

New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

September 10, 2008

Ann Yates
Chairperson
Town of Wawayanda Planning Board
P.O. Box 296
Slate Hill, New York 10973

RE: Comments – Draft Scoping Document, CPV Valley Energy Center, Wawayanda (T), Orange County

Dear Ms. Yates:

The Department of Environmental Conservation (“Department”) has reviewed the Draft Scoping Document dated June 27, 2008 for the CPV Valley Energy Center. The Scoping document was prepared in accordance with 6 NYCRR Part 617 (State Environmental Quality Review Act (SEQRA)) and distributed for review to involved and interested agencies by the Town of Wawayanda, the lead agency for the environmental review. Based on the Department’s review of the document it respectfully submits the following comments:

3.0 Summary of Discretionary Approvals and Involved/Interested Agencies

United States Environmental Protection Agency (EPA).

In addition to administering the PSD program in New York State, the United States Environmental Protection Agency (EPA) will also be responsible for the PM 2.5 New Source Review (NSR) until such time that the Department modifies 6 NYCRR Part 231 (New Source Review In Nonattainment Areas and Ozone Transport Region).

United States Army Corps of Engineers (USACOE).

It is unclear from the information provided in the scoping document that the project will qualify for coverage under any of the Nationwide Permits. This section should also recognize the need for an individual permit pursuant to Section 404 of the Clean Water Act from USACOE.

New York State Department of Environmental Conservation.

The listed State environmental regulations should include the above referenced Part 231. It should also be noted that the Clean Air Interstate Rule (CAIR), referenced in this section, may not be applicable because of a recent court decision vacating the federal rule. (US Federal Court of Appeals; State of North Carolina v. USEPA; July 11, 2008).

by the EPA until the Department modifies 6 NYCRR Part 231. However, Commissioner Policy 33: Assessing and Mitigating Impacts of Fine Particulate Matter Emissions is still applicable and must be addressed in the Draft EIS.

- Item 4.7.1(i). The stack emissions estimates should include the Prevention of Significant Deterioration (PSD) increments.
- Item 4.7.1(n). This item should be deleted because it is not consistent with the approach in DAR-10 noted in Item 4.7.1(m).
- Item 4.7.3. Other Air Related Analyses. The visibility impairment analysis should include State parks in the assessment.

4.10 Infrastructure

4.10.1 Water Supply

Section 4.10.1 of the scoping document addresses water supply issues related to the proposed facility. This section which pertains to the water supply for the project is contradictory to other descriptions of the water supply found elsewhere in the scoping document.

First, as currently organized in the scoping document, the water supply section does not adequately differentiate the topics of potable water source needs and process or cooling requirements. For clarity purposes the Department would suggest the water supply section be divided into two separate sections which separately discuss 1) water source needs and process and 2) water source cooling requirements.

The primary concern of the Department with regard to the water supply analyses is the source and volume of water to be used for cooling water purposes. As indicated in the Section 2.0 Project Description, the facility will be an air-cooled combined cycle facility. As indicated in the scoping document, this limits the cooling water demand to 295,000 gallons per day (gpd). The Department considers this the Best Technology Available for a new facility and does not consider it to be an issue. However, if the project sponsor is considering alternatives to the proposed cooling technology, it needs to be fully addressed in the Draft EIS.

With regard to the discussion of the source of the process water, the scoping document should be revised to indicate that gray water from the Middletown Wastewater Treatment Plant is the preferred source of cooling water for the facility. The scoping document states that gray water may be the “possible” cooling water source.

The Draft EIS should fully address gray water from the Middletown WWTP as a cooling water source and all impacts, both positive and negative, associated with using gray water for cooling. In addition, Section 617.9(b)(5)(v) requires that an EIS include “a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor.”

For instance, if groundwater is being considered a source of cooling water, the scoping document should be revised to include a discussion about the protocol by which the project sponsor would determine if there is sufficient groundwater in the area to support the project. Further, the protocol should outline how potential impacts from the groundwater will be analyzed. For instance, there are extensive wetlands on the project site and the Department is

4.12 Terrestrial Ecology

4.12.3 Wetlands

Department staff visited the project site in 2006-2007 to delineate the Department freshwater wetlands on site. The validated survey map was originally dated June 14, 2006 and revised on July 2, 2007. This delineation and survey should be used in project development and the analysis of wetland impacts from the project. The Department can make the information available to the project sponsor if needed.

In addition, the potential impacts to the on site wetlands from the potential use of groundwater as a water supply source should be evaluated.

4.14 Cumulative Impacts

The project description makes reference to the gas and electric transmission lines that will be required for the project. However, the scoping document does not indicate that the Draft EIS will address the potential impacts from these associated facilities. The Department recognizes that if these facilities are subject to review under Article VII of Public Service Law are considered Type II actions pursuant to SEQR. As stand alone projects, these facilities would not need to be reviewed pursuant to SEQR, however, because they are associated with a bigger project, the Draft EIS will need to address these portions of the project and their potential impacts. The cumulative impact section would seem to be the appropriate place for this review.

The Department suggests that if Article VII certificates are required for these facilities, that the applications be included as appendices to the Draft EIS. This is a similar approach that has been taken in similar projects and this ensures the SEQR record is comprehensive. If an Article VII certificate is not required for either facility or the Article VII application is not available at the time of submission of the Draft EIS, then, the following information should be included in cumulative impact section:

- Detailed description of the proposed line, including interconnecting facilities, route, and who will construct and operate the facilities.
- Alternative analysis, including routes and installation techniques (i.e., overhead vs. underground).
- A map level and literature review assessment of the probable environmental impacts and proposed mitigation to wildlife habitat, wetlands, water bodies, water resources, groundwater, soils, vegetation, cultural resources and land use along the proposed corridor.

5.0 Alternatives

As discussed numerous times above, the Draft EIS must address alternative cooling water supply sources.

6.0 Appendices to Accompany Draft EIS

The appendices identified in the scoping document is not an exhaustive list and it should be recognized that additional appendices will be required as the Draft EIS is prepared. For instance, the list included in the draft scoping document does not include a reference to the

CPV VALLEY ENERGY CENTER Environmental Justice Areas

