

**Catskill Mountainkeeper  
Coalition Against Pilgrim Pipelines – New York (CAPP-NY)  
Kingston Citizens  
Riverkeeper  
Scenic Hudson**

December 15, 2017

Basil Seggos, Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-1010

James Quigley, Supervisor  
Town of Ulster  
1 Town Hall Drive  
Lake Katrine, NY 12449

**RE: Lincoln Park Grid Support Center – SEQRA Review**

Dear Commissioner Seggos and Supervisor Quigley:

We write regarding the State Environmental Quality Review Act (“SEQRA”) review of the applications submitted by Lincoln Park DG, LLC to construct a natural gas-fired power plant and grid support center in the Town of Ulster (the “Project”). We specifically write with two requests: (1) that the New York State Department of Environmental Conservation (“DEC”) assume SEQRA lead agency status; and (2) that the lead agency issue a positive declaration and conduct scoping, consistent with Supervisor Quigley’s welcome statements at the December 7, 2017 Ulster Town Board Workshop meeting.<sup>1</sup>

**The Project**

Lincoln Park DG, LLC (the “Applicant”) is proposing to construct the Project on an approximately four (4) acre portion of a 120 acre property in the Town of Ulster. The Project is intended to provide peaking power generation from a 20 megawatt (“MW”) natural gas-fired power plant. The Applicant asserts that the Project would assist in the integration of variable renewable generation from wind and solar projects as provide services including micro-gridding and black start. The Project would also include containerized lithium ion batteries for energy storage and on-site diesel storage as backup when the gas supply is disrupted. The generator will be housed within a steel building and will require two exhaust stacks for combustion emissions which will be a maximum of 100 feet tall.

The Project will require Site Plan Approval from the Town of Ulster Town Board; a Lot Line Adjustment from the Town of Ulster Planning Board; an air permit, a stormwater pollution prevention plan (SWPPP), petroleum bulk storage permit, and waste oil storage permit from DEC; and a Nationwide permit from the U.S. Army Corps of Engineers (“ACOE”), among other approvals.

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<sup>1</sup> “...given the nature of the project, and the sensitivity of other projects along the ridge, the project will be a pos dec and a full environmental impact statement to analyze the project to include a public scoping session, and testimony taken when the public is given a copy of the Draft Environmental Impact Statement (DEIS).” Available at: <http://townofulster.org/content/MeetingCategories/View/1:field=meetings:/content/Meetings/View/298>

## **The DEC Should Assume SEQRA Lead Agency Status**

On November 16, 2017, the Town of Ulster Town Board passed a resolution initiating a coordinated SEQRA review of the Project as an Unlisted Action pursuant to 6 NYCRR part 617 and declaring its intent to be Lead Agency.<sup>2</sup> We appreciate the Town Board's diligence and professionalism in reviewing the Project to date, but respectfully submit that in this case, DEC would be a more appropriate lead agency. As such, we hereby request that DEC assume lead agency status for the SEQRA review of the project.

The three criteria for lead agency selection under 6 NYCRR part 617.6(b)(5)(v)<sup>3</sup> confirm that DEC is the agency best suited to lead the environmental review. The Project will have a regional impact on the Hudson Valley's watershed and air pollutant and greenhouse gas emissions. The DEC also has the greatest authority to regulate the potential for significant impacts on air quality, water quality, petroleum bulk storage, and conformity with the state's energy plan. And, of course, the DEC has the greatest resources to manage complex SEQRA proceedings, direct the preparation of comprehensive, regional environmental impact statements and manage input from a multitude of concerned stakeholders and involved agencies.

The undersigned have concerns about the potential impacts this project could have on the natural resources of the Hudson Valley region, including its potential implications for climate change as a new piece of fossil fuel infrastructure that will contribute to carbon emissions. The Project could have environmental impacts that go well beyond the borders of the Town of Ulster. As a "peaker" power plant using natural gas, it will have a direct impact upon the electricity reliability and generation makeup for the Hudson Valley region. The emissions from the plant, which may only be used a handful of times a year but could theoretically run 24/7, will not stop at the Ulster town border. The energy storage component of the Project has the potential for positive impacts, but again, they are regional in nature. And, as discussed further below, there is potential for significant visual impacts to the Hudson River National Landmark Historic District located across the Hudson River in Dutchess County.

Introduction of new fossil fuel infrastructure in New York State at this time is inconsistent with established State policy and the Clean Energy Standard, which requires a 50% reduction of greenhouse gas emissions by 2030. The applicant makes claims about beneficial impacts of the Project on carbon emissions and enabling the integration of new wind and solar generation. This may be the case, but given the precedent-setting nature of the project, it is important that an agency with expertise and experience in dealing with complex issues of carbon emissions and integrating renewables into the grid thoroughly evaluates this claim and evaluates the impact the project would have on climate change. The DEC Commissioner's Policy on Climate Change and DEC Action requires DEC to consider climate change in

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<sup>2</sup> Resolution of the Town Board available at:

<http://townofulster.org/content/MeetingCategories/View/1:field=meetings:/content/Meetings/View/296:field=documents:/content/Documents/File/3576.pdf>

<sup>3</sup> Where the choice of lead agency is in dispute, "[t]he commissioner will use the following criteria, in order of importance, to designate lead agency: (a) whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (*i.e.*, if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency); (b) which agency has the broadest governmental powers for investigation of the impact(s) of the proposed action; and (c) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action. 6 NYCRR 617.6(b)(5)(v).

all its actions, including permitting.<sup>4</sup> The proposal must therefore be vetted by the State’s designated environmental department in this context.

As the agency with jurisdiction over the numerous natural resources beyond the Town of Ulster that stand to be affected by this Project, DEC is in the best position to investigate the project’s potential environmental impacts. For this reason, and because of the Project’s potential conflict with New York State’s environmental and climate change policies, DEC should assume lead agency status.

**The Lead Agency Must Issue a Positive Declaration and the EIS Must Consider the Listed Environmental Impacts**

Whichever agency ultimately assumes the lead agency role for the SEQRA review of this project, it must issue a positive declaration because it undoubtedly “may include the potential for at least one significant adverse environmental impact”, the standard for requiring an Environmental Impact Statement (“EIS”) under 6 NYCRR §617.7(a)(1) . We were very pleased to hear Supervisor Quigley’s recent statements that there will be a positive declaration and scoping conducted for the project<sup>5</sup>. We appreciate his commitment, and in keeping with his statements, we summarize briefly below several of the potential significant adverse environmental impacts that could result from this project, and which should be included in the Draft Scope for the EIS. This list is not intended to be exhaustive, but highlights some of the most significant issues.

Visual Impacts – The proposed project would include two stacks for fuel combustion emissions, which would be a maximum of 100 feet tall. The Project’s location on a prominent ridgeline would increase the visual impact of these stacks on the surrounding area. A cursory viewshed analysis (based on landforms only without vegetative cover or buildings) shows that 100’ stacks would be visible from a wide range of locations in the region, including from the Hudson River National Landmark Historic District in Dutchess County and from the Estates District Scenic Area of Statewide Significance (“SASS”). While more specific analysis must be conducted to determine the precise extent of visual impact, this preliminary analysis makes clear that there is the potential for significant adverse visual impacts.

Air Emissions, Climate Change and Change in Use and Conservation of Energy – The purpose of the Project is to generate electricity, primarily from the combustion of natural gas. This will result in emissions of carbon dioxide, carbon monoxide and nitrogen oxides. As a “peaker” plant, the proposed project may only run a few days a year; however, it is possible it could run much more often, depending on demand, as it will be available to the grid 24 hours a day. Therefore, an analysis of the maximum potential emissions and its impacts on the surrounding population and environment should be required.

Further, as a piece of new fossil fuel infrastructure, construction of this plant will also impact the use and conservation of energy in the region. It is questionable whether a new gas generation plant is consistent with New York State’s energy plan to aggressively transition to renewable energy and dramatically reduce carbon emissions. The battery storage portion of the Project may enhance the ability of renewable energy to integrate with the existing electricity grid, but the 20MW natural gas plant will serve to continue use of polluting fossil fuels. The applicant’s claims that the Project will decrease carbon

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<sup>4</sup> NYSDEC CP-49, October 22, 2010, available at: [http://www.dec.ny.gov/docs/administration\\_pdf/commisclimchpolicy.pdf](http://www.dec.ny.gov/docs/administration_pdf/commisclimchpolicy.pdf)

<sup>5</sup> Audio of statement available at: <http://townofulster.org/content/MeetingCategories/View/1:field=meetings:/content/Meetings/View/298>

emissions and promote renewables and micro-grids must be objectively and fully evaluated, as projects that prolong our reliance on fossil fuels should not be constructed.

Wetlands – There is a significant wetlands complex located on the property, including a NYSDEC Class 2 wetland, a Class C stream and numerous National Wetland Inventory (“NWI”) wetlands. There are also additional wetlands on-site that have not been mapped. Because the wetlands are all part of an important habitat complex, disturbance or destruction of vegetation should be avoided. Despite the Applicant’s claims in the Full Environmental Assessment Form (“EAF”) for the Project that only a very minor disturbance to the NWI wetland will occur, it is important that a complete and robust analysis of potential impacts to the entire wetlands complex, including those wetlands that have not been mapped, is conducted. The EAF also indicates that the SWPPP for the Project would direct stormwater into on-site wetlands, which is not an appropriate stormwater treatment plan and could have significant adverse impacts on the wetland.

Principal Aquifer – There is a principal aquifer located on the project site, just south of the area where the power plant is expected to be constructed. Principal aquifers are aquifers known to be highly productive or whose geology suggests abundant potential water supply, and they therefore warrant special protection.<sup>6</sup> The Project includes bulk storage of diesel fuel in a 50,000 gallon tank, as well as lube oil and ammonia/urea storage tanks. Therefore, any potential impact to the aquifer from a leak or spill must be fully evaluated.

Threatened/Endangered Species – There are known occurrences of federal and state threatened and endangered species in the vicinity of the project site. There is a priority habitat for the federally-threatened Northern Long-Eared bat within 1.5 miles of the site, and bats are known to travel up to 5 miles.<sup>7</sup> The project site is also in the range of the federally and state endangered Indiana Bat, and the EAF indicates that the site features trees that would provide suitable summer roosts for the bat species. Potential impacts to these threatened and endangered species must be analyzed in the EIS, and Section 7 consultation with U.S. Fish and Wildlife Service must occur pursuant to the Endangered Species Act.

Cultural Resources – There are known Native American archeological sites in the vicinity of the proposed project.<sup>8</sup> A full evaluation of potential impacts or disturbances must be conducted in the EIS.

Potential Inconsistency with Town Comprehensive Plan and Zoning Code – The EIS should consider whether the project complies with the maximum building height limitation for the O-M District in which the proposed project is located, which is 75 feet.<sup>9</sup> Under Section 190-16 of the Town of Ulster Zoning Code, height requirements may not be modified. Section 190-21 of the Town of Ulster Zoning Code provides certain permitted height exceptions, including “water tanks, cooling towers, ventilators, *air-pollution abatement devices*, air conditioning equipment and electrical substations where such structures are located on the roof of a building and the area of which does not exceed, in total, more than

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<sup>6</sup> See NYSDEC Technical and Operational Guidance Series (TOGS) 2.1.3.

<sup>7</sup> See EAF, Endnote 7.

<sup>8</sup> Review of the Ulster Manor project, which would have been sited just south of this Project, revealed in 2009 the significant presence of Native American artifacts. See <http://www.dailyfreeman.com/article/DF/20100126/NEWS/301269991>

<sup>9</sup> Town of Ulster Zoning Code § 190-69.

fifty percent (50%) of the roof area and the height of which does not exceed 10 percent (10%) of the building height.”<sup>10</sup> In addition, there must be a setback from the property line equal to the height.<sup>11</sup>

In addition, the Town of Ulster’s 2007 Comprehensive Plan indicates that the Project’s location is within a Ridgeline Protection Area, which supports special protection of this important ridgeline and vista.<sup>12</sup> The Comprehensive Plan also recommends that development in the Town be limited on steep slopes of greater than 15%.<sup>13</sup> The EAF states that 60% of the site has slopes of 15% of greater. The EIS should investigate whether any of the developed area would be within the steep slopes.

All of the above potential impacts relate directly to one or more of the factors set forth in 6 NYCRR §617.7(1) that are considered indicators of significant adverse impacts on the environment. We appreciate your consideration of our requests, and look forward to participating in the SEQRA review of this project.

Respectfully,

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<sup>10</sup> Town of Ulster Zoning Code § 190-21.A(2) (emphasis added). Sections 190-21.A(1) and 190-21.C permit “flagpoles, antennas (except satellite and microwave dishes), transmission towers and bales, spires and cupolas, chimneys, elevators, stairs or bulkheads up to 100 feet, and above 100 feet with a special permit.

<sup>11</sup> Town of Ulster Zoning Code § 190-21.B.

<sup>12</sup> See Town of Ulster Comprehensive Plan, adopted July 2, 2007, map at 85. Available at: [https://ulstercountyny.gov/sites/default/files/documents/ulster-comp\\_plan.pdf](https://ulstercountyny.gov/sites/default/files/documents/ulster-comp_plan.pdf)

<sup>13</sup> Comprehensive Plan Section 5.7.1.

Cc:

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