁴ Petitioners state that the project “will now be a highly efficient, fast-ramping and quick starting peaking facility.”²⁵ Petitioners also represent that the new project’s use of Ultra-Low Sulfur Diesel fuel (ULSD) will have a significantly higher limit, at 720 hours per year, whereas the previous project limited firing on ULSD to 400 hours per year.²⁶

AGTP functionally acknowledges that it has changed the proposal, in that it has included the 2010 proposed project as an alternative to be considered in the DSEIS.²⁷ In the

²¹ Petition for Declaratory Ruling, *supra* note 9.

²² *Id.* at 9.

²³ Declaratory Ruling, *supra* note 11, at 12.

²⁴ Petition, *supra* note 8, at 10.

²⁵ *Id.*

²⁶ *Id.* at 16.

²⁷ AECOM, *Draft Supplemental Environmental Impact Statement: Astoria Replacement Project 4-7-4-8* (June 2021), https://www.nrg.com/assets/documents/legal/astoria/00_2021/astoria-draft-dseis-06-30-2021.pdf (“DSEIS”).

DSEIS, Petitioners describe the 2010 project as completely different in nature from the current project in terms of size, operations, and environmental impacts. Critically, the DSEIS contrasts the purpose of the 2010 project, which was meant as a baseload plant and was permitted based on a 98% capacity factor, to the current proposal's purpose as a peaking facility primarily intended "to provide backup/stand by service for intermittent renewable resources by participating in the Ten Minute Non-Synchronous Reserves ("TMNSR") market."²⁸

In addition, NRG has specifically flagged the potential to fuel the facility in the future with hydrogen, stating on the project website, "In line with our commitment to invest in cleaner energy, our new technology is fully convertible to hydrogen fuel in the future, giving New York even greater flexibility to achieve its zero-carbon emission goals."²⁹ First, no commercially available turbines are currently rated to burn 100% hydrogen fuel; all require hydrogen to be blended with natural gas, and most have limits of about 30% hydrogen. Suggesting that the technology is "fully convertible" to hydrogen fuel is misleading. Second, when combusted in power plants, hydrogen presents a different set of environmental and safety concerns than gas, including highly concerning NOx emissions (up to six times those of methane) that have nowhere previously been analyzed.³⁰

In sum, nearly a decade after Article 10 was enacted, a supplement to a decade-old environmental impact statement reviewing a completely different project is not sufficient to ensure to the public that this new facility is necessary, safe for the environment and residents of surrounding neighborhoods, and in the public interest. Before the Commission can consider this Petition, Petitioners must go back to the Siting Board to seek a determination of whether the *current* Astoria Replacement Project is exempt from Article 10 review under PSL § 164(2)(d). Similar repowering projects replacing existing facilities within the state—the Danskammer plant and the proposed Gowanus Repowering Project—are currently in various phases of Article 10 review. The Public Service Commission should not sanction a less comprehensive and less stringent review of the Astoria Replacement Project, based on unsound claims of exemption under the Public Service Law. Allowing Petitioners to evade the scrutiny every other repowering project justifiably receives would undermine efforts to rationally plan for environmentally sound, CLCPA-compliant electricity generation across the state.

II. The Astoria Replacement Project Fails to Comport with the CLCPA and Would Interfere with the State's Ability to Achieve a Zero-Emission Electricity Sector by 2040

The Petition fails to provide any explanation of how allowing a newly constructed fossil fuel plant in an environmental justice community to start operating in 2023 can possibly

²⁸ *Id.* at 4-7.

²⁹ *Astoria Replacement Project: An Even Cleaner Energy Future*, nrg, <https://www.nrg.com/legal/astoria-peaking-generation-station-project.html> (last visited July 15, 2021).

³⁰ See Dan Sadler et al., h21, Leeds City Gate (2019), <https://www.h21.green/wp-content/uploads/2019/01/H21-Leeds-City-Gate-Report.pdf>; Mehmet S. Celtek & Ali Pınarbaşı, *Investigations on Performance and Emission Characteristics of an Industrial Low Swirl Burner While Burning Natural Gas, Methane, Hydrogen-Enriched Natural Gas and Hydrogen as Fuels*, 43 Int'l J. Hydrogen Energy 1194 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0360319917319791>.

comply with or not interfere with achieving the CLCPA mandate for a zero-emissions electricity sector by 2040. The CLCPA, enacted in 2019, creates mandatory statewide greenhouse gas emissions reduction targets, requires the state to achieve a zero-emissions electricity sector by 2040, and sets forth additional relevant requirements prioritizing the reduction of co-pollutants in overburdened communities. The Astoria Replacement Project, which makes no commitment whatsoever to being zero-emissions by 2040 and would interfere with broader efforts to shift the sector to renewable resources and long-term clean energy storage, runs counter to the CLCPA's mandates and goals, and is contrary to state policy.

Under the CLCPA, state agencies, authorities, offices, and divisions should not, without justification, approve projects that will make it more difficult for the state to achieve its mandatory emissions reductions and equity goals. Section 7(2) of the CLCPA requires all state agencies or bodies to consider whether a project is consistent with the law and whether granting approval might “interfere with the attainment of the statewide greenhouse gas emissions limits” prior to issuing any “permits, licenses, and other administrative approvals or decisions.”³¹ Section 7(3) of the CLCPA further precludes state agencies and bodies from disproportionately burdening “disadvantaged communities” when issuing permits, licenses, and other administrative approvals or decisions, and requires state agencies to prioritize reducing greenhouse gas emissions and co-pollutants in disadvantaged communities.³²

Petitioners suggest the Astoria Replacement Project is consistent with the CLCPA because the new plant will be more efficient than their existing highly polluting plant (and other aging, inefficient New York City peakers), which is obligated to shut down by 2023 regardless of whether the new plant is built because of new NOx emissions limits. The Petition conveniently dodges the fact that the CLCPA would require this proposed new facility to either shut down or somehow switch to a zero-emissions fuel source by 2040. Nowhere does the Petition make any commitments on the part of NRG to comply with this critical provision of the CLCPA.

The Petition indicates no concrete plan to reach zero emissions, falling back on a vague statement about operations as a zero-emissions electricity resource after 2040, as it had for months on its website and in initial SEQRA documents until very recently.³³ The costs associated with converting a facility to operate using renewable natural gas (RNG) or hydrogen in the future could be substantial, and the PSC should await more specific information about the costs, feasibility, and greenhouse gas and co-pollutant impacts of using these alternative fuels before making a decision on this Petition. Based on what little has been presented, the risk is high that this plant will be shut down relatively early in its lifespan because of its inability to operate greenhouse-gas-emissions-free in 2040 as required by New York law, which represents

³¹ CLCPA § 7(2), S.B. 6599, 242d Sess. (N.Y. 2019) Section 7(2), <https://legislation.nysenate.gov/pdf/bills/2019/S6599>.

³² *Id.* § 7(3).

³³ Petition, *supra* note 8, at 36. *See also* AECOM, Final Scoping Document, *supra* note 13, at 1-1; *Cf.* DSEIS, *supra* note 27, at ES-6. However, more recently the company has expanded on its plans to operate with hydrogen. *See, e.g.*, DSEIS, *supra* note 27, at 3-49–3-51, 3-63–3-64, and Apps. E & L. Those details are under review in advance of an August 29, 2021 comment deadline.

a major stranded asset risk for project financing (*see* Section IV).

Even if NRG were to make a binding commitment to shut down the Astoria plant in December 2039, building a new gas plant now would still interfere with the New York’s ability to achieve the GHG emissions reductions and transition to a zero-emissions electricity sector mandated in the CLCPA. While the Project might be able to claim marginal emissions reductions in the short term by running more efficiently, in the longer term relying on gas plants rather than renewable generation and energy storage technologies will leave the state unprepared to fully transition to zero emissions electricity sector as well as run afoul of the CLCPA’s equity goals. In fact, the CLCPA requires the PSC, in establishing a program to reach 70% renewables by 2030 and 100% zero-emissions electricity by 2040, and in procuring 3GW of energy storage capacity by 2030, to specify “that energy storage projects be deployed to reduce the usage of combustion-powered peaking facilities located in or near disadvantaged communities.”³⁴ Continued reliance on fossil fuel combustion in Astoria, where there are several DEC-designated Potential Environmental Justice Areas, runs contrary to the CLCPA and will interfere with achieving its mandates. The fact that DEC has stated that the project appears to be inconsistent with the CLCPA should raise concerns for the Commission about this project’s necessity and economic feasibility, and indicates that moving ahead without additional information from Petitioners on those issues would be unsound. The Commission need not make a decision about the project’s consistency with the CLCPA at this time and should hesitate to make a decision while DEC is currently in the process of deciding the same issue in relation to the project’s pending Title V permit.

III. Approved Transmission Upgrades Make the New Gas Plant Unnecessary

This project is not needed for local reliability and cannot be justified as a necessary departure from the law. Since the date the Petition was filed in September 2020, this Commission has approved transmission upgrades within Zone J that would address the local reliability needs Petitioners claim this Project meets. With these transmission upgrades, amendment of the CPCN is inappropriate under PSL § 68(1), because the project is no longer necessary or in the public interest.

In February 2021, the NYISO selected Con Edison’s proposed transmission upgrades as a Short-Term Reliability Solution to address the 2020 Quarter 3 STAR Near-Term Reliability Needs for the bulk power transmission system related to the retirement of generation at the Astoria site—in other words, the anticipated retirement of NRG’s current Astoria Gas Turbines at the project site in 2023 due to more stringent NOx emissions limits.³⁵ NRG’s Astoria Replacement Project was the other proposed solution for this projected reliability need. In its Final Report in February 2021, NYISO stated that Con Edison’s proposal was the only viable solution to the short-term reliability needs beginning in 2023, rejecting NRG’s proposal for the Astoria plant to fill the need.³⁶ NYISO noted that NRG would be unlikely to receive the

³⁴ PSL § 66-p(7)(a).

³⁵ NYISO, *supra* note 18.

³⁶ *Id.*

necessary permits and approvals in time for its new plant to be operational by 2023.³⁷

In April 2021, the Commission approved the set of Con Edison transmission projects in Zone J, its Transmission Reliability and Clean Energy Projects, or “TRACE Projects,” which together would resolve additional projected local reliability issues within Zone J stemming from the retirement of peaker plants—including the existing Astoria Gas Turbines—under DEC’s new NO_x emissions limits.³⁸ Con Edison set forth how the TRACE Projects further CLCPA mandates “by enabling the retirement of downstate fossil fuel-fired ‘peaking’ generation units by resolving the associated reliability needs thus created without the addition of any new fossil-fueled power plants,” as well as by enabling additional renewable energy to feed into these constrained load pockets.³⁹ Even the Commission’s press release about the TRACE project approval lauded the transmission project for facilitating “[t]he retirement of downstate fossil fuel-fired peaking generation units without the addition of any new fossil-fueled power plants.”⁴⁰ The Commission agreed that the TRACE Projects were a necessary step for reliability and for CLCPA compliance, and approved Con Edison’s petition for cost recovery.⁴¹ Again, NRG submitted comments opposing the Con Edison TRACE petition and proposing the Astoria Replacement Project as an alternative to the transmission project.⁴² The Commission, like NYISO, expressed concern that the Astoria Replacement Project would not receive permits and approvals in time to be operational by 2023 and concluded the responsibility for reliable service fell to the utility.⁴³

These ratepayer-funded transmission upgrades effectively eliminate the need for a new power plant to replace the Astoria Gas Turbines plant when it closes down. Con Edison transmission upgrades are resolving short-term reliability needs stemming from the existing plant’s retirement.

In addition to the Rainey-Corona TRACE transmission upgrades, there are at least three

³⁷ *Id.*

³⁸ PSC TRACE Order, *supra* note 17; Petition of Consolidated Edison Company of New York, Inc. for Approval to Recover Costs of Certain Transmission Reliability and Clean Energy Projects at 17 (“Con Edison TRACE Petition”), Case No. 19-E-0065 (“The Company will install, ... a 6-mile long, 345 / 138 kV PAR controlled underground feeder. Con Edison plans to place this project in service by Summer 2023. The new feeder will electrically connect the Company’s 345 kV Rainey substation with its Corona 138 kV substation, increasing transfer capability by approximately 300 MW to solve the reliability need. The new feeder will also create a 345 to 138 kV off-ramp that enables 300 MW of existing and future renewable supply to access the load.”).

³⁹ Con Edison TRACE Petition, *supra* note 38, at 3.

⁴⁰ Press Release, PSC, *PSC Approves \$800 Million Investment to Maintain and Improve Reliability, Achieve Climate-Change Goals, Enhance Resiliency of NYC Transmission Grid* (April 15, 2021), [https://www3.dps.ny.gov/pscweb/webfileroom/nsf/ArticlesByCategory/8822278FE4329E07852586B80055A831/\\$File/pr21040.pdf?OpenElement](https://www3.dps.ny.gov/pscweb/webfileroom/nsf/ArticlesByCategory/8822278FE4329E07852586B80055A831/$File/pr21040.pdf?OpenElement).

⁴¹ PSC TRACE Order, *supra* note 17.

⁴² Comments of NRG Berrians East Development LLC to PSC, Case Nos. 20-E-0197 & 19-E-0065 (Jan. 19, 2021).

⁴³ PSC TRACE Order, *supra* note 17, at 27 (“While the Commission appreciates NRG Berrians’ efforts, and recognizes the desirability of a privately financed solution, the repowering of its peaker plant is dependent on obtaining permits from other regulatory agencies and the required permits may not be issued or issued in time to avoid commencement of transmission solutions prior to 2023.”).

new energy sources potentially able to address load constraints in sub-load pocket J2.⁴⁴ Equinor Wind US LLC's 1,230 MW Beacon Wind project is slated to interconnect to the Astoria Substation, bringing new renewable generation to the area.⁴⁵ Nearby, the Catskills Renewable Connector transmission lines may connect to the Ravenswood Generating Station in Long Island City, making the area a renewable energy hub.⁴⁶ Also nearby, renewable generation and energy storage on Rikers Island will be online in several years.

In addition, New York has implemented statewide energy storage targets of 3 GW by 2030, and long-duration storage technology is rapidly evolving. Moreover, the CLCPA directs the PSC in designing its renewable energy program, to ensure that to the extent possible, energy storage projects are "deployed to reduce the usage of combustion-powered peaking facilities located in or near disadvantaged communities."⁴⁷ Under this new program, to be established in coming years, the Commission will be working to ensure that vast new energy storage resources are deployed within the load pocket served by Astoria Gas Turbines to meet future peak demand.

Because improved transmission and distribution will resolve reliability issues in the load pocket, Petitioners cannot justify a need for the Astoria Replacement project. The Commission should not approve the amendment of the CPCN in the absence of the basic element of "necessity."

IV. Lack of Need for the Project and Its Potentially Limited Lifespan Raise Serious Questions About Financing and Stranded Assets

Despite the doubts about whether the proposed plant will continue to operate after 2040, the need for its generation capacity at all in the capacity markets, or how often it would be called on to meet actual reliability needs, Petitioners seek approval for \$425 million in financing for the project. Notably, in March 2021, well after the Petition was filed, parent company NRG Energy reported huge losses stemming from the widespread failure of its power generation facilities during the blizzard and cold spell in Texas in February 2021.⁴⁸ Given this

⁴⁴ See, e.g., Angélica Acevedo, 'An Important, Historic Moment': Mayor Signs Queens Councilman's Renewable Rikers Act into Law, QNS, Mar. 1, 2021, <https://qns.com/2021/03/mayor-signs-queens-councilman-renewable-rikers-act-into-law/>; NYLPI Celebrates as City Council Passes The Renewable Rikers Act, NYLPI (Feb. 12, 2021), <https://www.nylpi.org/nylpi-celebrates-as-city-council-passes-the-renewable-rikers-act/>.

⁴⁵ Offshore Wind Projects, NYSERDA, <https://www.nyserd.ny.gov/All-Programs/Programs/Offshore-Wind/Focus-Areas/NY-Offshore-Wind-Projects> (last visited July 15, 2021).

⁴⁶ See, e.g., RISE Light & Power, *Proposal for the Sale and Purchase of New York Tier 4 Eligible Renewable Energy Certificates: Catskills Renewable Connector* (2021), <https://www.nyserd.ny.gov/-/media/Files/Programs/Clean-Energy-Standard/Tier4-Step-2-Bid-Submission-Response/Catskills-Renewable-Connector.pdf>; Bill Parry, *Western Queens Community Leaders Support Plan to Turn Big Allis into Renewable Energy Hub*, QNS, May 19, 2021, <https://qns.com/2021/05/western-queens-community-leaders-support-plan-to-turn-big-allis-into-renewable-energy-hub/>; Press Release, Rise Light & Power, *Rise Plans Innovative Solution to Power 15% of NYC with Upstate Clean Energy* (May 12, 2021), <https://riselight.com/rise-plans-innovative-solution-to-power-15-of-nyc-with-upstate-clean-energy/>.

⁴⁷ PSL § 66-p(7)(a).

⁴⁸ Scott Voorhis, *NRG Discloses Nearly \$1B Hit from Texas Grid Collapse*, Utility Dive, May 7, 2021, <https://www.utilitydive.com/news/nrg-discloses-nearly-1b-hit-from-texas-grid-collapse/599753/>.

change in the company’s overall financial position and the uncertainties surrounding this project’s necessity and lifespan, the Commission should not approve the financing request based on the information in the Petition, and should have concerns about economic feasibility of the project under PSL § 68(1).

Under PSL § 68(1), the Commission must evaluate the economic feasibility of the project and the ability of the corporation to deliver safe, adequate, and reliable service. Significant questions exist about these factors. Questions also exist about Petitioners’ ability to finance the project and the Commission should not approve financing under PSL § 69 without additional information.

Even if Petitioners provide energy to the wholesale market and do not directly charge ratepayers, the company is paid directly by utilities—and those costs are passed on to ratepayers. Given the historically sky-high rates companies owning peaking facilities can charge on the capacity market, it is no surprise that NRG is aggressively pursuing this project. The PEAK Coalition has estimated that the existing Astoria Gas Turbines facility, despite having an average capacity factor of only 0.7%, running an average of 2.8 hours at a time for only 596 hours annually,⁴⁹ received approximately \$453 million in capacity revenue from 2010 to 2019.⁵⁰ These capacity payments contribute to making electricity costs in New York City among the highest in the nation. Especially since the Commission recently approved cost recovery for Con Edison’s transmission projects designed to meet the same reliability need Petitioners claim the proposed project purports to address, it would be imprudent and unnecessary for ratepayers to potentially bear double the costs for reliability measures in this load pocket.

In addition, NRG Energy’s financial position is significantly changed from September 3, 2020, when the Petition was filed, yet the company has failed to submit any updated information to supplement its Petition. As noted above, in March 2021, NRG reported \$975 million in losses due to widespread failures at its facilities in Texas.⁵¹ The Petition largely falls back upon the history of obtaining financing and overall assets of NRG Energy as the parent company to justify its request for financing approval now. That reliance is inadequate for a financial assessment here. Petitioners should be required to supplement the Petition to reflect the current status and outlook for NRG Energy.

Finally, the likelihood that the plant would have to shut down by law by 2040, less than two decades after being constructed, raises a major stranded asset risk and should give the Commission reason to pause before approving project financing and determining economic feasibility. Petitioners’ vague claim about a potential switch to “zero-emissions hydrogen fuel”

⁴⁹ *Opportunities for Replacing Peaker Plants with Energy Storage in New York State*, PSE, <https://www.psehealthyenergy.org/our-work/energy-storage-peaker-plant-replacement-project/new-york/#MapEJ1> (scroll to “Individual Plant Operational View” section; choose “Astoria Gas Turbines” from “Plant Name” dropdown; in the “Annual Operations” chart, locate data at rows labelled “Capacity factor”, “Average run hours per start”, and “Annual operational hours”).

⁵⁰ PEAK Coalition, *Dirty Energy, Big Money* 15 (2020), <https://www.cleangroup.org/wp-content/uploads/Dirty-Energy-Big-Money.pdf>.

⁵¹ Scott Voorhis, *supra* note 48.

is far from certain, as major questions exist about cost, viability and commercial availability of hydrogen for combustion. With such uncertainty about the ability of the plant to operate after 2039, the Commission should not approve the financing request or the CPCN amendment.

V. The Project Will Have Unmitigated Adverse Air Quality Impacts in an Environmental Justice Community

As Petitioners acknowledge, the project is located close to several DEC-designated Potential Environmental Justice Areas. Petitioners falsely claim that the project will reduce pollution in this community. When determining whether the Astoria Replacement Project is in the public interest, the Commission should evaluate the environmental impacts—particularly when there is a likelihood, as here, that the project will disproportionately burden a neighborhood that is already environmentally overburdened and where a significant proportion of residents are low-income, Latino, and Asian.

Petitioners argue that the Astoria Replacement Project will reduce pollution *compared to the existing facility*. Of course it is true that the existing facility, which lacks sufficient emissions controls, is more polluting than any proposed replacement that could be approved. The existing facility will, under DEC NOx rules and by the admission of the company, be closed and not operating in 2023, regardless of whether the Astoria Replacement Project is constructed. The relevant basis for comparison for emissions from the proposed project, therefore, is *no facility emissions*. Moreover, despite the greater efficiency of the proposed plant, Petitioners' estimates make clear that they expect the new plant to run far more often than the existing plant, which would increase overall emissions.

Because the facility is located in a DEC-designated Potential Environmental Justice Area, the cumulative impacts of the project will be an important consideration in this highly overburdened area. The Commission cannot determine whether the proposed project is in the public interest without a full analysis of the cumulative environmental impacts of the project in this neighborhood in Queens and without knowing whether the project complies with the CLCPA's goals of reducing pollution in disadvantaged communities.⁵² As described in PEAK Coalition's letter to the DEC on July 31, 2020,⁵³ the Commission must evaluate several environmental justice factors to ascertain whether this project will serve the public interest, including disparate COVID-19 risks and harms linked to air quality in this neighborhood, particularly from ozone and NO₂, as well as a flooding analysis.⁵⁴

Petitioners stated that they would supplement the Petition with the DSEIS, which was released on June 30, 2021. The DSEIS contains a detailed environmental justice analysis but due to the timing, the undersigned have not had sufficient opportunity to review that analysis. Again, issues about environmental justice, cumulative impacts, potential mitigation, and whether the project disproportionately burdens disadvantaged communities as prohibited by CLCPA § 7(3) are before DEC when reviewing the DSEIS, and the Commission should

⁵² PSL § 66-p(7)(a).

⁵³ Letter from PEAK Coalition to Chris Hogan, Project Manager, NYSDEC (July 31, 2020). Attached hereto as Attachment A.

⁵⁴ See Attach. A at §§ 5(a)–(c).

postpone any decision on these grounds until DEC has conducted its review as lead agency under SEQRA and the CLCPA.

CONCLUSION

The Petition should not be considered a pro forma submission or treated as business as usual. A new power plant, proposed after the passage of New York's landmark climate law, should not be allowed to evade Article 10 review and a Siting Board determination. In addition to the CLCPA, significant changes in local transmission, offshore wind, and storage technology have developed in a manner as to obviate the need for this gas-fired power plant, especially given the air quality in the neighborhood and beyond, heightened by the impacts of the COVID crisis on environmental justice communities in New York City.

The Commission should deny the request to amend the Certificate of Public Convenience and Necessity and Petitioners' financing request. In the alternative, the Commission should request more information to supplement the Petition and also await the DEC's actions on its pending environmental permits and SEQRA approvals in order to avoid conflicts and confusion between two agencies currently reviewing this proposed new gas plant.

Sincerely,

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Attachment 1



July 31, 2020

VIA EMAIL

Chris Hogan
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NYSDEC
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comment.nrgastoriagas@dec.ny.gov

Re: Astoria Replacement Project Draft Scoping Document

Dear Mr. Hogan,

The PEAK Coalition respectfully submits these comments concerning the Astoria Replacement Project Draft Scoping Document. The PEAK Coalition—UPROSE, THE POINT CDC, New York City Environmental Justice Alliance (NYC-EJA), New York Lawyers for the Public Interest (NYLPI), and Clean Energy Group (CEG)— seeks to reduce the negative and racially disproportionate health impacts of New York City’s peaker plants by replacing them with renewable energy and storage solutions. Together with communities, PEAK advocates for a system of localized renewable energy generation and battery storage to replace peaker plants, reduce greenhouse gas (GHG) emissions, lower energy bills and make the electricity system more resilient in the face of increased storms and climate impacts.

The Draft Scoping Document (“DSD”) does not identify all necessary alternatives, nor does it lay out a proposed Environmental Impact Statement analysis that will be sufficient for the community to evaluate the risks of the Astoria Replacement Project (“Project”). First and foremost, the DSD does not propose an adequate assessment of how the Project is consistent with state energy goals or New York State’s new climate laws; both of which have changed significantly since the project was first approved ten years ago. Moreover, the DSD’s proposed analysis of air quality, environmental justice, health, and flooding impacts also should be expanded to capture the full risks to the overburdened community residing adjacent to the site.

1. The DSD Does Not Propose Adequate Assessment of How the Project is Consistent with State Energy Goals and the Climate Leadership and Community Protection Act.

New York State realizes the dangers posed by climate change and the health impacts of co-pollutants, and has embraced ambitious goals to reduce greenhouse gas emissions by 60 percent by 2030, and by 85 percent by 2050. N.Y. E.C.L. § 75-0107. A key component of this

path is to reduce emissions in electricity generation 70% by 2030 and eliminate emissions entirely from the generation sector by 2040. N.Y. P.S.L. § 66-p(2). Specifically, the Climate Leadership and Community Protection Act (“CLCPA”) calls for New York to reduce reliance on peaker plants in disadvantaged communities. *Id.* § 66-p(7)(a). Even prior to the passage of the CLCPA, New York’s 2015 Energy Plan targeted of 50% renewable electricity generation by 2030, and aimed to have storage and renewables assist with peak loads.¹ It is not clear from the DSD that the Draft Environmental Impact Statement (“DEIS”) will fully assess compliance with either.

Astoria Gas Turbine Power proposes to build a new gas-powered plant that will not be operational until 2023. DSD 2-2. Though Astoria Gas Turbine Power has submitted an emissions analysis, it is reliant on the possibility of cost savings being “used to accelerate the construction of 543 MW of offshore wind” to generate indirect emissions benefits. Appx. F. 16. Astoria Gas Turbine Power must more thoroughly model anticipated greenhouse gas and co-pollutant emissions from the plant, without relying on speculative changes to the grid that are not near the Project.

Further, New York anticipates promulgating regulations implementing the greenhouse gas limits in the CLCPA by early 2021. N.Y. E.C.L. § 75-0107(1). Though these regulations may not be in place by the time the Final Scoping Document is published, Astoria Gas Turbine Power must carefully explain how the project meets the new regulations in subsequent analyses like the DEIS.

Additionally, Astoria Gas Turbine Power states that it hopes to use the facility after 2040 to generate electricity using hydrogen fuel “if available.” DSD 5-6. For the community to know what to expect, the DEIS must assess the likelihood that this will occur, in addition to the feasibility of using hydrogen to comply with CLCPA, the 2015 Energy Plan, and its implementing regulations and initiatives. The DEIS should also provide an analysis of the current risks of hydrogen fuel, as well as assess the lifecycle health and emissions implications of hydrogen production and storage to evaluate whether hydrogen use would in fact be compliant with the zero emissions electricity mandate in the CLCPA.

2. The Alternatives Analysis Must Include Actionable Renewable Options.

A thorough alternatives analysis must analyze the ability to add renewable energy generation and complementary storage configurations within or near the proposed Project.

When considering the renewable alternatives on site, on any scale, it will be essential to include an assessment of those alternatives and their contrasting impact on air quality and health benefits. New York State Energy Research and Development Authority (NYSERDA) recently released a white paper outlining how the state can meet the CLCPA requirements. The agency specifically noted the requirement for “the Commission to take steps to ensure reductions in

¹ See NEW YORK STATE ENERGY PLANNING BOARD, ENERGY TO LEAD: 2015 NEW YORK STATE ENERGY PLAN 28, 112 (2015).

emissions from peaker plants, many of which are located in low-income communities.”² In assessing the benefits and costs of renewable energy, NYSERDA recognized the importance of renewable energy servicing New York City. Specifically, the report noted that “offshore wind and other zero-emission energy...could cause significant improvements [to] local air quality and public health. Reducing emissions is particularly important for the New York City metropolitan area, which has a high population and high density of emissions sources.”³ NYSERDA further explained that renewable energy would provide “meaningful benefits, especially health benefits.”⁴ Such benefits should be considered in the alternatives analysis.

Astoria Gas Turbine Power should also include a full analysis of renewable energy and storage alternatives in the Final Scoping Document and DEIS.⁵ The company should use this Project as an opportunity to develop innovative solutions to meet peak energy needs. By considering renewable energy and storage alternatives in the DEIS, the community can better assess the impact on air quality and reliability.

Multiple projects in New York and around the country are already advancing the replacement of conventional peaker power plants with battery storage and renewables. In October 2019, the New York Public Service Commission approved the development of a 316-MW, 8-hour-duration battery at the Ravenswood Generating Station in Long Island City that will be built in a section of the facility currently occupied by aging peaker units similar to the Astoria Gas Turbine facility.⁶ The batteries are being developed to provide peak capacity, energy, and ancillary services to the New York City grid, offsetting the need for existing peaking units. At the end of 2019, NYSERDA approved a 20-MW battery storage project in Ulster that will replace a gas peaker plant that was initially proposed.⁷ California regulators have approved several peaker replacement projects over the past two years, including the replacement an aging jet-fuel peaker in Oakland with 20-MW battery system and 500 kW of 4-hour duration battery storage paired with solar at multifamily affordable housing properties,⁸ replacement of three gas

² NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, WHITE PAPER ON CLEAN ENERGY STANDARD PROCUREMENTS TO IMPLEMENT NEW YORK’S CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT 14 (2020) (Hereinafter NYSERDA White Paper).

³*Id.* at 24-25.

⁴ *Id.* at 24.

⁵ NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE, WHITE PAPER ON THE POTENTIAL FOR ENERGY STORAGE TO POWER OR REPLACE PEAKING UNITS IN NEW YORK STATE, (2020)

⁶ New York Public Service Commission, *Case 19-E-0122 - Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation* (Oct. 2019), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F39060AB-A5FB-4E65-8846-D148D099123D}>.

⁷ New York State Energy Research and Development Authority, *NYSERDA Announces Battery Storage Project for Town of Ulster, Replacing Previously Planned Fossil Fuel Plant* (Dec. 2019), <https://www.nyserdera.ny.gov/About/Newsroom/2019-Announcements/2019-12-13-NYSERDA-Announces-Battery-Storage-Project-for-Town-of-Ulster-Replacing-Previously-Planned-Fossil-Fuel-Plant> (last visited July 30, 2020).

⁸ PG&E, *CASIO Approved PG&E Oakland Clean Energy Initiative*, (Mar. 2018), https://www.pge.com/en/about/newsroom/newsdetails/index.page?title=20180323_caiso_approves_pge_oakland_clean_energy_initiative (last visited July 31, 2020).

peaker plants in Northern California with 567 MW of 4-hour duration battery storage resources,⁹ and replacement of a proposed 262-MW gas peaker plant in Oxnard with a combination of local energy efficiency measures, demand response, renewable energy generation, and a mix of distributed and large-scale energy storage.¹⁰

An assessment of economic feasibility of renewable and storage alternatives, as well as the amount of capacity needed, should take into account historical capacity payments to the facility as well as its recent capacity factor. Recent publications, such as The PEAK Coalition’s “Dirty Energy, Big Money”, have highlighted the very large capacity payments received by plants such as this one.¹¹ The report estimated that NRG received approximately \$453.6 million in capacity payments related to the Astoria Gas Turbines from 2010 to 2019.¹² Meanwhile, the plant ran very rarely, for example with just a 0.8% capacity factor in 2018 representing less than 100 hours of generation.¹³ The analysis of the Project must take into account the low run time, high amounts of historical capacity payments to the facility, the economic impact of capacity payments on the project going forward, whether any possible change in eligibility of renewables or storage for those payments might impact the project, and how ratepayers might be affected.

The DEIS analysis should include an assessment of the amount of energy storage possible to develop onsite as a replacement for existing resources, as well as the potential for energy storage, renewables, energy efficiency, and demand response development within the same load pocket served by the existing facility, which may reduce or negate the need for the Project.¹⁴ Astoria Gas Turbine Power must not propose more of the same—a new fossil fuel gas plant that would operate and pollute for many years.

3. Astoria Generating Has Not Thoroughly Explained the Need for the Project, Especially After Changes as a Result of COVID-19.

The prior project configuration was approved by the New York State Public Service Commission in 2011, since which time there have been significant changes in load, demand, and generation. The DEIS must thoroughly explain the current need for the Project generally, and more analysis is needed as to the public need for electricity generation in this load pocket.

⁹ Gavin Blade, *Storage Will Replace 3 California Gas Plants as PG&E Nabs Approval For World’s Largest Batteries*, (Nov. 2018), <https://www.utilitydive.com/news/storage-will-replace-3-california-gas-plants-as-pge-nabs-approval-for-worl/541870/> (last visited July 31, 2020).

¹⁰ See Julian Spector, “Oxnard, California: The City That Stopped a Gas Plant,” *Huffington Post*, June 12, 2019, https://www.huffpost.com/entry/oxnard-california-gas-plant_n_5cfeafdc4b0aab91c0a2f27 (last visited July 31, 2020).

¹¹ See generally PEAK Coalition, *Dirty Energy, Big Money* (2020).

¹² *Id.* at 15.

¹³ *Id.* at 30.

¹⁴ For instance, if there is increased energy generation at the proposed Renewable Rikers complex, as envisioned in three bills currently pending before City Council, that may provide additional nearby capacity which could offset the need for peak generation within NYISO Zone J and this particular load pocket. See, e.g., NYCurbed.com, “‘Renewable Rikers Act’ aims to remake the island with green infrastructure,” <https://ny.curbed.com/2019/6/11/18659909/nyc-rikers-island-solar-field-water-treatment-facility-council-bills> (last visited July 22, 2020).

In order for the project to move forward successfully, the Project’s Certificate of Public Convenience and Necessity (CPCN) must be updated, which is relevant to the alternatives analysis. The last CPCN was issued in 2011, well before the 2015 Storage Rule and the passage of the CLCPA. In order to obtain a new CPCN, the Project will need to prove (1) “a beneficial addition to or substitution for the electric generation capacity of the state,” (2) “serve the public interest,” (3) minimize or avoid adverse environmental impacts to the maximum extent practicable, (4) avoid, offset or minimize disproportionate impacts to the local community, and (5) be “designed to operate in compliance with [state law].” N.Y. P.S.L. § 168(3)(a)–(e). It is unclear how such a Certificate can be granted, especially in light of the recent CLCPA, and the analysis in the DEIS must address this. The DEIS must also include analysis of the potential for reductions in energy demand going forward, as Local Law 97 and statewide energy efficiency initiatives.¹⁵ The surrounding community should know the answers to these questions before moving forward under SEQRA as well.

4. The Alternatives Analysis Must Include Retirement, Given the Department of Environmental Conservation’s NO_x Rules and Potential Nearby Future Clean Energy Generation.

In an effort to reduce ozone levels in New York, NYSDEC promulgated regulations requiring significant cuts to NO_x emissions, particularly from peaker plants. 6 N.Y.C.R.R. Part 227-3. As the Astoria Generating Station currently operates, it would need to either shut down all turbines on site or add significant controls to meet the NYSDEC’s NO_x rules for peaker plants.¹⁶ As such, shutting down the facility altogether is a significant possibility, and is appropriate to consider as a No-Action Alternative. The Final Scoping Document and DEIS should consider the outcome of closing the facility. When doing so, that analysis must include the potential impact on air quality from retiring the turbine units. *Cf.* DSD 5-5.

5. The Air Quality, Environmental Justice, Health Outcomes, and Flooding Analyses Must Address the Risks and Adverse Impacts Facing the Nearby Community Residents.

The DEIS must include a completely new and more thorough analysis of air quality, environmental justice, health outcomes, and flooding. The current plan for analysis will not allow residents to determine the true risk of the plant. The DSD indicates that no additional data or studies will be required, despite significant changes since prior analyses performed in 2010, and the disparate health impacts of Covid-19 on the city and the neighborhood this year.

- a. The air quality analysis and health outcomes analysis does not adequately allow residents to determine the true risk of the plant, especially given the disparate respiratory health impacts of COVID-19 on the city and the neighborhood.*

A proper air quality analysis is essential for residents to assess the risks of the plant. Residents in this area already suffer from high rates of pollution compared to the rest of New

¹⁵ 26 N.Y.C. Charter § 651; NEW YORK STATE ENERGY PLANNING BOARD, 18-23.

¹⁶ NRG has admitted as such. Tom Atkins, Vice President of Development, NRG, Astoria Public Meeting (July 16, 2020).

York City, particularly from ozone and NO₂.¹⁷ The DEIS should discuss the likely possibility that the new unit will run more frequently than the existing units. The new unit has an anticipated capacity factor of 30 percent, while the capacity factor of the existing unit is below one percent.¹⁸ DSD 4-1. By foreclosing this possibility and instead planning to compare the Project with the configuration approved in 2010, the DSD's proposed analysis makes it more difficult for community members to understand how the air quality will change as a result of the Project.

Additionally, the pollution from nearby major roadways – particularly the Bronx-Queens Expressway (Route 278) and the Grand Central Parkway – will likely increase as New Yorkers drive cars and trucks more frequently due to the COVID-19 pandemic.¹⁹ The air quality analysis should encompass these recent but significant changes, as well as the interrelation of high asthma rates and other respiratory health issues with COVID-19 in the nearby community. The air pollution from nearby LaGuardia Airport also needs to be factored into the air quality analysis.

The health outcomes analysis must also encompass the full and current risks facing Astoria residents. The area around the proposed Project has suffered from high rates of COVID-19,²⁰ which may complicate the impact of air pollution on residents. The health outcomes analysis should assess the interrelations between COVID-19 and other respiratory illness with air pollution. Other disparate health impacts to the local community must be examined as well.

Furthermore, there is a large population residing at the Rikers Island jail complex very near to the site. The air quality at nearby Rikers would likely be impacted by the Project and should be analyzed.

b. The environmental justice analysis does not adequately allow residents to determine the true risk of the plant.

Related, the environmental justice analysis in the DEIS must expand to capture the full profile of the community and its environmental burden. The environmental justice analysis must include a discussion of how the Project meets the CLCPA's goals of reducing pollution in disadvantaged communities. N.Y. P.S.L. § 66-p(7)(a).

In addition, the DSD attempts to capture the components of environmental burden in its explanation of their environmental justice analysis. DSD 5-7 to 5-8. However, the sources of

¹⁷ See NYC Health, *The New York City Community Air Survey*, https://nyc-ehs.net/nyccas2020/web/report#Pollutant_Maps (last visited July 21, 2020).

¹⁸ PSE, *Opportunities for Replacing Peaker Plants with Energy Storage in New York State*, <https://www.psehealthyenergy.org/our-work/energy-storage-peaker-plant-replacement-project/new-york/#Comparison> (last visited July 20, 2020).

¹⁹ See Danielle Muoio, *The Coronavirus Comeback No One Wants: New York City Traffic*, POLITICO (July 17, 2020), <https://www.politico.com/states/new-york/albany/story/2020/07/17/the-coronavirus-comeback-no-one-wants-new-york-city-traffic-1301905> (“At stake is a gridlocked city where trucks and cars sit idle and spew emissions, primarily hurting the predominantly Black and Latino communities that surround major highways.”).

²⁰ See NYC Health, *COVID-19 Data*, <https://www1.nyc.gov/site/doh/covid/covid-19-data.page> (last visited July 21, 2020).

pollution included in this list must also include major roadways, bus depots, and major truck delivery routes, which may not have air permits but contribute a significant amount of pollutants.

Furthermore, in addition to covering race and ethnicity, the environmental justice analysis should cover factors like linguistic isolation and the economic situation of residents. The economic situation will likely have changed since the 2018 American Community Survey data given the current health and economic crisis, and the analysis should reflect this.

c. The flooding analysis does not adequately allow residents to determine the true risk of the plant.

Given the Project's location on a tidal river and its previous flooding history,²¹ the DEIS must include a thorough analysis of the flood risks. While the New York City Panel on Climate Change provides excellent resources, they generally analyze risks in terms of the 100-year floodplain.²² It is essential to look at rates of flooding that are more frequent than the 100-year flood, and especially at this location on the East River. The Project area is likely to be subject to more frequent flooding in parts.

Superstorm Sandy was less than a Category-1 storm. This facility needs to be able to withstand future storms of increasing strength and rainfall.²³ The DEIS should examine the impacts of Superstorm Sandy and future stronger storms on the all the utilities located near this Project Area, as well as this Project Area itself.

Additionally, the DSD is entirely lacking analysis of the Project's impact on water quality. The DEIS must include analysis of any water quality impacts, including but not limited to hot water and pollutant discharges, spills and leaks, and runoff.

* * * * *

These additions to the Final Scoping Document and Draft Environmental Impact Statement will help the public more accurately assess the risks of and the need for the project. Please feel free to contact us at any time with questions, which you may direct to Carlos Garcia at NYC-EJA, carlos@nyc-eja.org.

Sincerely,

PEAK Coalition: New York City Environmental Justice Alliance, UPROSE, THE POINT CDC, New York Lawyers for the Public Interest, Clean Energy Group

²¹ See Josey Bartlett, Hurricane Sandy Floods Long Island City, Astoria, QUEENS CHRON. (Nov. 1, 2012), https://www.qchron.com/editions/western/hurricane-sandy-floods-long-island-city-astoria/article_c050afc2-44ca-5ac8-b616-38f0134eed7a.html (noting that Shore Boulevard flooded up to the power plant).

²² See Lesley Patrick et al., NEW YORK CITY PANEL ON CLIMATE CHANGE 2019 REPORT CHAPTER 5: MAPPING CLIMATE RISK (2019).

²³ New York State Office of the Attorney General, CURRENT & FUTURE TRENDS IN EXTREME RAINFALL ACROSS NEW YORK STATE (2014), at https://ag.ny.gov/pdfs/Extreme_Precipitation_Report%209%202%2014.pdf; New York State Energy Research and Development Authority, CLIMATE CHANGE IN NEW YORK 14 (2014).