

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

Via Electronic Mail: supervisoroffice@townofulster.org

Hon. James E. Quigley 3rd, Supervisor
Town of Ulster Town Board
1 Town Hall Drive
Lake Katrine, NY 12449

March 21, 2018

**Re: Lincoln Park Grid Support Center
Comments on Draft Scope**

Dear Supervisor Quigley:

Please accept this comment on the Draft Scope for the Lincoln Park Grid Support Center (the “Project”) Draft Environmental Impact Statement (“DEIS”) on behalf of Catskill Mountainkeeper, Coalition Against Pilgrim Pipelines – New York (CAPP-NY), Kingston Citizens, Riverkeeper, and Scenic Hudson.

The purpose of scoping in the State Environmental Quality Review Act (“SEQRA”) process is to identify and describe the scope of environmental studies that will be conducted to evaluate the potential significant environmental impacts of the proposed Project. The importance of scoping and the critical role of the Lead Agency under SEQRA and its implementing regulations in developing a Final Scope cannot be understated. The Lead Agency must ensure that the Final Scope identifies the potentially significant adverse impacts of the Project; the extent and the quality of information needed to address them and to identify mitigation measures, if any; and the list of reasonable alternatives to be considered in the DEIS.¹ It must also, in response to public comments on the Draft Scope, include the prominent issues that were raised but not included in the Final Scope and address why they were determined not to be relevant or environmentally significant, or state that they have already been adequately addressed.² The Final Scope, in turn, serves as the basis for the Lead Agency’s determination of whether the DEIS is “adequate with respect to its scope and content for the purpose of commencing public review.”³

BACKGROUND

Lincoln Park DG, LLC (the “Applicant”) is proposing to construct a hybrid battery storage and natural gas-engine power plant on an approximately four-acre portion of a 120-acre property in the Town of Ulster. The Draft Scope indicates that the Project includes containerized lithium ion batteries for energy

¹ See 6 N.Y.C.R.R. § 617.8(f).

² *Id.*

³ 6 N.Y.C.R.R. § 617.9(a)(2).

storage along with a reciprocating engine generator system, fueled by natural gas, which will be housed within a steel building and will require two exhausts for combustion emissions within a single stack of 80 feet or less. The fuel combustion will result in primary emissions of carbon dioxide (CO₂), nitrogen oxides (NO_x), and carbon monoxide (CO). The Project includes on-site diesel storage as backup when the gas supply is disrupted. The system will be available to the grid 24 hours a day.

According to the Applicant, the 20 MW facility will provide grid regulation services and short-term energy during periods of peak demand.⁴ The Project's batteries, which will be charged by the reciprocating engine generators or by absorbing excess power from the grid, will be used to manage short-term changes in energy supply and demand, i.e., they will provide ancillary services, including frequency regulation, spinning reserve, and capacity/peaking power.⁵ While the "[b]atteries will often be used for the initial response to a call for services by the grid operator, and many times, the batteries will be able to provide the required services without the power from the engines, [t]he engines will be used when longer-term power is called for by the grid operator."⁶ In addition to such grid support services that aid in reliability, the Applicant asserts that the Project will assist in the integration of variable renewable generation from wind and solar projects.⁷

The Project requires Site Plan Approval from the Town of Ulster Town Board; a Lot Line Adjustment from the Town of Ulster Planning Board; an air emissions permit, State Pollution Discharge Elimination System (SPDES) general permit, petroleum bulk storage permit, and waste oil storage permit from the New York State Department of Environmental Conservation ("DEC"); and coverage under a Nationwide Permit for wetlands disturbance from the U.S. Army Corps of Engineers ("ACOE"), among other approvals.

On February 1, 2018, the Town of Ulster Town Board as lead agency for the SEQRA review of the Project issued a Positive Declaration of Significance, determining that the Project may have a significant adverse impact on the environment and a DEIS must be prepared.⁸ On the same day, the Town issued the Draft Scope for the DEIS for the project.

COMMENTS ON DRAFT SCOPE

Section III. Potential Significant Environmental Impacts

In addition to the areas of environmental concern listed in Section III, it should acknowledge that according to the completed Part 2 of the Environmental Assessment Form (EAF) for the Project, the proposal may also have adverse impacts on Land and Community Character.

Section V. DEIS Scope and Content

⁴ Project Summary, available at: <http://lincolnparkgridsupportcenter.com/>

⁵ Grid Transition White Paper, available at: <http://lincolnparkgridsupportcenter.com/>

⁶ Grid Transition White Paper, available at: <http://lincolnparkgridsupportcenter.com/>

⁷ <http://lincolnparkgridsupportcenter.com/>

⁸ See Town of Ulster Town Board, Notice to Involved Agencies and Positive Declaration adopted February 1, 2018.

We suggest that the following elements be separate sections of the DEIS and not included under the umbrella of the Executive Summary for clarity:

- DEIS Cover Sheet
- DEIS Table of Contents
- List of Required Approvals
 - The list of required approvals should indicate any approvals required from the New York Independent System Operator (“NYISO”), Central Hudson, or other entities for interconnection of the Project to the electric grid.
- List of Involved Agencies
- List of Interested Agencies

Section VI. Description of the Proposed Action

Section C. Description of Project

According to the Applicant, the Project will be one of the first in the country to combine reciprocating engine generators with batteries.⁹ Therefore, a thorough description of the Project and its components, as well as how it operates, its intended use and estimated hours of operation, and how it is anticipated to fit into the context of the New York energy system is critical to the public’s and involved agencies’ understanding and analysis.

The project description should also include a description of the process and approvals required for interconnection of the Project to the electric grid.

Section E. Purpose/Need/Public Benefit

SEQRA regulations require that the description of a proposed action in a DEIS include “its purpose, public need and benefits, including social and economic considerations.”¹⁰ This is required because, under SEQRA, “the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy,” and those factors must “be considered together in reaching decisions on proposed activities.”¹¹ In reaching a decision on an application, each involved agency is required to “weigh and balance the public need and other social, economic and environmental benefits of the project against identified environmental harm.”¹² Therefore, it is extremely critical that the DEIS for the Project include a robust and clear discussion of the purpose or objectives of the action, including any public need for, or public benefits, including social and economic considerations. According to the SEQRA Handbook:

[F]or an agency to approve an action with potential to create significant environmental damage, or to adversely affect important environmental resources, the agency must be able to conclude that the action which the agency will approve, including any conditions attached to that approval,

⁹ Grid Transition White Paper, available at: <http://lincolnparkgridsupportcenter.com/>

¹⁰ 6 N.Y.C.R.R. § 617.9

¹¹ 6 N.Y.C.R.R. § 617.1(d); see also N.Y. ECL § 8-0103(7).

¹² SEQRA Handbook, p. 119, available at: <https://www.dec.ny.gov/permits/6188.html>.

avoids or minimizes anticipated impacts to the maximum extent practicable, or that public needs and benefits outweigh the identified environmental harm. *Where public needs and benefits cannot be shown to outweigh the environmental risks of a project, the agency may be compelled to deny approvals for the action.*¹³

The Final Scope must require that the DEIS contain sufficient information on the projects purpose, need and public benefits in order for the Lead Agency and all involved agencies to assess the Project's costs and benefits and make the findings required under SEQRA.

Section VII. Existing Conditions/Potential Environmental Impacts and Mitigation Measures

In addition to the areas of environmental concern A through P listed in the Draft Scope, the DEIS must include an analysis of the existing conditions, the impacts and the mitigation measures for the Project's effects on Community Character.

Section VII.G. Visual Resources

The Draft Scope identifies that a visual impact analysis of the Project would be conducted. This analysis should include a zone of visibility map based on topography alone (without considering trees, vegetation or buildings), and identification of critical receptors such as the Hudson River, historic sites and districts, parks and high volume transportation routes, residential areas from which the facility would be visible.

Critical receptors must include multiple viewpoints from the Hudson River National Historic Landmark District and the Estates District Scenic Area of Statewide Significance (SASS) in Dutchess County, across the Hudson River from the Project. Preliminary visual assessments indicate that there may be visual impacts to important visual receptors in these areas, such as the Ferncliff Fire Tower in Rhinebeck and Amtrak's Empire Corridor along the shoreline. In addition to the Historic District and the SASS, visibility from other historic districts or sites, parks, recreation areas, scenic byways, wild and scenic rivers and residential neighborhoods should be considered.

The DEIS should include computer-generated simulations of the project site from receptors that fall within the zone of visibility as indicated on the aforementioned map.

In addition to the visual impact of the plant and its exhaust stack, as discussed in the Draft Scope, the Final Scope should require that the DEIS must also evaluate the visual impact of the cooling tower plume that would result from the exhaust. The worst-case meteorological conditions and varying wind directions and conditions should be modeled. The visual impact of the plume may extend over a significantly larger distance than the exhaust stack itself.

The visual impact analysis should consider that Project elements that "break the ridgeline", i.e., are visible above the treeline and against the sky, are generally more problematic than elements viewed against a hillside or trees. In addition, visual impacts should be evaluated from several areas where relatively large numbers of people experience historic sites or engaged in recreation or travel might be

¹³ SEQRA Handbook p. 120 (emphasis added); *see also* 6 N.Y.C.R.R. 617.11(d).

able to view the Project. It is also important to consider the duration of the view a person is likely to experience.

Section VII.I Land Use and Zoning

Compliance with Zoning Height Restrictions

The Final Scope should require that the DEIS include a demonstration of 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.¹⁴ In addition, there must be a setback from the property line equal to the height.¹⁵ 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 fifty percent (50%) of the roof area and the height of which does not exceed 10 percent (10%) of the building height.”¹⁶ The DEIS should describe whether the exhaust stack will exceed these requirements for the height restriction.

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.¹⁷ The Comprehensive Plan also recommends that development in the Town be limited on steep slopes of greater than 15%.¹⁸ The EAF states that 60% of the site has slopes of 15% or greater. The EIS should investigate whether any of the developed area would be within the steep slopes.

Section VII.N Noise and Air Resources

The Final Scope should require that the potential significant noise and air quality impacts of the Project should be assessed in separate sections of the DEIS. The Final Scope should also require an analysis of any potential odor impacts on the surrounding receptors.

Air Emissions and Climate Change

The DEIS must undertake a thorough evaluation of cradle-to-grave greenhouse gas (“GHG”) emissions, taking into account the facility’s maximum potential to emit based on the plant operating 24/7. The Draft Scope states that the facility will “be available to the electric grid 24 hours a day and will operate based on the needs of the grid,” so the impacts of this maximum potential operation must be evaluated in the DEIS.

¹⁴ Town of Ulster Zoning Code § 190-69.

¹⁵ Town of Ulster Zoning Code § 190-21.B.

¹⁶ 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.

¹⁷ 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

¹⁸ Comprehensive Plan Section 5.7.1.

All air emissions studies should be completed for both the burning of natural gas and the burning of diesel. In the absence of a permit limitation on the use of the diesel, it is possible that the Project could run primarily or exclusively on diesel if the natural gas supply is disrupted.

Section VII.O. Fiscal Impact Analysis

The fiscal impact analysis in the EIS should include a cost-benefit analysis for each jurisdiction impacted by the proposed project. Any fiscal benefits in the form of taxes or otherwise should consider any potential subsidies or payment in lieu of taxes (PILOT) agreements and costs should include the expense of emergency response and the impacts on the property values of the residents living adjacent to the plant site.

The Applicant's assertion that it will not increase costs to ratepayers, as it is privately funded, should be supported by an analysis in the DEIS.¹⁹

The economic impacts of the Project on the operation of the grid and other generators, including the Applicant's claim that it will "reduce the system's reliance on coal and gas plants by providing cleaner, more efficient, and *lower cost reliability services*" must be evaluated in the DEIS.²⁰

Section IX. Alternatives Analysis

The Draft Scope provides only that the required "No Action" alternative will be addressed in the DEIS, and that "the availability of alternative sites" and "alternative site plans and facility design" will be discussed. This description of alternatives in the Draft Scope fails to meet the requirements of SEQRA.

The alternatives analysis is the heart of the Environmental Impact Statement ("EIS"). SEQRA regulations require that the final written scope for an EIS include "the reasonable alternatives to be considered."²¹ The EIS must describe and evaluate "the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor."²² This includes alternative sites, technologies, uses, scale and types of action.²³ The "description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternative discussed."²⁴ The alternatives analysis in the EIS is critical because under SEQRA, the lead agency and all involved agencies must make findings and "certify that consistent with social, economic and other essential considerations *from among the reasonable alternatives available*, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable."²⁵

The alternatives analysis in the EIS for the Project should consider whether its stated purpose to provide frequency regulation and integration of variable renewable generation could be achieved with fewer environmental impacts by utilizing other technologies and project types, including a standalone battery storage facility, and a solar facility coupled with battery storage. The viability of these proposals should

¹⁹ See <http://lincolnparkgridsupportcenter.com/>

²⁰ See <http://lincolnparkgridsupportcenter.com/> (emphasis added).

²¹ 6 NYCRR § 617.8(f)(5)

²² 6 NYCRR § 617.9(5)(v)

²³ Id.

²⁴ Id.

²⁵ 6 NYCRR § 617.11(5).

be considered in the context of New York State's upcoming rulemaking to incentivize battery storage facilities in the state to reach the target of 1500 MW of energy storage by 2025.

The Applicant's parent company, Glidepath, has an existing project portfolio which is made up entirely of standalone battery storage facilities and renewable energy facilities with or without a battery storage component.²⁶ The Applicant has never constructed nor operated a gas-fired power plant, and has acknowledged that the Project is one of the first of its kind in the country.²⁷ The Applicant has stated publicly that it is not pursuing a standalone battery facility or a renewable project on this site because it is not economically viable at this time, and claims that the gas-fired engines are necessary to make the project reliable and successful.²⁸ However, the economic landscape for storage facilities in particular is on the cusp of drastic change in New York State. Whatever the current economics of such a project appear to be at this moment in time, they will undoubtedly be much different 1-2 years from now.

On February 25, 2018, the Federal Energy Regulatory Commission ("FERC") issued Order 841, which requires grid operators—in New York, NYISO --- to revise their tariffs to establish new market rules to remove barriers to energy storage.²⁹ Order 841 is designed to allow storage facilities to capture multiple revenue streams.³⁰ NYISO must now move forward with rule changes to effectuate FERC Order 841.

At the state level, Governor Cuomo announced in January 2018 that New York will target 1,500 MW of energy storage by 2025 and directed New York agencies and authorities to generate a pipeline of storage projects; implement regulatory changes in rates and wholesale energy markets; incorporate storage into large-scale renewables RFPs; and reduce regulatory barriers to storage.³¹ Accordingly, the Public Service Commission ("PSC") and the New York State Energy and Research Development Authority ("NYSERDA") are working on an "Energy Storage Roadmap" which will identify policies, regulations, and initiatives to grow the energy storage market and lay the near-term foundation to realize the 2025 goal and establish a larger storage goal for 2030. Governor Cuomo also announced that the New York Green Bank will invest \$200 million in financing for energy storage projects and \$60 million for soft cost reduction.³² And NYSERDA's next Large-Scale Renewables solicitation on April 25, 2018 will encourage proposals that cost-effectively pair renewable energy with advanced storage technologies.³³

All of these changes are intended to make building energy storage projects in New York easier and more cost-effective, and are slated to be implemented over the next 1-2 years. Given the pending SEQRA process and numerous federal, state and local permitting processes for the Project, it is very unlikely the Project could be built and operational before 2020. By that time, the economic barriers to siting an energy storage facility without a gas-fired power plant will almost certainly be gone. It is in this

²⁶ <http://glidepath.net/projects/>

²⁷ Grid Transition White Paper, available at: <http://lincolnparkgridsupportcenter.com/>

²⁸ Grid Transition White Paper, available at: <http://lincolnparkgridsupportcenter.com/>

²⁹ https://www.ferc.gov/media/news-releases/2018/2018-1/02-15-18-E-1.asp#.WqrdzIeG_IU

³⁰ New York Energy Storage Services Fact Sheet, Spring 2018, available at: <https://www.ny-best.org/sites/default/files/resources/Fact%20Sheet%20Spring%20Update.pdf>

³¹ <https://www.governor.ny.gov/news/governor-cuomo-unveils-20th-proposal-2018-state-state-new-yorks-clean-energy-jobs-and-climate>

³² *Id.*

³³ <https://www.nyserda.ny.gov/About/Newsroom/2018-Announcements/2018-03-09-Governor-Cuomo-Announces-Formal-Request-for-New-York-Exclusion-From-Federal-Offshore-Drilling-Program>

context that the range of reasonable alternatives assessed in the DEIS must be determined. Therefore, at a minimum, a standalone energy storage facility and a renewable energy facility with a storage component should be alternatives assessed in the DEIS and required in the Final Scope.

Section XII. Effects on the Use and Conservation of Energy Resources

As a new natural gas generation plant in the region, the project will impact the local use and conservation of energy. This impact must be evaluated in the DEIS. The applicant claims that the project will help integrate renewable energy resources onto the grid and therefore will help reduce GHG emissions. This claim must be thoroughly and objectively evaluated, from both a local and statewide perspective. As discussed above, alternatives that could serve the same purpose of integrating renewable energy resources onto the grid without requiring a gas-fired power plant should be thoroughly evaluated.

In addition, SEQRA regulations require that “for an electric generating facility, the [EIS] must include a demonstration that the facility will satisfy electric generating capacity needs or other electric system needs in a manner reasonable consistent with the most recent state energy plan.”³⁴

Additional Analyses Required in the DEIS

Reasonably Foreseeable Catastrophic Impacts

The SEQRA regulations require that reasonable foreseeable catastrophic impacts must be acknowledged and identified in the DEIS.³⁵ The Project, which will consist of a large (20 MW) battery storage system, reciprocating engine generators, interconnection to both the electric and natural gas transmission systems, and a diesel storage facility could suffer an emergency resulting in catastrophic impacts that could cause the destruction of natural resources and be life threatening to a number of individuals. Therefore, a requirement that the DEIS address such potential impacts should be included in the Final Scope

Thank you for your consideration of these comments.

Respectfully submitted,

Sue Rosenberg, Coalition Against Pilgrim Pipelines – New York (CAPP-NY)

Ramsay Adams, Executive Director, Catskill Mountainkeeper

Rebecca Martin, Director, KingstonCitizens.org

Julia Farr, Executive Director, Kingston Land Trust

Jessica Roff, Director of Advocacy and Engagement, Riverkeeper, Inc.

Hayley Carlock, Esq., Director of Environmental Advocacy, Scenic Hudson, Inc.

Maxanne Resnick, Executive Director, Woodstock Land Conservancy

³⁴ 6 N.Y.C.R.R. § 617.9(b)(5)(iii)(e).

³⁵ 6 N.Y.C.R.R. § 617.9(b)(6).