

**STATE ENVIRONMENTAL QUALITY REVIEW ACT FINDINGS
OF THE TOWN BOARD OF THE TOWN OF DOVER
RESPECTING THE CRICKET VALLEY ENERGY CENTER**

Name of Action: Cricket Valley Energy Center

Name of Project Sponsor: Cricket Valley Energy Center, LLC

Name of Involved Agency: Town Board of the Town of Dover
126 East Duncan Hill Road
Dover Plains, New York 12522

**Contact Person for
Additional Information:** Hon. Ryan Courtien, Supervisor
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SEQR Status: Type I

Date Final FEIS Filed: July 25, 2012

Date of Adoption of this Statement of Environmental Findings: {date}

The Town Board of the Town of Dover (the “Town Board”) is an Involved Agency in the review of the Proposed Action as defined by the New York State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law) and its implementing regulations, 6 NYCRR Part 617, (referenced herein as “SEQRA”). Pursuant to the requirements of SEQRA the Town Board makes the findings contained herein for the Proposed Action identified below.

In preparing this Involved Agency SEQRA Findings, the Town Board, as an Involved Agency, relies on the facts and analysis presented in the Draft Environmental Impact Statement (DEIS) (dated May 18, 2011) and the Final Environmental Impact Statement (FEIS) (dated July 25, 2012) prepared by the Project Sponsor under the supervision of the New York State Department of Environmental Conservation (NYSDEC), which served as Lead Agency for the review of the Proposed Action. The Town Board also makes reference to the Lead Agency SEQRA Findings (dated September 26, 2012), which document summarizes the Lead Agency’s findings as to the key facts and conclusions relating to permits granted by NYSDEC. In some instances, the Town Board concurs with the Findings issued by NYSDEC. In other instances, this document provides the specific findings and reasoned elaboration of the relevant facts and conclusions as interpreted by the Town Board relating to specific approvals under its jurisdiction.

Description of the Action:

Cricket Valley Energy Center, LLC (hereinafter referred to as “CVEC” or the “Project Sponsor”) proposes to construct the Cricket Valley Energy Center (hereinafter referred to as “CVE” or “the Project”) – a combined cycle natural gas powered 1,000-megawatt (MW) electric generating facility and interconnection substation. The Project is proposed to be located on an approximately 193-acre assemblage of properties with an address at 2241 Route 22 (the “Project Site”). The “Project Development Area” within which the electric generating facility is proposed to be located, is an area of approximately 57 acres located west of Route 22 and is the site of the former Mica Products industrial facility. An additional 57 acres of industrial land to the south of the Project Development Area is the site formerly leased to Rasco Materials, LLC (the “Rasco Site”). Approximately 13 acres of the Rasco Site will be temporarily used during the construction of the Project. An additional 79 acres of land west of the Metro-North Railroad tracks comprises the balance of the property controlled by the Project Sponsor. This 79-acre area is located within the Great Swamp Critical Environmental Area. A 38.8-acre temporary construction parking and laydown area (the “Remote Laydown Site”) is proposed to be located approximately 2.5 miles north

of the Project Development Area on a parcel on the east side of Route 22 near the intersection of Old Post Road/Old Route 22.

Town of Dover Approvals and Permits:

The Project will require the following Town of Dover approvals or permits:

- Architectural Review Board Approval (§37-5.A(1)) – Architectural Review Board
- Building Permit (§47-5) – Building Inspector
- Erosion & Sediment Control Permit (§65-7.A) – Planning Board
- Blasting Permit (§69-5) – Building Inspector
- Fire Prevention Permit (§77-5.D) – Building Inspector
- Amendments to the Town of Dover Zoning Code at §145-30.G (permitted height of fence within a setback) and §145-40.C(2)(a) (permitted sound level pressure at a property line abutting a rail line in the Industrial/Manufacturing (M) Zoning District) – Town Board
- Special Permit/Site Plan Approval (§145-60.A, §145-65.A(1)) – Town Board
- Area Variances as to height of proposed structures (§145-11.B) – Zoning Board of Appeals

The Project Sponsor may elect to subdivide one or more parcels of land. Approval of a Subdivision of Land by the Planning Board would be required pursuant to Chapter 125 of Town of Dover Town Code.

Purpose and Need:

The Project is intended to provide an additional 1,000 MW of electric power generating capability within the southeastern New York energy market. The location of the Project has been selected due to its proximity to both the Iroquois pipeline and the Consolidated Edison Company of New York (ConEd) 345-kilovolt electric transmission line, located just to the north of the Project Development Area.

The Project provides an opportunity to rehabilitate an inactive industrial site within the Town of Dover and return it to productive use, thereby resulting in new tax revenues to the Town of Dover and Dutchess County.

The Project provides an opportunity to generate an average of 300 construction jobs during the three (3) year construction period with up to 750 construction jobs during the peak five (5) month construction period. During operations, the Project would generate approximately 28 full-time employees. The Project would generate secondary economic benefits in the Town of Dover and Dutchess County through the purchase of goods and services and wages to employment indirectly generated by the Project.

The Project will provide property tax revenues to the Town of Dover and Dover Union Free School District (as identified in a Payment in Lieu of Taxes, or PILOT, agreement to be negotiated with the Project Sponsor) as well as application fees to offset Town of Dover expenses in reviewing the permit applications and supplementary materials for the Project.

Evaluation of Potential Impacts:

Land Use and Community Character, Public Policy, and Zoning

This section evaluates the Project’s consistency with local land use, Zoning regulations, and Public Policy (specifically the Town’s Master Plan).

Land Use and Community Character

The Project Sponsor proposes to use a portion of a 193-acre assemblage of parcels located west of Route 22 between North Chippawalla Road to the south and Dover Furnace Road to the north. The Project Development Area is a 57-acre parcel located between Route 22 to the east and the Metro-North Railroad

rail line to the west. An additional 57 acres of industrial land to the south of the Project Development Area is the site formerly leased to Rasco Materials, LLC (the “Rasco Site”). Approximately 13 acres of the Rasco Site will be temporarily used during the construction of the Project. An additional 79 acres of land west of the Metro-North Railroad tracks comprises the balance of the property controlled by the Project Sponsor.

A 38.8-acre temporary construction parking and laydown area (the “Remote Laydown Site”) is proposed to be located approximately 2.5 miles north of the Project Development Area on a parcel on the east side of Route 22 near the intersection of Old Post Road/Old Route 22.

Land use on properties abutting the Project Development Area is generally vacant or very low-density residentially zoned land. A ConEd electric transmission line and Iroquois natural gas pipeline crosses Route 22 just north of the Project Development Area. An office of Cablevision is located on the east side of Route 22 across from the Project Development Area. The Boundary Fence and Railing property is located on the east side of Route 22 approximately 3,400 feet from the entrance driveway to the Project Development Area. The closest residential structure is approximately 1,000 feet from the Project Development Area. The Wingdale Elementary School is located approximately two (2) miles south of the Project Development Area. The Dover High School/Middle School is located approximately 3,300 feet northeast of the Project Development Area. The Town of Dover hamlets of Dover Plains and Wingdale, which contain a mix of residential and commercial uses, are located four (4) miles north and two (2) miles south, respectively, from the Project Development Area.

Land uses on properties adjacent to the Remote Laydown Site are predominantly low-density residential. The Remote Laydown Site itself is currently used for agricultural purposes. A light industrial use is located to the west of the Remote Laydown Site across Route 22 and the rail line.

Land uses within the Town of Dover are generally low density residential and agricultural uses. Wingdale and Dover Plains are small commercial areas located along New York State Route 22.

The Project Development Area and Rasco Site have had a long history of industrial use. From 1932 to 1966 the property was used as a magnesium refining facility. From 1966 to 1980, the Mica Products Corporation operated a formica production facility at the site. Organ cabinets, cassette tape recorders, and other laminated wood products were manufactured at the site. From the early 1990s until a January 1, 1996 fire, the site was used by the Polytech Recycling Corporation for a tire recycling operation. More recently, Rasco operated a facility that processed contaminated soils into asphaltic bituminous concrete. The Project Development Area had, at one time, been proposed as the Mica Products Critical Environmental Area (CEA) by NYSDEC due to the potential need for cleanup associated with prior uses.

Public Policy

The Town’s Master Plan is the policy document that guides land use development, protection of environmental quality, and protection of community character.

The Master Plan was last adopted on September 21, 1993, and last amended on April 28, 1999.

The Master Plan includes the following goal statement with respect to industrial development or uses: “To encourage opportunities that provide a stronger employment base, meet the needs of its residents, and are consistent with the rural character of the Town” (see Master Plan at page 96). The Master Plan identifies a number of implementation measures to achieve this goal including encouragement of a variety of businesses and employment opportunities, floating light industrial zoning provisions, restrictions on access for industrial and manufacturing uses to State highways, and provision of appropriate lot area, setbacks, and screening to avoid impacts to residential properties.

The Town’s Master Plan does not have any specific policies, goals, or implementation measures relating directly to electric generating facilities.

Zoning Regulations (Special Permit/Site Plan)

The Project Development Area is located within the Industrial/Manufacturing (M) Zoning District as shown on the Town's Zoning Map (§145-9). The purpose of the M Zoning District is to "allow industrial and related uses and adult entertainment, uses that are not compatible with most commercial, office, or residential uses, in isolated and well-buffered locations" (§145-8.A(8)). A small portion of the Project Site, located west of the Swamp River, is within the Resource Conservation (RC) Zoning District. No activity or use is proposed within the RC-zoned portion of the Project Site. The Remote Laydown Site is located within both the Commercial (CO) and Rural (RU) Zoning Districts. No permanent use of the Remote Laydown Site is proposed.

The Project Site is located entirely within the Town of Dover's Principal Aquifer Zone (PAZ) and the Valley Bottom Aquifer System. Land uses and activities within those zones are regulated pursuant to §145-15. The portion of the Project Site west of the Project Development Area along the Swamp River (west of the railroad track) includes Stream Corridor Overlay District and Floodplain Overlay District. The area north of Dover Furnace Road is designated with a Soil Mining Overlay District.

Since the proposed electric generating facility does not fit into any one of the categories of permitted uses identified in the Use Table of the Town's Zoning Code (§145-10.B) and is not identified as a Prohibited Use (§145-10.C), the proposed use "may be allowed by special permit issued by the Town Board" (§145-10.B).

Article IX, "Special Permits and Site Plan Review," of the Town's Zoning Code identifies the required submissions and procedures for actions requiring special permit and/or site plan approval. Pursuant to §145-60.A, "...uses not listed on the Use Table (if not prohibited by §145-10.C) require a special permit issued by the Town Board, which shall follow the procedures and standards established for the Planning Board...". Further, §145-65.A(1) states that "Site plan review shall be included as an integral part of the special permit approval process, and no separate site plan approval shall be required for uses requiring a special permit."

Thus, the Town Board has asserted its role as an Involved Agency for the purposes of reviewing the combined application for Special Permit/Site Plan (SP/SP) approval submitted by the Project Sponsor pursuant to §145-61.A and §145-65.B.

The Town's Code Enforcement Officer has issued an interpretation (received by the Town Clerk on August 27, 2012) confirming that the proposed use does not fit into one of the use categories within the Use Table at §145-10.B and is not considered a use prohibited in §145-10.C.

The Town's Code Enforcement Officer has also issued an interpretation (received by the Town Clerk on August 27, 2012) confirming that the proposed stacks would be considered "chimneys" and would be exempt from height limitations in the Dimensional Table.

As noted in the Town Code Enforcement Officer's interpretation, the Proposed Project will require an Area Variance from the Zoning Board of Appeals to allow building height to exceed thirty-five (35) feet.

Proposed Amendments to the Zoning Code

As currently proposed, the Project would not be consistent with the following two (2) provisions of the Zoning:

- §145-30.G relating to the permitted height of a fence along a property line; and
- §145-40.C(2)(a) relating to the permitted sound pressure level at a property line.

On January 24, 2012, the Project Sponsor submitted a petition to the Town Board requesting consideration of amendments to these provisions of the Zoning Code (the “Zoning Amendments”).

On September 12, 2012, the Town Board referred the proposed Zoning Amendments to the Town of Dover Planning Board (pursuant to §145-69.B) and to the Dutchess County Department of Planning and Development (pursuant to General Municipal Law §239-m).

A response was received from the Dutchess County Department of Planning and Development on September 18, 2012 indicating that the County had no comments on the Zoning Amendments and that the matter was one of local concern.

A response was received on September 26, 2012, from the Town of Dover Planning Board, suggesting several revisions or modifications to the proposed Zoning Amendments. The Planning Board indicated that it “has no objections to the adoption of the proposed text amendments but offers ... comments for the Board’s considerations.” Those comments adjust the language of the proposed Zoning amendments to improve clarity.

On October 24, 2012, the Town Board held a duly noticed Public Hearing on the proposed Zoning Amendments at which date one member of the public provided comments. The Public Hearing was continued until November 14, 2012 at which date {number} members of the public provided comments.

Amendment to §145-30.G

The Project Sponsor requested the proposed amendment to §145-30.G to allow a security fence of between eight (8) and ten (10) feet in height to be placed as close to the property line as possible. The current §145-30.G restricts fences greater than four (4) feet within the required front yard setback and fences greater than six (6) feet within any required side or rear yard setback. The proposed amendment, with proposed modifications by the Planning Board, would add a new sub-paragraph to §145-30.G that would allow fences less than ten (10) feet high in any side or rear yard where “M” zoned property borders either a rail line or another abutting “M” zoned property.

The Town Board finds that the proposed Zoning Amendment to §145-30.G would not have a significant adverse environmental impact as its applicability would be limited to the few M-zoned properties that abut a rail line or other M-zoned property. Further, the intent of the proposed Zoning Amendment is to allow greater flexibility in locating a fence of sufficient height to provide safety and security for activities and uses in the M Zoning District. The proposed Zoning Amendment would benefit the CVE Project, but would also have general applicability to other potential land uses within the M Zoning District. The proposed Zoning Amendment would not necessarily adversely affect community character or visual character as the provision would only be applicable to fences along a side or rear property line, which are typically not as visible to the general public.

Amendment to §145-40.C

The Project Sponsor requested the proposed amendment to §145-40.C(2)(a) due to what the Project Sponsor has described as a unique condition at the Project Development Area. While the Project Sponsor controls land on either side of the rail line, the Project Site comprises multiple tax parcels and a strict interpretation of §145-40.C(2)(a) would require compliance with sound pressure levels at the property line abutting the rail line. The Project Sponsor has argued that meeting this standard along an active commuter rail line, which generates noises of its own in excess of the Town of Dover threshold, would not be achievable using standard mitigation measures and would not be reasonable, or necessary, given the absence of any sensitive receptors in this area (e.g., residences or places of public gathering). The proposed amendment, as modified and clarified by the Planning Board, would allow sound pressure levels of up to 65 dBA at any time during the day along a property line in an M Zoning District where the property line abuts a rail line.

It should be noted that the Project Sponsor had, at a previous time, submitted a petition to amend the Zoning to allow higher sound pressure levels at all property lines within an M Zoning District. Since that time, the Project Sponsor has obtained an option to purchase the Rasco Site immediately to the south of the Project Development Area. Once the two (2) parcels are merged, the additional land area within the control of the Project Sponsor would provide additional distance for sound generated by the Project to be attenuated and for the Project to be in compliance with Town of Dover noise thresholds at the Project's southern property line. This lot merger would require Town of Dover Subdivision of Land approval by the Town Planning Board. The Project Sponsor has not applied for such an approval at this time. The Town of Dover understands that the Project Sponsor would submit this Subdivision of Land application upon Special Permit/Site Plan approval.

The Town Board finds that the proposed amendments to §145-40.C(2)(a) would not have a significant adverse environmental impact as its applicability would be limited to the few M-zoned properties that abut a rail line or other M-zoned property and there are no sensitive receptors on adjoining properties that would be adversely affected by elevated noise levels, even if the elevated noise is discernible. The Town Board finds that a 65 dBA sound pressure level, while noticeable given the low ambient sound pressure levels in the Town of Dover (especially during the over-night hours), would not be considered a nuisance and would not likely result in measurable effects on human health given prolonged exposure. The NYSDEC Program Policy on "Assessing and Mitigating Noise Impacts" identifies an upper threshold of 65 dBA for new noise sources in "non-industrial settings" and acknowledges that new noise sources in commercial or industrial areas could exceed the 65 dBA threshold (but not exceed 79 dBA). The Town Board also finds that the proposed amendments would not likely cause a significant adverse impact to community character as noise levels along transportation corridors (e.g., Route 22 and the rail line) do currently exceed 50 dBA during the overnight hours in some conditions (e.g., the measured long-term equivalent sound pressure level on Route 22 opposite the Project Development Area, which was measured at 51 dBA). (Specific Town Board findings with respect to noise of the Proposed Project, as distinct from the proposed Zoning Amendments, are described in more detail below).

The Town Board further finds that the proposed amendments to §145-40.C(2)(a) would benefit the CVE Project, but would also have broader applicability to other potential land uses within the M Zoning District.

Aquifer Overlay District Regulations

The Special Permit/Site Plan application filed by the Project Sponsor documents the Proposed Project's compliance with all relevant provisions of the Aquifer Overlay District (§145-15). The application references the DEIS which contains detailed studies that document compliance with all applicable Town, County, and State standards for storage of hazardous materials, a public water supply system, an on-site wastewater treatment system (septic system), and a Stormwater Pollution Prevention Plan (SWPPP) that would meet the Town of Dover's requirements for uses and activities within the Aquifer Overlay District.

The Project Sponsor has designed secondary containment systems around all storage areas where hazardous substances may be stored. A preliminary Spill Prevention, Control, and Countermeasure (SPCC) Plan has been prepared and would be fully developed following project approvals and design. The SPCC was prepared to meet the requirements of Title 40, Code of Federal Regulations (CFR), Part 112 (40 CFR 112) and will be submitted to the NYSDEC Region 3 Petroleum Bulk Storage Section for review and approval. The SPCC Plan would also be developed in coordination with the J.H. Ketcham Hose Company. A Spill Prevention Report (SPR) for hazardous substance storage systems has also been prepared that identifies the specific substances and quantities of materials to be stored and used on the Project Site. The SPR includes Material Safety Data Sheets (MSDS) for each of the hazardous materials proposed to be stored and used on the Project Site. The SPR will be shared with the J.H. Ketcham Hose Company. Due to the potential impacts to the aquifers within the Town of Dover, the Town Board finds

that secondary containment of hazardous substances is a necessary form of mitigation to prevent degradation of aquifers within the Town.

The Proposed Project would use on-site water supply wells to provide process water for the Proposed Project. These wells will be designed, installed, and operated pursuant to all applicable Dutchess County Department of Health (DCDOH), New York State Department of Environmental Conservation, and New York State Department of Health (NYSDOH) regulations and permits. The Project Sponsor is able to provide sufficient land area and fencing to ensure the security and safety of the wellheads as well as limit the introduction of pollutants to the water supply. The Proposed Project includes a pre-treatment facility for process water to meet the high purity requirements of water used in the Proposed Project. All potable water would meet the requirements of DCDOH and NYSDOH.

The Proposed Project would use an on-site sanitary wastewater disposal system (septic system) to treat and dispose of sanitary wastewater generated by employees. The septic system will be designed and approved by DCDOH. The Proposed Project intends to use a “Zero Liquid Discharge” system for process wastewater. Implementation of such a system would result in no industrial wastewater discharge from the Proposed Project. Due to the potential impacts to the aquifers within the Town of Dover, the Town Board finds that a “Zero Liquid Discharge” system is a necessary form of mitigation to prevent degradation of aquifers within the Town.

The Town Board finds that the submitted studies adequately assess compliance with the requirements of §145-15 and that there would be no significant adverse impacts on aquifers within the Town of Dover, provided that all proposed secondary containment of hazardous materials and a Zero Liquid Discharge system are implemented.

Special Permit/Site Plan

On August 15, 2012, at a pre-application meeting between the Project Sponsor and the Town’s Code Enforcement Officer and other representatives of the Town, the Project was identified as a “Major” project pursuant to the criteria of §145-60.C.

On August 15, 2012, the Project Sponsor attended a “preliminary meeting” with the Town Board, which was held during a regularly scheduled meeting of the Town Board. The purpose of the preliminary meeting was “to determine the information that will need to be submitted in the site plan” (§145-62.A).

On October 3, 2012, the Project Sponsor submitted a combined Special Permit/Site Plan application pursuant to §145-62.C.

The Town Board has reviewed the material submitted and has caused the Town Engineer and Town Planner (consultants to the Town) to review the material submitted.

Town Code at §145-63.B requires that “Before granting or denying a major project special permit, the [Town Board] shall make specific written findings establishing whether or not the proposed major project:”

- (1) *Will comply with all land use district, overlay district, and other specific requirements of this chapter and other local laws and regulations and will be consistent with the purposes of this chapter and of the land use district in which it is located.*
- (2) *Will not result in excessive off-premises noise, dust, odors, solid waste, or glare or create any public or private nuisances.*
- (3) *Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.*
- (4) *Will be accessible to fire, police, and other emergency vehicles.*

- (5) *Will not overload any public water, drainage, or sewer system, or any other municipal facility.*
- (6) *Will not materially degrade any watercourse or other natural resource or ecosystem or endanger the water quality of an aquifer.*
- (7) *Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.*
- (8) *Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the town.*
- (9) *Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering nonresidential uses that are incompatible with residential use.*
- (10) *Will not adversely affect the availability of affordable housing in the town.*
- (11) *Will comply with applicable site plan criteria in §145-65.D.*
- (12) *If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.*

This section of the SEQRA Findings statement is structured according to this outline of special permit criteria to document the Town's environmental findings and the findings related to the special permit application. It should be noted that §145-63.B(12) is not applicable to the Proposed Project as the Project Site is not located within a residential Zoning District.

(1) Compliance with Land Use Laws and Regulations

As documented above, the Proposed Project would be in compliance with all land use laws and regulations with the exception of three (3) provisions of the Zoning Code relating to: (i) height of fence within a side and/or rear yard setback; (ii) height of structure; and (iii) sound pressure levels along a property line. The Project Sponsor has proposed Zoning Amendments that would address height of a fence within a side and/or rear yard setback and sound pressure levels along a property line. The Project Sponsor will require an Area Variance from the Zoning Board of Appeals for height of the proposed building. The Town Board notes that this Area Variance, while significant, would allow for the construction of a building to enclose the mechanical equipment and would replace existing buildings and structures that do not comply with the height standard. The Zoning Board of Appeals will issue separate Involved Agency SEQRA findings to document its conclusions relevant to the requested Area Variance.

At the time of the adoption of this SEQRA findings, the Town Board has not completed its review of the Special Permit/Site Plan application. Nor have the Building Inspector, Town Engineer, or Town Planner completed their review of the Special Permit/Site Plan application. The Proposed Project may be found to be non-compliant with other dimensional standards within the Zoning Code. If conditions are identified that are non-compliant the Project Sponsor will be required to modify the Proposed Project to come into compliance or seek an Area Variance from the Zoning Board of Appeals. In making these SEQRA findings, the Town Board assumes that any additional modifications to address compliance with dimensional standards would be minor in nature and would not create impacts to community character not already considered as part of the overall review of the Proposed Project.

- (2) *Will not result in excessive off-premises noise, dust, odors, solid waste, or glare or create any public or private nuisances.*

Noise

Town of Dover Town Code

The Town of Dover regulates noise in two Chapters of Town Code.

Chapter 107, “Noise,” states:

“The creation of any unreasonably loud, disturbing and unnecessary noise is prohibited. Said noise shall be prohibited when it is of such character, intensity and duration or of any type or volume that a reasonable person would not tolerate under the circumstances and that is detrimental to the life, health or welfare of any individual or would cause or create a risk of public inconvenience, annoyance or alarm” (§107-3.A).

“The following acts and the causing thereof are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but the enumeration herein shall not be deemed to be exclusive: ...

(14) Noise in the conduct of any business: the creation of unreasonable or unnecessary noise in the operation, conduct and/or maintenance of any business, factory, plant yard or manufacturing establishment, except as otherwise provided in this chapter, including but not limited to excavating, blasting, grinding, breaking, crushing or processing of any substance, where permitted” (§107-3.B)

Chapter 145, “Zoning,” states:

“C. Noise. No noises shall be emitted in violation of Chapter 107 of the Dover Town Code. In addition, the following specific standards apply to noise:

- (1) Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be accomplished through a sound-level meter having an A-weighted filter and constructed in accordance with specifications of the American National Standards Institute or other generally accepted standard for the measurement of sound.*
- (2) No person, firm or corporation shall allow the emission of sound which, as measured at the property lines, has a sound level in excess of:
 - (a) Sixty decibels on the A-weighted scale between the hours of 7:00 a.m. and 8:00 p.m.; and*
 - (b) Fifty decibels on the A-weighted scale between the hours of 8:00 p.m. and 7:00 a.m.**
- (3) Sounds emitted at levels lower than those prohibited by Subsection C(2) above shall not be permitted if, because of the type or frequency of the noise emitted, such sounds are offensive, disruptive or in continual disharmony with the character of an adjoining or nearby residential neighborhood.*
- (4) Exemptions. The following shall be exempt from the noise level regulations:
 - (a) Noises not directly under the control of the property user.*
 - (b) Noises emanating from construction and maintenance activities between 8:00 a.m. and sunset, Monday through Friday.*
 - (c) The noises of safety signals, warning devices, emergency pressure-relief valves or other emergency warning signals.*
 - (d) Bells or chimes from a church or other place of worship.” (§145-40.C)**

Existing Noise Levels

The DEIS contained a “Baseline Sound Study and Environmental Sound Evaluation” (see DEIS at Appendix 6-E) prepared on behalf of the Project Sponsor by Cavanaugh Tocci Associates, Inc. The Baseline Sound Study evaluated existing noise levels at five locations surrounding the Project Site:

- *Location 1:* The former Green Acres Conference Center, now part of Dover Furnace Sporting (approximately 2,900 feet northwest of the center of the main power block of the Proposed Project). This location represents the nearest noise-sensitive receptor to the northwest of the Project Development Area.
- *Location 2:* The Consolidated Edison (Con Ed) right of way near #3 Vincent Road (approximately 2,100 feet north of the center of the main power block of the Proposed Project). This location conservatively represents residences and the Dover High School/Middle School complex further to the north.
- *Location 3:* Residence at the address of #7 Cricket Hill Road (approximately 1,200 feet northeast of the center of the main power block of the Proposed Project). This location represents the closest residence to the Project Development Area.
- *Location 4:* East property line across the street from #2238 NYS Route 22 (approximately 1,000 feet southeast of the center of the main power block of the Proposed Project). This location represents commercial uses along NYS Route 22 as well as residential areas further east.
- *Location 5:* North Chippawalla Road (approximately 2,800 feet south of the center of the main power block of the Proposed Project). This location represents areas to the south of the Project Development Area near residences.

Locations for monitoring were selected based upon the guidance provided in NYSDEC’s Program Policy Memorandum entitled “Assessing and Mitigating Noise Impacts” (October 6, 2000 revised February 2, 2001).

Continuous (seven (7)-day) and intermittent (10-minute) noise measurements were made at each location and presented in the DEIS. Intermittent measurements were made between 1:30 PM and 3:30 PM as well as 12:00 AM and 2:00 AM. Sound pressure levels as expressed in the one (1)-hour time-weighted average (Leq(1)) were calculated from the continuous measurements and ten (10)-minute time-weighted averages (Leq(10-min)) were calculated from the intermittent measurements. Observed sound pressure levels ranged between 36 dBA and 51 dBA (Leq(1)). Observed intermittent measurements ranged between 46 dBA and 59 dBA during daytime hours and between 42 dBA and 53 dBA during nighttime hours. As documented by Figure A-1 of Appendix 6-E, these sound pressure levels are consistent with a “Quiet Residential Neighborhood” and an “Average Office Background.” These monitoring locations are then used as “receptor” sites for estimating potential future noise impacts.

The Baseline Sound Study evaluated potential sound pressure levels during construction and operation of the Proposed Project.

Construction Period

For the construction period, the Baseline Sound Study used United States Environmental Protection Agency (USEPA) data and methodology to estimate sound pressure levels at each receptor for different phases of construction and from construction traffic. Sound pressure levels during construction varied by receptor location and phase of construction. The lowest sound pressure levels (43 dBA) are anticipated at two receptor locations during the construction of foundations for the Proposed Project. The highest sound pressure levels (61 dBA and 63 dBA) would occur at two receptor locations during the excavation and finishing phases of construction. The Baseline Sound Study also identified “special construction events”

(blasting and steam blows) that could generate intermittent sound pressure levels in excess of those modeled for general construction phases. Noise from special construction events would likely be readily noticeable from off-site locations. It is estimated that thirty (30) to fifty (50) steam blows, lasting two (2) to three (3) minutes per blow will be required over a period of two (2) to three (3) weeks. Temporary steam blow silencers will be used to limit sound pressure levels from these events to approximately 70 dBA at the nearest residences.

Construction activity will comply with Town of Dover Town Code Chapter 107 as long as it is conducted between the hours of 7:00 AM to 9:00 PM. To minimize potential impacts from construction related noise, the Project Sponsor has identified the following measures:

- Construction activity will be concentrated to a limited on-site area at significant distances from receptor properties.
- Construction producing significant noise levels will be limited to daylight hours, to the extent possible. The following activities have been identified that will be required to occur after normal working hours:
 - Concrete pours, which must be continuous for structural integrity.
 - Transfer of materials from the Remote Laydown Site to the Project Development Area, timed to avoid the evening commuter period and no later than 9:00 PM.
 - Hauling of heavy loads (such as the turbines), which per NYS DOT regulations must occur during late night hours to minimize effect on existing roadway use.
 - Construction finish work, as necessary, during later construction phases, which would predominantly occur indoors.
- Federal regulations limiting truck noise will be followed.
- The construction equipment manufacturers' sound muffling devices will be used, and will be kept in good repair throughout the construction process.

The Town Board finds that construction period noise, while greater than 6 dBA above background conditions and thus clearly noticeable at certain locations, would not typically rise above 65 dBA, the threshold identified in the NYSDEC Program Policy. However, the extended duration of the construction process (estimated at approximately three (3) years) may cause these elevated levels to constitute an impact to the community character.

To further minimize or mitigate any potential construction period noise impacts, the Town of Dover will require the preparation of a Construction Noise Mitigation Plan as part of the Special Permit/Site Plan approval. The Construction Noise Mitigation Plan will require periodic monitoring of construction sound pressure levels and reporting to the Town of Dover to ensure that all practicable means are being taken to minimize construction noise.

Operations Period

The Baseline Sound Study also included an assessment of potential noise from operation of the Proposed Project. That assessment conservatively estimated the types of equipment and their locations and included the following noise abatement assumptions:

- Low noise air cooled condensers with a maximum sound level of 51 dB(A) at a distance of 400 feet from the edge of a single tower (16 cells).
- Low-noise fin-fan coolers with a maximum sound level of 45 dB(A) at a distance of 400 feet from the edge of a single unit (15 cells).
- Depending on the sound attenuating characteristics of the HRSG system, a duct silencer may be required in the exhaust outlet duct or stack. A maximum sound level of 42 dB(A) at a distance of 400 feet perpendicular to a single stack has been assumed.
- The combustion turbine air intake will require duct silencers. A maximum sound level of 40 dB(A) at a distance of 400 feet perpendicular to a single inlet has been assumed.

- Reduced noise transformers with a National Electrical Manufacturers Association (NEMA) ST-20 sound rating of 70 dB(A) or less.
- The combustion turbines, steam turbines, and generators will be enclosed with vendor-supplied equipment to reduce equipment noise within the power generation building. Duct silencers will be required to mitigate sound produced by turbine compartment and exhaust compartment ventilation fans.
- The combustion turbines, HRSGs, steam turbines, generators, boiler-feed pumps, and other auxiliary equipment will be housed within various building structures. Sound transmitted through the walls and roofs of these buildings is based on average interior sound levels of 85 dB(A). The walls and roofs of the buildings will be constructed of 2-inch thick insulated metal panels with 22-gauge sheet metal on the interior and exterior sides. To account for penetrations of the panels for ventilation, the analysis assumed that 10 percent of all building surfaces are acoustic louvers and de-rated the acoustic performance of the building façades of approximately a Sound Transmission Class (STC) 25 rating. In addition, all building ventilation equipment (louvers, and exhaust fans), and entryways will be carefully oriented, and/or acoustically treated to meet project acoustic design goals.

The Baseline Sound Study estimated that sound pressure levels at receptor locations with operation of the Proposed Project would increase from 0 dBA (Receptor 5) to 6 dBA (Receptor 3). Sound pressure levels at the Project Site property lines were also calculated as 48 dBA (north), 48 dBA (east), 58 dBA (south), and 59 dBA (west).

The increased sound pressure levels associated with operation of the Proposed Project would not exceed the 6 dBA threshold identified in the NYSDEC Program Policy and would not be considered a significant impact. However, these estimated sound pressure levels will only be possible if best available practices and technologies are used to minimize or mitigate noise from the equipment within and outside of the building. The Town of Dover will require further assessment of project design for operational sound levels prior to issuance of a Building Permit to ensure that the Proposed Project meets or exceeds the estimated sound pressure levels included in the Baseline Sound Study. The Town of Dover will require a third-party independent assessment of actual Project operational noise levels at nearby residences and the property boundaries to document the effectiveness of noise mitigation measures.

The estimated sound pressure levels at the south and west property lines would exceed the Town of Dover nighttime threshold of 50 dBA. Subsequent to preparation of the Baseline Sound Study, the Project Sponsor has obtained an option to purchase the Rasco Site (south of the Project Development Area). The additional land area provided by the Rasco Site would attenuate sound pressure levels to below the 50 dBA threshold at the southern property line, thus eliminating that impact. The Project Sponsor has requested a Zoning Amendment to §145-40.C(2) of Town of Dover Town Code to allow sound pressure levels of up to 65 dBA at the property line for M-Zoned properties adjacent to a rail line (the western property line). Adoption of this Zoning Amendment would eliminate the impact at the western property line.

Dust and Odors (Air Quality)

The Town of Dover Town Code regulates “smoke, dust and other atmospheric pollutants” at §145-40.E. The DEIS prepared for the Proposed Project contains detailed analyses of potential air quality impacts. NYSDEC, as Lead Agency, reviewed these analyses for sufficiency and accuracy and concluded “that the Project will comply with all applicable State and federal air pollution laws and regulations” (see NYSDEC Findings at page 9). NYSDEC issued a Title IV (Phase II Acid Rain) Permit under Article 19 of Environmental Conservation Law (Permit ID 3-1326-00275/00005) for the Proposed Project on September 27, 2012 with an expiration date of September 26, 2017. The Proposed Project will utilize

Lowest Achievable Emission Rate (LAER)/Best Available Control Technology (BACT) measures to achieve the permitted levels of emissions.

The Town of Dover expressed concern during the public comment period on the DEIS regarding the sufficiency of the air quality modeling and the conclusions drawn from the studies contained in the DEIS. The Town of Dover retained the services of Dr. Bruce A. Egan, Sc.D., CCM (Certified Consulting Meteorologist) to review the technical studies prepared by the Project Sponsor. Dr. Egan filed a report dated March 8, 2012, with the Town Board. That report is attached to this SEQRA Findings as Attachment A.

Dr. Egan concluded that:

“...the demonstrations for compliance follow regulatory procedures and are complete and seem to be without errors. The determination of required emissions control technologies follows detailed regulatory guidance and will result in LAER being applied to emissions of NO_x and VOCs that will reduce emissions [of] these pollutants that contribute to the formation of regional ozone. The DEIS and subsequent information list the offsets being taken to meet the States’ goals of reducing emissions contributing to ozone in the region. The top down BACT analyses applied to the other criteria pollutants also are complete and include regulatory concerns for assuring controls are applied to smaller sources to start up and shut down operations that may pose compliance problems for short duration ambient air standards.”

Dr. Egan concurred with the Town’s specific concern that meteorological data from the Poughkeepsie Dutchess County Airport relied upon in the technical studies is not “representative of the local meteorology at the proposed CVE site.” While Dr. Egan acknowledges that use of the Poughkeepsie Dutchess County Airport data may result in “more conservative results than if the surface parameters for the CVE site were used with the [Poughkeepsie] wind data,” frequencies of wind from all directions would “alter not only the predicted impacts of CVE but also of all the other external sources brought into the analyses with interactive modeling.”

Thus, Dr. Egan recommends that a NO₂ monitor and anemometer (wind monitor) be located in the vicinity of the High and Middle schools in Dover to provide the data needed to establish the relationships of the NO₂ measurements with the impacts of the high terrain of West Mountain on east winds. Dr. Egan also noted that the monitoring station could include measurement of particulate matter (PM 2.5) to assess whether the Proposed Project could achieve the NAAQS for that pollutant in the Town of Dover. Dr. Egan recommends that the monitoring station be implemented at least one year before construction of the Proposed Project and extend for a full year after CVE is in full production.

The Town Board concurs with Dr. Egan’s conclusions and recommendations and finds that the unique topographic and meteorological conditions created within the Harlem Valley may have measurable effects on air quality and may cause the modeled estimates of pollutants included in the DEIS to vary. To ensure that air quality within the Town of Dover and Harlem Valley remain in compliance with NAAQS, the weather and air quality monitoring station recommended by Dr. Egan shall be constructed and operated by the Project Sponsor as a condition of approval of the Special Permit/Site Plan application.

The Town of Dover Town Code also regulates emissions of smoke and dust (see §145-40.E(2) and §145-40.E(3)). The Town’s standard for measurement of the density of smoke is based upon any of three methodologies (Ringelmann Smoke Chart, US EPA Method 9, US EPA Method 22). The Air Permit issued by NYSDEC requires conformance with opacity requirements measured under the US EPA Method 9 (visual observation by a certified smoke reader). Specifically, Condition 10 of the Air Permit issued for the Proposed Project limits the opacity of any smoke to 20 percent (20%), which is consistent with the Town of Dover standard. While NYSDEC is the agency responsible for enforcing conditions of

the Air Permit, the Town of Dover may retain an independent party to periodically assess the Proposed Project's conformance with this provision of Town Code.

Dust or other particulate matter emitted by combustion equipment or soil erosion is regulated by §145-40.E(3). Operation of the Proposed Project would not result in dust emissions due to use of natural gas and use of LAER/BACT technologies. During the construction process, an Erosion & Sediment Control Plan (ESC) would be implemented to control any fugitive dust emissions generated by construction traffic or earth moving activities. The Erosion & Sediment Control Plan would be reviewed and approved by the Town's Planning Board prior to receipt of building permits.

Odors are regulated by §145-40.F and §145-40.G of Town Code. While certain of the chemical substances proposed for storage and use on the Project Site would have an "obnoxious odor" at off-site locations, these substances are proposed to be contained within storage vessels that would not allow for off-site dispersal. Some minor releases of these substances might be possible during loading, but the design of the Proposed Project would not allow for releases of these substances in quantities that would be readily detectable at off-site locations. The primary emissions of the Proposed Project are water vapor and odorless gases such as carbon dioxide (CO₂) and nitrogen (N₂).

Liquid and Solid Wastes

Liquid and solid wastes are regulated by §145-40.M of Town Code. Liquid wastes generated by employees will be managed through implementation of an on-site sanitary treatment system (septic system) regulated by DCDOH. The Proposed Project will implement a Zero Liquid Discharge system so that no process wastewater will be discharged from the Proposed Project. Pursuant to Town Code, all solid wastes will be collected and stored so as to be screened from the street and adjoining property and to discourage the breeding of rodents and insects.

Glare

Glare, defined as illumination beyond the property boundaries in excess of 0.5 footcandles, is regulated at §145-40.L of Town Code. Lighting plans for the Project Development Area and temporary construction parking and storage areas (Rasco Site and Remote Laydown Site) have been prepared to meet the standards of Town Code and the Illuminating Engineering Society Lighting Handbook. All site lighting has been designed to provide sufficient lighting of the Proposed Project during normal operations and emergency situations while meeting Town of Dover standards.

Other Nuisances

The Town's Environmental Performance Standards at §145-40 also include standards for vibration (§145-40.D(2)), heat (§145-40.K), and electromagnetic fields (§145-40.I).

While the Project Sponsor has not provided evidence of future compliance with the vibration standards at §145-40.D(2), these performance standards are typically measured against built projects. Thus, there would be no way before the Proposed Project is constructed for the Project Sponsor to demonstrate compliance. In the Special Permit/Site Plan Application, the Project Sponsor has noted that the selected construction management company would "guarantee" compliance. The Town of Dover Code Enforcement Officer is empowered to enforce the Zoning Chapter and would conduct any necessary testing once the Proposed Project is complete and operational.

The Proposed Project would use 282.5-foot stacks and air cooled condensers mounted on a roof top approximately 113 feet above ground level to dissipate emissions and heat from the Proposed Project. The height of these units would allow heat to dissipate such that ground-level temperatures at the property line would not rise in excess of one (1) degree Fahrenheit.

The Proposed Project must comply with New York State Public Service Commission (PSC) interim standards for electro-magnetic emissions along rights-of-way for high voltage electric transmission lines. The Proposed Project's electrical interconnection will occur within the Project Site and on ConEdison

property, both of which are buffered from public access by trees and vegetation. As documented in Section 6.5 of the DEIS, maximum field strengths were calculated at the outer edge of the right-of-way and approximately 75 feet from the centerline of the structure and found to be below the PSC interim standards. These levels are not anticipated to interfere with normal radio or television reception within the Town of Dover.

- (3) *Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.*

The DEIS at Section 6.3 includes an analysis of traffic conditions for the construction period and the operations of the Proposed Project. Analysis was conducted at two (2) signalized intersections and nine (9) unsignalized intersections, including the Project Development Area driveway and Remote Laydown Site driveway.

Construction period traffic was estimated for each of four (4) different construction phases and the peak volumes of traffic from the busiest phase were used to assess potential impacts. The DEIS estimated that the peak construction traffic would comprise 675 workers (including a 20 percent provision for carpooling), 38 shuttle buses between the Remote Laydown Site and the Project Development Area, and 20 delivery trucks.¹ Construction traffic was distributed to Route 22 according to existing 24-hour counts that show 45 percent of vehicles traveling northbound and 55 percent of vehicles traveling southbound in the AM peak period.

Analysis indicates that Levels of Service (LOS) at each of the study area intersections during construction would be acceptable (LOS A through D) except for the Project Development Area driveway, Remote Laydown Site driveway, and intersection of Route 22 and East Duncan Hill Road.

It should also be noted that vehicles exiting the Dover Middle/High School driveway at its intersection with Route 22 would have increased delay in both the AM and PM peak hours compared to conditions in the future without the Proposed Project. The estimated increase in delay would be 17.5 seconds in the PM peak hour and 26.2 seconds in the AM peak hour. While these LOS and delay are considered acceptable according to the Town of Dover's traffic impact criteria, these changes will be notable and the Project Sponsor has agreed to work with the Dover Union Free School District to develop strategies for coordinating construction traffic with school-related traffic especially during the peak arrival/departure times for the Middle School and High School.

The Project Sponsor is coordinating with NYSDOT to identify appropriate temporary measures to implement during the construction period to mitigate traffic operations at the Project Development Area driveway. Temporary measures could include installation of a traffic signal and/or installation of a southbound right-turn lane and a northbound left-turn lane into the driveway. (Upon completion of the construction period the traffic signal and turning lanes would be removed).

In the DEIS, the Project Sponsor proposed to use manual controls at the Remote Laydown Site to facilitate turning movements into and out of the Site. Manual controls (e.g., traffic safety officer) would only be necessary during the AM and PM peak hours. It was also proposed that a 400-foot southbound left-turn lane be constructed to allow through vehicles at this location to proceed beyond the driveway to the Remote Laydown Site while vehicles are waiting to make a left-turn into the Site. This 400-foot turn-

¹ The traffic analysis included in the DEIS assumed more construction period traffic and parking at the Remote Laydown Site than is currently projected. With the addition of the Rasco Site immediately south of the Project Development Area, less traffic and parking is anticipated at the Remote Laydown Site and along Route 22 between the Project Site and the Remote Laydown Site.

lane can be accommodated within the NYSDOT right-of-way without property takings or easements. The Project Sponsor would be responsible for paying for such improvements and all coordination with NYSDOT. However, the Project Sponsor is currently proposing to use the Rasco Site for temporary construction parking of up to 580 vehicles. The Remote Laydown Site would only be used by approximately 95 vehicles during the busiest construction period. (The Remote Laydown Site would still be used during other construction phases to stage larger pieces of equipment or construction materials). With the relocation of construction worker parking to the Rasco Site, the need for improvements at the Remote Laydown Site driveway has been eliminated.

The DEIS analysis also identifies an impact at the intersection of Route 22 and East Duncan Hill Road. At this intersection, vehicles seeking to turn onto or cross Route 22 from East Duncan Hill Road during the PM peak hour would experience LOS E (compared to LOS C in the future without the Proposed Project). The DEIS analysis proposed signalizing this intersection to mitigate the impact. However, the Project Sponsor is currently proposing to use the Rasco Site for temporary construction parking of up to 580 vehicles. Use of this site would significantly reduce the number of vehicles passing through the intersection of Route 22 and East Duncan Hill Road and would ensure that operating conditions are within acceptable limits. With the relocation of construction worker parking to the Rasco Site, the need for improvements at the intersection of Route 22 and East Duncan Hill Road has been eliminated.

Operational traffic impacts of the Proposed Project were also assessed. The Proposed Project was estimated to generate approximately 28 vehicle trips (entering and exiting vehicles) during both the AM and PM peak hours. The vehicle trips include both employees and delivery vehicles. Analysis of Proposed Project vehicle trips at study area intersections reveals acceptable Levels of Service at each of the study area intersections. No mitigation is required for operational traffic.

(4) *Will be accessible to fire, police, and other emergency vehicles.*

The Project Site will be designed to allow for access to fire, police, and other emergency vehicles. A Preliminary Site Maneuvering Plan was submitted as Exhibit A15 of the Special Permit/Site Plan Application. This drawing demonstrates that a 42.5-foot long fire truck (the longest currently owned by J.H. Ketcham Hose Company) can satisfactorily navigate the proposed driveway and loop road.

(5) *Will not overload any public water, drainage, or sewer system, or any other municipal facility.*

The Proposed Project will rely on on-site wells for water supply and an on-site sanitary wastewater treatment system (septic system). The Proposed Project will be required to obtain a State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001). A Stormwater Pollution Prevention Plan (SWPPP) has been developed to meet all NYSDEC Design Standards and Town of Dover standards and will ensure that the peak rate of runoff will not be increased.

Fire protection service in the Town of Dover is provided by the J.H. Ketcham Hose Company, an all-volunteer fire department. The fire department has approximately 200 volunteers that operate three engines, one rescue/pumper, one quint (5 function engine and ladder truck), two utility trucks, two ambulances, and two staff automobiles. The fire department currently has a 75-foot aerial ladder truck.

As proposed, the Proposed Project will include fire protection systems designed and constructed to the latest, state-of-the-art requirements, including the National Fire Protection Association (NFPA) "Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations." The fire protection systems will also comply with all applicable state and local codes.

NFPA fire protection systems will be fully automated to provide alarm, detection, and suppression capability for all hazard areas. Fire water will be supplied to the fire protection system via an electric motor driven pump. A diesel-driven pump will serve as back up to the motor-driven pump. The fire pumps will take suction directly from a 1,000,000-gallon on-site water storage tank supplied by on-site wells, and supplemented by rooftop rainwater capture. The fire water distribution system will include yard hydrants and automatic and manual suppression systems serving areas requiring protection. In addition, a Comprehensive Site and Safety Plan (CSSP) will be prepared, in coordination with the Hose Company, State Police and Sherriff's Office, detailing safety procedures, training and testing that must be completed before workers can enter the site. The CSSP may identify the need for specialized training for local emergency responders given the unique character of the Proposed Project. As mitigation, the Project Sponsor will be required to coordinate whatever training is necessary to ensure the safety of local emergency responders.

Given the height of proposed buildings (approximately 113 feet high) and the height of the existing aerial ladder truck (75 feet) operated by the J.H. Ketcham Hose Company, the Proposed Project will result in an impact to the Town. Mitigation for this impact would comprise purchase of an aerial ladder truck capable of reaching personnel and fighting fire at the roof of the Proposed Project.

(6) *Will not materially degrade any watercourse or other natural resource or ecosystem or endanger the water quality of an aquifer.*

Construction of the Proposed Project within the Project Development Area will minimize effects on watercourses and natural habitat. The majority of the Project Development Area comprises a former industrial property where a great deal of disturbance has already occurred due to past industrial uses. An approximately 13-acre portion of the Rasco Site will be disturbed to create a temporary construction parking area. The entire 79-acre parcel west of the railroad tracks will remain undisturbed.

While the Proposed Project has been designed to minimize potential impacts to wetlands, approximately 0.2 acres of an approximately 1.7-acre degraded wetland area will be permanently disturbed and the remaining 1.5 acres will be converted into shrub/scrub wetland. An additional 0.05 acres of Federal- and State-jurisdiction wetlands will be permanently filled. However, this area comprises an area previously disturbed and filled by historical industrial activities. Finally, approximately 0.8 acres of Adjacent Area to a State-jurisdiction wetland (DP-22) will be permanently filled due to construction of the Proposed Project. Approximately 1.0 acres of wetland within the Project Development Area will be temporarily disturbed by construction or waste removal/restoration activities. On the former Rasco Site, 1.4 acres of Adjacent Area associated with Wetland DP-22 will be temporarily disturbed due to waste excavation and temporary parking during construction. An additional 0.03 acres of fill is proposed within a wetland regulated by the United States Army Corps of Engineers.

To compensate for the loss of wetlands, the Proposed Project would restore 0.6 acres of previously degraded wetland and 2.4 acres of Adjacent Area and create 0.08 acres of new wetland. In addition, approximately 1.8 acres of Adjacent Area between the Project Development Area and Wetland 2 will be selectively planted with tree and shrub species to increase the density of vegetation and create further buffer to Wetland 2.

NYSDEC issued a Freshwater Wetlands Permit (Article 24) and Water Quality Certification (Clean Water Act Section 401) for the proposed wetland modifications on September 27, 2012. The Town of Dover concurs with the findings of the NYSDEC, as Lead Agency, that these wetland modifications will not have adverse effects on the Swamp River. The Town of Dover agrees that the installation (by the Project Sponsor) of a stream gauge in the Swamp River near the Route 22 bridge will help to monitor stream flow and water quality conditions within the Swamp River. With the implementation of this

stream gauge, the Town of Dover agrees that all potential adverse effects on the Swamp River would be avoided, minimized, or mitigated to the maximum extent practicable.

Approximately 4.8 acres of upland forested habitat would be permanently lost due to construction of the Proposed Project. An additional 2 acres of upland forested habitat would be cleared during construction and restored to scrub/shrub habitat.

No significant disturbance to wetland or forested habitat would occur at the Remote Laydown Site, which is predominantly covered by agricultural crops.

Biological surveys were conducted on each of the parcels (Project Development Area, Rasco Site, and Remote Laydown Site) for Threatened or Endangered Species. Surveys were specifically conducted for bog turtle (*Glyptemys mohlengergii*), timber rattlesnake (*Crotalus horridus*), New England cottontail (*Sylvilagus transitionalis*), and Indiana bat (*Myotis sodalis*). The Town of Dover concurs with the findings of the NYSDEC, as Lead Agency, with respect to the absence of potential impacts to threatened or endangered species.

- (7) *Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.*

The DEIS and FEIS contain detailed descriptions of the topography, soils, vegetation, natural habitat, and hydrology of the Project Site. Most of the area to be used for the Proposed Project has been previously disturbed by prior industrial use. There will be approximately 4.8 acres of forested habitat lost due to Proposed Project construction and 2 acres of forested habitat proposed to be temporarily cleared during construction. An additional 13-acre area within the Rasco Site will be disturbed for temporary construction parking, of which 6 acres comprise former waste material piles and 2 acres comprise small diameter trees.

As indicated above, the Town of Dover concurs with the findings of the NYSDEC, as Lead Agency, with respect to the absence of potential impacts to natural habitat and hydrology of the Project Site.

See the discussion below regarding visibility of the Proposed Project from neighboring properties and public roads.

- (8) *Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the town.*

The DEIS contained a visual impact assessment conducted pursuant to the NYSDEC Program Policy on "Assessing and Mitigating Visual Impacts." The methodology described in the Program Policy requires a comprehensive analysis of certain natural, recreational, and cultural (historic) features within a five (5)-mile radius of the Proposed Project. The DEIS also evaluated various "landscape similarity zones" and the various "viewer groups" that might experience visibility of the Project Site within the five (5)-mile radius study area to supplement the NYSDEC methodology. A Geographic Information Systems (GIS) analysis of the five (5)-mile study area was prepared to identify areas within the study area where views of the Proposed Project (specifically the 282-foot tall stacks) might be possible given both topography and presence of vegetation. Field studies were completed to evaluate accuracy of the GIS analysis. From these analyses, four (4) viewpoints were identified where views of the Project Site would be possible or which represented a typical "middleground" view from which views would either not be possible or would be obscured due to intervening topography. There would be no views of the Proposed Project from any of the designated historic resources within the Town of Dover. These four (4) viewpoints were selected for further analysis:

- Viewpoint 1: Southbound on NYS Route 22 from the ConEdison transmission lines
- Viewpoint 2: Cricket Hill Residences
- Viewpoint 3: Dover Middle/High School Complex
- Viewpoint 4: Knolls of Dover proposed development area

A computer-generated photosimulation of the Proposed Project was developed to evaluate potential visibility of the Proposed Project from each of these viewpoints. In addition, a plume simulation was prepared to determine potential visual impacts from water vapor plumes.

The DEIS concluded the following for each of these viewpoints:

Viewpoint 1: While elements of the Proposed Project would be visible from this location in both leaf-off and leaf-on conditions, other built elements within this viewshed include the existing ConEdison transmission lines and existing buildings or structures within the Project Site. Visibility of the Proposed Project from this viewpoint would generally be limited to motorists traveling southbound on Route 22. Those motorists would only experience fleeting views of the Proposed Project as the speed limit (and prevailing rate of travel) along Route 22 is 55 miles per hour. There are few residences in the vicinity of this viewpoint that would have views similar to those from Route 22.

Viewpoint 2: Views of the Proposed Project from residences along Cricket Hill Road would be a new element of the viewscape and would be notable due to the increase in height of the proposed stacks and buildings.

Viewpoint 3: Visibility of the Proposed Project from the Dover Middle/High School would be limited due to the presence of existing vegetation between the viewpoint and the Project Site. While the proposed stacks might be partially visible through the dense screen of vegetation, this visibility would not significantly alter the overall viewshed.

Viewpoint 4: Visibility of the Proposed Project from the proposed Knolls of Dover mixed-use development project would be limited to the tops of the proposed stacks. This visibility would be partially screened during leaf-off conditions and more fully screened during leaf-on conditions. Visibility would not significantly alter the overall viewshed.

The plume simulation noted that the type of technologies proposed to be used for cooling at the Proposed Project would minimize the likelihood of a water vapor plume. The plume simulation does note that a potential plume could be visible from viewpoints 2 and 4 during winter months.

The proposed stacks would require Federal Aviation Administration (FAA) lighting. This lighting, if not properly designed, could have adverse impacts on residences along Cricket Hill Road. To mitigate this impact, the Project Sponsor should work directly with the FAA to develop a lighting program that is sensitive to the rural character of views from Cricket Hill Road and the overall rural character of the Town of Dover. The Town Board will review this lighting plan as part of the Special Permit/Site Plan Application.

The Town's Architectural Review Board (ARB) would review the materials and colors of each of the Proposed Project elements as part of the Special Permit/Site Plan process. The ARB will work with the Project Sponsor to identify materials and colors that will minimize the visibility of the Proposed Project and that will blend into natural background colors.

(9) *Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering nonresidential uses that are incompatible with residential use.*

The NYS Route 22 corridor is a major roadway extending in a north-south direction through the area surrounding the Project Site. Route 22 serves as a primary connector between communities in the Harlem Valley, and is characterized along its length by scattered commercial, industrial and residential

development, and open space or undeveloped land. The closest residence (located at the north side of the intersection of Route 22 and Cricket Hill Road) is approximately 1,000 feet from the center of the Project Development Area. The closest residence to the south along Chippawalla Road is approximately 3,000 feet from the center of the Project Development Area.

The Project Site is the location of former industrial uses and is buffered from Route 22 and surrounding land uses by both a topographic grade change and dense vegetation. The grade change between Route 22 and the center of the Project Development Area is approximately 40 to 50 feet. The horizontal distance between Route 22 and the Project Development Area is approximately 300 to 400 feet.

The Proposed Project is not a retail or commercial use that would be appropriate for location within a hamlet. Nor does the Proposed Project continue strip commercial development in an area that would be contrary to the Town's Master Plan. This nonresidential use would be buffered by existing vegetation from residential uses that would be supplemented along Route 22 to further screen the proposed buildings from visibility.

(10) Will not adversely affect the availability of affordable housing in the town.

Section 6.7.3.1.4 of the DEIS indicates that the majority of construction labor for the Proposed Project would come from the greater Hudson Valley region. Approximately 75 construction workers could relocate to the area during peak construction periods and would seek temporary housing or lodging within the area. It is envisioned that these construction workers and technicians would find temporary lodging within existing motels in the area and would not require the construction of new housing.

The Proposed Project itself would not affect the availability of affordable housing in the town as it would not occupy land that could be used for affordable housing, nor would the Proposed Project generate sufficient long-term employment to require the construction of new housing for employees.

(11) Will comply with applicable site plan criteria in §145-65.D.

The Town Board will be conducting a review of the Special Permit/Site Plan Application to evaluate consistency of the Proposed Project with the specific site plan criteria in §145-65.D, "Criteria." It should be noted, however, that many of the criteria within that section are relevant to small-scale development within hamlet areas or along commercial corridors. The *applicable* site plan criteria to the Proposed Project would be those that apply to landscaped buffers and screening that would prevent the majority of the Proposed Project from being seen from public rights-of-way. In the case of the Proposed Project, the existing band of mature deciduous and evergreen vegetation between the Project Development Area and Route 22 already screens views of the existing buildings and structures and would continue to screen most views of the Proposed Project (with the exception of views identified above from Route 22 near the ConEd transmission lines).

The Architectural Review Board will review the Proposed Project and will recommend treatment of those buildings or structures that would likely be visible from public rights-of-way, as well as additional vegetative screening as necessary.

(12) If the property is in a residential district, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

This Special Permit criterion is not applicable to the Proposed Project as the Project Site is located in the Industrial/Manufacturing (M) Zoning District.

Socioeconomic Conditions

The Proposed Project has been estimated to result in approximately 300 construction jobs over a three (3)-year period (with peak employment at 750 construction jobs). Total estimated construction payroll is \$142.3 million.

The DEIS indicates that it is anticipated that much of the required construction labor force for the project would be met with the available trades' workforce in Dutchess County. According to the U.S. Census data for 2007, approximately 5,700 construction trade workers reside within Dutchess County. As of July 2010, data from the New York State Department of Labor indicates that there are approximately 3,900 construction workers actively seeking employment in Dutchess County. The unemployment rate in Dutchess County was 7.2 percent in April 2010.

An economic analysis was conducted based on the estimated local (Dutchess County) share of total construction cost (\$995 million) of the Proposed Project. Accounting for specialized equipment and project design and financing costs, which would be imported, the Proposed Project would have an estimated \$134.7 million in direct construction project expenditures and ancillary services. An economic multiplier model evaluated potential indirect and induced effects of this spending in the Dutchess County economy. That model indicates that the local share of the construction of the Proposed Project would result in total output of \$224.3 million in Dutchess County, including \$124.4 million in direct effects, \$28.1 million in indirect effects, and \$71.7 million in induced effects.

Estimates were made for all disciplines in the trade mix for the project, and it was determined that approximately 74 percent of the total jobs created by the project during construction would likely be filled by workers from the Dutchess County area and 26 percent from outside Dutchess County. It is estimated that up to 85 percent of the electricians required would come from Dutchess County.

The Proposed Project would generate significant fiscal benefits to the Town of Dover and Dover Union Free School District through a Payment In Lieu of Taxes (PILOT) to be negotiated with the Project Sponsor. The PILOT agreement would be coordinated with the Dutchess County Industrial Development Agency (IDA).

Alternatives

The Town of Dover does not make any findings separate from the NYSDEC with respect to project alternatives. However, the Town of Dover does note that the "No Action" alternative would not result in the significant construction employment benefits; direct, indirect, and induced economic activity generated during the construction period; the significant fiscal benefits to the Town of Dover and Dover Union Free School District; and the cleanup of a former industrial property.

Cumulative Impacts

Unavoidable Adverse Impacts

Irreversible and Irretrievable Commitments of Resources

Growth-Inducing Aspects

Use and Conservation of Energy

The Town of Dover concurs with the NYSDEC Lead Agency findings with respect to these analyses contained in the DEIS and FEIS.

Conclusion

The Town Board hereby certifies that its obligations as an Involved Agency under 6 NYCRR Part 617 have been met. After due consideration and pursuant to Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617) of the relevant environmental impacts, facts and conclusions disclosed in the DEIS and FEIS, and after weighing and balancing the relevant environmental impacts with social, economic, and other considerations, the Town Board of the Town of Dover, certifies, for the reasons set forth in these Findings, that:

1. Consistent with social, economic and other essential considerations from among the reasonable alternatives, the Proposed Project 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 by incorporating those mitigation measures that are set forth herein;
2. The Project is one that appropriately balances potential adverse impacts against potential beneficial impacts in the forms of creation of additional construction employment, economic activity during the construction period, fiscal benefits from a PILOT agreement, and the overall redevelopment of a vacant and deteriorating former industrial facility that currently exerts a blighting influence on the community;
3. This written findings statement contains the facts and conclusions utilized by the Town Board to make its decision.