STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMISSIONERS PRESENT:

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

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

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

(Issued and Effective February 14, 2013)

BY THE COMMISSION:

## INTRODUCTION

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

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

## NOTICE

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

## PROCEDURAL CONFERENCE AND RULING

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

## THE PETITION

### Petitioner

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

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

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

[1] Case 11-E-0593, Cricket Valley Energy Center, LLC, Notice Of Purchase of Interest, (March 1, 2012).

equipment pursuant to a continuing service agreement.[2]

Advanced Power states that, at closing of the construction financing for the project, it plans to involve a major institutional equity source to provide a substantial equity investment in the facility. Project debt will be obtained from commercial banks or major energy funds and project costs are expected to be approximately $1.4 billion. The petition does not seek Commission approval of the project's debt financing.

Proposed Facility

The proposed facility will be fueled by natural gas and generate approximately 1000 MW of electricity using combined-cycle technology. The facility will consist of three combined-cycle generation units, each consisting of: a combustion turbine generator; a heat recovery steam generator (HRSG) with supplemental duct firing; and a steam turbine generator. Auxiliary equipment will include: a low nitrogen oxide ($NO_x$) natural gas-fired auxiliary boiler needed to keep the HRSG units warm during periods of turbine shutdown and to provide sealing steam during startups; and four diesel-fired blackstart generators, each with a maximum power rating of 3 MW. The four blackstart generators will be used to restart the facility in the event of a total power loss on the local or regional transmission grid.

The facility will be equipped with emissions control technology including dry low $NO_x$ burners and selective catalytic reduction technology to control emissions of $NO_x$ and an oxidation catalyst to control carbon monoxide and volatile organic

[2] Advanced Power has also signed a five-year agreement with GE, through which the two companies will develop additional combined-cycle gas-fired generation plants in North America.

compounds emissions. The petition states that utilization of a continuous emissions monitoring system will ensure and document the facility's compliance with applicable emissions standards.

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

Several storage tanks will be on-site at the facility, including a 1,000,000 gallon raw water storage tank, used to supply the facilities water needs and for fire protection; a 250,000 gallon de-mineralized water storage tank; and two 30,000 gallon aqueous ammonia storage tanks. A secondary safety containment area, designed to hold 110% of the entire volume of the tanks will be located around the aqueous ammonia tanks. A small quantity of ultra-low sulfur diesel (ULSD) fuel and lubricating oils will be stored on sight. All tanks, equipment and vessels containing ULSD fuel and/or lubricating oils will be located inside a concrete safety containment, sump or curbed dike area for spill control.

The electricity generated by the facility is proposed to be transmitted via two 700 foot long, on-site, overhead 345 kilovolt (kV) lines that will be built and connected to the existing Consolidated Edison Company of New York, Inc.'s (Con Edison) 345 kV electrical transmission line located adjacent to the northern property line of the project. A new switchyard and substation, incorporating gas-insulated switchgear to minimize the facility footprint will also be built on site. Cricket Valley will also have to contribute to system reinforcements on

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

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

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

alternative back-up fuels.[4]

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

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

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

Proposed Facility Location

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

[4] The blackstart generators are limited to 500 hours of operation per year for readiness testing.

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

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

Public Outreach

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

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

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

The Lightened Rate Regulation Request

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

## SUMMARY OF PUBLIC COMMENTS

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

[5] Available at http://www.dec.ny.gov/docs/permits_ej_operations_pdf/cvnotice.pdf.

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

## DISCUSSION

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

[6] 16 NYCRR §21.3.

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

State Environmental Quality Review

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

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

(i) consider the relevant environmental impacts, facts, and conclusions disclosed in the FEIS;

(ii) weigh and balance relevant environmental impacts with relevant social, economic, and other considerations;

(iii) provide the rationale for the agency's decision;

(iv) certify that the requirements of 6 NYCRR Part 617 have been met; and

(v) certify that, consistent with social, economic, and other essential considerations, and considering among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures indentified as practicable.[7]

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

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

The record in the SEQRA proceeding contains extensive

[7] 6 NYCRR §§617.11(c) and (d).

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

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

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

monitoring will continue for the life of the project.

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

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

An Economic Dispatch Analysis using General Electric's electric production simulation tool (GEMAPS®) predicts that the project would reduce regional air pollutant emissions by displacing less efficient power plants. Emissions of $NO_x$ and $SO_2$

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

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

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

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

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

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

Historic Preservation Review

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

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

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

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

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

Public Convenience and Necessity

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

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

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

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

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

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

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

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

Expedited Proceeding

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

Lightened Ratemaking Regulation

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

[8] One public comment supporting the project was received on November 9, 2011.

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

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

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

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

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

Certain provisions of Article 4 are also inapplicable because they are restricted to retail service.[11]

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

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

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

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

[13] Case 11-M-0295, Lightened Ratemaking Regulation – Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation, (issued January 23, 2013).

participants in competitive markets bear the financial risk associated with their financial arrangements.[14]

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

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

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

[15] Carr Street Order, p. 8; Wallkill Order, pp. 9-10.

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

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

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

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

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

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

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

The Commission orders:

1. The motion for an expedited proceeding on the application of Cricket Valley Energy Center, LLC (Cricket Valley) is granted.

2. A Certificate of Public Convenience and Necessity is granted, authorizing Cricket Valley to construct and operate an electric plant within New York as described in the body of this Order.

3. Cricket Valley and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) All facilities agreements with Con Edison, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO IA );

(b) the SRIS approved by the NYISO Operating Committee;

(c) any documents produced as result of the updating of requirements by the NYSRC;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) provide fencing and gate designs to demonstrate site security provisions;

(b) add gate at O&M building entry drive; and,

(c) revise exterior lighting specifications to indicate full-cutoff fixtures with no drop-down optics

(utilize the “flat glass” option for light trespass control.

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

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

By the Commission,

(SIGNED) JEFFREY C. COHEN
Acting Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

## Statement of Findings

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

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

The address of the Commission is:

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

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

## Description of Project

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

consisting of a combustion turbine generator, a heat recovery steam generator (HRSG) with supplemental duct firing and a steam turbine generator. Auxiliary equipment will include a low nitrogen oxide ($NO_x$) natural gas-fired auxiliary boiler and four diesel fired blackstart generators, each with a maximum power rating of 3 MW.

The facility will be equipped with emissions control technology including dry low $NO_x$ burners and selective catalytic reduction technology to control emissions of $NO_x$ and an oxidation catalyst to control carbon monoxide and volatile organic compounds emissions. A continuous emissions monitoring will be utilized to ensure compliance with applicable emissions standards.

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

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

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

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

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

Discussion

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

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

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

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

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

Although the project will be a major source of air emissions, carbon dioxide production region wide is expected to decrease. Further, the project is expected to result in other air emissions reductions in New York and region-wide including emissions of $NO_x$ and $SO_2$. Air emissions in general will be

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

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

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

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

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

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

## Conclusions

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

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

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

mitigation measures in the Certificate of Public Convenience and Necessity.

Jeffrey C. Cohen
Acting Secretary