



April 3, 2018

Hon. Kathleen Burgess, Secretary
New York State Board on Electric Generation Siting and the Environment
Empire State Plaza
Agency Building 3
Albany, NY 12223

**RE: Deficiencies in Public Involvement Program Plan Filed by Circular enerG,
LLC (Case No. 18-F-0150)**

Dear Secretary Burgess,

On behalf of Seneca Lake Guardian and the Finger Lakes Wine Business Coalition, we write to notify you of significant concerns about the Public Involvement Program Plan (“PIP Plan”) filed with the State Board on Electric Generation Siting and the Environment (“Siting Board”) by Circular enerG, LLC on March 13, 2018. The filing opened Case No. 18-F-0150.

Circular enerG seeks to build a massive garbage incinerator in Romulus, New York, between Seneca and Cayuga Lakes, the two largest Finger Lakes. The incinerator will be 180 feet high with a 260-foot smoke stack—the equivalent of a 24-story building. *See* Circular enerG, LLC, Special Use Permit Appl. and Env’tl. Assessment 27 (Nov. 2017), http://www.romulustown.com/pdfs/discussions/20171207115656~Final_Full_Permit_and_Assessment_for_Circular_enerG_Facility.pdf (“Special Use Permit App.”) (withdrawn). When fully built and operational, the incinerator will burn 2,640 tons of garbage every day to generate capacity of up to 80 MW of energy, *see* PIP Plan at 2, and will emit dioxins, furans, lead, mercury, arsenic, chromium, particulates, hydrochloric acid, sulfur dioxide and nitrogen oxides from its smoke stack, *see* Special Use Permit App. at 12–13.

Seneca Lake Guardian and the Finger Lakes Wine Business Coalition oppose construction of the incinerator and seek to ensure that all stakeholders in the region have a meaningful opportunity to participate this Article 10 proceeding. Seneca Lake Guardian is a New York State Not-for-Profit Corporation that is dedicated to preserving and protecting the health of Seneca Lake, its residents and visitors, its rural community character, and its agricultural and tourist-related businesses. The Finger Lakes Wine Business Coalition, a coalition of business owners in the wine-driven agritourism industry in the Finger Lakes Wine region, works to protect the clean air, soil, and water on which the industry depends. The groups’ concerns about Circular enerG’s PIP Plan are set forth below.

The PIP Plan fails to meet the requirements of the state Article 10 regulations because it does not describe activities that are sufficient to “educate the public as to the specific proposal and the Article 10 review process,” and it is not “designed to encourage participation” by all

stakeholders. 16 NYCRR § 1000.4(c). Stakeholders are broadly defined to include “[t]hose persons who may be affected or concerned by *any issues* within the Board’s jurisdiction relating to the proposed major electric generating facility and *any decision* being made about it.” *id.* § 1000.2(an) (emphasis added). Thus, the law requires that an applicant’s PIP Plan be thorough enough to encourage the participation of anyone who potentially will be affected by the incinerator.

The PIP Plan is deficient in several ways: (1) the study area in the PIP Plan is too small, (2) the stakeholder list is missing key stakeholders, (3) the notification methods are insufficient to reach many stakeholders, (4) the activities are not designed to educate the public in a balanced manner, and (5) the planned activities related to environmental justice and non-English-speaking communities are not sufficient to ensure meaningful participation of those communities. As you review the submitted plan for its adequacy and compliance with Article 10 regulations, we respectfully request that you consider the concerns raised in our letter and require Circular enerG to prepare a plan that will be sufficient to include all voices in this important proceeding.

I. THE PROJECT DESCRIPTION IS INADEQUATE TO DEFINE EITHER THE REQUIRED STUDY AREA OR THE RELEVANT STAKEHOLDERS.

The “fundamental” first step in developing a Public Involvement Plan is identifying the stakeholders who will be informed about the project and the Article 10 process. Dept. of Pub. Serv., DPS Staff Guidance on Preparing a Pub. Involvement Plan 1, [http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/6fd11ce8db088a2785257e200054a99b/\\$FILE/PIP%20Guidance%20Document%202.8.13.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/6fd11ce8db088a2785257e200054a99b/$FILE/PIP%20Guidance%20Document%202.8.13.pdf) (last accessed Mar. 29, 2018) (“DPS Guidance”). “In order to identify the communities and groups that may be affected by the proposed project,” the applicant must provide a detailed Project Description and define a Study Area, which are then used to help generate the project’s Stakeholder list. *Id.* at 2. The Study Area described by Circular enerG is too small, and the deficient size of the Study Area results in the exclusion of key stakeholders.

For a project of this magnitude, it is critical to have a complete Project Description and a Study Area that is large enough to capture all stakeholders. Circular enerG is proposing an enormous incinerator to burn 2,640 tons of garbage per day. PIP Plan at 2. The garbage will be imported from outside the region by truck and possibly rail. *Id.* Without rail transport, 238 (likely diesel-powered) trucks per day, for a total of 74,256 additional trucks per year, will enter and leave the facility and travel on country roads. *See* Special Use Permit App. at 29 (238 is the sum of predicted truck traffic at the completion of Phase 2; 238, multiplied by 6 days per week and 52 weeks per year, brings the total number of truck trips to 74,256). The 260-foot smoke stack will emit a wide range of pollutants that are harmful to human health, animals, fish, and crops. *See id.* at 15 (facility emissions estimates). The company will withdraw 445,000 gallons of water from Seneca Lake every day to operate the plant. *Id.* at 8. Given these impacts, the Study Area, related Project Description, and Stakeholder List are woefully inadequate.

The PIP Plan does not include sufficient information about the nature and location of important truck routes, train tracks, and water supply lines for the proposed incinerator to identify the relevant Study Area and stakeholders. The Department of Public Service (“DPS”) states in its guidance to applicants that the PIP Plan should include a “description of major routes of transportation for construction and operations (including transport of fuel for facility, if applicable.” DPS Guidance at 2. With an incinerator of this magnitude, the locations of the likely truck and train routes should be included in the PIP Plan and used to determine the Study Area and Stakeholder List. Residents and businesses that almost certainly will be affected adversely by diesel emissions from the garbage trucks, increased train and truck traffic, and possible noise and smell impacts from vehicles along transportation routes should be recognized as Stakeholders.

The PIP Plan also “should provide . . . the locations of interconnections,” DPS Guidance at 2, and the Study Area perimeter should be “at least five miles from all . . . interconnections and related facilities.” 16 NYCRR § 1000.2(ar). Interconnections include not only interconnections to the electric grid but also “water supply lines.” *Id.* § 1000.2(q). The Plan fails to describe the locations of water supply lines that will serve the plant. In its now withdrawn Special Use Permit Application before the Town of Romulus Board, Circular enerG had indicated that water supply lines would be located in the Lakeshore Landing Neighborhood, west of the proposed incinerator and at the far edge of the current Study Area boundary. *See* Special Use Permit App. at 8. The Project Description in the PIP Plan should be revised to include this information, the Lakeshore Landing Homeowners Association should be added to the Stakeholder List for the project, and the Study Area boundaries should be expanded to reflect the additional minimum five-mile radius beyond this interconnection of the water lines leading from the project to Seneca Lake.

Moreover, the five-mile-radius Study Area is simply too small in light of the scale of the facility and its anticipated impacts on air quality and the area’s natural resources. The Article 10 regulations require the Study Area for a large facility located in a rural place to be “*generally . . . the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites.*” 16 NYCRR § 1000.4(ar) (emphasis added). However, in areas of “significant resource concerns, the size of a study area shall be configured to address specific features or resource issues.” *Id.* Here, there are specific features and resource issues that must be addressed.

First, the pollution from a garbage incineration facility of this magnitude will extend far beyond the five-mile-radius Study Area selected by Circular enerG. At an absolute minimum, the Study Area should be based on the likely reach of these air pollutants. The U.S. Environmental Protection Agency (“EPA”) uses a radius of 10 km or 6.2 miles, when assessing air quality impacts for waste incinerators. *See* U.S. Env’tl. Prot. Agency, Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, Chapter 3: Air Dispersion and Deposition Modeling at 3-16 (2005), <https://archive.epa.gov/epawaste/hazard/>

[tsd/td/web/pdf/05hhrap3.pdf](https://www.energen.com/~/media/05hhrap3.pdf). The study area should be at least that large for Circular enerG's incinerator, and stakeholders within that larger radius should be added to the Stakeholder List. To the extent that the reach of pollutants in the air and water may be predicted at this point, the Study Area should be expanded to include those who will experience pollution from the plant, and additional stakeholders in those areas should be added to the Stakeholder List.

Second, many businesses in the Finger Lakes depend on the region's rural character and beauty. A 180-foot industrial incinerator with 260-foot smoke stack will intrude on the scenic and rural character of the region, which may in turn harm the region's agritourism and outdoor recreation industries. *See* Special Use Permit App. at 27. The study area for the incinerator should encompass the entire viewshed for the proposed facility and include stakeholders within that area as well.

II. THE STAKEHOLDER LIST IS UNDERINCLUSIVE AND CONSULTATION ACTIVITIES SHOULD INVOLVE ALL STAKEHOLDERS.

The Stakeholder List prepared by Circular enerG is under-inclusive. *See* PIP Plan at 4–8, and App. A. It is missing many people who will be impacted by the decision of the Siting Board. Annexed as Exhibit A hereto is a list of additional stakeholders who should be included, with contact information where it was available.

Circular enerG also should schedule consultation activities with every stakeholder identified in its Appendix A and Exhibit A hereto. Some groups are identified in Appendix A, but missing from the Outreach Schedule, such as the Five Points Correctional Facility and Willard Drug Treatment Center. *Compare* PIP Plan, Appendix A, at 31 *with id.* Appendix B.

III. THE PROPOSED NOTIFICATION METHODS WILL NOT REACH KEY STAKEHOLDERS

Circular enerG's proposed notification methods will leave out large numbers of area residents who are likely to be impacted by the proposed incinerator and should be included in the Article 10 process. Circular enerG plans to notify residents about the project by "mailing an informational flyer announcing the open house and providing general Project information to all unique addresses in the voting rolls for the Study Area." PIP Plan at 8.

This method of notification is insufficient for many reasons. First, because the Study Area defined by Circular enerG is too small, notice will not reach persons who live in areas that should be added to the Study Area. *See supra* Section I. Second, many area residents will not be on the voter rolls and thus will not be reached in this way. Residents who are seasonal or temporary residents will be registered to vote elsewhere, but they will have a substantial stake in preserving the character of the Finger Lakes region. The list also will exclude the prisoners and any parolees in the area, as people who have been convicted of felonies in New York are not permitted to vote until they have completed parole. As Circular enerG recognizes, there are several prisons and other places of incarceration in the area, including the state Five Points

Correctional Facility and Willard Drug Treatment Campus. *See* PIP Plan at 31. The Seneca County Jail in Romulus is roughly two miles from the proposed incinerator, but its residents are omitted from the Stakeholder List.

Circular enerG should build its mailing list for this project based on the expanded Study Area recommended in Section I, *supra*. In addition to voter lists, mailing lists should be based on property records in the expanded study area, to include property owners who may be registered to vote elsewhere. This list still will be incomplete and may require additional outreach to tenants and property managers.

People incarcerated in the area are stakeholders because they “may be affected or concerned by” pollution from the incinerator and associated truck traffic if the board decides to grant Circular enerG’s application. *See* 16 NYCRR § 1000.2(an). Prisoners incarcerated within five miles of the proposed incinerator also have a right to participate in the eventual Article 10 proceeding as local parties because they are “residents.” *See* Public Service Law § 166 [1[[m] (“The parties to the certification proceedings shall include . . . (m) [a]ny other municipality or resident of such municipality located within a five mile radius of [the] proposed facility. . . .”). People incarcerated in the area are residents and have a right to participate in the Article 10 process. Circular enerG therefore should include in its plan notification methods designed to reach those incarcerated in the area, such as placement of all outreach materials in libraries at Five Points, the Seneca County Jail, and Willard Drug Treatment Center, or in some other location providing access to the information for residents of those facilities. Outreach materials should include information on how to participate in the Article 10 process by mail, as access to the internet may be restricted for many of them, and how to sign up to receive materials related to the Article 10 process. Circular enerG should work with prison officials and advocates to ensure that prisoners receive this information.

IV. CIRCULAR ENER G MUST PROVIDE UNBIASED INFORMATION TO THE PUBLIC ABOUT THE PROPOSED INCINERATOR AND ALLOW FOR PUBLIC DISCUSSION.

Circular enerG’s PIP Plan indicates that they will not provide unbiased information to the public. When Circular enerG describes its planned activities to educate the public on the proposed incinerator, the company lists topics that it will cover in its poster display, including “[p]opularity of this type of system used internationally; [e]nvironmental, emission offset, and fuel offset benefits of methane and steam capture; Circular enerG Facility O&M capabilities and plans for staffing . . . ; and [e]conomic benefits of the Project to the local economy.” PIP Plan at 13. Taken together, this list indicates that Circular enerG plans to present only what it sees as the positive aspects of the proposed incinerator, while omitting any reference to the numerous likely and predictable costs of the project to the community.

To truly “educate the public as to the specific proposal,” 16 NYCRR § 1000.4(c)(3), Circular enerG must present a full and balanced picture of the costs of the project as well as the ostensible benefits. At a minimum, the information presented must include:

- Potential emissions of the facility, based either on preliminary studies or on performance of other incinerators of the same design;
- Potential traffic impacts, including number of daily truck trips and related pollution from trucks, as well as likely wear on public roads;
- Costs and benefits as compared with clean energy resources, such as wind and solar;
- Potential economic costs to the region, including impacts on real estate values;
- Potential impacts of lights, noise, and rail and truck traffic on the existing agritourism industry, especially the wine industry;
- Potential impacts on agriculture beyond the wine industry from pollution from the incinerator; and
- Potential visual impacts, based on viewshed studies, on local tourism resources, such as the Seneca Lake Scenic Byway, Cayuga Lake Scenic Byway, and area wine trails.

At its public meetings and open houses, *see* PIP Plan at 10–11, Circular enerG also must provide members of the public with an opportunity to ask questions and must answer questions posed during these discussions.

V. THE PIP PLAN LEAVES ENVIRONMENTAL JUSTICE AND LINGUISTICALLY ISOLATED COMMUNITIES VULNERABLE TO EXCLUSION FROM THE ARTICLE 10 PROCESS.

Circular enerG’s discussion of the environmental justice characteristics of the area near the proposed facility is deficient for several reasons. Left uncorrected, these deficiencies may result in the exclusion of environmental justice communities from this Article 10 proceeding. *See* PIP Plan at 15-16.

Circular enerG should review maps of the enlarged study area, as defined above, and consult up-to-date census information to determine whether the full study area incorporates any environmental justice communities, rather than examining sites only half a mile from the incinerator. Although the Department of Environmental Conservation’s environmental justice maps use outdated census information, updated census information is available elsewhere. EPA has a mapping tool called EJ Screen that includes all the relevant demographic information, including the percentage of the population that identifies as people of color and the percentage below the federal poverty line. *See* U.S. Env’tl. Prot. Agency, EJSCREEN: Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen> (last updated Aug. 17, 2017). EJ Screen relies on more up-to-date information: the U.S. Census Bureau’s five-year American Community Survey for the years 2011–2015. *See* U.S. Env’tl. Prot. Agency, EJSCREEN Technical Documentation 35 (Aug. 2017), https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf.

Circular enerG also should identify all census block groups that exceed the demographic benchmarks in the DEC guidance for Potential Environmental Justice Areas within the study area. Describing them as “Block Group 1, 2, 3,” etc. is not sufficient to ensure that the relevant environmental justice communities have been included and identified. *See* PIP Plan at 16. Circular EnerG should instead identify each relevant census block or block group by its unique ID number, such as census block group 360999508002, which is the block group in which the incinerator is proposed to be located.

Further, simply stating that the Project will “fairly treat and meaningfully involve all people regardless of race, color, or income” is not enough to satisfy Circular enerG’s obligations to encourage participation of members of environmental justice communities. *See id.* Circular enerG must make an effort to ensure that information reaches those low-income residents and residents of color who are likely already facing environmental and health burdens. For example, notices need to be sent to community boards, schools, prayer centers, and community groups that serve those specific communities. In addition, notices should be placed in accessible locations and visible on days of the week and at times that make them available to working families.

Circular enerG’s determination to produce its materials only in English rests on an incomplete language access analysis. Article 10 regulations require applicants to identify both (1) “any language other than English spoken . . . by 5,000 or more persons residing in any 5-digit zip code” within the study area and (2) “any language other than English spoken by a significant population of persons residing in close proximity to the proposed facility, alternative locations and interconnections not captured by paragraph (1).” 16 NYCRR § 1000.4(d). Because few zip codes in the study area exceed 5,000 persons in population, Circular enerG cannot rely solely on the 5,000-person metric to justify its determination to produce materials only in English. Circular enerG must undertake a deeper analysis to make sure there are no linguistically isolated neighborhoods or populations in the study area, regardless of whether those neighborhoods house 5,000 people.

VI. CONCLUSION

In conclusion, to comply with Article 10’s public involvement requirements, Circular enerG should resubmit its PIP Plan with the suggested improvements to its Project Description and Study Area; the expanded Stakeholder List; a commitment to notify all area residents, not just registered voters; plans for disclosing not only the supposed benefits of the project but also its potential costs; and improved Environmental Justice and Language Access analyses, with specific plans to engage environmental justice communities in this process. We respectfully request that the Siting Board deem the PIP Plan inadequate and use its authority under 16 NYCRR § 1000.4(e) to recommend the above improvements to the Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Legge", is enclosed in a thin black rectangular border.

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EXHIBIT A: ADDITIONS TO THE STAKEHOLDER LIST

The Following Entities should be added to the Stakeholder List. Readily available contact information for some stakeholders is included to assist Circular enerG in compiling its list.

Host Communities

- County health departments:
 - Eileen O'Connor, Cayuga County, eoconnor@cayugacounty.us
 - Thomas Scoles, Seneca County, tscoles@co.seneca.ny.us

Legislative Representatives

- Senator Thomas F. O'Mara (58th Senate District)

School Districts

- Romulus School Board
- Local New York State United Teachers at Romulus Central School District

Nearby Municipalities

The following municipalities have considered resolutions concerning the Circular enerG project and should be added as stakeholders.

Resolutions Passed:

- Town of Covert
- Town of Tyre
- Town of Fayette
- Town of Lodi
- Town of Waterloo
- Town of Seneca Falls
- Town of Junius
- Ontario County
- City of Geneva
- Town of Geneva
- Tompkins County
- Town of Skaneateles (Onondaga County)
- Village of Skaneateles (Onondaga County)
- Town of LaFayette (Onondaga County)
- Town of Starkey (Yates County)
- Town of Torrey (Yates County)
- Cayuga County
- Village of Cayuga (Cayuga County)
- Town of Hector (Schuyler County)

Resolutions Pending:

- City of Auburn
- City of Ithaca

Adjacent Landowners

- Spring Meadows Apartment Complex. *Stakeholder List should include owners, managers, and tenants*
- Lakeshore Landing Homeowners Association and private property owners within this neighborhood

Public Interest Groups/Additional Stakeholders

- Water Management Organizations
 - Seneca Watershed Intermunicipal Organization (SWIO)
 - Cayuga Lake Intermunicipal Organization, chaired by Tee-Ann Hunter, huntertd@gmail.com .
 - Bolton Point Water Plant: <http://www.boltonpoint.org/>
 - The Seneca County Water Quality Agency, chaired by Jim Malyj, James.Malyj@nacdn.net
 - Tompkins County Water Quality Agency, chaired by Darby Kiley, kily@ulysses.ny.us
 - Cayuga Co Water Quality Management Agency: <http://www.cayugacounty.us/Departments/Water-Quality-Management-Agency>, chair is Steve Lynch; contact is Michele Wunderlich, mwunderlich@cayugacounty.us
- State Parks
 - Contact is the **NYS State Park Finger Lakes Region office at Taugh Falls State Park**
 - Lodi Point State Park
 - Seneca Lake State Park
 - Sampson State Park
 - Taughannock State Park,
 - Cayuga State Park,
 - Long Point State Park,
 - Buttermilk State Park and
 - Robert H. Treman State Park and Treman Marine State Park on
 - Filmore Glen at the south end of Owasco Lake
 - Watkins Glen

- Prisons/Jails
 - New York State Correctional Officers & Police Benevolent Association local chapter
 - Five Points Inmate Liaison Committee
 - Seneca County Jail

- Outdoor Recreation Groups
 - Ithaca Area Hunting and Conservation group
 - New York Chapter of Backcountry Hunters and Anglers
 - Trout Unlimited
 - Ducks unlimited
 - Discover Cayuga Lake <https://www.discovercayugalake.org/> (previously The Floating Classroom), contact Bill Foster floatingclassroom@gmail.com
 - Red Jacket Yacht Club, <https://www.myrjyc.com/>
 - Ithaca Yacht Club, <https://ithacayachtclub.wildapricot.org/>
 - Paddling groups of Cayuga Lake, Contacts: Jennifer Miller, jennifer@paddle-n-more.com; Cynthia Brock, cbrock@cityofithaca.org; and Paul Closs, paulcloss@gmail.com
 - Finger Lakes Parks

- Summer camps
 - Camp Seneca Lake (run by the Louis S. Will Jewish Community Center of Greater Rochester)
 - Camp Babcock Hovey (in Ovid, run by the Boy Scouts of America)
 - The Seneca Lake Camp (run by Church of Jesus Christ of Latter Day Saints)

- Cultural and religious organizations
 - Peter Whitmer Farm (founding site of Church of Jesus Christ of Latter Day Saints)

- Environmental organizations
 - Cayuga Lake Watershed Network, steward@cayugalake.org
 - Finger Lakes Regional Watershed Alliance, decook007@rochester.rr.com
 - Finger Lakes Land Trust, Andy Zepp andrewzepp@fltl.org
 - Friends of Salt Point
 - Cayuga Lake Environmental Action Now, contacts are John Dennis, johnvdennis@gmail.com; Cait Darfler, ckdarfler@gmail.com

- Water Monitoring Partnership, contact Roxy Johnston, rjohnston@cityofithaca.org
 - New York State Water Resources Institute, contact Prof. M. Todd Walter, mtw5@cornell.edu
 - EcoLogic LLC, contact Liz Moran, lmoran@ecologicllc.com
 - Community Science Institute, contact Steve Penningroth, spenningroth@communityscience.org; Claire Weston, claire.weston@communityscience.org
- Wine Industry and Agritourism
 - Cayuga Lake Wine Trail
 - Seneca Lake Wine Trail
 - New York Wine Industry Association (NYWIA)
 - New York Wine and Grape Foundation
- Other Local Business
 - Seneca County Farm Bureau
 - Cayuga County Farm Bureau
 - Chambers of Commerce
 - Seneca County, <http://fingerlakesgateway.com/seneca-county-chamber-of-commerce/>
 - Cayuga County, <http://www.cayugacountychamber.com/>
- West Shore Homeowners Association (Cayuga Lake), John Abel, jfa5@cornell.edu