

GEORGE M.  
JANES &  
ASSOCIATES

*PLANNING with  
TECHNOLOGY*

250 EAST 87TH STREET  
NEW YORK, NY 10128

[www.georgejanes.com](http://www.georgejanes.com)

T: 646.652.6498  
F: 801.457.7154  
E: [george@georgejanes.com](mailto:george@georgejanes.com)

January 31, 2011

Mr. Patrick Hines  
McGoey Hauser & Edsall Consulting Engineers  
33 Airport Center Drive Suite 202  
New Windsor, NY 12553

RE: SEQRA  
Review of November 2010 PFEIS  
CPV Valley Energy Center  
Town of Wawayanda  
Orange County, New York

Dear Mr. Hines:

My office has conducted a review of the Preliminary Final Environmental Impact Statement (PFEIS) for the CPV Valley Energy Center dated November 2010. This review provides my opinion as to its adequacy and completeness, primarily regarding the topics of visual impacts and community character.

### **Summary**

As you know, this PFEIS includes the plan to place the transmission wires underground from the facility to the NYPA's Marcy South transmission line. This is a major change for the better and the PFEIS reflects the applicant's intent to build the project with the wires buried.

Nevertheless, there have been changes made in this PFEIS that reflect significant changes in the description of the project's impacts on visual resources. Language added since the February 2010 Working Draft asserts that the project will have no significant visual impacts, which is contrary to the disclosures made in the DEIS. Many of my suggested changes either remove or alter this new language.

Other language in the PFEIS seems to hedge regarding the underground placement of the transmission wires, as if they may come back and place them above ground should the applicant encounter difficulties placing them underground. My comments change this language to make it clear that the underground option is what the applicant is pursuing.

I have also made other more minor suggested changes regarding completeness. All suggested changes appear in the Appendix to this letter.

### **Changes made to the FEIS: The elimination of previously disclosed impacts**

Many changes have been proposed in this PFEIS since the Working Draft reviewed in 2010. The project has changed, and so the PFEIS must change to reflect the placement of the transmission wires underground. Further, this PFEIS includes responses to comments on the visual assessment for the overhead transmission wires, one of the so-called “Additional Studies.” Other changes in this PFEIS reflect comments provided on the 2010 Working Draft.

The most material change in the PFEIS is the addition of language that disclaims previously disclosed impacts. This PFEIS proposes language that says neither the facility nor the overhead wires will create any significant visual impacts,<sup>1</sup> contradicting the impacts disclosed in the DEIS.

In summary, the PFEIS has used the following logic: visual resources are by definition highly valued views. The views that experience large visual impacts are not highly valued views, and consequently, cannot be visual resources. If these views are not visual resources then there can be no significant visual impacts.

The NYSDEC instructs that significant visual impacts only happen when visual resources are impacted. The NYSDEC lists visual resources of statewide concern, but there are none that are significantly impacted by this project. But the NYSDEC does not define visual resources of local concern and, in practice, lead agencies define them as they wish. The Planning Board identified locally important visual resources and they were studied in the DEIS;<sup>2</sup> it is only now with the PFEIS is it suggested that these viewpoints are not visual resources.

Further, not only are these nearfield viewpoints<sup>3</sup> identified as visual resources in the DEIS, the DEIS discloses that “The Facility when viewed from this distance will have substantial unmitigateable visual impacts from this viewpoint.”<sup>4</sup> As a result, to say in the FEIS that there are “no significant visual impacts to local or state visual and aesthetic resources”<sup>5</sup> is contradictory to the impacts disclosed in the DEIS, which I believe constitutes an error in fact.

### **Basis for the change in findings of significance**

The applicant is using language that my office either wrote or approved of as the basis for this change in the PFEIS. The visual analysis for the above ground wires says that the visual impacts of the overhead wires were mitigated because the existing quality of the viewpoints is not high. The concept behind this comment

---

<sup>1</sup> “The visual impact assessment has concluded that there are no significant visual impacts to local or state visual and aesthetic resources of concern.” Page 3-20.

<sup>2</sup> Pgs 5-6 and 5-7 of the DEIS.

<sup>3</sup> These include I-84, Route 17, Horizons at Wawayanda, and others.

<sup>4</sup> Pg 5-20. The quote is regarding the view from I-84. Similar language appears elsewhere describing other nearfield viewpoints.

<sup>5</sup> Pg 3-20.

was that these were not views that were sought out because of their visual quality, but rather they were experienced incidentally. These are valid considerations because the quality of a view matters, and it is reasonable to treat a clearly locally treasured view more carefully than a view from the Interstate that happens to be close to the project. This language in the Additional Study was adopted with much back and forth between my office and the applicant.

In an email to the applicant's consultant that discussed this language I wrote regarding the nearfield views that experience large visual impacts:

*The importance of these views, and thereby the significance of the mitigating factor of their existing quality, can only be determined by the Planning Board, as these are views of local concern. I'm fine saying that the impact is "somewhat" mitigated by the quality and duration of the view, but what "somewhat" means is up to the Planning Board. Consequently, it is important for you to disclose the significant visual impacts in the tech memo and let the Planning Board discuss the significance of the mitigating factors of the quality/duration of the view in the FEIS. One of the strengths of the DEIS is how clearly you've disclosed the significant visual impacts of the action. We can't stop now with this tech memo.<sup>6</sup>*

Considering the SEQR record, no one can assume that the visual resources of local concern identified by the Planning Board are anything but what they are described in the DEIS. Most of my recommended changes to the PFEIS are an effort to purge this kind of language, and to acknowledge clearly that the project has been changed to include burying the wires as a way of mitigating many of the visual impacts already disclosed. Even though the project has changed, making these changes in the PFEIS – that is, clearly defining what is significant and what is not – is still important, as the applicant may simply build them aboveground if they encounter obstacles since the PFEIS claims they have no significant environmental impacts.

### **Comments on PFEIS**

The comments and recommended changes in the PFEIS are presented as an Appendix to this letter and most of them address this aforementioned concern. When compared to my April 14 comments on the Working Draft, I have tried to be more specific regarding my changes. For example, instead of saying a section was non-responsive or needed to be rewritten, in many cases I suggested actual language for the FEIS.

Many of my recommendations from my April 14 comments are reflected in this PFEIS. There are many others that are not. The ones that were not adopted include both minor stylistic suggestions and major omissions. I am no longer suggesting minor stylistic changes that were not previously adopted in an attempt to focus on critical content changes that are needed before this PFEIS can be finalized.

---

<sup>6</sup> January 21, 2010

Should you or the applicant have any questions or comments regarding my recommendation, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "G. M. Janes". The signature is fluid and cursive, with the first name "George" and last name "Janes" clearly distinguishable.

George M. Janes, AICP  
Principal

Attachment: Comments on November 2010 PFEIS CPV Valley Energy Center

## **Appendix: Comments on November PFEIS CPV Valley Energy Center**

### **Section 2**

Page 2-3 delete: *The SEQRA DEIS and FEIS concluded that there are no significant visual or other environmental impacts associated with the option of installing the electric transmission line above ground within the Project site. However, as noted above,*”

### **Section 3**

Page 3-20 delete: *The visual impact assessment has concluded that there are no significant visual impacts to local or state visual and aesthetic resources of concern.*

### **Section 4**

#### **Section 4.1: Missing elements**

Section 4.1 summarizes comments to each section of the EIS and the responses made therein. There is no summary for Community Character or Alternatives even though there are several comments which address these areas. There are also no summaries of Construction Impacts or Other Environmental Impacts, although there are not many comments on these topics. By omitting Community Character and Alternatives it appears that there were no substantive comments in these sections, when, in fact, there were.

#### **Section 4.1.6 (pg 4-2):**

This section summarizes the visual comments on the DEIS. In my earlier comments on the February 2010 version of the PFEIS, I stated that this section needed to be “re-written” because it only discussed comments regarding the transmission wires, not the facility itself. The PFEIS added a sentence that mentioned the facility, and another sentence to address the fact that the intention is to put the wires underground.

To make this section consistent with the DEIS and to more accurately summarize the DEIS comments, I have edited the text found in the PFEIS. Section 4.1.6 should be replaced in its entirety with the following:

*Review comments were received on the DEIS that addressed the Facility’s potential visual impacts and overall visibility from residences near the Project site, and the visibility of the Facility while driving along I-84. Additional comments addressed the visibility and impact of the project’s electrical transmission wires.*

*In response to the comments regarding the electrical transmission wires, additional photosimulations were prepared from a number of viewpoints to determine the relative visibility and visual impact of the Facility with the above ground electric transmission line. Locations from which photosimulations were prepared included I-84, Horizons at Wawayanda, Balchem Corporation, Bates Gates Road, and Kirbytown Road. Section 3.5 provides a summary of the analysis, and Appendix 4 to the FEIS includes a technical memorandum presenting the results and photosimulations. While components of the Facility would be partially visible from the locations evaluated, the additional photosimulations showed visual impacts of the electrical transmission would be mitigated by the general character of the Facility site and surrounding area and because the views would be fleetingly experienced.*

*Nevertheless, CPV Valley is pursuing the option of installing the electric transmission lines underground within the Project site as discussed in Section 2.3 of the FEIS, which would entirely mitigate all visual impacts of the above ground transmission wires.*

Response to comment PB1-4 (pg 4-55):

This response asserts that since the project complies with the new zoning, it must comply with the Comprehensive Plan. The project may comply, but it does not conform and will require at least one area variance and either a variance or a special use permit for the stacks. These variances would be substantial as both the building height and the height of the stacks are approaching twice the allowed maximum.

Using the same logic, it can be easily argued that the since the project requires such substantial area variance(s) from zoning so recently adopted to implement the Comprehensive Plan, that it cannot be consistent with Comprehensive Plan. A more appropriate response should be written that relies more heavily upon the Comprehensive Plan's economic development components to support consistency. Compliance with zoning can be mentioned, but it should not be central to the argument. Many comments (H16-1, L14-1, L11-1, L9-1, L8-8, others) refer to Comprehensive Plan consistency and any change made to the response to this comment should be made to the similar responses throughout the document.

Response to comment PB1-17 (pg 4-57):

Delete the last sentence of the second paragraph.

Alter the third paragraph to read:

*CPV Valley is pursuing the option of installing the electric transmission lines underground within the Project site as discussed in Section 2.3 of the FEIS. With the underground option, the poles and wires associated with an above ground installation would not be visible. As a result, the transmission wires would have no impact on the perception of this area as a gateway to these towns.*

Since the underground option has been selected the rest of the response can be deleted because it is moot.

Response to comment PB1-18 (pg 4-59):

Delete the second, third and fourth paragraphs. Alter the last paragraph to read: *CPV Valley is pursuing the option of installing the electric transmission lines underground within the Project site as discussed in Section 2.3 of the FEIS. With the underground option, the poles and wires associated with the above ground option described above would not be visible and therefore will not impact Horizons at Wawayanda.*

Response to comment PB1-21 (pg 4-62):

Delete the clause: "Although visual impacts from the above ground lines were determined not to be significant," and start the sentence with the next clause, "CPV Valley . . ."

Response to comment PB 1-22 (pg 4-63):

After the sentence: “Appendix 4 of the FEIS includes photosimulations that show the above ground electric transmission line option and Section 3.0 of the FEIS provides a summary of the results,” add “Nevertheless, CPV Valley is no longer pursuing the above ground transmission line option.”

Response to comment PB1-26B (pg 4-74):

The answer to this comment added qualifiers (shown in italics below) to the first sentence: “The Project, *if constructed and operated properly*, is *not expected* to pose uncontrolled nuisances related to noise, odors, or unsightly uses.” The project will have significant visual impacts as disclosed in the DEIS and the difference between unsightly uses and significant visual impacts should be addressed here. The response should be altered as follows:

*The Project does not pose uncontrolled nuisances related to noise or odors. Regarding unsightly uses, significant visual impacts that cannot be fully mitigated due to the facility’s size have been disclosed in the DEIS, but the facility will not be unsightly; it will be well maintained and landscaped, and the grounds will be kept neat and clear of litter. Most of the site will be kept in its existing state and no unsightly uses including outdoor storage, additional parking lots, waste disposal or similar noxious uses will be allowed on site.*

Response to comment PB2-1 (pg 4-94):

This response remains partially non-responsive, as per my comments of April 14 2010. However, because the project now places the transmission wires underground, the two-page response to this comment should be changed to:

*The subject of this comment, the overhead wires, are now being placed underground, thereby eliminating all of their visual impacts. This change in the project renders the comment moot.*

Response to comment L-2-5 (pg 4-99):

Delete the first clause of the second paragraph: “Although visual impacts from the above ground lines were determined not to be significant,” and start the paragraph with the next clause, “CPV Valley . . .”

Response to comment PB1-58 (pg 4-297):

The first paragraph of this response remains incorrect. Strike the entire response and replace it as follows:

*Community Character is the built and unbuilt environment and the interaction between them, and the socio-economic, historic and cultural conditions of the community. How a project changes Community Character and the significance of those changes are informed by the Town’s Comprehensive Plan, development regulations and other locally adopted plans. The DEIS discloses that “the Project would not change the community character of the area except in limited locations very close to the Project site where views exist.” These limited locations are generally along Route 6 and Interstate I-84 where the Town’s Comprehensive Plan and zoning concentrates non-residential uses, which allows the planned electrical generation use. The Community Character along Route 6 that is recommended for Mixed Commercial land use in the Town’s Comprehensive Plan will change over time as projects—including this one—are proposed, approved, and then constructed. But this is the kind of desired change in character that the*

*Comprehensive Plan calls for and, as such, is not an environmental impact that requires mitigation.*

*Even though much of the land in question is still undeveloped, the proposed Project is consistent with character of existing developments along the Route 6 corridor including: Pannattoni, NYSDOT, Frontier Communications, Tetz's gravel pit/concrete plant, Elvree Thermo-King, and other commercial/industrial uses.*

**Comment L-7-12 & L-6-67 (pg 4-310):**

This comment refers to additional facilities described in Section 18.5. The response to this comment describes a gas interconnect and related elements that might be required in the future. However, the subject of the comment, Section 18.5 of the DEIS states:

*“The Project would interconnect to NYPA’s . . . transmission system . . . via an onsite overhead transmission line and an offsite underground transmission conduit . . . to be constructed between the Project’s step up transformers and the new 145 kV switchyard to be constructed in the eastern portion of the Project’s 122 acre parcel.” [Emphasis added].*

The FEIS needs to address the 145kV switchyard that appears in this section of the DEIS. Add the following paragraph after the existing response:

*CPV Valley is not proposing to construct the 145 kV switchyard mentioned in Section 18.5 of the DEIS. No additional switchyards will be required for this project now or at any time in the future.*

**Comment L-6-70 (pg 4-311):**

This comment continues to reference a security fence which will surround the riser pole. This fence is not shown in the visual simulations of the riser pole, however, nor is it shown in the plans. Since the project has changed to render this comment moot, this response should be changed as follows:

*CPV Valley is pursuing the option of installing the electric transmission lines underground within the Project site as discussed in Section 2.3 of the FEIS. With the underground option, there will be no riser pole to protect.*

## **Section 5**

This section is the response to comments on the Additional Studies. It was not a part of the Working Draft FEIS reviewed in 2010. The responses to these comments appear to have been written before the project was changed to relocate the transmission wires underground. I suggest the following changes, mostly to reflect the change in the project.

**Comment B1 (pg 5-7):**

Strike the response proposed in the PFEIS. Replace with:

*The project has been altered to place the transmission wires underground. This comment describes the aboveground transmission wires which are no longer being proposed.*

Comment B2 (pg 5-8):

Keep the existing response, but add a new second paragraph:

*Nevertheless, this comment describes aboveground transmission wires which are no longer being proposed.*

Comment B3 (pg. 5-9):

Strike the response proposed in the PFEIS. Replace with:

*The project has been altered to place the transmission wires underground. This comment describes the aboveground transmission wires which are no longer being proposed.*

Comment B4 (pg. 5-11):

Strike the response proposed in the PFEIS. Replace with:

*The project has been altered to place the transmission wires underground, which eliminates all visual impacts of the proposed transmission wires. This comment describes this and other mitigation measures.*

Comment B5

There is no Comment B5. Is one missing?

Comment B6 (pg 5-12):

Keep the first paragraph. Strike the remainder. Replace with:

*Interstate-84, Route 17, and Horizons at Wawayanda are not identified as visual resources of local concern in the Town's Comprehensive Plan. Rather, they were identified as visual resources of local concern during the DEIS process. Sections 5.2.3.2 and 5.2.3.3 of the DEIS identify the visual resources of local concern studied for this project and include these viewpoints along with several others.*

*While the quality of the view, how the view is experienced, and the duration of the view may all be mitigating factors when assessing impacts and developing mitigation strategies, these viewpoints must be considered visual resources of local concern because they were so identified during the SEQOR process. Now that the transmission wires have been placed underground, however, any visual impact these viewpoints experience from the transmission wires have been entirely mitigated.*

*Likewise, with the placement of the wires underground, any impact on community character specific to the transmission wires is also entirely mitigated.*

Comment B7 (pg 5-14):

Strike the first clause under Response. Start the sentence with the second clause, "CPV Valley is pursuing . . ."

Under Visual Impacts, strike the first two paragraphs and replace with:

*The underground installation of the electric transmission wires eliminate any visual impacts caused by the overhead transmission wires and supporting pole structures.*

**Missing items**

This PFEIS does not appear to summarize any of the verbal comments that were made during the May 13, 2009 Planning Board meeting, even though the comment period was still open and a stenographer was present to capture the comments provided during that meeting.

It remains unclear why these comments, and responses to them, are not included in the FEIS. While much of the discussion was duplicated in the written commentary, which is captured in the PFEIS, there were other comments, including a discussion involving the 145 kV switchyard that appears in the DEIS once (in Section 18.5), which occurred during the meeting, that does not appear in the FEIS. Without explicit instruction from the Planning Board otherwise, the FEIS should include these comments and responses to them.

**Close**

I have not reviewed the entire PFEIS; I have limited my review to sections that are relevant to my area of expertise. It is possible that there is similar language, especially regarding the installation of the wires below ground, which appear in other sections. The applicant should make any other necessary changes to the PFEIS so that it is internally consistent with the changes found in this document.

I remain available to the Planning Board, its consultants and the applicant to discuss these comments and suggestions, as required.