

GEORGE M.
JANES &
ASSOCIATES

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PLANNING with
TECHNOLOGY

250 EAST 87TH STREET
NEW YORK, NY 10128

www.georgejanes.com

T: 646.652.6498
F: 801.457.7154
E: george@georgejanes.com

Ms. Barbara Parsons, Chairperson
Planning Board
Town of Wawayanda
80 Ridgebury Hill Road
PO Box 106
Slate Hill, NY 10973

RE: SEQRA
Review of Working Draft PFEIS For
CPV Valley Energy Center
Town of Wawayanda
Orange County, New York

Dear Ms. Parsons:

My office has conducted a review of the Working Draft of the Preliminary Final Environmental Impact Statement (PFEIS) for the CPV Valley Energy Center dated February 26, 2010. This document provides my thoughts as to the completeness and adequacy of the Working Draft. It focuses on visual impacts and community character and touches on the related areas of project description and land use.

Summary

The Working Draft can be considered a good first step in the production of a Final Environmental Impact Statement for the project. I do have concerns over the adequacy of responses to several of the comments, and in the summaries that appear in Section 3 and 3.8. My comments regarding the Working Draft can be summarized into three general categories:

Non-responsive: The response in the Working Draft does not completely address the comment, though it may still be accurate.

Emphasis and Voice: Some responses are not written using language that is appropriate for the Planning Board. Other responses may use appropriate language, but the emphasis of the response serves the interest of the applicant and not the Planning Board.

Accuracy and completeness: The working draft shows an effort to avoid saying that there were errors in the DEIS that needed to be corrected in the FEIS and in the additional studies that the applicant produced. There is an ample record, however, showing these errors, in both the written comments, and during the public meetings. For its own reasons the applicant may not wish to acknowledge these errors, which either have been or are in the process of being corrected, but the Planning Board's document must accurately acknowledge the errors identified, and correct them.

Probably my most substantive comment regards Comprehensive Plan consistency and the reference to the Town's new zoning. By my count the fact that the Town adopted new zoning on May 7, 2009 is referenced no fewer than 25 times in the Working Draft, and this fact is often presented as evidence that the Project is consistent with the Comprehensive Plan. I suggest the FEIS roll up many similar comments and provide a single, detailed response regarding Comprehensive Plan consistency that is comprehensive that demonstrates using evidence--not only argument--that the Project is consistent with the Town's Comprehensive Plan. Such a change would make the document more complete, more readable and shorter.

In addition to Visual Impacts, this letter also comments on the responses to Land Use and Community Character comments. With some notable exceptions, the responses to the Visual Impact comments are generally good. Nevertheless, the Planning Board's consultants do need more direct input from the Planning Board on certain mitigation issues.

Input needed from Planning Board

The DEIS discloses significant impacts on near field viewpoints. The additional study shows large visual impacts created by the electrical transmission wires and poles. Mitigation measures have been suggested, including:

- Burying some or all of the wires;
- Increasing the amount, location and size of landscaping proposed. Most effective landscaping would possibly include screens planted in areas not controlled by the applicant (Horizons, the edge of the NYSDOT ROW);
- Offsets.

These mitigation measures are not without environmental and/or financial cost, and some may not be feasible, or even desirable, considering their costs. It is appropriate to discuss additional mitigation measures in the FEIS, but without further direction from the Board, and without further knowledge of each method's costs (both environmental and financial), efficacy, feasibility and desirability it is impossible to finalize language regarding mitigation. A comment from the Public Service Commission, and the response to that comment, starts to address some of the costs and benefits of burying the wires, but we still do not have a complete understanding of the costs and benefits of all mitigation measures. This understanding is needed to make a determination on a course of action regarding mitigation, and only once that course of action is agreed upon by the Planning Board can the language of the FEIS be finalized.

Comments on Working Draft

I encourage the Planning Board to read the draft FEIS closely, as this will become the Planning Board's document. While many technical issues with the Project have

previously been resolved by your consultants, now is the time when direct Planning Board direction is most valuable. If there are issues of either substance or style that do not meet your expectations, your consultants need to know the Board's position and we can effect changes based on that information.

The comments I have made on the Working Draft are presented as an Appendix, which is attached to this letter. My comments should not be considered exhaustive. Should you have any questions or comments regarding the content of the Working Draft, or the comment found in the Appendix to this letter, please do not hesitate to contact me directly.

Thank you for the opportunity to continue to contribute to this important project.

Sincerely,

A handwritten signature in black ink, appearing to read "G. M. Janes". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

George M. Janes, AICP
Principal

Attachment: Comments on Working Draft

Appendix: Comments on 2/26/2010 Working Draft FEIS CPV Valley Energy Center

The comments on the first three sections of the Working Draft are identified below by section number. Comments on Section 4, which contains the responses to comments, are identified by comment number.

Section 2

Page 2-1 states, “There have been no refinements or changes to the Project since the DEIS was submitted,” but then starts to discuss a change in the Project. Apparently, the Project now requires a 45 foot tall building with a 4,000 SF building footprint in the City of Middletown that would be needed to house the new interconnect. This change was not studied in the DEIS. If the applicant is required to rework the interconnect and construct this new building in Middletown, this would be considered a refinement to the Project and the language of the FEIS should reflect such. Most of the details of this refinement are not in the Working Draft, and are identified as forthcoming. The cover letter to the FEIS identifies this change as a potential change as discussions with the regulatory agency regarding its need are ongoing.

Section 3

Organization. Section 3 is entitled: SUMMARY OF ENVIRONMENTAL STUDIES CONDUCTED SINCE FILING DEIS AND RESPONSE TO COMMENTS ON DEIS. I recommend reorganizing this section: Section 3 should become SUMMARY OF ENVIRONMENTAL STUDIES SINCE FILING THE DEIS and include what is shown as Sections 3.1 through 3.7. A new Section 4 would consist entirely of Section 3.8. Or, optionally, Section 4 should include a new Section 4.1, which would consist of the section that is currently numbered Section 3.8. Such segregation separates the studies done since the DEIS was completed from comments and responses on the DEIS.

Section 3.4 Visibility of Plumes. This section needs to be rewritten using the Planning Board’s voice. In this section, and elsewhere in the Working Draft, the applicant has repeated that the Planning Board’s consultants told the applicant to include misleading and incorrect information in the DEIS. This is simply not true. Perhaps more important to the FEIS, the issue is irrelevant. The Board’s consultants have accepted the analysis detailed in TRC’s June 9, 2009 technical memo that explained the very long plumes that appeared in the DEIS, and this summary should focus on a brief technical explanation that explains the long plume reported in the DEIS as an artifact of modeling.

3.7.2 Analysis of Consistency with the Town of Wawayanda 2009 Zoning Law (Section 3.5.2 of DEIS). This section looks at how the Project conforms and complies with the new zoning that was adopted in the Town last year, after the DEIS was completed.

From Page 3.16:

“Section 3.6. Applicability of regulations; prohibited uses.

Subsection A. Any owner or occupant must acquire any permits or approvals required by this chapter prior to any change in land use or making any modification or improvements to the property or structures on the property.

All necessary permits or approvals required by the Zoning Law will be acquired.

Subsection C. Any use which is noxious, offensive or objectionable, by reason of the emission of smoke, dust, gas, odor or other form of air pollution or by reason of the deposit, discharge or dispersal of liquid or solid wastes in any form in a manner or amount as to cause permanent damage to the soil and stream or to adversely affect the surrounding area or by reason of the creation of noise, vibration, electromagnetic or other disturbance or by reason of illumination by artificial light or where light reflection emanates, or which involves any dangerous fire, explosive, radioactive or other hazard or which causes injury, annoyance or disturbance to any of the surrounding properties or to their owners and occupants and any other process or use which is unwholesome and noisome and may be dangerous or prejudicial to health, safety or general welfare is prohibited. Further, the following uses and activities are expressly prohibited: dumps; junkyards; construction and demolition dumps; commercial stripping of topsoil, permanent installation or use of a sound-amplifier device audible beyond the premises; artificial lights as traffic hazards; or blinking and flashing *lights*. [Emphasis added]

The CPV Valley Energy Center will be operated in manner that will not create a nuisance in any manner described above. The Project will utilize the best available control technologies to minimize air pollution and will meet all applicable state and federal air quality requirements. The Project’s proposed use does not include any expressly prohibited use or activity.”

As disclosed in the DEIS, the facility will have blinking lights, which are an FAA requirement because of the height of the stacks. The Working Draft identifies blinking lights as a prohibited use in Section 3.6, Subsection C. The Working Draft, however, quotes the zoning incorrectly. The zoning law prohibits flashing or blinking *signs*. There was some confusion over this issue earlier as explained in comment PB1-32, which in reference to the zoning in place at the time the DEIS was filed, stated:

“Zoning compliance -Section 195-9. The applicant did not address item B of this section and the DEIS incorrectly states ‘blinking or flashing lights’ are a prohibited use. The Zoning states ‘blinking or flashing signs’ are a prohibited use.”

The same error seems to have propagated into the Working Draft and needs to be corrected. The blinking lights would only be prohibited if they were a “use which is noxious, offensive or objectionable.”

Under this same section, the following text appears on page 3-17:

“Section 3.11. Accessory structure and use standards.

Accessory structures to commercial or industrial uses shall require site plan and/or special use approval from the Town of Wawayanda Planning Board. Except as otherwise approved by the Planning Board as part of a site plan, fences shall not exceed 6 feet in height on side or rear yards or 4 feet in height in front yards.

All buildings proposed are essential to the proposed use as an electric generating facility, and would therefore not be considered accessory structures. Appropriate fencing for the Facility will be determined during site plan review. The site plan conforms to all setback requirements. The site will be surrounded by an 8 foot high chain link fence with a return on the top for security purposes.”

I believe the transmission poles may be considered an accessory structure. Even if they are not, they should be discussed here to clarify their status.

Regarding the fence, the DEIS states that the fence surrounding the facility will be six feet tall (page 3-52 of the DEIS). The eight foot tall fence discussed in this section is either incorrect or a change in the Project. The applicant needs to clarify and the Working Draft appropriately edited.

Again, in this same section on page 3-20:

“Section 4.6. Landscaping, screening, ridge development and buffer regulations.

To enhance the appearance and natural beauty of the town and protect property values, this section provides general landscaping requirements, as well as requirements for landscaped front and parking areas. The Planning Board may require a landscape plan be prepared as part of any site plan/special use or site plan application.

The landscaping provision in this section will be complied with. A landscaping plan is included with the Site Plan set (Sheet SP-6).

Sheet SP-6 was one of the many in the DEIS that did not include the right-of-way (ROW) for the transmission wires and poles, and as a result, incorrectly labeled about 3.5 acres of forested area as “forest to remain,” when, in fact, it will be cut down for the ROW. Since the landscape plan was designed only considering the facility and not the transmission poles and ROW, it is appropriate for the Planning Board to actively consider the adequacy of the proposed landscape plan, especially considering public comments that have asked for additional plantings to soften the visual impacts of the project.

The landscape plan in the DEIS leaves the majority of the site unplanted; landscaping is largely confined to the area immediately adjacent to the facility and its entrance off of Route 6. This design appears to be a purposeful intention to leave most of the site in its predevelopment state. Thick, tall vegetative screens may be a visual mitigation measure, but to be even marginally effective these screens would need to be at the site’s perimeter along Route 6, Route 17M and I-84, in places where few if any plantings are currently planned.

Section 3.8.4 Land Use. This section is the first of many places (including the response to comments L-11-9, PB1-4, PB1-19, PB1-24a-h, PB1-26a and b, L6-6, L9-1, L8-8, L14-1, PB1-60, PB2-3 and others) where the reader is told that the project complies with the Town's Comprehensive Plan. The argument it makes, while correct, needs more detail and should present evidence to be more convincing. This comment is discussed in more detail in the next section.

Section 3.8.6 Visual. This section needs to be rewritten. As currently written this section only addresses the visual impacts of the aboveground electric transmission line and no mention is made of the many comments that concerned the significant visual impacts of the facility that are disclosed in the DEIS.

Section 4

Comment PB1-4 concerns Comprehensive Plan Consistency. One argument the Working Draft makes in the response is that the Comprehensive Plan made recommendations and the Town adopted a revised Zoning Map based on those recommendations and "the proposed Facility is consistent with the uses associated with the new MC district." While the use may comply, the proposed structure does not conform to the new zoning, and will require one and perhaps two variances. Because the project requires variances to a new zoning law adopted purportedly to implement the Comprehensive Plan makes the thrust of this argument weak as a support for Comprehensive Plan consistency.

Comments PB1-26A and PB1-26B and others, Plan Consistency. The responses to these comments on Plan Consistency are not responsive. First, PB1-26A brings up one of the more difficult portions of the Comprehensive Plan, which states: "Currently, the MI district in Wawayanda is large and allows certain uses (i.e. 'other manufacturing' or mining) that is vague or not in line with the Town's vision." While the new zoning district is no longer the MI district, the comment continues, "This type of language in the plan presents challenges for the proposed action to justify how it is consistent with the plan. It is not difficult to imagine that the crafters of this plan would also consider 'other industrial uses' in a similar way as 'other manufacturing' is described." The answer to this comment is to simply refer to another answer, which states that the project is consistent with the Plan.

Further, comment PB 1-26B states that "the Plan includes a recommendation to 'Control nuisances attributable to noise, odors, and unsightly uses in all districts...'" The answer (that the project does not create any of these issues) is not responsive, nor is it consistent with the impacts disclosed in the DEIS. The DEIS clearly and repeatedly discloses in both text and images significant visual impacts from near-field viewpoints, which can be interpreted as "unsightly."

I suggest that all responses in the FEIS regarding Comprehensive Plan consistency be rewritten. The FEIS should still individually list all the comments, but roll up

the response to all the comments into a single comprehensive response regarding Comprehensive Plan consistency. The response should summarize all of the issues with Plan consistency and it should show how and why the project is consistent with the Plan. The responses to Comments PB1-24a through h are a good start, but the responses need to be more detailed and comprehensive and rely not only on argument and logic, but also use evidence and data to demonstrate consistency.

Finally, there are many comments that concern Comprehensive Plan consistency. By listing them individually, but answering them in a single comprehensive response, the FEIS becomes better and more detailed, and shorter and more readable at the same time, as dozens of duplicated responses are eliminated.

Likewise, there are many comments listed on pages 4-36 to 4-45 that have the same response, “The benefits from the Project are acknowledged.” All of these comments can be listed and the same response can be provided only one time. I acknowledge that this is an issue of style, but such editorial changes will make the document more readable.

Comment PB1-17. This comment regards, “how this land use will impact this gateway area” but the answer is almost exclusively given in terms of visual impacts, with mentions of traffic and construction activity. There is nothing incorrect in the answer provided in the Working Draft, but the answer is not responsive to the comment.

Comment PB1-27. The response is non-responsive to the comment. The absence of a comment from Orange County regarding consistency with the County Plan does not mean the Project is consistent with the County Plan. In contrast, the response to *Comment PB1-28*, which also regards consistency with the County Plan, is very good, quoting evidence and presenting an argument as to why the Project is consistent.

Similar to *Comment PB1-27*, the response to *Comment PB1-29* is also non-responsive to the comment regarding consistency with the County Plan and creating an “attractive” setting for business. The DEIS discloses in both the text and photosimulations significant visual impacts, which can easily be argued are not attractive from some viewpoints. This response needs to be revised to be responsive to the comment.

The tone of *Comment PB1-30* is not appropriate for the Planning Board’s document and the first sentence should be deleted. The FEIS must include a more thorough discussion of County Plan consistency to address these comments.

The tone of the last sentence of *Comment PB1-35* is inappropriate for the Planning Board’s document. It also does not add to the response, which is adequate without this sentence.

Comment PB1-36 has a non-responsive response.

Comment HI4-1 also has a non-responsive response. Further, the emphasis of the response also serves the applicant, not the Planning Board. For example, in response to this comment about the negative visual impact to the residential areas around Route 6, the Working Draft states:

“Through selective tree plantings, development of a landscaped buffer area will be pursued to minimize impacts of the Facility to residences along Route 6. The Project includes a landscaping plan that is intended to enhance the appearance and natural beauty of the historical agricultural use of the existing property and to provide visual buffering for the surrounding areas.”

Yet the DEIS states:

“The planting of trees along the southern edge of Route 6 will help to soften [the visual] impact, but the scale of the Facility is such that at this distance no landscaping can fully mitigate the impact.”

Both the Working Draft statement and the DEIS statement are true, but the proper emphasis for a Planning Board response should be closer to the language quoted from the DEIS, which acknowledges the limited effectiveness of the proposed plantings on the impacts experienced from areas around Route 6.

Comment PB2-1 contains a partially non-responsive answer. This comment regarded the missing transmission poles, wires and right of way in the visual simulations and many of the plans for the project. Specifically,

“The on-site overhead electrical transmission lines that are proposed to follow 1-84 on-site are not shown on the technical drawings (Figures ES-1, ES-2, SP-3, SP-4, SP-6 and others). They are not represented in the visual simulations, do they appear to be on the rendering on the cover and spine of the document. This appears to be an error in the submission.”

The response in the Working Draft does not acknowledge any error. Instead, it states, “The onsite electric transmission line right-of-way is shown on numerous plans throughout the DEIS (e.g., Figures 1-1, 2-1, 2-4, as well as the figures in Sections 3.0, 11, 14, etc). The existing conditions and impacts are fully evaluated throughout the DEIS.” It then goes on to discuss the additional visual study for the missing transmission wires in acceptable detail (even though it just claimed that the impacts are fully evaluated throughout the DEIS).

The FEIS cannot ignore the errors identified in the comment simply by giving examples of similar materials in the DEIS that are not in error. This kind of response is just not relevant or responsive to the comment. To be responsive to the comment, the response needs to confirm that, indeed, the wires, poles and right-of-way were missing from the plans identified, and an error was made. It needs to confirm which other plans also have the error, and that all these errors have been corrected in the FEIS, with references to the corrected plans. The FEIS needs to be

forthcoming regarding the errors in the DEIS that were discovered during the process and how these errors have been corrected.

Comment PB2-2, while technically fine, the Working Draft response again includes the statement that the Planning Board's consultant insisted the applicant include misleading information in the DEIS, which remains untrue. See the above comment regarding Section 3.4 of the Working Draft.

Comment L-5-17 noted that the proposed chain link fence was missing from the visual simulations along with the transmission wires and poles. I believe the response is partially incorrect. I have found no evidence that any chain link fence was added to the simulations along I-84. But I question the need for showing a chain link fence from this viewpoint, which is the basis of the comment. There already is a similarly sized chain link fence at the approximate location of the proposed chain link fence along the property line. Our opinion was that the real chain link fence, while battered and worn, would represent the appearance of the proposed chain link fence at least as well as a computer simulated chain link fence. As such, the simulation is fine without simulating the new fence.

The first paragraph of the response to *Comment PBI-58* is incorrect. The response starts by saying, "The comment confuses community character and aspirational official plans." But the commenter does not confuse the two. It is absolutely appropriate to refer to community plans when trying to understand the perception of community character and how that character is hoped to change. Changing the character of a community may be a highly sought after condition a community works hard to implement. Understanding the nature of change in community character is only understood by researching plans and, ideally, other documents about the community. A current, accepted Comprehensive Plan can provide a researcher important information about the character of a community. This first paragraph needs to be stricken or rewritten. The last two paragraphs of this response are better, as they present data regarding the character of this area and how the Project is consistent with the character. This response needs to be rewritten building on the data driven approach shown in these last two paragraphs.

Most of the subsequent responses to Community Character refer to this answer and should also be rewritten.

The response to *Comment L-6-70* references a security fence which will surround the riser pole. This fence is not shown on any plans or described in any detail in the DEIS. The FEIS should describe the fence that is being proposed.

The response to *Comment L-7-12* fails to correct an error in the DEIS. This comment states:

"Section 18.5 mentions the possibility of additional facilities to be built onsite in years to come. These facilities need to be delineated on a map, explanations need to be made with

regard to what uses they would have, estimations need to be given as to what their size and height may be, etc. etc. etc. and the public should be afforded the opportunity to comment on them in the FEIS. . . .”

The response to this comment states only that a gas interconnect and related elements is being considered. While this response is not incorrect as far as it goes, 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].

I brought the issue of a possible new switchyard being built on the eastern portion of the parcel to the Planning Board’s attention during the May 13, 2009 meeting. At that time the applicant informed the Board that this section contained an error; no additional switchyard was proposed on the eastern portion of the parcel and the error would be corrected in the FEIS. The Working Draft does not include any such correction, even though it directly addresses the comment that brought this additional switchyard to my attention (Section 18 (“Other Environmental Impacts”) is not a section I normally review). I am further concerned because my comment regarding this additional switchyard was not captured during the May 13, 2009 meeting. I had believed, perhaps incorrectly, that comments on the project made by the Planning Board or its consultants at the April 22nd and May 13, 2009 meetings were comments that required responses in the FEIS. If this was not the Planning Board’s understanding or desire, then I withdraw this comment. If the Planning Board expected that comments raised during those meetings would be addressed in the FEIS, then the applicant needs to capture those comments from the stenographer’s record and the FEIS needs to be edited to include those comments and responses.

Missing items

The 2/26/2010 version of the Working Draft contains most of the comments on the DEIS, though there are some elements that remain missing. The revised plans are not included, nor is there any information on the additional studies, which were only recently received. While I have seen all these additional comments, (there are not many) I have not yet seen the responses.

It is both my hope and expectation that the Planning Board’s consultants will continue to work with the applicant to come to a resolution on the issues identified in the Working Draft of the FEIS. All parties have developed a cordial working relationship and have shown to be able to develop a common understanding of what is required under SEQR. I expect that this relationship will continue moving forward.

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