

Brenda D. Colella  
Partner

December 11, 2019

**VIA ELECTRONIC MAIL**

Hon. Michelle L. Phillips  
Secretary  
New York State Board on Electric  
Generation Siting and the Environment  
Three Empire State Plaza  
Albany, New York 12223-1350

**RE: Application of Danskammer Energy, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Approval to Repower its Danskammer Generating Station Site Located in the Town of Newburgh, Orange County**

**Case 18-F-0325**

Dear Secretary Phillips:

Danskammer Energy, LLC (“Danskammer” or the “Applicant”), a subsidiary of Danskammer Holdings, LLC, is seeking to repower its existing 532 MW nameplate generating facility with a state-of-the-art natural gas fired combined cycle power generation facility with an optimal net capacity of approximately 536 MW (the “Project”) (the “Danskammer Energy Center” or the “Project”), under Article 10 of the Public Service Law (“PSL”) and the New York State Board on Electric Generation Siting and the Environment’s (“Siting Board”) regulations, 16 NYCRR part 1000 et. seq.

Pursuant to PSL § 164 and 16 NYCRR § 1000.6, and as agreed by certain parties in executed Stipulations, Danskammer hereby files its Article 10 Application with the Siting Board. An electronic copy of the Application is enclosed on a flash drive. Twelve paper copies of the Application are also being filed separately. A check for application intervenor funding as required by PSL § 164(6) will be filed under separate cover.

The Application follows the statutory requirements of Article 10, PSL § 164(1), the Siting Board’s regulations and the executed Stipulations. The Application contains, among other things, a description of the proposed Project and the studies or program of studies conducted to evaluate potentially significant adverse environmental and health impacts, and the results of those studies along with proposed avoidance, minimization or mitigation measures, as applicable. Also included with the Application is the testimony of each expert witness that Danskammer intends to offer at any hearing as required by PSL Section 165 and 16 NYCRR § 1000.6(c)(1). The testimony includes the qualification of each witness and specifies the portion

of the Application for which each witness is responsible or supports (*see* Appendix 1-1 of Exhibit 1 of the Application).

Pursuant to PSL §164(2) and 16 NYCRR § 1000.6(a), copies of the Application have been served on the parties identified therein, as listed on the service lists. Affidavits of Service, providing proof of service of the Application, along with the accompanying service lists, will be provided under separate cover.

Pursuant to Sections 16 NYCRR §§ 1000.7(a) and 1000.7(b)(1), the Notice of the Application with a summary and a map (the “Notice of Application”) was published in the following newspapers at least three days in advance of the filing date of the Application:

- The Times Herald-Record;
- Mid-Hudson Times;
- The Hudson Valley Press;
- The Poughkeepsie Journal;
- The Pennysaver; and
- El Aguila (on-line daily publication);

The Notice of Application with proofs of publication are attached as Attachment 1 to this letter.

Pursuant to 16 NYCRR §§ 1000.7(b)(2) and (3), at least three days in advance of the Application filing date, the Notice of the Application was also served on each member of the State Legislature in whose district any portion of the facility is to be located as proposed and all persons who have filed a statement with the Secretary to the Siting Board that they desire to receive all such notices. Pursuant to the Applicant’s Public Involvement Program Plan (“PIP”), on December 4, 2019 the Notice of Application was also served on stakeholders identified in the PIP and through the PIP process. A copy of the Affidavit of Service for the Notice of the Application is attached as Attachment 2 to this letter. A copy of the Notice of Application was also posted on the Project’s website, available at: [www.danskammerenergy.com](http://www.danskammerenergy.com).

Pursuant to Section 16 NYCRR §1000.6(c)(5), the following are the names, addresses, telephone numbers, and e-mail addresses of the Applicant and its attorney:

Applicant:

Michelle Hook, Vice President of Public  
Affairs Danskammer Energy, LLC  
181 South Plank Road  
Newburgh, NY 12550  
Telephone: (845) 570-0862  
Email: [mhook@danskammerenergy.com](mailto:mhook@danskammerenergy.com)

Applicant’s Attorney:

Brenda D. Colella  
Barclay Damon, LLP  
125 East Jefferson Street  
Syracuse, NY 13202  
Telephone: (315) 425-2722  
Email: [bcolella@barclaydamon.com](mailto:bcolella@barclaydamon.com)

Finally, pursuant to 16 NYCRR § 6-1.3(b), certain confidential information contained in the Application and its Appendices has been redacted from the version of the Application submitted for filing and served pursuant to PSL § 164(2)(a) and 16 NYCRR § 1000.6(a). Danskammer has separately submitted a letter to Presiding Examiners Anthony Belsito and Michael S. Caruso requesting that such information be exempt from public disclosure under Public Officers Law (“POL”) §§ 87 and 89 and Subpart 6-1 of the Public Service Commission’s

December 11, 2019

Page 3

regulations, along with copies of the confidential information. Pursuant to Section 16 NYCRR § 1000.6(c)(4), a copy of that letter-brief is attached as Attachment 3 to this letter.

Please feel free to contact me if you have any questions regarding this filing.

Respectfully submitted,

*/s/ Brenda D. Colella*

Brenda D. Colella

*Counsel for Danskammer Energy, LLC*

Enclosures: Article 10 Application (on flash drive)  
Attachment 1, Affidavits of Publication and Notice of Application  
Attachment 2, Affidavit of Service for the Notice of the Application  
Attachment 3, Copy of Letter-Brief (without enclosures)

cc: Statutory Service List  
DMM Party List

# **Attachment 1**



STATE OF New York }

} SS.

COUNTY OF Westchester }

I, Thomas Kelly duly swear that I am  
Employed with Yorktown Pennysaver Corp.  
a newspaper publication based in Yorktown Heights, New York,  
as the Media Consultant  
and further swear that the Danskammer Energy ad  
ran in Yorktown Pennysaver on the  
following date(s):

Date(s): 12/4/2019

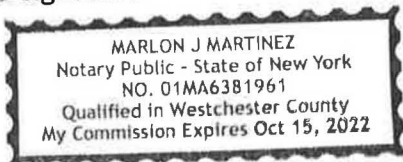
Thomas Kelly

(signature)

Sworn to before me on this 5<sup>th</sup> day of December, 2019.

[Signature]

Notary's signature



**Case No. 18-F-0325**  
**Danskammer Energy, LLC**  
**Danskammer Energy Center**  
**Town of Newburgh, Orange County, New York**  
**NOTICE OF APPLICATION FILING**

Danskammer Energy, LLC ("Danskammer" or the "Applicant"), a subsidiary of Danskammer Holdings, LLC, is submitting an application (the "Application") to repower its existing 532 MW nameplate generating facility with a state-of-the-art natural gas fired combined cycle power generation facility with an optimal net capacity of approximately 536 MW (the "Project") (the "Danskammer Energy Center" or the "Project"), under Article 10 of the Public Service Law ("PSL"). Pursuant to 16 NYCRR § 10007.(b), this notice announces that on or about December 11, 2019, the Applicant will file the Application with the New York State Board on Electric Generation Siting and the Environment (the "Siting Board").

As part of the Project, the existing operational electric generating facility will be replaced with a 1-on-1 combined cycle configuration, utilizing a gas combustion turbine and steam turbine generator, with an optimal capacity of approximately 536 MW. The Danskammer Energy Center will also incorporate the ability to provide additional peaking output to potentially ramp up to as much as 600 net MW to meet market demands, or support variations in generation from renewable resources. The Project will be located entirely on lands owned by Danskammer in the Town of Newburgh in Orange County, New York.

Pursuant to the Article 10 process, Danskammer filed a Public Involvement Plan ("PIP") on May 24, 2018, and filed a Preliminary Scoping Statement ("PSS") on February 8, 2019, with the Siting Board. Thereafter, the public and stakeholders had an opportunity to submit comments on the PSS. Following the comment period, on April 19, 2019, Danskammer filed and served its summary of the comments on the PSS and response to such comments. On April 3, 2019, a pre-application procedural conference was held to consider requests for pre-application intervenor funding and the scoping stipulations process was ordered to be commenced. On April 24, 2019, Danskammer filed a notice that settlement negotiations for the stipulation process had been initiated. Negotiations occurred between Danskammer and the New York State Department of Public Service ("DPS"), the New York State Department of Environmental Conservation, the New York State Department of Health, and other stakeholders pursuant to 16 NYCRR § 1000.5(j)(2). On September 6, 2019, Danskammer filed the proposed joint stipulations resulting from those negotiations. As set forth in 16 NYCRR § 1000.5(k), any party that executes a pre-application stipulation may not raise objections regarding the Application as to the methodology or scope of any study or program of studies performed in compliance with such stipulation.

Danskammer will submit a permit application for a Prevention of Significant Deterioration Air Permit and for a modification of its Title V Facility Permit, both pursuant to the Clean Air Act, as well as a request for a modification of its State Pollutant Discharge Elimination System Individual Permit for Stormwater Dischargers from Industrial Activities under the Clean Water Act. Additionally, Danskammer will seek a coastal consistency determination from the NYS Department of State pursuant to the Coastal Zone Management Act.

Pursuant to 16 NYCRR § 1000.7, this notice serves as a summary regarding the contents of the Application, which will be filed on or about December 11, 2019. In addition, a copy of the Application will be served on the Chief Executive Officer of each municipality in which any portion of the Facility is located, as well as those persons and agencies enumerated in 16 NYCRR § 1000.6.

The Application includes, among other things: an analysis of the environmental setting of the Project, a description of the Project, including preliminary design drawings and related information; copies of reports, studies and plans submitted in support of the Application; and an assessment of impacts of construction and/or operation of the Project relating to land use; consistency with State energy planning objectives, public health and safety; terrestrial ecology, water resources and aquatic ecology, communications, transportation and utilities; cultural, historical and recreational resources; visual, sound; electric magnetic fields; and impacts on the statewide electrical system.

Once the Application is filed and determined by the Siting Board to be complete, the Siting Board will schedule a public hearing on the Application. Upon filing the Application, Danskammer will provide intervenor funding in the amount of \$400,000 to be disbursed by the Siting Board to municipalities and other local parties to help pay expenses, including attorneys and consultants, associated with participating in the Article 10 process during the application review phase. Fifty percent (50%) of these intervenor funds are reserved for municipalities. The Siting Board will issue a notice of availability of application-phase intervenor funds. Requests for intervenor funds must be submitted to the Hearing Examiners within thirty (30) days after the issuance of such notice. A pre-hearing conference will be scheduled by the Hearing Examiners to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the Application and project impact assessments will be scheduled by the Hearing Examiners as needed. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board, must be completed within twelve (12) months of when the Application is determined to be complete.

All public documents filed in this proceeding, including the Application, may be accessed electronically at the DPS website at <http://www.dps.ny.gov>. To access documents, go to "Search," type the case number, "18-F-0325", and click "Search by Case Number." Documents may also be accessed using the direct link: (<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=18-F-0325>) or by going to the Project-specific website maintained by Danskammer at <https://danskammerenergy.com/>.

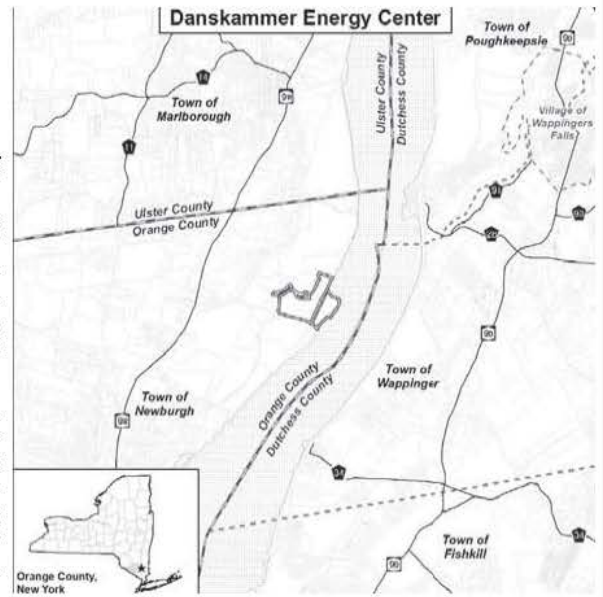
Hard copies of the Application may also be examined during normal business hours at the Offices of the DPS at 3 Empire State Plaza, Albany, New York 12223, at the local project office located at 181 South Plank Road, Newburgh, New York 12250, or at the following public repositories: Newburgh Free Library, 124 Grand Street, Newburgh, New York 12550; Marlborough Free Library, 1251 Route 9W, Marlborough, New York 12542; Adriaance Memorial Library, 93 Market Street, Poughkeepsie, New York 12603; and Blodgett Memorial Library, 37 Broad Street, Fishkill, New York 12524.

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Project. Written requests should be sent to the DPS Secretary at [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov) or sent by mail to the following address: Honorable Michelle L. Phillips, Acting Secretary to the Siting Board, NYS Board on Electric Generation Siting and the Environment, Empire State Plaza, Agency Building 3, Albany, New York 12223-1350

**Contact Information:**

Danskammer Energy, LLC  
Michelle Hook, Vice President of Public Affairs Danskammer Energy  
181 South Plank Road, Newburgh, NY 12550  
Telephone: 845-570-0862 | Email: [mhook@danskammerenergy.com](mailto:mhook@danskammerenergy.com)

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James Denn, Article 10 Public Information Coordinator  
3 Empire State Plaza, Albany, NY 12223  
Telephone: 518-474-7080 | Email: [james.denn@dps.ny.gov](mailto:james.denn@dps.ny.gov)





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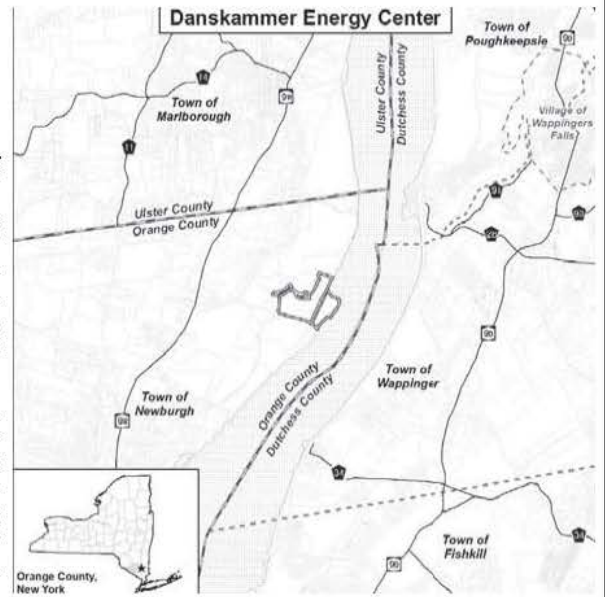
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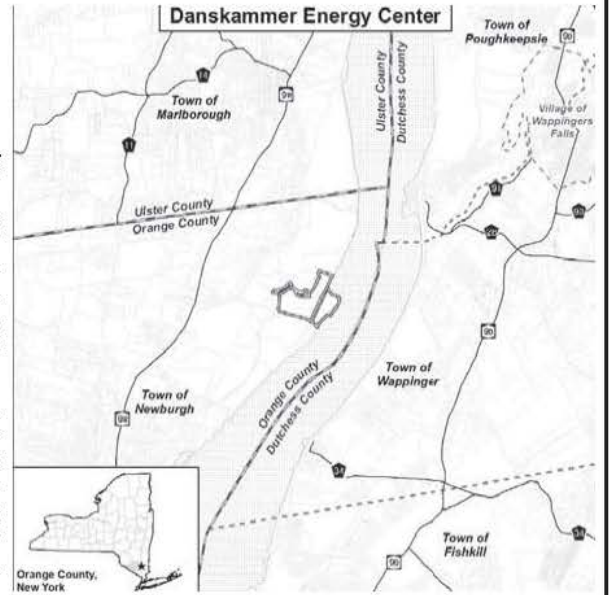
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STATE OF NEW YORK

}  
} SS.  
}

COUNTY OF ORANGE

I, Charles Stewart, duly swear that I am employed with Hudson Valley Press,

a newspaper publication based in Newburgh, New York, as the Editor,

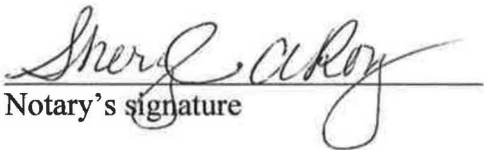
and further swear that the Danskammer Energy ad ran in Hudson Valley Press on the following date(s):

Date(s): December 4, 2019

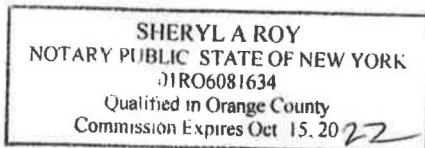


(signature)

Sworn to before me on this 4<sup>th</sup> day of December, 2019.



Notary's signature





Case No. 18-F-0325  
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 Town of Newburgh, Orange County, New York

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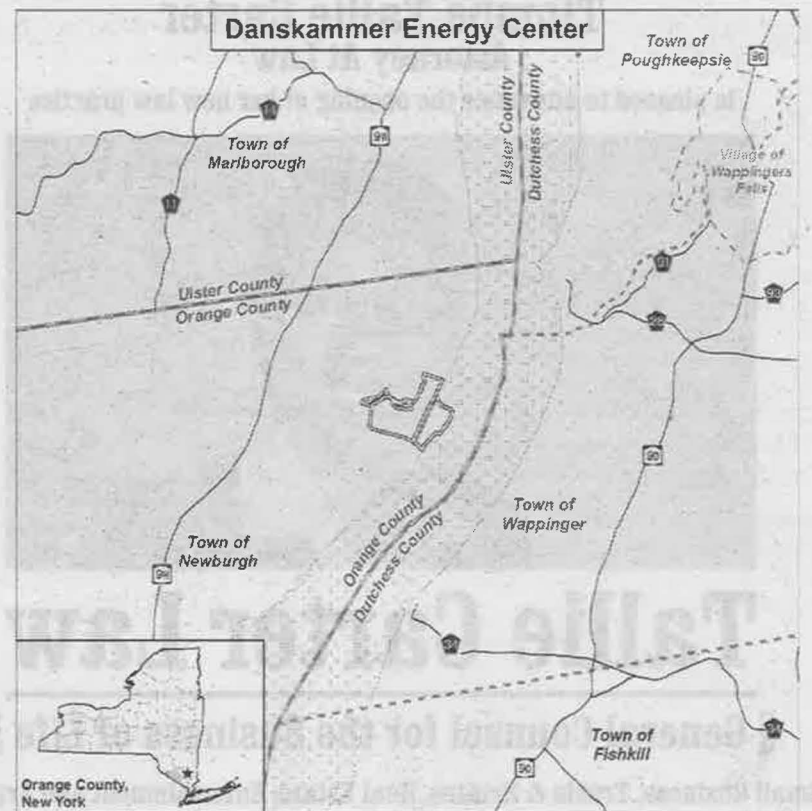
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**Contact Information:**  
 Danskammer Energy, LLC  
 Michelle Hook, Vice President of Public Affairs Danskammer Energy  
 181 South Plank Road, Newburgh, NY 12550  
 Telephone: (845) 570-0862 | Email: [mhook@danskammerenergy.com](mailto:mhook@danskammerenergy.com)

NYS Department of Public Service  
 James Denn, Article 10 Public Information Coordinator  
 3 Empire State Plaza, Albany, NY 12223  
 Telephone: (518) 474-7080 | Email: [james.denn@dps.ny.gov](mailto:james.denn@dps.ny.gov)



Thursday, December 5, 2019 at 10:59:04 Eastern Standard Time

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**Subject:** Re: Affidavit

**Date:** Wednesday, December 4, 2019 at 9:16:18 PM Eastern Standard Time

**From:** Norma Maximo

**To:** Cailin McKenna

Hi Cailin,  
your ad is up today, attached please find the tear sheet and Invoice.

Best Regards,  
Norma Maximo  
El Aguila  
914 686-2598

> On Dec 4, 2019, at 1:01 PM, Cailin McKenna <[cailin@gramcomm.com](mailto:cailin@gramcomm.com)> wrote:

>

> Hi Norma,

>

> Thanks! Please let me know when the ad is up today. As for the tear sheet and invoice, you can send to me directly as you did last time.

>

> Best,

> Cailin

>

> CAILIN MCKENNA

> SENIOR ACCOUNT MANAGER

> 150 State Street, Fourth Floor / Albany, NY 12207

> e / [cailin@gramcomm.com](mailto:cailin@gramcomm.com)

> p / 518.326.6400

> c / 518.396.7787

> [gramercynewyork.com](http://gramercynewyork.com/) <<http://gramercynewyork.com/>>

> Facebook <<https://www.facebook.com/gramercycommunications/>> / Instagram

> <<https://www.instagram.com/gramercycomm/>> / Twitter <<https://twitter.com/GramercyComm>> / LinkedIn

> <<https://www.linkedin.com/company/gramercy-communications/>>

>

>

> On 12/4/19, 1:58 PM, "Norma Maximo" <[nmaximo@elaguilanews.com](mailto:nmaximo@elaguilanews.com)> wrote:

>

> Hi Cailin,

>

> I haven't received the Ad from the graphic designer, I am sure he'll send it today. On the other hand, the last time you pleased an ad I sent the tear sheet and an invoice to Gramercy.

>

> Please explain what do you need now.

>

> Best regards,

>

> Norma Maximo

> El Aguila

> 914 686-2598

>

**TRENDING NOW** What Does Thanksgiving Mean to Native Americans?


USA

**What Does Thanksgiving Mean to Native Americans?**

November 27, 2019


**NEWS**

**Andrea Stewart-Cousins helps distribute backpacks to underserved children**
**Westchester** August 23, 2019

Andrea Stewart-Cousins helps distribute backpacks to an estimated 1,000 underserved children YONKERS, NY – On Saturday, August 17, Senate Majority Leader Andrea Stewart-Cousins joined...


**Air Traffic increases noise pollution and more...**
**Environment** July 27, 2019

Air Traffic increases noise pollution and more... Dear EarthTalk: I've noticed more and more air traffic over my house in Seattle and I'm getting a...


**WP Lights for Liberty Vigil Protests US Detention Centers**
**Westchester** July 21, 2019

WP Lights for Liberty Vigil Protests US Detention Centers By Natalie Chun Armed with homemade signs and electronic candles, about 300 people gathered in Tibbets Park...


**US 'roundup' of undocumented migrants may begin on Sunday**
**USA** July 13, 2019

US 'roundup' of undocumented migrants may begin on Sunday. Immigrants say their communities have been 'in constant fear' over expected sweep targeting families in major...


**DAC Technology and the Greenhouse Effect**
**Environment** June 22, 2019

DAC Technology and the Greenhouse Effect Dear EarthTalk: If we already know how to capture carbon dioxide (CO2) and turn it into fuel, why aren't...

**LATEST EDITION**

**El Aguila | Dec.-Feb. – 2020**

December 3, 2019

El Aguila Digital Edition is a quarterly publication founded by Máximo Publications, Inc. El Aguila Circulate important news and articles in English and Spanish. It's mostly business-oriented, but also contains social and cultural information of the Latino American community.

**Danskammer  
Energy Center**
**NOTIFICACIÓN DE  
PRESENTACIÓN  
DE SOLICITUD**




Inicio · Anuncio · Caso Nro. 18-F-0325 Danskammer Ad

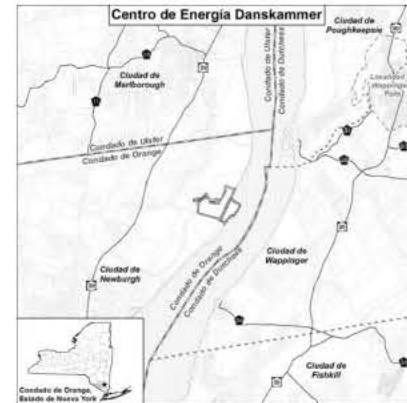
Anuncio

## Caso Nro. 18-F-0325 Danskammer Ad

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**Caso Nro. 18-F-0325  
Danskammer Energy, LLC  
Centro de Energía Danskammer  
Ciudad de Newburgh, condado de Orange, Nueva York  
NOTIFICACIÓN DE PRESENTACIÓN DE SOLICITUD**

Danskammer Energy, LLC ("Danskammer" o el "Solicitante"), una filial de Danskammer Holdings, LLC, envía una solicitud (la "Solicitud") para repotenciar su centro actual generador de placas de 532 MW con un centro de generación de energía de ciclo combinado de gas natural de avanzada con una óptima capacidad de red de aproximadamente 536 MW (el "Proyecto") (El "Centro de Energía Danskammer" o el "Proyecto"), conforme al artículo 10 de la Ley de Servicios Públicos ("PSL"). De conformidad con el título 16, apartado 10007. (b) del NYCRR, esta notificación anuncia que el 11 de diciembre de 2019, o alrededor de esa fecha, el Solicitante presentará una Solicitud ante el Consejo de Nueva York sobre Generación eléctrica, emplazamiento y medio ambiente (el "Consejo de Emplazamiento").



Como parte del proyecto, el centro operativo actual de generación eléctrica se reemplazará con una configuración de ciclo combinado 1 a 1, mediante una turbina de combustión de gas y un generador de turbina de vapor, con una capacidad óptima de aproximadamente 536 MW. El Centro de Energía Danskammer también incorporará la capacidad de proporcionar una producción máxima adicional para potencialmente aumentar hasta 600 MW netos a fin de satisfacer la demanda del mercado o apoyar las variaciones en la generación a partir de recursos renovables. El Proyecto se ubicará en su totalidad en terrenos propiedad de Danskammer, en la ciudad de Newburgh, condado de Orange, Nueva York.

De conformidad con el proceso del artículo 10, Danskammer presentó un Plan de participación pública ("PIP") el 24 de mayo de 2018 y presentó una Declaración de alcance preliminar ("PSS") el 8 de febrero de 2019 ante el Consejo de Emplazamiento. Posteriormente, el público y las partes interesadas tuvieron la oportunidad de enviar comentarios sobre la PSS. Después del período de comentarios, el 19 de abril de 2019, Danskammer presentó y entregó su resumen de los comentarios sobre la PSS, y la respuesta a dichos comentarios. El 3 de abril de 2019, se llevó a cabo.

### ÚLTIMA EDICIÓN



El Aguila | Dic.-Feb. – 2020

diciembre 3, 2019

El Aguila Digital Edition es una publicación trimestral por Máximo Publications, Inc. El Águila circula noticias y artículos importantes en inglés y español. Es principalmente orientado a los negocios, pero también contiene información social y cultural de la comunidad latinoamericana.

Danskammer  
Energy Center

**NOTIFICACIÓN DE  
PRESENTACIÓN  
DE SOLICITUD**



Leer Mas >





**Case No. 18-F-0325**  
**Danskammer Energy, LLC**  
**Danskammer Energy Center**  
**Town of Newburgh, Orange County, New York**

**NOTICE OF APPLICATION FILING**

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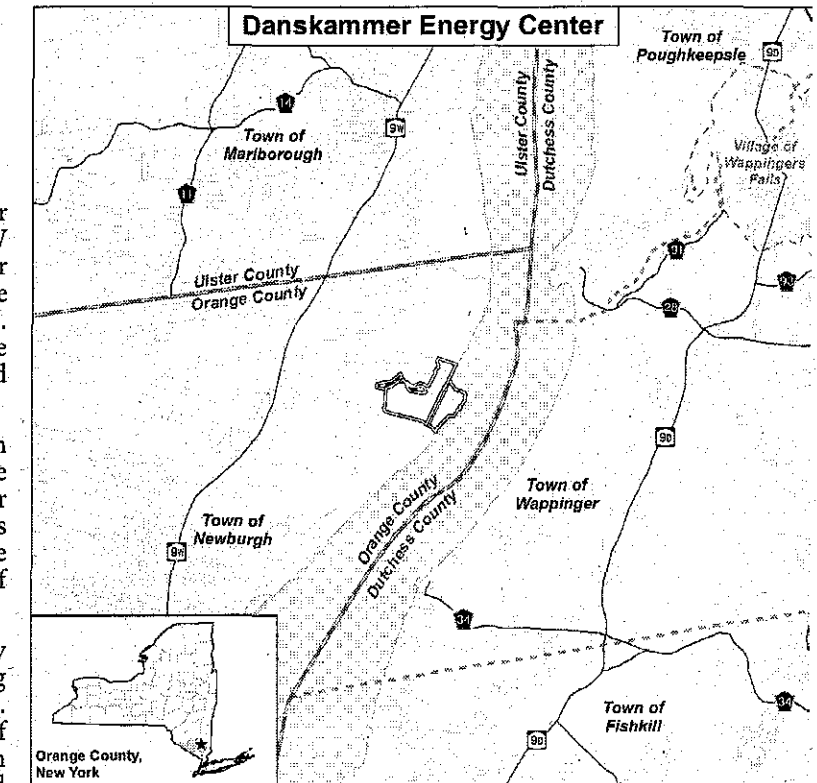
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**Contact Information:**

Danskammer Energy, LLC  
 Michella Hook, Vice President of Public Affairs, Danskammer Energy

NYS Department of Public Service  
 James Denn, Article 10 Public Information Coordinator



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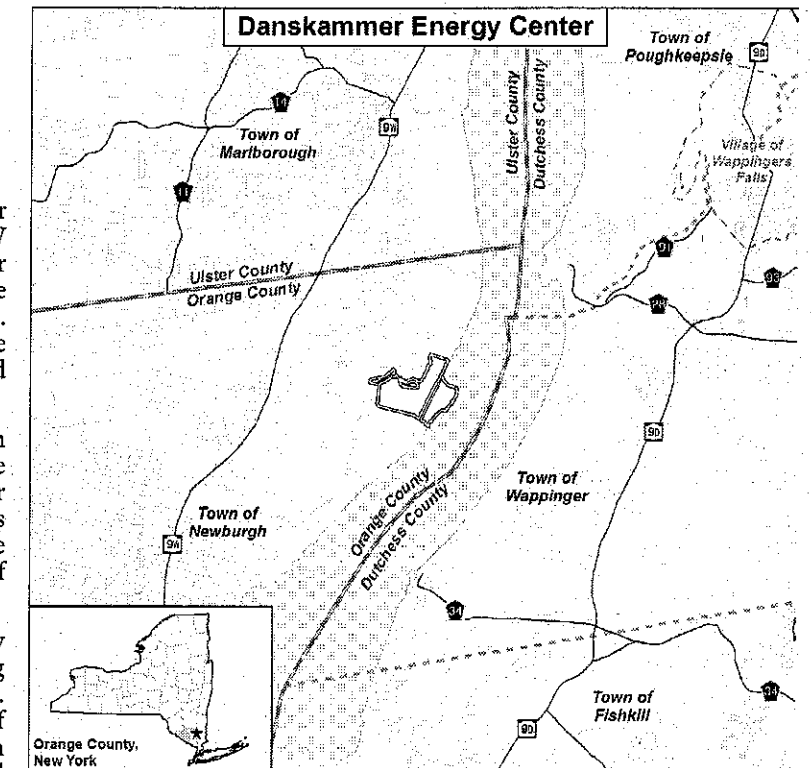
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Danskammer Energy, LLC  
 Michelle Hook, Vice President of Public Affairs Danskammer Energy  
 181 South Plank Road, Newburgh, NY 12550

NYS Department of Public Service  
 James Denn, Article 10 Public Information Coordinator  
 3 Empire State Plaza, Albany, NY 12223

**AFFIDAVIT OF INSERTION**

**Please Fill out Information Below:**

**Name of Publication:** Poughkeepsie Journal

**City, State:** Poughkeepsie, NY

**Client name:** Gramercy

**Insertion Order #:**

**Date of Insertion:** 12/4/19

**Headline:** N/A

**Ad Size:** ½ pg H

**Total # Inserted:** 7,408

**Please Return Completed Affidavit to:**

Email:

My signature verifies that this ad was inserted as scheduled according to the above specifications.

Atasha Davis

Signature

12/4/19

Date

Atasha Davis

Name (Please Print)

Notary Signature

Melissa Ben'WMD

Signature

12/4/2019

Date

MELISSA BEN'WMD

Name (Please Print)



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Pursuant to the Article 10 process, Danskammer filed a Public Involvement Plan (“PIP”) on May 24, 2018, and filed a Preliminary Scoping Statement (“PSS”) on February 8, 2019, with the Siting Board. Thereafter, the public and stakeholders had an opportunity to submit comments on the PSS. Following the comment period, on April 19, 2019, Danskammer filed and served its summary of the comments on the PSS and response to such comments. On April 3, 2019, a pre-application procedural conference was held to consider requests for pre-application intervenor funding and the scoping stipulations process was ordered to be commenced. On April 24, 2019, Danskammer filed a notice that settlement negotiations for the stipulation process had been initiated. Negotiations occurred between Danskammer and the New York State Department of Public Service (“DPS”), the New York State Department of Environmental Conservation, the New York State Department of Health, and other stakeholders pursuant to 16 NYCRR § 1000.5(j)(2). On September 6, 2019, Danskammer filed the proposed joint stipulations resulting from those negotiations. As set forth in 16 NYCRR § 1000.5(k), any party that executes a pre-application stipulation may not raise objections regarding the Application as to the methodology or scope of any study or program of studies performed in compliance with such stipulation.

Danskammer will submit a permit application for a Prevention of Significant Deterioration Air Permit and for a modification of its Title V Facility Permit, both pursuant to the Clean Air Act, as well as a request for a modification of its State Pollutant Discharge Elimination System Individual Permit for Stormwater Dischargers from Industrial Activities under the Clean Water Act. Additionally, Danskammer will seek a coastal consistency determination from the NYS Department of State pursuant to the Coastal Zone Management Act.

Pursuant to 16 NYCRR § 1000.7, this notice serves as a summary regarding the contents of the Application, which will be filed on or about December 11, 2019. In addition, a copy of the Application will be served on the Chief Executive Officer of each municipality in which any portion of the Facility is located, as well as those persons and agencies enumerated in 16 NYCRR § 1000.6.

The Application includes, among other things: an analysis of the environmental setting of the Project, a description of the Project, including preliminary design drawings and related information; copies of reports, studies and plans submitted in support of the Application; and an assessment of impacts of construction and/or operation of the Project relating to land use; consistency with State energy planning objectives, public health and safety; terrestrial ecology, water resources and aquatic ecology, communications, transportation and utilities; cultural, historical and recreational resources; visual, sound; electric magnetic fields; and impacts on the statewide electrical system.

Once the Application is filed and determined by the Siting Board to be complete, the Siting Board will schedule a public hearing on the Application. Upon filing the Application, Danskammer will provide intervenor funding in the amount of \$400,000 to be disbursed by the Siting Board to municipalities and other local parties to help pay expenses, including attorneys and consultants, associated with participating in the Article 10 process during the application review phase. Fifty percent (50%) of these intervenor funds are reserved for municipalities. The Siting Board will issue a notice of availability of application-phase intervenor funds. Requests for intervenor funds must be submitted to the Hearing Examiners within thirty (30) days after the issuance of such notice. A pre-hearing conference will be scheduled by the Hearing Examiners to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the Application and project impact assessments will be scheduled by the Hearing Examiners as needed. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board, must be completed within twelve (12) months of when the Application is determined to be complete.

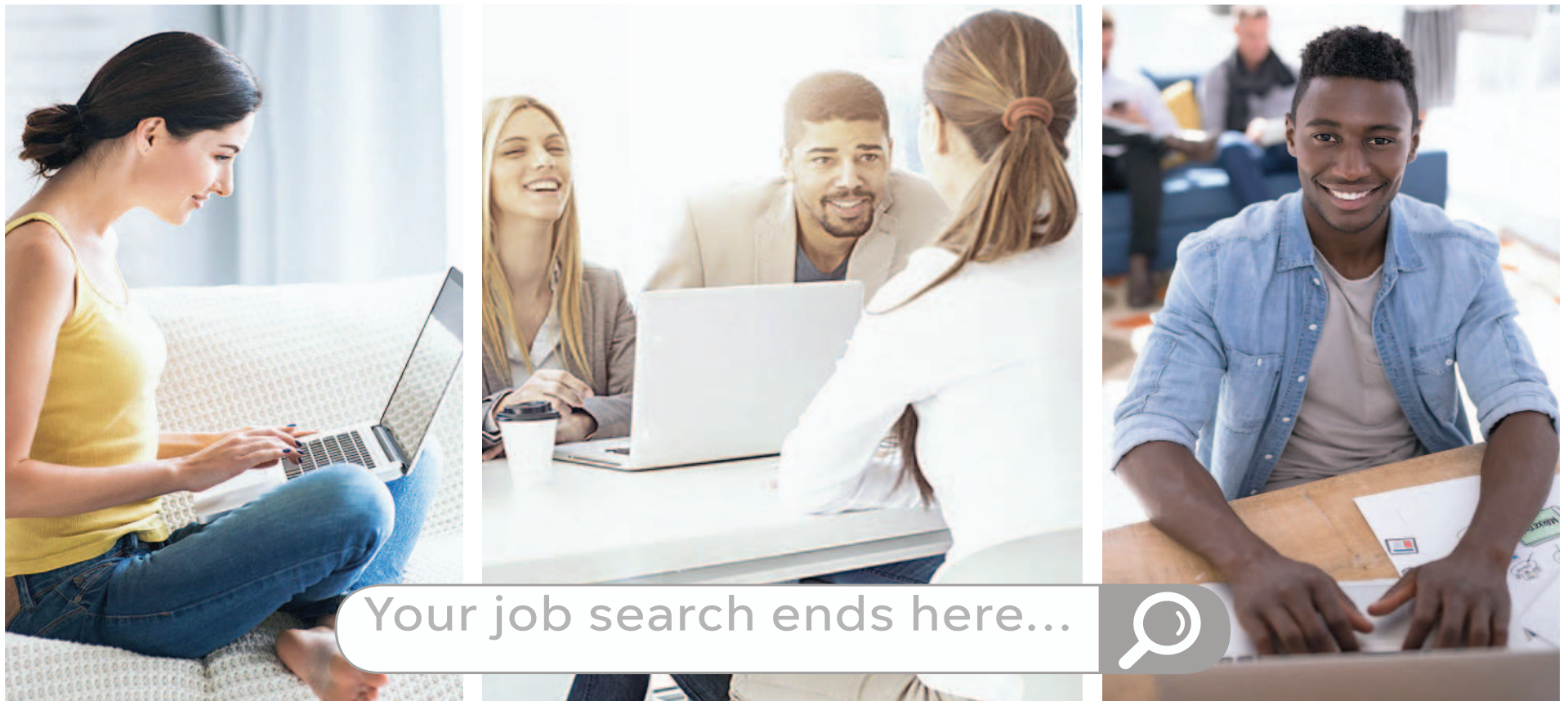
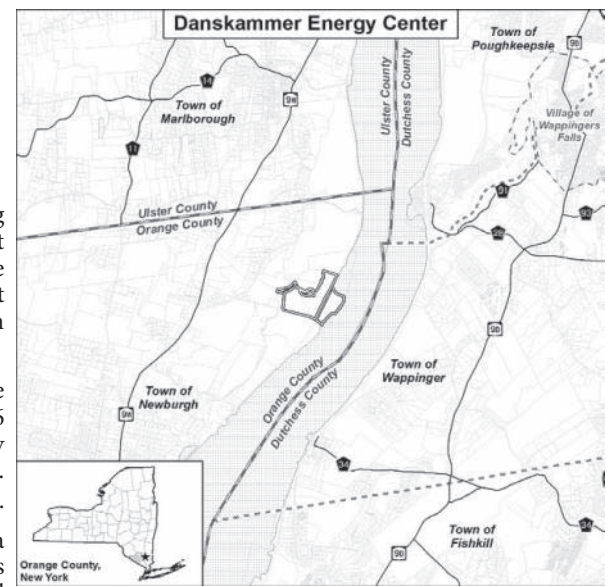
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Hard copies of the Application may also be examined during normal business hours at the Offices of the DPS at 3 Empire State Plaza, Albany, New York 12223, at the local project office located at 181 South Plank Road, Newburgh, New York 12250, or at the following public repositories: Newburgh Free Library, 124 Grand Street, Newburgh, New York 12550; Marlborough Free Library, 1251 Route 9W, Marlborough, New York 12542; Adriance Memorial Library, 93 Market Street, Poughkeepsie, New York 12603; and Blodgett Memorial Library, 37 Broad Street, Fishkill, New York 12524.

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Project. Written requests should be sent to the DPS Secretary at [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov) or sent by mail to the following address: Honorable Michelle L. Phillips, Acting Secretary to the Siting Board, NYS Board on Electric Generation Siting and the Environment, Empire State Plaza, Agency Building 3, Albany, New York 12223-1350

**Contact Information:**  
 Danskammer Energy, LLC  
 Michelle Hook, Vice President of Public Affairs Danskammer Energy  
 181 South Plank Road, Newburgh, NY 12250  
 Telephone: (845) 570-0862 | Email: [mhook@danskammerenergy.com](mailto:mhook@danskammerenergy.com)

NYS Department of Public Service  
 James Denn, Article 10 Public Information Coordinator  
 3 Empire State Plaza, Albany, NY 12223  
 Telephone: (518) 474-7080 | Email: [james.denn@dps.ny.gov](mailto:james.denn@dps.ny.gov)



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# TIMES HERALD-RECORD

P.O. Box 2046, 40 Mulberry Street, Middletown, NY 10940-6357

State of New York:

County of Orange: ss:

Megan Kessler

Being duly sworn deposes and says that the Local Media Group, Inc. is organized under the last of the State of New York and is, at all the times hereinafter mentioned, was the printer and publisher of the Times Herald-Record, a daily newspaper distributed in the Orange, Ulster, Rockland, Dutchess, Pike, PA, Delaware and Sullivan, Counties, published in the English language in the City of Middletown, County of Orange, State of New York, that deponent is the

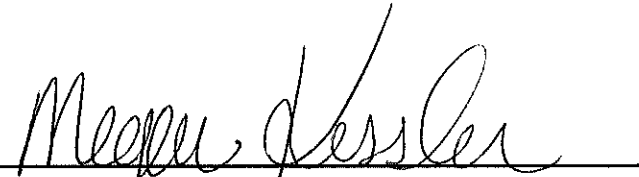
Legal Advertising Rep.

of said The Times Herald-Record acquainted with the facts hereinafter stated, and duly authorized by said Corporation to make this affidavit; that the

Public Notice

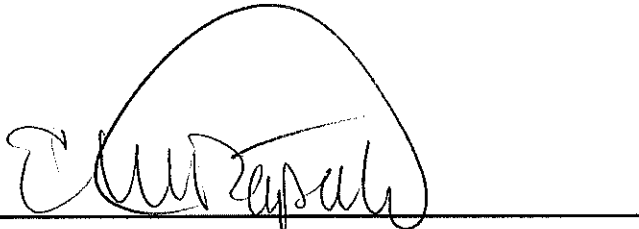
a true printed copy of which is attached, has been duly and regularly published in the manner require by law in said The Times Herald-Record in each of its issues published upon each of the following dates, to with: In its issues of:

12/04/2019



Signature of Representative:  
Megan Kessler

Sworn to before me this 5 Day of Dec 2019



Notary Public, Orange County

ELIZABETH MARTHA RAPALO  
Notary Public - State of New York  
No. 01RA6344907  
Qualified in Orange County  
My Commission Expires 07/11/2020

Case No. 18-F-0325  
**Danskammer Energy, LLC**  
**Danskammer Energy Center**  
**Town of Newburgh, Orange County, New York**

**NOTICE OF APPLICATION FILING**

Danskammer Energy, LLC ("Danskammer" or the "Applicant"), a subsidiary of Danskammer Holdings, LLC, is submitting an application (the "Application") to repower its existing 532 MW nameplate generating facility with a state-of-the-art natural gas fired combined cycle power generation facility with an optimal net capacity of approximately 536 MW (the "Project") (the "Danskammer Energy Center" or the "Project"), under Article 10 of the Public Service Law ("PSL"). Pursuant to 16 NYCRR § 10007(b), this notice announces that on or about December 11, 2019, the Applicant will file the Application with the New York State Board on Electric Generation Siting and the Environment (the "Siting Board").

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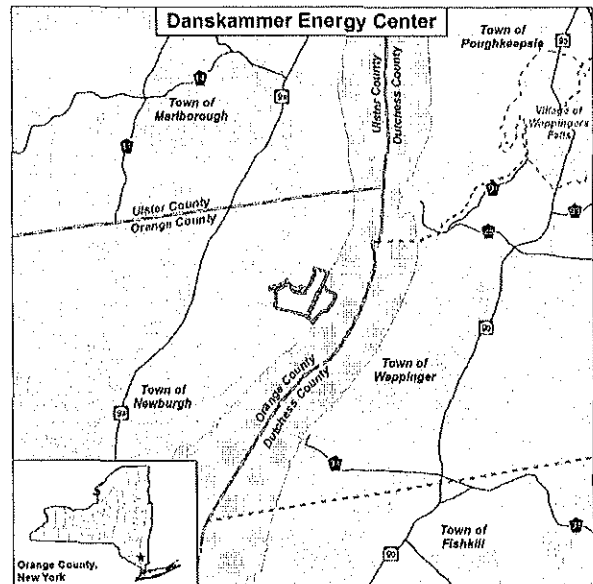
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**Contact Information:**  
 Danskammer Energy, LLC  
 Michelle Hook, Vice President of Public Affairs Danskammer Energy  
 181 South Plank Road, Newburgh, NY 12550  
 Telephone: (845) 570-0862 | Email: [mhook@danskammerenergy.com](mailto:mhook@danskammerenergy.com)

NYS Department of Public Service  
 James Denn, Article 10 Public Information Coordinator  
 3 Empire State Plaza, Albany, NY 12223  
 Telephone: (518) 474-7080 | Email: [james.denn@dps.ny.gov](mailto:james.denn@dps.ny.gov)





## **Attachment 2**

**BEFORE THE  
NEW YORK STATE  
SITING BOARD ON ELECTRIC GENERATION SITING  
AND THE ENVIRONMENT**

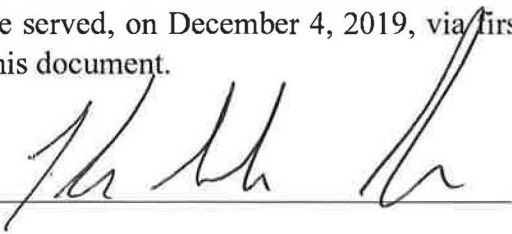
Application of Danskammer Energy, LLC for a )  
Certificate of Environmental Compatibility and )  
Public Need Pursuant to Article 10 for Approval )  
to Repower its Danskammer Generating Station Site )  
Located in the Town of Newburgh, Orange County )  
\_\_\_\_\_ )

Case 18-F-0325

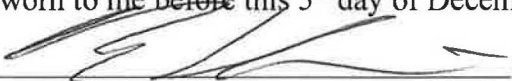
STATE OF NEW YORK )  
 ) SS.  
COUNTY OF ALBANY )

**AFFIDAVIT OF SERVICE FOR THE NOTICE OF APPLICATION FILING**

I, Thomas Verdi of Sentron Associates, Inc. in Albany, New York, the undersigned being duly sworn deposes and says: I caused the document entitled "**Notice for Application Filing**" in PSC Case: 18-F-0325 for the Danskammer Energy Center proposed in the Town of Newburgh, NY, to be served, on December 4, 2019, via first-class mail to the addresses listed in Attachment A of this document.

  
\_\_\_\_\_

Sworn to me before this 5<sup>th</sup> day of December, 2019.

  
\_\_\_\_\_

Notary Public



**Attachment A – Master Stakeholder List**

**Master Stakeholder List for Danskammer Energy LLC as of November 26, 2019**

**TOWN OF NEWBURGH (HOST COMMUNITY)**

Gilbert J. Piaquadio, Town Supervisor  
Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550

Andrew Zarutskie, Town Clerk  
Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550

Gerald Canfield, Code Compliance  
Supervisor  
Town of Newburgh  
308 Gardnertown Road  
Newburgh, NY 12550

John P. Ewasutyn, Chairman  
Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, NY 12550

Scott Manley, Town Councilman &  
Deputy Supervisor  
Town of Newburgh Town Council  
1496 Route 300  
Newburgh, NY 12550

Kenneth Mennerich, Vice Chairperson  
Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, NY 12550

**ORANGE COUNTY AGENCIES**

Steven M. Neuhaus, County Executive  
Orange County  
40 Matthews Street  
Goshen, NY 10924

Annie Rabbitt, County Clerk  
Orange County Government Center  
255 Main Street  
Goshen, NY 10924

David E. Church, Planning Commissioner  
1887 County Building  
124 Main Street  
Goshen, NY 10924

Kevin Sumner, District Manager  
Orange County Soil & Water Conservation  
District  
225 Dolson Avenue, Suite 103  
Middletown, NY 10940

Laurie Villasuso, Chief Operating Officer  
Orange County IDA  
4 Crotty Lane-Suite 100  
New Windsor, NY 12553

L. Stephen Brescia  
Chairman of the Legislature  
Orange County Legislature  
255 Main Street  
Goshen, NY 10924

Michael D. Paduch, Minority Leader  
Orange County Legislature  
255 Main Street  
Goshen, NY 10924

Michael Amo, Independence Party Leader  
Orange County Legislature  
255 Main Street  
Goshen, NY 10924

Kate Bonelli, Majority Leader  
Orange County Legislature  
255 Main Street  
Goshen, NY 10924

**ULSTER COUNTY AGENCIES**

Pat Ryan  
County Executive  
Ulster County Office Building  
6<sup>th</sup> Floor County Office Building  
244 Fair Street  
Kingston, NY 12401

Thomas Jackson  
Ulster County  
Department of Public Works  
313-317 Shamrock Ln  
Kingston, NY 12401

Nina Postupack, County Clerk  
Ulster County Office Building  
244 Fair Street  
Kingston, NY 12401

Adele Reiter  
Deputy County Executive  
Ulster County Office Building  
6<sup>th</sup> Floor County Office Building  
244 Fair Street  
Kingston, NY 12401

**MUNICIPALITIES IN ULSTER COUNTY**

**TOWN OF MARLBOROUGH**

Alphonso Lanzetta  
Town Supervisor & Town Councilman  
Town of Marlborough  
21 Milton Turnpike-suite 200  
P. O. Box 305  
Milton, NY 12547

Colleen Corcoran, Town Clerk  
Town of Marlborough  
21 Milton Turnpike-Suite 200  
P. O. Box 305  
Milton, NY 12547

**DUTCHESS COUNTY AGENCIES**

Marcus J. Molinaro, County Executive  
22 Market Street  
Poughkeepsie, NY 12601

Bradford Kendall, County Clerk  
22 Market Street  
Poughkeepsie, NY 12601

**MUNICIPALITIES IN DUTCHESS COUNTY**

**TOWN OF WAPPINGER**

Richard Thurston, Town Supervisor  
Town of Wappinger  
20 Middlebush Road  
Wappingers Falls, NY 12590

Joseph P. Paoloni, Town Clerk  
Town of Wappinger  
20 Middlebush Road  
Wappingers Falls, NY 12590

**TOWN OF POUGHKEEPSIE**

Jon J. Baisley, Town Supervisor  
Town Hall  
1 Overocker Road  
Poughkeepsie, NY 12603

Felicia Salvatore, Town Clerk  
Town Hall  
1 Overocker Road  
Poughkeepsie, NY 12603

**TOWN OF FISHKILL**

Robert LaColla, Supervisor  
Town of Fishkill  
807 Route 52  
Fishkill, NY 12524

Becki Tompkins, Town Clerk  
Town of Fishkill  
807 Route 52  
Fishkill, NY 12524

**VILLAGE OF WAPPINGERS FALLS**

Matt Alexander, Mayor  
Village of Wappingers Falls  
2582 South Avenue  
Wappingers Falls, NY 12590

John Karge, Village Clerk  
Village of Wappingers Falls  
2582 South Avenue  
Wappingers Falls, NY 12590

**STATE AND REGIONAL AGENCIES**

Michelle L. Phillips  
Acting Secretary New York State Generation  
Siting and the Environment  
Empire State Plaza, Agency Building 3  
Albany, NY 12223

James Denn, Public Information Officer  
New York State Department of Public  
Service  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

John Rhodes, Chairman  
New York State Department of Public Service  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

Robert Rosenthal, Acting General Counsel  
Office of the General Counsel  
New York State Department of Public  
Service  
Empire State Plaza-Agency Building 3  
Albany, NY 12223-1350

Lorna Gillings, Outreach Contact  
New York State Department of Public Service  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

Heather Behnke, Esq.  
Assistant Counsel  
Office of General Counsel  
New York State Department of Public  
Service  
3 Empire State Plaza  
Albany, NY 12223

Sita Crouse  
Senior Attorney  
Department of Environmental Conservation  
625 Broadway-14<sup>th</sup> Floor  
Albany, NY 12203-1500

Judith Abbott  
NYS Department of Health  
Empire State Plaza  
Corning Tower-Room 1772  
Albany, NY 12237

Michael Phillips  
NYS Department of Health  
Empire State Plaza  
Corning Tower-Room 1772  
Albany, NY 12237

Michael Higgins, Outreach Contact  
New York State Department of  
Environmental Conservation  
Division of Environmental Permits  
625 Broadway-4<sup>th</sup> Floor  
Albany, New York 12233-1750

Mark Sanza  
New York State Department of  
Environmental Conservation - Central Office  
Division of Projects Management  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-1750

Daniel Whitehead, Director  
New York State Department of  
Environmental Conservation  
Division of Environmental Permits  
625 Broadway-4<sup>th</sup> Floor  
Albany, New York 12233-1750

Kelly Turturro, Regional Director  
New York State Department of  
Environmental Conservation  
Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561

Lucy R. Waletzky, Chair  
OPRHP, Taconic Regional Office  
P. O. Box 308  
9 Old Post Road  
Staatsburg, NY 12580

Marie Therese Dominguez  
Commissioner  
New York State Department of Transportation  
50 Wolf Road  
Albany, NY 12232

Joanne M. Mahoney, Chair  
New York State Thruway Authority  
200 Southern Boulevard  
P. O. Box 189  
Albany, NY 12201-0189

Matthew Driscoll, Executive Director  
New York State Thruway Authority  
200 Southern Boulevard  
P. O. Box 189  
Albany, NY 12201-0189

Alicia Barton  
President & Chief Executive Officer  
New York State Energy Research  
& Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

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

Erik Kulleseid, Commissioner  
New York State Office of Parks, Recreation  
& Historic Preservation  
Peebles Island State Park  
P. O. Box 189  
Waterford, NY 12188-0189

New York State Office of Parks, Recreation  
& Historic Preservation  
625 Broadway  
Albany, New York 12207

Lance McMillan, P.E.  
Acting Regional Director  
New York State Department of  
Transportation Region 8  
Eleanor Roosevelt Building  
4 Burnett Boulevard  
Poughkeepsie, NY 12603

Richard Ball, Commissioner  
New York State Department of  
Agriculture and Markets  
10B Airline Drive  
Albany, NY 12235

Richard L. Kaufmann, Board Chairman  
New York State Energy Research  
& Development Authority  
17 Columbia Circle  
Albany, NY 12203-6399

Meghan Taylor  
Director Mid-Hudson Region  
Empire State Development Corporation  
33 Airport Center Drive-Suite 201  
New Windsor, NY 12553



Heather Gierloff, Reserve Manager  
Betsy Blair, Reserve Manager  
Hudson River Estuarine Reserve  
256 Norrie Point Way  
P. O. Box 315  
Staatsburg, NY 12580

Eric Gertler  
Acting Commissioner  
NYS Department of Economic Development  
633 Third Avenue-Floor 37  
New York, NY 10017

Rossana Rosado  
Secretary of State  
New York State Department of State  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231-0001

Howard A. Zucker  
Commissioner of Health  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Letitia James  
New York Attorney General  
State Capital Building  
Albany, NY 12224

RoAnn Destito, Commissioner  
New York State Office of General Services  
41<sup>st</sup> Floor – Corning Tower  
Empire State Plaza  
Albany, NY 12242

Howard Zemsky, Board Chair  
NYS Department of  
Economic Development  
633 Third Avenue-Floor 37  
New York, NY 10017

Howard Zemsky, Board Chair  
95 Perry Street, Suite 500  
Buffalo, NY 14203

Laura McLean, Outreach Contact  
New York State Department of State  
Division of Coastal Resources  
41 State Street  
Albany, New York 12231

Thomas Richard, Assistant Counsel  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Vincent Sapienza, Acting Commissioner  
New York City Department of  
Environmental Protection  
59-17 Junction Boulevard  
Flushing, NY 11373

Barnabas McHenry, Chairman  
Hudson River Valley Greenway  
Communities Council  
625 Broadway – 4<sup>th</sup> Floor  
Albany, NY 12207

Andrew Cuomo, Governor of New York  
Governor's Office  
New York State Capitol Building  
Albany, NY 12224

Michael Saviola, MPS  
Associate Environmental Analyst  
New York State Department of Agriculture  
and Markets  
1530 Jefferson Road  
Rochester, NY 14623

Heather Gierloff, Reserve Manager  
Hudson River Estuarine Reserve  
256 Norrie Point Way  
P. O. Box 315  
Staatsburg, NY 12580

**FEDERAL AGENCIES**

U. S. Army Corps of Engineers  
New York District  
Attn: Regulatory Branch  
Room 1937  
26 Federal Plaza  
New York, NY 10278-0090

David Stilwell, Field Supervisor  
U. S. Fish and Wildlife Service (USFWS)  
3817 Luker Road  
Cortland, NY 13045

National Telecommunications and  
Information Administration (NTIA)  
Herbert C. Hoover Building (HCHB)  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Steven J. Sample  
Mission Evaluation Branch  
U. S. Department of Defense Siting  
Clearinghouse  
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Warwick, NY 10990

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Hudson Highlands Land Trust  
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Garrison, NY 10524

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Sustainable Hudson Valley  
P. O. Box 3364  
Kingston, NY 12402

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Newburgh, NY 12550

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Latinos Unidos of the Hudson Valley  
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355 S. William Street  
Newburgh, NY 12550

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Dutchess County Department of  
Public Works – Parks Division  
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Stony Kill Foundation  
79 Farmstead Lane  
Wappingers Falls, NY 12590

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MTA Metro – North Railroad  
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Town of Woodstock  
Ulster County Environmental  
Management Council  
33 Shotwell Road  
Woodstock, NY 12498

Our Lady of Mercy  
P. O. Box 730  
Marlboro, NY 12542

Chief, Middle Hope Fire Department  
Middle Hope Fire District  
5172 Route 9W  
Newburgh, NY 12551

Board of Fire Commissioners  
Middle Hope Fire District  
5172 Route 9W  
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Sandra Kissam  
1261 Union Avenue  
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New York State Department of State  
Office of Planning and Development &  
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Stewart Air National Guard  
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Robert Balkind, Commissioner  
Hudson Valley Regional Airport  
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**HOST LANDOWNER**

DANSKAMMER ENERGY, LLC  
994 River Road  
Newburgh, NY 12550

**ADJACENT LANDOWNERS (within 2,500 feet of Preliminary Project Area)**

Property Owner  
2200 Atlantic Street – Suite 800  
Stamford, CT 06902

Property Owner  
17 Danskammer Road  
Newburgh, NY 12550

Property Owner  
P. O. Box 1357  
New Britain, CT 06050

Property Owner  
500 Water Street (C910)  
Jacksonville, FL 32202

Property Owner  
284 South Avenue  
Poughkeepsie, NY 12602

Property Owner  
500 Water Street  
Jacksonville, FL 32202

Property Owner  
P. O. Box 730  
Marlboro, NY 12542

Property Owner  
5468 Route 9W North  
Newburgh, NY 12550

Property Owner  
60 Old Post Road  
Newburgh, NY 12550

Property Owner  
89 Old Post Road  
Marlboro, NY 12542



Property Owner  
95 Old Post Road  
Marlboro, NY 12542

Property Owner  
14 Camelot Drive  
Marlboro, NY 12542

Property Owner  
5 Camelot Drive  
Marlboro, NY 12542

Property Owner  
4 Camelot Drive  
Marlboro, NY 12542

Property Owner  
12 Camelot Drive  
Marlboro, NY 12542

Property Owner  
18 Camelot Drive  
Marlboro, NY 12542

Property Owner  
134 Old Post Road  
Marlboro, NY 12542

Property Owner  
120 Old Post Road  
Marlboro, NY 12542

Property Owner  
104 Old Post Road  
Marlboro, NY 12542

Property Owner  
141 Old Post Road  
Marlboro, NY 12542

Property Owner  
1 Christopher Way  
Marlboro, NY 12542

Property Owner  
117 Old Post Road  
Marlboro, NY 12542

Property Owner  
15 McDonald Drive  
Marlboro, NY 12542

Property Owner  
143 Old Post Road  
Marlboro, NY 12542

Property Owner  
153 Old Post Road  
Marlboro, NY 12542

Property Owner  
14 Curtin Lane  
Marlboro, NY 12542

Property Owner  
15 Curtin Lane  
Marlboro, NY 12542

Property Owner  
130 Old Post Road  
Marlboro, NY 12542

Property Owner  
114 Old Post Road  
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Property Owner  
102 Old Post Road  
Marlboro, NY 12542

Property Owner  
128 Sunflower Circle  
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7 McDonald Drive  
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Property Owner  
1 McDonald Drive  
Marlboro, NY 12542

Property Owner  
16 Hilltop Circle  
Fishkill, NY 12524

Property Owner  
18 Curtin Lane  
Marlboro, NY 12542

Property Owner  
1 Flemming Drive  
Newburgh, NY 12550

Property Owner  
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Property Owner  
195 Old Post Road  
Marlboro, NY 12542

Property Owner  
187 Old Post Road  
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Property Owner  
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**BEFORE THE  
NEW YORK STATE  
SITING BOARD ON ELECTRIC GENERATION SITING  
AND THE ENVIRONMENT**

Application of Danskammer Energy, LLC for a )  
Certificate of Environmental Compatibility and )  
Public Need Pursuant to Article 10 for Approval )  
to Repower its Danskammer Generating Station Site )  
Located in the Town of Newburgh, Orange County )  
\_\_\_\_\_ )

Case 18-F-0325

STATE OF NEW YORK )  
 ) SS.  
COUNTY OF RENSSELAER )

**AFFIDAVIT OF SERVICE FOR THE NOTICE OF APPLICATION FILING**

I, Cailin McKenna of Gramercy Communications located in Troy, New York, the undersigned being duly sworn deposes and says: I caused the document entitled **“Notice for Application Filing”** in PSC Case: 18-F-0325 for the Danskammer Energy Center proposed in the Town of Newburgh, NY, to be served, on December 4, 2019, via electronic service to the e-mail addresses listed in Attachment A of this document.

  
\_\_\_\_\_

Sworn to me before this 5<sup>th</sup> day of December, 2019.

  
\_\_\_\_\_

Notary Public



**Attachment A – E-mail Addresses in the Master Stakeholder List**

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# **Attachment 3**

Brenda D. Colella  
Partner

December 11, 2019

**BY ELECTRONIC MAIL**

Honorable Anthony Belsito  
Honorable Michael S. Caruso  
Presiding Examiners  
New York State Department of Public Service  
New York State Board on Electric Generation Siting  
and the Environment  
3 Empire State Plaza, 18<sup>th</sup> Floor  
Albany, New York 12223-1350

Re: **Application of Danskammer Energy, LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Approval to Repower its Danskammer Generating Station Site Located in the Town of Newburgh, Orange County**

**Case 18-F-0325**

**Request for Protection of Confidential Information**

Dear Judges Belsito and Caruso:

Today, Danskammer Energy, LLC (“Danskammer” or “the Applicant”) filed its Application for a Certificate of Environmental Compatibility and Public Need authorizing a repowering of its generating station site located in the Town of Newburgh, Orange County. By this letter, Danskammer seeks exemption from public disclosure of all or portions of the following documents (unredacted, confidential versions are attached):

- Exhibit 3: Figure 3-2;
- Exhibit 5: Appendix 5-1 (SRIS) and Appendix 5-2 (Heat Balance Diagram);
- Exhibit 8: portions of Exhibit 8 as well as the electronic ProMod input data supporting Exhibit 8;
- Exhibit 11: Appendix 11-1 Drawings C1-01-01, C1-01-02, C1-01-03, C3-01-01, C3-01-02, C3-01-04, C3-01-05, C3-01-06, M1-01-01, M1-02-01, M1-03-01 and E4-2;
- Exhibit 13: Figure 13-1 in Exhibit 13 and Appendix 13-1 (Surveys of Project Properties) and Appendix 13-3 (Private Crossing Agreement);
- Exhibit 14: Appendix 14-1 (Project Cost Estimates) and Appendix 14-2 (Danskammer Redevelopment Costs);

- Exhibit 20: Appendix 20-3 (Phase IA Archaeological Survey Report);
- Exhibit 27: Appendix 27-1 (Direct Expenditures) and Appendix 27-2 (Anticipated Annual and Cumulative PILOT, CBA and Property Tax Payments), as well as the electronic input data and work files supporting Ex. 27, and
- Exhibit 36: Appendix 36-1 (CHGE Letter) and Appendix 36-2 (CHGE System Gates – Pressure History)

As set forth in detail below, each of the documents identified above qualifies under one or more of the statutory exceptions to disclosure provided by the New York Freedom of Information Law (Public Officers Law (“POL”), Article 6) as follows: (1) records containing trade secrets or where disclosure would cause substantial competitive injury (POL § 87(2)(d)); (2) records containing critical infrastructure information (POL § 89.5(1-a)); or (3) records specifically exempted from disclosure by state statute, in this case, a provision of the New York State Parks, Recreation, and Historic Preservation Law (POL § 87(2)(a)).

### ANALYSIS

#### *Overview of Relevant Exemptions.*

POL § 87(2)(d) provides, in relevant part, that agencies must refuse requests for public disclosure of records that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.”<sup>1</sup> Records containing “critical infrastructure information” are exempt from disclosure pursuant to POL § 89.5(1-a).<sup>2</sup> Records containing information “specifically exempted from disclosure under state and federal statutes” are exempt from disclosure pursuant to POL § 87(2)(a).<sup>3</sup>

In its 2016 decision, *Verizon v. New York State Public Service Commission*,<sup>4</sup> the New York State Appellate Division, Third Department, held that the “trade secret” and “substantial competitive injury” tests included in POL § 87(2)(d) are two separate standards and, as a result, that information satisfying either test must be exempted from public disclosure under New York’s Freedom of Information Law (“FOIL”). Accordingly, materials found to be trade secrets must be exempted from public disclosure under FOIL without the need for any showing of substantial competitive injury. In addition, business records that are not trade secrets must be exempted from disclosure upon a showing that their disclosure will subject the business that provided those records to substantial competitive injury.<sup>5</sup> As enumerated below, Danskammer respectfully submits that some of the Confidential Information satisfies one or both of these standards and must therefore be exempted from disclosure.

---

<sup>1</sup> POL § 87(2)(d).

<sup>2</sup> POL § 89.5(1-a).

<sup>3</sup> POL § 87(2)(d).

<sup>4</sup> *Verizon New York, Inc. v. New York State Public Service Commission*, 137 A.D.3d 66 (3d Dep’t 2016).

<sup>5</sup> *Id.* at 73.

Danskammer further submits that certain of the Confidential Information meets the definition of critical infrastructure information, or is information that is otherwise protected from public disclosure by state and federal statutes, and thus, must be exempted from disclosure.

*1. Trade Secret*

Relying on the Restatement of Torts definition of a trade secret, the Third Department's decision in *Verizon* established a two-pronged test to identify information that must be protected as a trade secret. "First, it must be established that the information in question is a 'formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it.'"<sup>6</sup> This definition is also found in the Commission's Regulations under 16 NYCRR § 6-1.3(a). For the second prong, *Verizon* laid out the factors enumerated in the Restatement:

Second, if the information fits [the] general definition, then an additional factual determination must be made concerning whether the alleged trade secret is truly secret by considering:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) the extent of measures taken by the business to guard the secrecy of the information;
- (4) the value of the information to the business and its competitors;
- (5) the amount of effort or money expended by the business in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.<sup>7</sup>

These six factors are non-exclusive, and not all factors must be established to prove that a trade secret exists.<sup>8</sup> It should be noted that many of these same factors are also used in the analysis for whether disclosure would result in substantial competitive injury, discussed below.

Here, Appendix 5-1 and Appendix 5-2 of Exhibit 5, portions of Exhibit 8 and the supporting electronic input data for Exhibit 8, Appendices 14-1 and 14-2 of Exhibit 14, Appendices 27-1 and 27-2 of Exhibit 27, as well as the supporting electronic input data and work

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<sup>6</sup> *Id.* at 72.

<sup>7</sup> 137 A.D.3d at 72-73.

<sup>8</sup> The Secretary followed this approach in a determination in Case 14-C-0370, *In the Matter of a Study on the State of Telecommunications in New York State*, Determination of Appeal of Trade Secret Determination, p. 17 (issued March 23, 2016) ("Thus, in compliance with the Appellate Division's decision, the entity resisting disclosure 'must make a sufficient showing with respect to each of the six factors,' any trade secret factor that is not established would be deemed to weigh against a finding that the information constitutes a trade secret").

files for Exhibit 27, and Appendices 36-1 and 36-2 of Appendix 36 each satisfy these factors. The information contained in these exhibits and appendices would be of significant competitive value to Danskammer's competitors, since it could be used to secure an unfair advantage in the wholesale electricity market or gas markets. The information listed is not generally available to the public nor does it constitute the type of information that competitors make available to each other in the normal course of business. Instead, this information is the product of a significant investment of time, effort and expense by Danskammer that cannot be replicated by others without Danskammer's consent. This information is kept in Danskammer's confidential files and is not disclosed to others except on a confidential basis or as required by law.

## 2. *Substantial Competitive Injury*

Certain of the Confidential Information also qualifies for exemption from disclosure under POL § 87(2)(d) on the ground that its disclosure would impose significant competitive injury on Danskammer. The "substantial competitive injury" test evaluates whether disclosure of the confidential information "would be likely to cause substantial injury to the competitive position of the subject commercial enterprise."<sup>9</sup>

In addition to those documents identified above (Appendices 5-1 and 5-2 of Exhibit 5, portions of Exhibit 8 and the supporting electronic input data for Exhibit 8, Appendices 14-1 and 14-2 of Exhibit 14, Appendices 27-1 and 27-2 of Exhibit 27, as well as the supporting electronic input data and work files for Ex. 27, and Appendices 36-1 and 36-2 of Exhibit 36), Appendix 13-3 of Exhibit 13 satisfies the "substantial competitive injury" test. All of these documents (or redacted portions) contain proprietary, non-public information regarding Danskammer's financial information, generator specific operating data and/or other confidential commercial contract information with its counterparties, all of which is not available to competitors from any other source. Disclosure of this information could provide Danskammer's competitors, its vendors, and its counterparties to bilateral agreements an advantage causing injury to Danskammer's competitive position.

Moreover, Danskammer operates in the highly competitive wholesale markets for electric energy, capacity and ancillary services operated by the New York Independent System Operator, Inc. ("NYISO"). This information, including the SRIS, the cost estimates for the Project, as well as significant operating characteristics such as average heat rates, total available hours, hours of planned outage and maintenance, could be used by Danskammer Energy's competitors to underbid Danskammer in NYISO markets. Indeed, the NYISO's own Code of Conduct requires that operational, cost, and revenue information be kept confidential, recognizing that such confidentiality is necessary in order to ensure the efficient operation of the competitive wholesale markets in which generators such as Danskammer operate.

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<sup>9</sup> *Matter of Encore College Bookstores, Inc. v. Auxiliary Services Corp.*, 87 N.Y.2d 410 (1995); Case 15-M-0388 - *Joint Petition of Charter Communications Time Warner Cable for Approval of a Transfer Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Determination of the Records Access Officer 16-02, at 8 (May 4, 2016) ("Determination 16-02"); 16 NYCRR § 6-1.3(b)(2).

### 3. *Critical Infrastructure Information*

Certain of the Confidential Information contains critical infrastructure information (“CII”), and Danskammer respectfully requests that such Confidential Information be exempt from disclosure. POL § 86(5) defines “critical infrastructure” as “systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy.” As the Records Access Officer for the Department of Public Service has previously held:

[I]nformation concerning specific structures, potential weakness in the system, maps and drawings of the existing electric system (including configurations of various components), overhead transmission standards, structure work lists, and ratings on certain circuits constitutes critical infrastructure information that should be excepted from public disclosure because such information, if disclosed, could endanger the life or safety of people. This is so because the information would allow particular parts of the electric system to be targeted by those planning harm to the State’s electric grid.<sup>10</sup>

Similarly, gas facilities represent critical infrastructure that is protected pursuant to New York Executive Law § 713, and POL §§ 87(2) and 89. Gas infrastructure is also considered critical energy infrastructure information under federal law. *See* 18 C.F.R. § 388.113(c)(1).

The statutory definition of CII encompasses the information redacted by Danskammer, which consists of the SRIS in Appendix 5-1 of Exhibit 5, as well as detailed information regarding the location of underground gas infrastructure, including distribution pipelines and interconnections to the Project facility, in Figure 3-2 of Exhibit 3, Drawings C1-01-01, C1-01-02, C1-01-03, C3-01-01, C3-01-02, C3-01-04, C3-01-05, C3-01-06, M1-01-01, M1-02-01, M1-03-01 and E4-2 in Appendix 11-1 of Exhibit 11 and Figure 13-1 of Exhibit 13 and Appendix 13-1 of Exhibit 13, and information regarding the gas pipeline connections in Appendices 36-1 and 36-2 of Exhibit 36. Central Hudson has previously sought exemption from public disclosure of similarly detailed information regarding its gas distribution facilities.<sup>11</sup>

The above-referenced figures, drawings and appendices in Exhibits 3, 11, 13 and 36 include depictions and information regarding the existing gas pipelines that would serve the Project, and if not properly protected, any successful attacks on such critical gas infrastructure could directly or indirectly jeopardize public safety or have grave economic implications, attracting significant public attention or discontent. Moreover the SRIS contained in Appendix 5-1 of Exhibit 5 reveals detailed information about the New York State electric transmission system (“Transmission System”), including the design and operation of transmission and substation assets and components, the release of such information increases the vulnerability of the Transmission System. Any disruption to the interconnecting gas infrastructure or the

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<sup>10</sup> *See* Case 06-M-0878, *Joint Petition of National Grid PLC and Keyspan Corporation for Approval of Stock Acquisition and Other Regulatory Authorizations*, Request for Unredacted Exhibits 14, 15, and 16 to the Petition (July 10, 2008).

<sup>11</sup> *See, e.g.,* Case 18-M-0272, *Report on the New York State Electric and Gas Supply Readiness for 2018-2019 Winter*, Central Hudson Gas & Electric Corporation’s Request for Exception from Disclosure (Nov. 9, 2018).

Transmission System risks jeopardizing the health, safety, welfare and security of New York State, its residents and its economy. Public disclosure of this information could endanger the life or safety of people and, thus, this information should be excepted from disclosure pursuant to POL § 87(2)(f).

Information of this type has routinely been granted CII status and excepted from public disclosure.<sup>12</sup> Protection of this information is required to avoid jeopardizing public health, safety, welfare and security. Accordingly, Danskammer respectfully requests that the documents identified be treated as confidential and exempt from public disclosure.

#### 4. *Statutorily Exempted Information*

POL § 87(2)(a) exempts from disclosure any records exempted by federal or state statute. In this case, Danskammer requests that the Phase IA Archaeological Survey Report in Appendix 20-3 of Exhibit 20 be treated as confidential and withheld from public disclosure, recognizing the highly sensitive nature of the information contained in the report (precise locations and nature of archaeological resources) and the governing provisions of Article 14 of the New York State Parks, Recreation, and Historic Preservation Law (“PRHPL”) counseling against the public dissemination of such information.

Section 14.01 of the PRHPL states, “[t]he legislature determines that the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state and that it should be preserved.” PRHPL §14.01. Specifically with respect to disclosure of locational data of archaeological sites, Section 14.07(f) of the PRHPL provides:

The commissioner shall, upon request, provide information on the places listed on the state register and on sites included in the statewide inventory maintained by the office pursuant to the provisions of subdivision two of this section to any person making a written request for such information, with the exception of sites that may be damaged by unauthorized investigators if their location be generally

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<sup>12</sup> See Case 06-T-0650, *Application of New York Regional Interconnect, Inc.*, Ruling Granting Protection for Critical Energy Infrastructure Information (July 31, 2008) (finding that disclosure “has the potential to lead to disruption of New York’s power system, which could endanger the life and safety of the public”); Case 08-T-0746, *Application of the Village of Arcade and Noble Allegany Windpark, LLC*, Ruling Granting Request for Confidential Status (July 30, 2008) (finding that portions of the System Reliability Impact Study should be exempted from disclosure as CII); Case 11-T-0534, *Application of Rochester Gas and Electric Corporation for a Certificate of Environmental Compatibility and Public Need for the Construction of the “Rochester Area Reliability Project*, Ruling on the Request for Confidential Status for System Impact Study and Related Drawings (issued March 6, 2012) (holding that the SIS and related figures are protected as CII); Case No. 13-T-0456, *Part A Application of NextEra Energy Transmission New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Oakdale to Fraser Project*, Ruling Adopting Protective Order (issued March 9, 2015) (adopting a protective order in response to the applicant’s request that a project one-line and breaker diagram of existing substations be treated as confidential); see also *Living Rivers, Inc. v. U.S. Bureau of Reclamation*, 272 F.Supp.2d 1313 (D. Utah 2003) (in applying federal FOIA, court held that inundation maps showing areas below Hoover Dam and Glen Canyon Dam were exempt from disclosure due to concerns of terrorist threat and risks to life and personal safety of those downstream).

publicized. Notwithstanding the provisions of any other law, information on such archeological sites may be withheld from the public at the discretion of the commissioner in consultation with the commissioner of education....

Similar protections are provided in federal law. *See, e.g.*, 16 U.S.C. § 470hh (addressing confidentiality regarding the location of archaeological resources); 16 U.S.C. § 470w-3. Therefore, under the Section (87)(2)(a) of the POL, the Phase 1A Archaeological Survey Report in Appendix 20-3 should be treated as confidential and exempted from public disclosure.

### **CONCLUSION**

Accordingly, Danskammer respectfully requests that the Siting Board find that the Confidential Information contained in its Article 10 Application, as identified above, and enclosed, satisfies the “trade secret” and the “substantial injury” tests under the POL, contains “critical infrastructure information,” or is statutorily exempt, and must be exempted from disclosure under FOIL. To protect the confidentiality of this information, the Confidential Information must be maintained in the Department of Public Service’s confidential files and must be provided only to interested members of the Siting Board and DPS Staff, and not otherwise be disclosed or made available, either through FOIL or otherwise.

Respectfully submitted,

*/s/ Brenda Colella*

Brenda D. Colella

*Attorney for Danskammer Energy, LLC*

Enclosures

cc: DMM Party List (without enclosures)  
Statutory Service List (without enclosures)