

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

IN THE MATTER of
Cricket Valley Energy Center, LLC
Petition for Order Granting a Certificate of Public
Convenience and Necessity and Establishing
A Lightened Regulatory Regime

CASE _____

**PETITION FOR ORDER GRANTING
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND
ESTABLISHING A LIGHTENED REGULATORY REGIME**

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Albany, New York

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INTRODUCTION

Cricket Valley Energy Center, LLC (“CVE”) proposes to construct, own and operate a combined cycle, natural gas-powered 1,000 megawatt (“MW”) electric generating facility in Dover, Dutchess County, New York (the “Facility” or the “Project”). The Facility will constitute “electric plant” under New York Public Service Law (“PSL”) § 2(12),¹ classifying CVE as an “electric corporation” within the meaning of PSL § 2(13)² and, therefore, subject to the New York State Public Service Commission’s (“Commission”) jurisdiction.

CVE hereby submits this Petition requesting the Commission (i) grant a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Section 68 of the PSL authorizing construction of the Facility, and (ii) extend the established lightened regulatory regime the Commission employs for competitive generation facilities operated wholly in the competitive wholesale markets to CVE and its operation of the Facility. CVE is also requesting expedited treatment of this Petition pursuant to Section 21.10(a) of the Commission’s Rules and

¹ N.Y. PUB. SERV. LAW § 2(12) (McKinney Supp. 2011).

² *Id.* § 2(13) (McKinney Supp. 2011).

Regulations,³ in order to commence construction and financing activities in a timely manner.

The Notice required by Section 21.10 is attached hereto as Exhibit 1. Correspondence and communications concerning this filing should be directed to:

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I. EXECUTIVE SUMMARY

CVE proposes to construct, own and operate a combined cycle, natural gas-powered 1,000 MW electric generating facility. The Facility will produce numerous local and statewide benefits. Locally, an abandoned site will be restored to productive use. The site has a long history of industrial use and was badly damaged by a fire in 1996. Since that time, the site has not been used and currently contains numerous collapsed and fire-damaged buildings and other associated debris and solid waste. When operational, the Facility will represent approximately 15% of the Town of Dover's tax base while creating up to 750 construction jobs, and approximately 28 permanent jobs during operation. The Facility will utilize steam turbines expected to be manufactured by General Electric Company at its Schenectady, New York plant. In addition to complying with all applicable Federal and State air quality requirements, the Facility is designed to minimize water use by employing air cooled condensers, recycling and treating wastewater to eliminate any wastewater discharge and collecting rooftop rainwater to supplement its internal plant consumptive water needs. No significant wildlife habitat areas will

³ 16 NYCRR § 21.10(a) (2010).

be lost as a result of the Facility and no rare, threatened, or endangered species will be displaced from the development area. Approximately 75 acres of on-site wetland habitat will be preserved and left untouched or donated to local conservation organizations.

On a statewide level, the Facility's efficient production of energy and capacity will displace higher emitting generators. Emissions of air pollutants by other generators as well as production costs throughout the region will be reduced. Importantly, the Facility will reduce regional greenhouse gas emissions by hundreds of thousands of tons while helping to satisfy electric system capacity needs on a long-term basis, and in the short term if reliability needs materialize.

II. CVE REQUESTS A CPCN AUTHORIZING THE CONSTRUCTION OF THE FACILITY

Section 68 of the PSL provides in relevant part:

[n]o . . . electric corporation shall begin construction of a . . . electric plant without first having obtained the permission and approval of the commission.⁴

The Commission has interpreted PSL Section 68 and the criteria listed in 16 NYCRR § 21.3 as requiring an applicant for a CPCN to provide to the Commission “a description of the plant to be constructed and of the manner in which the cost of such plant is to be financed, evidence that the proposed plant is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.”⁵

CVE intends to develop, finance, construct and operate the Project as a merchant facility without relying upon cost-of-service rates set by either a Federal or State regulatory entity. It intends to sell capacity, electricity, and ancillary services exclusively through the wholesale

⁴ N.Y. PUB. SERV. LAW § 68 (McKinney Supp. 2011).

⁵ See Case 07-E-1343, *Marble River, LLC*, Order Granting Certificate of Public Convenience and Necessity, and Providing For Lightened Regulation (June 19, 2008) at 11; Case 07-E-0138, *Canandaigua Power Partners, LLC*, Order Granting Certificates of Public Convenience and Necessity, Providing For Lightened Regulation and Approving Financing (Aug. 16, 2007) at 13.

competitive markets administered by the New York Independent System Operator, Inc. (“NYISO”) or through competitive requests for proposals (“RFPs”). Neither CVE nor any of its affiliates have any retail customers in the State. The Commission has previously found that the scrutiny applicable to monopoly utilities may be reduced for lightly regulated companies like CVE that operate in a competitive environment. As a result, the Commission need not make an in-depth analysis of proposed financing. Captive New York ratepayers cannot be harmed by the terms of CVE’s financing because CVE bears all the financial risk associated with its financial arrangement.⁶

A. The Petitioner

The Facility will be constructed, owned and operated by CVE, a limited liability company and single purpose entity formed in 2009 under the New York Limited Liability Company Law. CVE is an affiliate of Advanced Power AG (“AP”), a leading energy development company headquartered in Zug, Switzerland, with its central offices in London. AP’s North American operations are managed by its Advanced Power Services (NA) Inc. subsidiary, located in Boston, Massachusetts. A certified copy of the CVE certificate of formation is attached as Exhibit 2.

AP’s management has considerable experience with plant operations and has developed more than 9,400 MW of power generation projects worldwide. Through various subsidiaries AP has developed a 420 MW facility in Slovakia, which went into commercial operation in 2011, and a 420 MW facility in Belgium, which went into commercial operation in 2011. Projects currently under development include: a 1,200 MW combined-cycle gas-fired generation facility

⁶ See Case 10-E-0197, *NRG Astoria Power LLC*, Order Granting Certificate of Public Convenience and Necessity, Providing For Lightened Regulation and Approving Financing (Jan. 24, 2011) at 19–20; Case 10-E-0281, *Connecticut Municipal Electric Energy Cooperative*, Order Providing for Lightened Regulation and Approving Financing (Oct. 14, 2010) at 12–13.

in Germany, a 1,200 MW combined-cycle gas-fired generation facility in the Netherlands, a 920 MW combined-cycle gas-fired generation facility in Hungary, a 920 MW project in Belgium and a 350 MW combined-cycle gas-fired generation facility in Massachusetts.

AP has entered into a Joint Development Agreement with a subsidiary of General Electric Company, GE Energy LLC (“GE”), for the development of the CVE Facility pursuant to which GE is the preferred major equipment supplier for the CVE Facility. GE, with major operations in New York’s Capital Region, is one of the world’s leading suppliers of power generation and energy delivery technologies. For the CVE project, GE will supply the CVE Facility with GE’s latest 7FA gas turbine technology and highly efficient steam turbines. GE’s manufacturing facility in Schenectady would produce the steam turbines for this project. GE will have a continuing service agreement with CVE after the Facility is built, providing maintenance services for the Facility’s equipment.

Additionally, AP has signed a five-year agreement with GE, through which AP will develop additional combined-cycle gas-fired generation plants with GE in North America.

AP has a similar development agreement with a subsidiary of Siemens AG, another global leader in power plant technology, whereby AP develops gas-fired power generation projects in Europe utilizing Siemens equipment.

The collective experience and expertise of AP and its international industrial partners ensures that the CVE Facility will be developed, built and operated to the highest possible standards in the power industry utilizing clean, efficient, state-of-the-art generation technology.

At the closing of the construction financing of the Project, CVE plans to bring in a major institutional equity source to provide substantial equity investment in the CVE Facility. Project

debt will be obtained from commercial banks or major energy funds. Project costs are expected to be approximately \$1.4 billion.

B. The Facility

The Facility will generate approximately 1,000 MW of electricity, fueled only by natural gas. The CVE Facility will use “combined cycle” generation technology, one of the most efficient technologies for producing electricity. The Facility will comprise three combined-cycle units, each consisting of a combustion turbine generator, a heat recovery steam generator (“HRSG”) with supplemental duct firing, and a steam turbine generator.

Auxiliary equipment will include a low nitrogen oxide (“NO_x”) natural gas-fired auxiliary boiler needed to keep the HRSGs warm during periods of turbine shutdown and to provide sealing steam during startups, and four diesel-fired blackstart generators, each with a maximum power rating of 3 MW. The four blackstart generators will be used to restart the Facility in the event of a total power loss on the local or regional transmission grid.

The Facility will be equipped with state-of-the-art emissions control technology, including dry low NO_x burners and selective catalytic reduction technology to control emissions of NO_x, and an oxidation catalyst to control carbon monoxide and volatile organic compounds emissions. A continuous emissions monitoring system will be utilized to ensure and document Facility compliance with applicable emissions standards.

Water use will be minimized by the use of air-cooled condensers. Process water will be supplied from new, on-site deep bedrock wells which have been tested to provide adequate water supplies for the Facility. In addition, a roof-top rainwater capture system will be utilized to supplement water needs and a zero liquid discharge system will recycle and reuse water

internally, reducing the need for process water and ensuring that no process wastewater will be discharged.

There will be several storage tanks on-site, including a 1,000,000 gallon raw water storage tank, used to supply the Facility's water needs and for fire protection; a 250,000 gallon demineralized water storage tank; and two 30,000 gallon aqueous ammonia storage tanks. A secondary safety containment area, designed to hold 110% of the entire volume of the tanks, will be provided around the ammonia storage tanks. There will also be on-site storage of small quantities of ultra-low sulfur diesel ("ULSD") fuel and lubricating oils. ULSD storage will be limited to the fire pump's integrated 650 gallon fuel tank and the four emergency blackstart generators, each with an integrated 1,000 gallon fuel tank. All tanks, equipment and vessels containing ULSD fuel and/or lubricating oils will be located inside a concrete safety containment, sump or curbed dike area for spill control and management.

The electricity generated from the Facility will be transmitted via two proposed 700 foot, on-site, overhead 345 kilovolt ("kV") lines that will be built and connected to the existing Consolidated Edison Company of New York, Inc. ("ConEdison") 345 kV electric transmission line located adjacent to the northern property line of the Facility. A new switchyard and substation, incorporating gas-insulated switchgear to minimize plant footprint and impacts on the Project site, will be built on-site at the Facility.

Clean burning natural gas will be the sole fuel for the Facility, transported via a new 500 foot, 12 inch gas pipeline from the Iroquois Gas Transmission ("Iroquois") natural gas pipeline, just north of the Facility. Iroquois will install the new gas service line and will contract with CVE to provide firm gas transportation to the site. A firm transportation contract will ensure that delivery of the Project's fuel supply is given priority, even in times of gas curtailment.

Use of natural gas as the sole fuel also lowers the environmental impacts of the Project compared to the burning of back-up fuel oil. Environmental impacts that are avoided include air emissions and water use associated with the burning of fuel oil, additional truck traffic required to deliver fuel to the site, and potential safety and environmental issues associated with storage of more than two million gallons of oil over a sole source aquifer and adjacent to the Great Swamp Critical Environmental Area. Combustion of fuel oil in the turbines would result in an increase in emissions of sulfur dioxide (“SO₂”), NO_x and particulate matter including fine particulates (“PM_{2.5}”). Together with the firm gas supply contract, avoiding these environmental impacts and risks outweighs the potential benefits of using back-up fuel on a limited basis.

Facility Site and Location

The site for the Facility was selected because it is located adjacent to a ConEdison electric transmission line and an Iroquois natural gas pipeline, its distance from residential dwellings, favorable site characteristics, and zoning and environmental considerations. The Facility will be located on approximately 131 acres,⁷ bordered by New York State Route 22 to the east; to the south by industrially zoned property owned by Howlands Lake Partners, LLC; to the west generally by the Swamp River and a Metro-North rail line, which transects the 131-acre parcel in a north-south direction. To the north is the aforementioned existing ConEdison electric transmission right-of-way, to which the Facility will be interconnected and which right-of-way also contains the aforementioned Iroquois natural gas pipeline, which will provide fuel to the Facility. See site location map, attached as Exhibit 3.

The property, for which CVE holds a long-term option to purchase, is within the Town of Dover’s Industrial/Manufacturing District that permits industrial and related uses. See Exhibit 3.

⁷ The acreage will increase to 185 acres once a newly-acquired land option is exercised, discussed later in this Petition.

CVE will use an off-site laydown area during construction of the Project to reduce environmental impacts to wetlands adjacent to the main plant site as well as to maintain a larger tree buffer around the Project site. There are no endangered species on the Project site or on the laydown area.

CVE has met with local residents to discuss and address any concerns they may have and has performed traffic studies to ensure that the laydown area will not create traffic problems. Furthermore, archeological studies have been performed on the laydown area, and no potential impacts have been identified.

Pictures of the project site in its current condition, as well as artist renderings of the completed Project are attached hereto as Exhibit 4.

Facility Public Benefits

The Facility will produce electricity in an efficient and environmentally acceptable manner, which will help satisfy long-term regional energy demand, and reduce dependence on older, less efficient, and higher emitting electric generators that currently serve the New York region. The Facility will use advanced, state-of-the-art power generation technologies, *i.e.*, GE Energy 7FA gas turbines and highly efficient steam turbines, making it one of New York's most efficient energy producers.

NYISO and New York State Energy Benefits:

The Facility will sell its energy, capacity and ancillary services into the wholesale competitive markets administered by the NYISO. In addition, as RFPs are issued by various load serving entities, the Facility will endeavor to submit competitive bids in order to win the RFP and enter into bilateral power sales contracts with the purchasing entity.

The NYISO is responsible for overseeing the safe and reliable operation of the New York bulk electric transmission system. The NYISO issues annually a Power Trends Report, addressing New York's electricity supply, infrastructure and needs. The 2011 Power Trends Report recognizes that the addition of new generating resources over the past decade has relieved what was a near-term critical need for additional electric supply. While the current economic climate has depressed electric demand to some degree over the short-term, the Power Trends Report explains that "New York's power demand is expected to increase as economic growth returns."⁸

The Report recognizes the likely adoption of additional regulatory mandates aimed at lowering carbon dioxide emissions (CO₂), as well as further emission reductions of NO_x and sulfur dioxides (SO₂), which could force the early retirement of older, inefficient electric generating plants. The NYISO states that "the cumulative impact of an array of impending environmental regulations on the continued operation of various existing power plants across New York State requires thorough attention."⁹ Specifically, the Report found that compliance with these new environmental regulations, which are expected to impact 23,957 MW of capacity (more than half the installed generating capacity in the State), could result in unplanned plant retirements that may impact reliability.¹⁰

CVE's generation capabilities can serve as a replacement generation capacity resource for plant closings caused by this wave of environmental regulations designed to reduce CO₂, NO_x, SO₂, PM_{2.5} and mercury emissions. In addition, the Facility's more efficient technology will help displace the operation of existing, less efficient plants. Due to the Facility's superior

⁸ Power Trends, *New York's Emerging Energy Crossroads*, at 18 (2011), available at http://www.nyiso.com/public/webdocs/newsroom/power_trends/Power_Trends_2011.pdf

⁹ *Id.*

¹⁰ *Id.* at 40-41.

low heat rate, it will be dispatched by the NYISO ahead of higher emitting generators, causing those units to operate less frequently, thereby yielding a net air quality benefit across the region.¹¹ While the NYISO recognizes that short-term power needs are not of immediate concern, it believes the State must be vigilant to ensure the power system will continue to reliably, efficiently and economically serve the State's changing energy needs into the future.¹²

The NYISO's 2010 Comprehensive Reliability Plan ("CRP"), which evaluates proposed solutions to address reliability needs over a ten-year planning period, mirrors reliability concerns over reduced generating capacity due to the implementation of new environmental emissions restrictions. Specifically:

[t]he [environmental] programs are estimated to impact 23,957 MW of capacity in the NYCA or 64% of the installed generating capacity NYISO currently relies on to meet the electricity needs of New York consumers. A total of 18,609 MW of capacity is estimated to require a major recapitalization as a result of the cumulative compliance requirements. A total of 12,619 MW of capacity is impacted by the draft BTA policy, which has the greatest estimated compliance costs when compared to the three regulatory air quality programs. The quantity of capacity that requires a significant recapitalization is an order of magnitude greater than the amount of capacity that can be removed from service while satisfying reliability requirements. The environmental initiatives studied could result in LOLE violations if a small portion of the affected capacity were to choose to retire.¹³

CVE's generation capacity will be available to the NYISO to replace the capacity of generation facilities that are forced to shut down as a result of the requirements of these strict new environmental laws and regulations.

¹¹ See, "Cricket Valley Energy Project: Security Constrained Economic Dispatch Analysis," prepared by GE Energy Global Development and Strategic Initiatives, May 20, 2011, attached hereto as Exhibit 6. ("GE Study").

¹² Power Trends, *New York's Emerging Energy Crossroads*, at 18 (2011), available at http://www.nyiso.com/public/webdocs/newsroom/power_trends/Power_Trends_2011.pdf at 6.

¹³ New York Independent System Operator, Inc., *2010 Comprehensive Reliability Plan*, at 18 (2010), available at http://www.nyiso.com/public/webdocs/services/planning/reliability_assessments/CRP_2010_FINAL_REPORT_January_11__2011.pdf.

According to the CRP, the possible retirement of Units 2 and 3 of the Indian Point nuclear power plant would have the greatest and most immediate impact on the reliability of the New York Control Area system.¹⁴ The NYISO states that, in order to mitigate the impact of these retirements, approximately 1,000 MW of capacity would need to be installed in Southeastern New York (NYISO Load Zones G through K) for each retired unit.¹⁵

The Commission has also determined that a facility would serve the public interest even though there was not an immediate capacity need. In the Bayonne Energy Center (“BEC”) Article VII decision, the Commission found that:

[w]ith respect to reliability, the BEC project will provide an additional source of supply in the event that other expected generation and transmission projects are not completed as projected, generation retires or is unavailable as a result of relicensing disapproval, emissions control requirements such as compliance with the Clean Air Act National Ambient Air Quality Standards or the effects of possible changes in state and federal climate change/greenhouse gas emission regulation and legislation, or for any other reason.

* * *

The BEC facility is a merchant project. No ratepayer funding is being sought. Therefore, any and all favorable impacts – reliability, economic or environmental – benefit New York without imposing additional risk on electric ratepayers.¹⁶

In the Hudson Transmission Partners Article VII decision, the Commission reiterated its view that “need” is not determined by whether a proposed facility would satisfy a pressing capacity demand:¹⁷

[f]or our purposes pursuant to PSL Article VII, need is determined by examining numerous factors, including system reliability

¹⁴ *Id.* at 11–12.

¹⁵ *Id.* at 12.

¹⁶ Case 08-T-1245, *Bayone Energy, LLC*, Order Adopting The Terms Of A Joint Proposal And Granting Certificate Of Environment Compatibility And Public Need, With Conditions, And Clean Water Act §401 Water Quality Certification (November 12, 2009) at 13.

¹⁷ Case 08-T-0034, *Hudson Transmission Partners, LLC*, Order Granting Certificate Of Environmental Compatibility And Public Need (September 15, 2010) at 43.

benefits, economic benefits for customers and the State, and the achievement of public policy goals.

The CVE Facility is also consistent with the New York State Energy Plan, which was issued by the State Energy Planning Board in December 2009. The 2009 State Energy Plan identified five policy objectives:

- **Maintain Reliability:** Assure that New York has reliable energy and transportation systems;
- **Reduce Greenhouse Gas (“GHG”) Emissions:** Support energy and transportation systems that enable the State to significantly reduce GHG emissions, both to do the State’s part in responding to the dangers posed by climate change and to position the State to compete in a national and global carbon-constrained economy;
- **Stabilize Energy Costs and Improve Economic Competitiveness:** Address affordability concerns of residents and businesses caused by rising energy bills, and improve the State’s economic competitiveness;
- **Reduce Public Health and Environmental Risks:** Reduce health and environmental risks associated with the production and use of energy across all sectors; and
- **Improve Energy Independence:** Improve the State’s energy independence and fuel diversity by developing in-state energy supply resources.¹⁸

The CVE Facility will assist New York State in achieving the State Energy Plan’s objectives.

The 2009 State Energy Plan explains:

[i]n general, new plants use technologies that are more efficient than those used in older plants. As older facilities retire and newer, more efficient plants come on line, the average heat rate of the power plant fleet in New York is expected to improve. The State’s

¹⁸ State Energy Planning Board, *2009 State Energy Plan: Volume I*, at xiii (2009), available at http://www.nysenergyplan.com/final/New_York_State_Energy_Plan_VolumeI.pdf.

markets and its commitment to continually improve them will facilitate this substitution.¹⁹

The Facility will generate electricity far more efficiently than the existing fleet of plants, and it will do so using natural gas instead of higher emitting fossil fuels like oil or coal. Since the CVE Facility has the ability to provide electricity more cost effectively and efficiently with a significantly lower emissions profile, CVE can play a critical role in achieving the State's Energy Plan goals.

Town of Dover/Dutchess County Economic, Tax and Employment Benefits:

The CVE Project provides an environmental and economic opportunity to rehabilitate an inactive industrial site in Dover, NY, currently burdened with collapsed and abandoned industrial structures and associated debris, and return it to productive use. Between 1932 and 1966 the site was used for refining magnesium from local ore. The Mica Products Corporation operated at the property from 1966 to 1980 and assembled various products requiring lamination of wood bases (laminating Formica onto particle board). Portions of the property were later used by Poly Tech Recycling Corporation for tire recycling operations between the early 1990s through 1996. On January 1, 1996 a fire destroyed the main industrial building on the site, which has never been repaired or replaced. The site also currently houses several buildings most of which are in extreme states of disrepair or collapse. The site is littered with various solid waste materials, such as empty drums, wood pallets and insulation. No plans have been made or proposed to clean up the site and none appear imminent, except for the cleanup and rehabilitation of the site which will be accomplished if the CVE Project goes forward.

The Project was designed to fit as much as possible onto the previously disturbed portions of the site. The Facility design, dictated by the layout of the site, minimizes disturbance

¹⁹ *Id.* at 33.

to wetlands and preserves an existing tree buffer adjacent to Route 22. See Site Plan attached as Exhibit 5.

The Project at this site will result in economic growth for Dutchess County and the Town of Dover without a significant burden on community services or significant adverse impact to the environment. Benefits to the region, in addition to the electricity that will be contributed to the regional grid, include job creation and material contributions to the Town of Dover tax base, as well as the cleanup of an inactive industrial complex.

The Facility will produce significant direct and indirect socioeconomic benefits to the local, regional and state economies. Facility development and construction will require an estimated investment of approximately \$1.4 billion, which will provide a significant benefit to the local, regional and state economies.²⁰ It is expected that an average of 300 construction jobs will be created during the three-year construction of the Facility, with up to 750 jobs during the five-month peak construction period.²¹ Once completed, operation of the Facility will support approximately 28 well-paying permanent jobs in Dover.²²

The investment in the Facility, during both construction and operation, will also result in significant secondary and induced economic benefits to the local, regional and state economy. Facility construction is estimated to generate and include creation of an additional 2,202 full-time equivalent (“FTE”) jobs, including 751 secondary jobs in Dutchess County in a wide variety of industries.²³ Upon completion, the Facility will create an additional 56 FTE jobs.

The Facility will also provide a long-term revenue source for the Town of Dover, Dutchess County and the Dover Union Free School District through an anticipated Payment in

²⁰ CVE Draft Environmental Impact Statement at page 6-102. Available at: <http://www.cricketvalley.com/study-process/documents.aspx> (“DEIS”).

²¹ *Id.*

²² *Id.*

²³ *Id.*

Lieu of Taxes (“PILOT”) agreement. CVE has offered to pay an initial year tax payment under the anticipated PILOT Agreement of \$3.5 million/year. The Town of Dover is expected to receive a multi-million-dollar building permit fee, and the taxes received by the School District are expected to account for 10% of the total annual school budget. When operational, the Facility will represent approximately 15% of the Town of Dover’s tax base.

State and Regional Reduction in Air Emissions:

The Facility is expected to result in significant reductions in air emissions as indicated in the attached studies (Exhibit 6). Reductions will be realized with or without the possible retirement of the Indian Point facilities. Specifically, the GE Study attached hereto as Exhibit 6, prepared for CVE projects decreases in both NO_x and SO₂ emissions across New York State, and a total CO₂ production decrease across the larger region studied. Total annual NO_x production is expected to decrease by an average of 2.05% per year in New York State.²⁴ Total annual SO₂ production is expected to decrease by an average of 1.53% per year in New York State.²⁵ Total CO₂ production across the region is projected to decrease by an average of 0.1% per year as a result of the Facility’s operation.²⁶

State and Regional Energy Production Cost Savings:

The Facility is also projected to produce statewide, and regional production cost savings. Specifically, the GE Study projects potential aggregate production cost savings of \$241 million in New York State between 2015 and 2020.²⁷ These savings represent average annual energy

²⁴ Exhibit 6 at Page 6, Table 3.3.

²⁵ *Id.* at Page 6, Table 3.4.

²⁶ *Id.* at Page 6, Table 3.5. Note that CO₂ increases in New York State due to increased generation within the NYISO and less imports from outside the NYISO, but CO₂ readily transports across state lines and the net CO₂ decrease across the NY-NE-PJM-Ontario region is the more appropriate metric for this regional and global problem.

²⁷ *Id.* at 16, Table 8.1

cost reductions of 0.7% in New York.²⁸ These savings should translate to substantial benefits to end use consumers in New York as well as the surrounding areas.

As noted by the NYISO, the addition of generating resources in the Hudson Valley region, specifically Zone G, would provide significant congestion cost benefits.²⁹ Of the three regions evaluated in the NYISO's 2009 Congestion Assessment and Relief Integration Study ("CARIS"), the Hudson Valley region was projected to experience the greatest amount of congestion costs over the 10-year study period. The Project, therefore, is consistent with the findings in the CARIS Study. The Facility's location south of the often-congested Leeds–Pleasant Valley transmission line corridor also provides additional flexibility for the NYISO to maintain proper voltage in the lower Hudson Valley. See Exhibit 7, Map of New York State Transmission System.

Public Outreach

CVE has conducted an extensive outreach program designed to inform the local communities of the proposed Project and address the community's concerns. Initially, CVE established a project web site (www.cricketvalley.com) in June 2009 to provide the public with Project information. The web site is regularly updated with CVE permit filings, meeting announcements, presentations, and outreach materials. The website contains a comprehensive and easily accessible list of all major CVE filings. In addition, the CVE development team maintains an email list, which is used to inform interested parties of upcoming meetings and events. The website prominently displays the contact information for the CVE community outreach office, as well as dates and locations for upcoming events.

²⁸ *Id.*

²⁹ 2009 Congestion Assessment and Relief Integration Study, *CARIS-Phase I*, (December 2009), available at: http://www.nyiso.com/public/webdocs/committees/mc/meeting_materials/2009-12-16/agenda_04_CARIS_Draft_Report_MC_12_16_09.pdf

CVE has maintained an office at 5 Market Street in Dover Plains, NY since October, 2009. The community outreach office is open Tuesday-Thursday, or by appointment, to respond to public inquiries. It has been used for community Open Houses in December 2009 and July 2011.

CVE has also established local Advisory Working Groups beginning in January 2010. The groups were created to allow residents, environmental groups and other interested parties to be involved in the development process and hear from CVE experts on the latest project developments. The Advisory Working Groups, which meet quarterly at CVE's Dover office, are announced via direct mail to each Dover household and advertisements in local newspapers (see Exhibit 8). The topics discussed included air and water impacts and traffic congestion that may result from the Project. In direct response to concerns expressed by the community, CVE has completed redesigns of the Project, which now incorporate a rooftop water collection system and a zero liquid discharge water system to address the concerns about water quality and volume, and traffic plans to minimize potential traffic congestion during construction of the Project.

CVE has also published a series of newsletters, which are mailed to every household in Dover on a quarterly basis. The newsletters, which were first published in April 2010, recap recent Project news and inform residents of upcoming events and meeting. The newsletters are presented in Exhibit 8. In addition to its December 2009 and July 2011 Open Houses, the CVE team has participated in numerous public outreach meetings. The Dover Town Board hosted the first two meetings in April and May 2009, to introduce the Project prior to any applications being filed. Two DEIS scoping sessions were hosted by the New York State Department of Environmental Conservation ("NYSDEC") in Dover in June, 2010 and public comment hearings

for the DEIS were held in Dover on June 28 and July 9, 2011 as part of the State Environmental Quality Review Act (“SEQRA”) process.

Status of Environmental Review

The comprehensive environmental review of the Facility as set forth in the CVE DEIS demonstrates that the Facility will have no significant adverse impact on the environment, and, in fact, it will improve the environment by reducing air pollutant emissions and cleaning up a dilapidated industrial site. CVE is also actively engaged in acquiring all other permits needed for the construction and operation of the Facility. Development and construction of the Project will require or involve the issuance a number of discretionary federal, state and local regulatory agency notifications, actions, permits and approvals. The Table below lists each permit, review or approval and its current status.

Agency	Permit, Review or Approval	Status
Federal		
USEPA	Prevention of Significant Deterioration (Air Permit)	Application filed 3/26/10. Permit delegated to the NYDEC. Draft Permit issued jointly with DEC 5/25/11.
United States Army Corps of Engineers	Section 404 Permit	Joint Permit filed 1/22/10.
United States Fish and Wildlife Service	Endangered Species Act Section 7 consultation	Correspondence received 7/20/09 and 9/21/09.
FAA	Notice of Proposed Construction or Alteration	Determination of No Hazard received 3/19/10. Extension granted on 9/15/2011.
State		
NYSDEC	Part 201 permit (air quality)	Application filed 3/26/10. Draft Permit issued 5/25/11.
	Title V operating permit (air quality)	To be filed within 12 months following facility operation.

Agency	Permit, Review or Approval	Status
	Title IV Acid Rain permit (air quality)	To be filed in November, 2011.
	Freshwater Wetlands Permit	Draft Permit issued 5/25/11.
	Clean Water Act Section 401 Water Quality Certification	Joint application filed 1/22/10.
	SPDES General Permit for Storm Water Discharges from Construction Activities	Joint application filed 1/22/10.
	Natural Heritage and Endangered Species program consultation	Correspondence received on 6/10/09.
	Oil and chemical storage authorization	Pending
	Notification for large asbestos removal, if applicable	Correspondence received on 9/3/09 and 9/25/09.
Office of Parks, Recreation and Historic Preservation	National Historic Preservation Act Section 106 consultation	No Impact Letter Received.
New York State Department of Transportation	Highway work permit for non-utility work	Pending
New York State Public Service Commission	Section 68 Certificate of Public Convenience and Necessity Section 69 Petition-to be filed	Pending
New York State Department of Transportation	Fire Prevention Permits	Pending

Local		
Agency	Permit, Review or Approval	Status
Dutchess County Health Department	Water Well Construction	Notifications provided for temporary wells on 7/22/09; final well notifications pending.
Dutchess County Health Department	Septic System Approval	Pending
Dutchess County Planning Board	Site Plan Review	Application filed 11/4/09.
Town of Dover Town Board	Special Permit/Site Plan Review	Application filed 11/4/09.
Town of Dover Town Board	Use of Explosives	Application filed 11/4/09.
Town of Dover Planning Board	Subdivision Approval; Erosion/Sediment Control Plan	Petition filed 6/15/11.
Town of Dover Zoning Board	Zoning Text Amendment (fence height, noise)	Petition filed on 6/22/11.
Town of Dover Architectural Review Board	Design Review	Pending
Building Inspector	Building/Occupancy Permits	Pending

CVE has prepared and submitted a DEIS to the NYSDEC. The NYSDEC has assumed lead agency status, with the Town of Dover being an involved agency. On May 25, 2011, the NYSDEC issued a public notice determining that the DEIS was complete, that draft air and wetlands permits were available, and inviting public comment. The written comment period

ended on August 5, 2011 and public hearings on the DEIS were held in Dover on June 28 and July 9, 2011. The NYSDEC Notice of Completeness of the DEIS is attached hereto as Exhibit 9.

In order to assist the Commission's review of the instant Petition, the Project "Single Line Diagrams" are attached hereto as Exhibit 10. Also, a complete listing of engineering codes, standards, guidelines and practices that CVE will conform with when planning, designing, constructing, operating and maintaining the Facility is attached hereto as Exhibit 11.

The Facility is also currently engaged in the NYISO's interconnection process. Its System Reliability Impact Study ("SRIS") has been approved by the Operating Committee and the Facility has been admitted into the NYISO 2011 Class Year.

Electric and Magnetic Fields ("EMF")

There are no Federal standards limiting residential or occupational exposure to EMF. However, the Commission has established interim standards to be applied at the edge of rights-of-way for high voltage electric transmission lines. The interim standard was implemented by the Commission to avoid unnecessary increases in existing levels of EMF exposure. The Commission's electric field strength standards are stated in Opinion No. 78-13 (issued June 19, 1978). It established an interim electric field strength standard of 1.6 kV/m for electric transmission lines at the edge of the right-of-way, with the line at the rated voltage, one meter (approximately 3.28 feet) above ground level.

The Commission has also set forth magnetic field standards under the PSC's Interim Policy Statement on Magnetic Fields, issued on September 11, 1990. This policy sets up an interim magnetic field strength standard of 200 mG, measured at one meter above grade, at the edge of the right-of-way and at the point of lowest conductor sag (*e.g.*, Mid Span). As described

fully in the DEIS at pp. 6-95 – 6-98, the Facility will not create edge-of-right-of-way EMF levels above the limits set forth by the Commission.

Noise

CVE performed an ambient sound survey to quantify and characterize the existing acoustic environment in the vicinity of the Project. The survey found that ambient sound in the community is dominated by traffic on NY Route 22 and local roads. In accordance with the NYSDEC Program Policy Memorandum,³⁰ Facility sound will not be expected to produce a significant impact if it does not raise existing sound levels by more than 6 dB(A) at a given receptor. In addition, to comply with the Town of Dover noise regulations, Facility sound levels at property lines must not exceed the most stringent nighttime sound level limit of 50 dB(A) at the Facility property line.

The noise study prepared for the CVE DEIS concluded that the CVE Project's projected operational sound levels attenuate to below existing ambient levels over a relatively short distance from the Facility, and therefore, are consistent with the levels established in the NYSDEC guidelines.³¹

Even though the Project includes state-of-the-art design and engineering components to mitigate Facility sound, there are locations along two property lines on the site optioned by CVE where noise reduction measures will not reduce sound emissions low enough to comply with the performance standards set forth in Section 145-40 of the Town of Dover Code. While the Project is expected to comply with the most restrictive night time sound level limit (50 dB(A)) of the Town of Dover Zoning Code at the north and east property lines, the noise emissions along the west property line abutting the rail line and the southern property line abutting other

³⁰ NYSDEC Program Policy Memorandum, *Assessing and Mitigating Noise Impacts*, (February 2, 2001), available at: http://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf

³¹ Exhibit 5, DEIS at 6-89.

industrial zoned property may exceed the 50 dB(A) limit. However, these adjacent properties are not occupied by noise sensitive uses. To the contrary, the uses along the potentially non-compliant property lines abut a railroad track where the passengers on the train will not hear any noise from the Facility and a proposed industrial facility, which will generate its own noise.

CVE has addressed this potential non-compliance by petitioning the Town Board to amend the Town of Dover Zoning Code (Section 145-40) to permit the anticipated Facility sound emissions. To ensure that sensitive noise receptors (*i.e.*, residences) are not adversely affected, this amendment would apply only where a proposed industrial use abuts other properties zoned for industrial uses. Such amendment, permitting no sound level to exceed 60 dB(A) between the hours of 8:00 p.m. and 7:00 a.m. – only where abutting an manufacturing/industrial zoning district – recognizes the legislative intention of permitting certain property to be used for industrial uses while not negatively affecting community character and residential uses.

In addition, on August 22, 2011, CVE entered into an agreement with the property owner providing CVE the option to purchase the industrial property to the south of the site. After CVE has exercised the options and purchased the subject parcels, CVE will take the necessary steps with the Town or County to have the adjoining parcels, now under CVE's ownership, merged. The southern-most boundary of the property, therefore, will be moved by approximately 2,000 feet, thereby enabling CVE to meet the Town of Dover's sound level limits at its southern property line.

The Amendment to the Town of Dover Zoning Code has been presented to the Dover Town Board.

III. CVE REQUESTS THAT THE COMMISSION APPLY THE LIGHTENED REGULATORY REGIME FOUND APPROPRIATE FOR COMPETITIVE GENERATING FACILITIES THAT OPERATE WHOLLY IN THE WHOLESALE ELECTRIC MARKETS

CVE requests that it be regulated under a lightened regulatory regime similar to the regimes the Commission has imposed on other independent power producers engaged in the selling of electric energy exclusively at wholesale. The Commission first articulated its policy on the regulatory regime for competitive wholesale providers of electricity in its Wallkill Generating Co., L.P. order (“*Wallkill*”).³² In *Wallkill*, the Commission found it appropriate to modify the regulatory procedures that were intended to apply to monopoly utilities when regulating generators operating in a competitive environment. The Commission established the regulatory requirements that should be imposed on wholesale electric service providers in its orders imposing lightened regulation on Carr Street Generating Station, L.P. (“*Carr Street*”) and AES Eastern Enterprises, L.P. (“*AES Eastern*”).³³

In the *Carr Street* proceeding, the Commission found that the generator was subject to regulation as an electric corporation under Public Service Law § 2(13) and was an entity engaged in the manufacture of electricity under Public Service Law § 5(1)(b). As such, *Carr Street* was subject to the Commission’s jurisdiction under Public Service Law §§ 11, 19, 24, 25 and 26. The Commission also found that *Carr Street* was subject to certain provisions of Article 4, namely, Public Service Law §§ 66(6), 68, 69, 69-a and 70. The Commission noted, however, that consistent with the *Wallkill* Order, *Carr Street* could fulfill its obligation to file an annual

³² Case 91-E-0350, *Wallkill Generating Co., L.P.*, Order Establishing Regulatory Regime (Apr. 11, 1994).

³³ Case 98-E-1670, *Carr Street Generating Station, L.P.*, Petition for an Original Certificate of Public Convenience and Necessity and for a Declaratory Ruling on Regulatory Regime, Order Providing For Lightened Regulation (Apr. 23, 1999); Case 99-E-0148, *AES Eastern Energy, L.P. and AES Creative Resources, L.P.*, Petition for a Declaratory Ruling That Light-Handed Regulation Be Applied Concerning the Petitioner’s Purchase of Certain Electric Generating Assets From New York State Electric & Gas Corporation, Order Providing For Lightened Regulation (Apr. 23, 1999).

report, pursuant to Public Service Law § 66(6), by submitting the information it is obliged to file with the Federal Energy Regulatory Commission. The Commission also stated it would presume that Public Service Law § 70 regulation would not apply to transfers of ownership interests upstream from the parent of the regulated entity as long as there is no potential for the exercise of market power arising out of an upstream power transfer.

Finally, the Commission determined that most of the provisions of Article 6 do not apply to wholesale generators. Nonetheless, because Carr Street was a generator that would have its capacity marketed by an affiliated power marketer, the Commission ordered Carr Street to comply with Public Service Law § 110(2), which gives the Commission access to books and records and the filing of reports in the event the affiliate relationship creates a market power issue. The Commission determined that Public Service Law § 110(1), on reporting of stock ownership, did not apply to Carr Street because it was organized as a limited partnership.³⁴ The Commission also ordered Carr Street to comply with Public Service Law § 119-b, regarding the protection of underground facilities from damage by excavators. As for the remainder of Article 6 requirements, the Commission determined that the provisions either do not pertain to wholesale generators, or would unnecessarily hinder competitive wholesale generators by interfering with their flexibility to structure the financing and ownership of their facilities.³⁵

In the *AES Eastern* Order, the Commission applied the principles announced in the *Carr Street* Order, which was issued the same day. The Commission determined that as a wholesale generator, Articles 1 and 4 of the Public Service Law would be applied to AES Eastern's

³⁴ The Commission, however, has stated that it would apply the reporting of stock ownership requirements of Section 110(1) to non-partnership entities. *See, e.g.*, Case 02-E-0362, *Flat Rock Windpower LLC*, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (June 17, 2004).

³⁵ *Carr Street* at 9.

operations, but with reduced scrutiny and less stringent filing requirements, and that most of Article 6 would not be imposed.

Here, the Commission should subject CVE to lightened regulation for generators selling electricity in wholesale competitive markets. CVE requests that the Commission apply the relevant sections of Article 1 and Article 4 to its operation with scrutiny and filing requirements consistent with commission precedent, and that the Commission not impose Article 6 requirements, except for Public Service Law § 119-b.

CONCLUSION

Based on the foregoing, CVE respectfully requests that the Commission issue an order granting CVE a CPCN authorizing construction of the Facility and declaring that CVE will be subject to the lightened regulatory regime as described above consistent with Commission precedent for similarly situated wholesale generators.

Respectfully submitted,

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By: _____ /s/

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Dated: October 31, 2011
Albany, New York

VERIFICATION

I, Robert De Meyere, do hereby affirm that the contents of this document are true to the best of my knowledge.

Signed: _____ /s/ _____ (e-signature)

Date: _____ October 31, 2011 _____