

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 15, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-E-0138 – Petition of Canandaigua Power Partners, LLC for an Original Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approving Financing Pursuant to Section 69 of the Public Service Law and Approving a Lightened Regulatory Regime.

ORDER GRANTING CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY, PROVIDING FOR LIGHTENED
REGULATION AND APPROVING FINANCING

(Issued and Effective August 16, 2007)

BY THE COMMISSION:

INTRODUCTION

By petition filed January 26, 2007, Canandaigua Power Partners, LLC (CPP) requested a Certificate of Public Convenience and Necessity (CPCN), pursuant to §68 of the Public Service Law (PSL), authorizing the construction and operation of a wind energy generating project proposed to be located in the Towns of Cohocton and Avoca, Steuben County (the Cohocton Project). CPP also requested an order approving financing for its project pursuant to PSL §69 and providing for lightened regulation as an electric corporation.

In connection with its request for a CPCN, CPP moved for an expedited proceeding, pursuant to 16 NYCRR §21.10(a)(1), so that the hearing required by PSL §68 might be held before us on the application and any information filed by the parties,

without oral testimony. CPP caused a notice of its motion to be published in the Hornell Evening Tribune, a newspaper of general circulation in the vicinity of the proposed project, on January 30, 2007, pursuant to 16 NYCRR §21.10(a)(3). CPP served its petition, motion and notice on 34 entities. Within the ten-day period specified in 16 NYCRR §21.10(b)(2), which expired on February 9, 2007, responses to the motion were filed by the Village of Naples (Village), the Town of Naples, the Town of Italy, Cohocton Wind Watch and Advocates For Prattsburgh (CWW-AFP) jointly,¹ and Frank and Kathleen Duserick. On March 27, 2007, CPP filed a response to the comments.

A notice of the petition for financing approval and lightened regulation was published in the State Register on March 7, 2007 in conformance with §202(1) of the State Administrative Procedure Act (SAPA). Only CWW-AFP responded to the notice before the end of the SAPA §202(1)(a)(i) comment period, which expired on April 23, 2007.

On May 14, 2007, we considered the comments received concerning CPP's request for a CPCN and required CPP to show at an evidentiary hearing that it is able to render adequate service, given factual questions raised regarding (1) the reliability and characteristics of the Clipper Wind turbines proposed to be installed; (2) the design, layout and accessibility of the proposed transmission and substation facilities; (3) the potential for adverse effects on access to and operation of the bulk transmission system; and (4) proposed right-of-way management practices and design standards.² An evidentiary hearing was held on June 6, 2007 in the Town of Bath.

On June 15, 2007, CPP and Canandaigua Power Partners II, LLC (CPP II) jointly filed an amendment to the petition, requesting the review of a wind energy generating project proposed by CPP II to be located in the Town of Cohocton (the Dutch Hill Project) jointly with the Cohocton Project proposed by CPP, and the grant of two CPCNs under PSL §68 authorizing the construction and operation of both projects.

¹ By letter dated April 25, 2007, CWW-AFP requested party status in this proceeding, claiming that their participation is likely to contribute to the development of a complete record and is fair and in the public interest.

² Case 07-E-0138, Canandaigua Power Partners, LLC, Order Denying Motion for Expedited Proceeding (issued May 14, 2007).

Certain facilities or infrastructure will be shared by the Cohocton Project and the Dutch Hill Project. Thus, CPP II will be an electric corporation.³ As such, it is expected to file in the near future a petition seeking the approval of financing and the provision of lightened regulation.

On July 24, 27, 30 and 31, and August 2, 2007, CPP and CPP II (also referred to as the Companies) filed supplements to their Petition providing details of the design and management of the proposed substation and transmission facilities, various plans, analyses, drawings, schedules, a list of applicable codes, criteria, procedures and standards and a request for Orders authorizing non-permanent construction and granting CPCN for the Cohocton and Dutch Hill projects on an expedited basis.

THE PETITION

Both CPP and CPP II are wholly-owned subsidiaries of UPC New York Wind, LLC, a wholly-owned subsidiary of UPC Wind Partners, LLC (UPC Wind). The petition states that UPC Wind is a leading developer of wind power production in North America. According to the Companies, UPC Wind's subsidiaries have three projects totaling 92 megawatt (MW) in commercial operation in Hawaii, Maine and New York. Other subsidiaries are developing 340 MW in Vermont, New York and Utah. CPP and CPP II intend to commence construction as soon as possible and anticipate that their projects will begin commercial operation near the end of 2007.

Description of Projects

A. The Cohocton Project

CPP originally proposed to develop an approximately 90 MW wind-powered generating facility in the Town of Cohocton, Steuben County New York. This project was anticipated to include approximately 41 wind turbines, each with a generating capacity of 2.0 MW. The project as currently proposed will include a maximum of 35 Clipper wind turbines, each with a generating capacity of 2.5 MW (totaling up to 87.5 MW).

³ Case 91-E-0454, Output Limitations Implementing the 80 MW Size Restriction, Order Interpreting and Clarifying 80 MW Output limitations (Issued April 22, 1992).

The primary turbine array will be located northeast of the Village of Cohocton. Thirty-two of the turbine sites are located in this area. An additional three turbine sites will be located south of the village near the point of interconnection with the existing New York State Electric & Gas Corporation (NYSEG) 230 kV (Meyer to Avoca) transmission line. Each wind turbine will include a 96-meter (315 foot) diameter, three-bladed rotor mounted on an 80-meter (262 foot) tall tubular steel tower. The total maximum height will be approximately 420 feet. The project will consist of 35 wind turbines, 8.8 miles of 16 foot and 36 foot wide turbine access roads, 15.4 miles of underground electrical lines, a collection substation, a 9.0 mile long overhead 115 kV transmission line, an interconnection substation, a construction staging area, two permanent meteorological towers, and a centrally located operations and maintenance facility. The Cohocton Project land area (Site) includes approximately 4,800 acres of leased land.

A single circuit 115 kV transmission line will connect the collection station with the proposed substation. The transmission line will be approximately 9.0 miles in length. The line will be carried on wood pole structures that range in height from 61 to 92 feet. Tower structures will be of three general types: unguyed single wood pole, guyed wood pole, and guyed two-pole wood structures. The crossing of NYS Route 390 may be underground. The final route of the transmission line traverses a short distance within the Town of Avoca, with the remainder of the line and both substations located in the Town of Cohocton.

Project construction is anticipated to occur in a single phase, starting in the summer of 2007 and being completed by December 31, 2007. The completion date will be predicated on the start date of construction, as well as the weather patterns toward the end of the year.

Stormwater and erosion control plans will minimize construction impacts. Following construction, disturbed areas will either be allowed to re-vegetate or will be restored to agricultural use in accordance with New York State Department of Agriculture and Markets (NYSA&M) Agricultural Protection Guidelines. Special construction and restoration measures within NYS-regulated wetland AV-1 will be

specified in permits to be issued by the New York State Department of Environmental Conservation (DEC).

B. The Dutch Hill Project

CPP II proposes to develop the Dutch Hill Project, an approximately 40 MW wind-powered generating facility in the Town of Cohocton, Steuben County, New York. The project includes up to 16 Clipper wind turbines, each with a generating capacity of 2.5 MW.

The turbine array will be located on Dutch Hill north of the Village of Cohocton. Each wind turbine will include a 96-meter (315 foot) diameter, three-bladed rotor mounted on an 80-meter (262 foot) tall tubular steel tower. The project includes one permanent meteorological tower, a system of gravel access roads (approximately 5 miles), buried collection lines (2.6-miles), one temporary construction laydown/staging area, and a 3.8-mile, 34.5 kV transmission line that will connect the turbines to the collector substation that is a part of the neighboring Cohocton Project. That collector station and the 115 kV transmission line running from it to the interconnect substation will be shared with the Cohocton Project. The Dutch Hill Project will share an operations center and maintenance building with the Cohocton Project.

The Dutch Hill Project will share a centrally-located staging area constructed for the neighboring Cohocton Project, although it is anticipated that major turbine components (*i.e.*, tower sections, nacelle, and blades) will be delivered directly to the individual turbine sites. This area would be utilized for job trailers, vehicle parking, and storage of tools, equipment, and construction materials. The Dutch Hill Project land area (Site) includes approximately 2,560 acres of leased land (owned by seven individual landowners).

Project construction is anticipated to occur in a single phase, starting in the summer of 2007 with a completion on or around December 31, 2007. The completion date will be predicated on the start date of construction, as well as the weather patterns toward the end of the year.

Both Companies have committed to comply with the requirements of our regulations regarding the protection of underground facilities (16 NYCRR Part 753); the

companies also certified that they would become members of Dig Safely New York, and would require all contractors, excavators and operators associated with their facilities to comply with the underground facility protection regulations. The Companies have also committed to comply with the requirements of our regulations regarding identification and numbering of above ground utility poles (16 NYCRR Part 217).

In the July 24 and 27, 2007 supplements to their petition, the companies provided additional details and descriptions of their proposed electric facilities (including features for facility security and public safety, a plan for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures). Facility design is proposed to conform to the National Electric Safety Code, as well as other relevant codes and standards applicable to facility siting, construction and operation.

Financing and Lightened Regulation

CPP recognized that, pursuant to §69 of the PSL, authorization is necessary for an electric corporation to enter into indebtedness for longer than 12 months. Because it will be a competitive wholesale provider of electricity and will not serve retail customers, CPP contended that the scrutiny applicable to monopoly utilities under PSL §69 may be reduced.

CPP explained that project financing will be done through UPC Wind on a portfolio basis, which will include several North American wind projects currently under development by UPC Wind. Total financing for these projects will be approximately \$450 million, of which approximately \$185 million will be attributable to CPP. CPP will pledge all of its assets and membership interests in order to secure its share of the financing. The proceeds will be issued exclusively for the construction and operation of the Cohocton Project. As part of the financing, CPP proposes to enter into a sale-leaseback or lease-leaseback arrangement with the Steuben County Industrial Development Agency (SCIDA).

CPP requested that it be granted the flexibility to substitute financing entities and change payment terms and amounts of financing without Commission approval so long as the total financing amount is less than or equal to \$185 million. It claims this flexibility is needed to take advantage of changing market conditions.

CPP requested that it be regulated under a lightened regulatory regime similar to the regimes that have been applied to other entities engaged in selling electric power exclusively at wholesale. According to the petition, CPP will sell the output of its project exclusively at wholesale and will not be a retail supplier of electricity. CPP stated it does not intend to have the capacity of the Cohocton Project marketed by an affiliated power marketer.

COMMENTS AND EVIDENTIARY HEARING

Comments in opposition to the Cohocton Project were submitted by CWW-AFP, concerned citizens, and nearby local municipalities. On March 22, 2007, CPP submitted a response to the comments (revised March 27, 2007).⁴ Comments by the citizens and municipalities consisted mostly of generalized statements in opposition, or raised issues that were addressed by the lead agency under the State Environmental Quality Review Act (SEQRA).⁵ CWW-AFP also contended that the proposed turbines were prototypes, not yet in production and so could not be properly tested.

As noted above, we required that an evidentiary hearing be held to consider this issue and others related to the design and management of CPP's proposed project. At the hearing, CPP presented testimony and exhibits;⁶ CWW-AFP presented exhibits as well.

⁴ CWW-AFP filed additional comments on August 14, 2007; those comments were received too late for consideration here.

⁵ Case 07-E-0138 Supra.

⁶ CPP presented information on the testing and reliability of the turbines proposed to be used, the status of negotiations with the owner and operator of the rail road along which the 115 kV line will be routed, vegetation management along the 115 kV line and design of the proposed substations.

CWW-AFP commented that it was not clear whether CPP is solely engaged in the generation of electricity for sale into the wholesale market. CWW-AFP added that it is not obvious, given the multitude of affiliates, who CPP is and whether it is affiliated with a power marketer.

As to CPP's request for financing approval, CWW-AFP considered the need for financing questionable, given that CPP will use taxpayer funds in the form of grants, tax incentives, and payments in lieu of taxes (PILOT) to subsidize the Cohocton Project. According to CWW-AFP, the proposed agreement with the SCIDA appears to be simply a tool to cloud issues surrounding the PILOT agreement. CWW-AFP also alleged that the public would be harmed if financing entities were allowed without Commission approval.

Responding to these comments, CPP asserted that it is not unusual for firms engaged exclusively in wholesale generation of electricity to receive Commission approval in advance to finance their projects using industrial development agency financing. It claimed as well that the Commission has granted financing flexibility like that requested by CPP. According to CPP, the way in which the SCIDA chooses to assist in the development of the Cohocton Project is within its discretion and is not the subject of Commission review. Even if the SCIDA takes title to the Cohocton Project for purposes of financing, contended CPP, the SCIDA will have a passive role; CPP will manage and operate the Cohocton Project and will be subject to Commission jurisdiction.

DISCUSSION AND CONCLUSION

State Environmental Quality Review

Environmental review of the proposed facilities was conducted pursuant to SEQRA, Article 8 of the Environmental Conservation Law, with the Town of Cohocton acting as lead agency. The purpose of SEQRA and its implementing regulations (6 NYCRR Part 617 and 16 NYCRR Part 7) is to incorporate consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that agencies determine whether the actions they

are requested to approve may have a significant impact on the environment. If it is determined that the action may have a significant adverse impact, an environmental impact statement must be prepared by the lead agency or the applicant.

The Cohocton Project

On December 19, 2005, a Full Environmental Assessment Form (EAF) addressing the proposed wind power project was submitted by CPP to the Town of Cohocton Planning Board. In January of 2006, a solicitation of Lead Agency status was forwarded to involved agencies by the Cohocton Planning Board, along with a copy of the EAF document. No agency objected to the Planning Board's assuming the role of Lead Agency. On March 2, 2006, the Cohocton Planning Board formally assumed the role of Lead Agency and, in that role, issued a positive declaration, requiring the preparation of a Draft Environmental Impact Statement (DEIS).

On March 31, 2006, the DEIS was submitted to the Planning Board. The DEIS was accepted as complete on April 20, 2006. Upon acceptance of the DEIS, copies of that document (along with a copy of the public notice) were distributed to all interested and involved agencies and made available to the public. The public comment period ran from April 20, 2006 to June 9, 2006, and was subsequently extended through June 23, 2006. A public hearing was held on May 25, 2006.

In order to address changes made to the Project layout, present further support studies, and to provide additional detail to the public regarding the proposed project, the Supplemental Draft Environmental Impact Statement (SDEIS) was prepared. The SDEIS was accepted by the Planning Board on December 20, 2006 and a Notice of Completion and Notice of Public Comment Period were subsequently filed and published. The public comment period on the SDEIS was to run through February 1, 2007 but was subsequently extended until February 15, 2007. A public hearing on the SDEIS was held on January 19, 2007. A Responsiveness Summary was subsequently prepared as part of the Final Environmental Impact Statement (FEIS) to address all substantive comments received on the DEIS and the SDEIS.

A proposed FEIS was prepared initially by CPP. The proposed FEIS was reviewed by the Planning Board's consultants and counsel, and then revised by the

Planning Board. The FEIS was accepted as complete by the Planning Board on June 27, 2007, and thereafter noticed, filed, and distributed as required under 6 NYCRR §617.12.

The Dutch Hill Project

In October 2006, a full EAF addressing the proposed wind power project was submitted by CPP II to the Town of Cohocton Planning Board. The formal submittal of the EAF initiated the SEQRA process for the subject action. Also in October of 2006, a solicitation of Lead Agency status was forwarded to involved agencies by the Cohocton Planning Board, along with a copy of the EAF document. No agency objected to the Planning Board's assuming the role of Lead Agency. In November, 2006 the Cohocton Planning Board formally assumed the role of Lead Agency and, in that role, issued a positive declaration, requiring the preparation of a DEIS.

In November 2006, the DEIS was submitted to the Planning Board. The DEIS was accepted as complete on December 20, 2006. Upon acceptance of the DEIS, copies of that document (along with a copy of the public notice) were distributed to all interested and involved agencies and made available to the public. Additional copies of the document were sent to the U.S. Army Corps of Engineers (USACE), the Federal Highway Administration, several NYS agencies, the Town of Wayland, Town of Avoca, Village of Naples, and Town of Howard. The entire DEIS was posted to the project website to facilitate public review and comment on the document. The public comment period ran from December 20, 2006 to February 1, 2007 and was extended until February 15, 2007 for the submission of written comments and questions. A public hearing was held on January 19, 2007. A Responsiveness Summary was subsequently prepared as part of the FEIS to address all substantive comments received on the DEIS.

A proposed FEIS was prepared initially by CPP II. The proposed FEIS was reviewed by the Planning Board's consultants and counsel, and then revised by the Planning Board. The FEIS was accepted as complete by the Planning Board on June 27, 2007, and thereafter noticed, filed, and distributed as required under 6 NYCRR §617.12.

The DEIS and FEIS for both projects analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality, noise, soils, geology, terrestrial and aquatic ecology including

threatened and endangered species, effects on communications facilities, stormwater management, impacts of construction, and proposed general and specific mitigation measures. The Town determined that a large-scale wind power-generating project will result in significant environmental and economic benefits to the area. Moreover, the Town concluded, based upon field investigations and review of the DEIS and the FEIS, that the proposed action with the mitigation measures incorporated in the FEIS minimizes or avoids significant adverse environmental impact to the maximum extent practicable. The mitigation measures discussed in the FEIS include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; use of minimum setbacks from residences to limit noise, visual and public safety impacts; and employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. Measures to mitigate soil compaction and mixing in agricultural fields have been identified. Project-wide soil erosion and sediment control will be addressed in the Stormwater Pollution Protection Plan. As a result of the visual assessment study, the mitigation measures include location of the turbines in a random pattern, installation of fencing and landscape plantings for affected viewsheds, and a prohibition of advertising on the turbines. The 115 kV transmission facility route was modified to reduce impacts to the only designated scenic vista in the project area.

Parks Recreation and Historic Preservation Law §14.09 Review

Citing provisions requiring conformance with Parks Recreation and Historic Preservation Law (PRHPL) §14.09, DPS Staff raised concerns with the companies about analysis of potential historic resource impacts, and fulfilling the requirements regarding consultation with Office of Parks, Recreation and Historic Preservation (OPRHP) Staff.⁷ OPRHP has determined that the projects will have no adverse impact on archeological resources listed or eligible for listing on the State or National Registers of Historic Places. By correspondence dated June 26, 2007, OPRHP stated that the project would have adverse impacts on cultural resources (historic

⁷ Pursuant to PRHPL §14.09, DPS Staff has engaged in ongoing consultation with OPRHP Staff.

structures and architectural resources) within the area of potential effect. OPRHP indicated that consultation regarding potential mitigation to offset impacts should be undertaken. OPRHP explained that the introduction of sleek, ultramodern, 400-foot tall kinetic wind turbines throughout the landscape forever changes the rural setting, which is a significant element that serves as the backdrop of the architectural and cultural heritage of the communities. Consultation with OPRHP regarding mitigation measures to minimize adverse effects resulted in development of an offset mitigation strategy, which will include funding for historic preservation projects. A requirement to finalize offset program and funding details to mitigate the historic resources impacts is appropriate as a Certificate condition.

Bird and Bat Impacts

In addition to the historic resources impacts discussed above, impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates that post-construction mortality reporting and an adaptive management strategy to address any adverse impacts to birds and bats that are revealed by these studies should be developed with additional input from the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation (DEC). This approach is appropriate to the mitigation of adverse wildlife effects, provided that the adaptive management strategy is required to be implemented in facility operations. Critical migratory periods and hours of highest risk of impact may be identified through a period of monitoring operations and impacts. Deterrent mechanisms and habitat manipulation near turbine locations hold potential for reducing wildlife collisions with operating turbines; they warrant additional evaluation as greater operational experience in the industry is gained. Based on operational experience, impact avoidance or minimization strategies appropriate to the facility site should be developed and implemented as appropriate to address potential significant impacts on avian and bat species. We will therefore require the companies to address the need for additional post-construction study, monitoring and analysis of impacts, and the development and implementation of a

long-range strategy for adapting facility operations to address conservation of natural resources, such as birds and bats.

Other findings, as extensively discussed in the Findings Statement adopted by the Town, are reasonable and appropriate. The additional impact mitigation requirements we will impose will insure that impacts are minimized to the extent practicable, and that required SEQRA findings may be made.

Public Convenience and Necessity

We are authorized to grant certification to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that the construction of an electric plant is necessary and convenient for the public service. Our rules establish pertinent evidentiary requirements for a certificate application (16 NYCRR §21.3). The rules require 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.

The Companies intend to provide electricity to the wholesale competitive market and have proposed to site the facilities to utilize a portion of the wind energy potential in New York State. The facilities are based on renewable resource technology, providing clean and renewable supplies of electricity to the wholesale energy market. Further, the proposed facilities will facilitate compliance with Executive Order 111 (issued by Governor George Pataki on June 30, 2001 and continued by Governor Eliot Spitzer on January 1, 2007), which requires all New York State agencies to purchase 10% of their electricity from renewable energy sources by 2005 and 20% by 2010. The proposed facilities also address the objectives identified in the 2002 State Energy Plan and in Renewable Standard Proceeding, Case 03-E-0188.

These objectives include stimulating economic growth, increasing energy diversity, and promoting a cleaner, healthier environment. The proposed facilities will reportedly provide benefits that include positive economic impacts (such as increased revenues to municipalities and lease payments to landowners) and enhanced

environmental quality (including potential reduction of emissions from fossil-fuel burning power plants).

In addition, the Companies' parent is experienced and a financially viable developer of wind energy. Therefore, the facilities appear to be economically feasible and in the public interest.

The Companies have committed to complying with the relevant design, construction and operational requirements of the National Electric Safety Code, other applicable engineering codes, standards and requirements, and the standards and policy requirements of NYSEG. The Companies have proposed plans for addressing coordination with, and avoiding interference with, other utility providers in their facility design, construction and operations controls, and for responding to complaints and inquiries. The Companies have generally developed appropriate emergency response measures and facility maintenance standards for the life of the electric plant.

The evidence proffered shows that, while the Clipper turbine model proposed to be installed is of a new design and has only been in commercial operation for a short time, it has been tested by European industrial standards.⁸ Further, it is clear that while all the land-use rights for the transmission line have not been obtained and the vegetation management plans are not final, the company is working to correct these deficiencies and satisfactory results are expected. Finally, updated substation drawings that showed accommodations for environmental constraints and the company's commitment to working closely with NYSEG indicate a positive outcome.

Based on the Companies' representations and commitments to adopt and enforce reasonable measures within the proposed area of operations, and the evidence presented in the petition and supplements, and at the evidentiary hearing, we conclude that the Companies will provide safe, reliable and adequate service using the turbines they propose. The issues of substation design and accessibility, right-of-way management, and constructability and operability of the collection and transmission lines

⁸ The evidence presented concerning the reliability of the turbines is as applicable to the Dutch Hill Project and the Cohocton Project. No party raised issues specific to the Dutch Hill Project that warrant an evidentiary hearing.

will meet NYSEG standards, and the connection to the transmission system will meet the requirements of NYSEG, NYSRC, NPCC, NERC and successive organizations and will not affect the operation of the transmission grid. The conditions we will impose will help to ensure that the Companies' commitments are kept and enable us to make the required statutory finding.

CPP satisfied the requirements of PSL §68 by filing a copy of its Certificate of Formation as an exhibit to its petition. CPP II filed a copy of its Certificate of Formation as a supplement to its petition. Moreover, responsible company officials have verified that the Companies have secured all municipal consents necessary for the use of town property that are required by law.

A hearing having been held on June 6, 2007, we find, as required by PSL §68, that the construction of the proposed Cohocton and Dutch Hill Projects is necessary and convenient for the public service.

Electric Regulation

The lightened regulatory regime that CPP requests is similar to that afforded to other comparably-situated Exempt Wholesale Generators participating in wholesale electric markets. Its petition is, therefore, granted, to the extent discussed below.

In interpreting the PSL, the Commission has examined what reading best carries out the Legislature's intent and advances the public interest. In the AES and Carr Street Orders,⁹ it was concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated. Under this realistic appraisal approach, PSL Article 1 applies to CPP because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b).

⁹ Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 99-E-0148, AES Eastern Energy, L.P., Order Providing For Lightened Regulation (issued April 23, 1999) (AES Order).

CPP is, therefore, subject to provisions, such as PSL §§ 11, 19, 24, 25 and 26 that prevent producers of electricity from taking actions that are contrary to the public interest.¹⁰

All of Article 2 is restricted by its terms to the provision of service to retail residential customers. It is inapplicable to wholesale generators like CPP.

Certain provisions of Article 4 are also restricted to retail service.¹¹ It was decided in the AES and Carr Street Orders that other provisions of Article 4 pertain to wholesale generators.¹² Application of these provisions was deemed necessary in light of obstacles to entry into the generation market. The Article 4 provisions, however, were implemented in a fashion that limited their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level the public interest required. Moreover, wholesale generators were allowed to fulfill their PSL §66(6) obligation to file an annual report by duplicating the report they were required to file under federal law. This analysis adheres to CPP.

Regarding PSL §70, it was presumed in the AES Order that regulation would not "adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption."¹³ Wholesale generators were also advised that the potential for the

¹⁰ The PSL §18-a assessment is applied against gross retail revenues. As long as CPP remains exclusively a wholesaler, there are no retail revenues and no assessment is collected.

¹¹ See, e.g., PSL §66(12), regarding the filing of tariffs, required at our option; §66(21), regarding storm plans submitted by retail service electric corporations; §67, regarding inspection of meters; §72, regarding hearings and rate proceedings; §75, regarding excessive charges; and §76, regarding rates charged religious bodies and others.

¹² PSL §68 provides for certification of construction of electric plant (unless such plant is reviewed pursuant to PSL Article VII) or to electricity sales made via direct interconnection with retail customers. PSL §69, §69-a and §70 provide for the review of security issuances, reorganizations, and transfers of securities, works or systems.

¹³ AES Order, p. 7.

exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review.¹⁴ This analysis applies to CPP.

Turning to PSL Article 6, several of its provisions that adhere to the rendition of retail service do not pertain to CPP because it is engaged solely in the generation of electricity for sale into the wholesale market.¹⁵ Application of PSL §115, relating to requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, relating to the protection of underground facilities from damage by excavators, adheres to all persons, including wholesale generators.

Most of the remaining provisions of Article 6 need not be imposed generally on wholesale generators.¹⁶ These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. So long as the wholesale generation market is effectively competitive, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, adversely affecting its operation to the detriment of the public interest.

¹⁴ In this context, under PSL §66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

¹⁵ See, e.g., PSL §112, regarding enforcement of rate orders; §113, regarding reparations and refunds; §114, regarding temporary rates; §114-a, regarding exclusion of lobbying costs from rates; §116, regarding discontinuance of water service; §117, regarding consumer deposits; §118, regarding payment to an authorized agency; §119-a, regarding use of utility poles and conduits; and, §119-c, regarding recognition of tax reductions in rates.

¹⁶ These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and electric, gas, and water purchase contracts under §110(4).

As discussed in the Carr Street Order, market power issues may be addressed under PSL §110(1) and (2), which afford us jurisdiction over affiliated interests.¹⁷ CPP, however, reports that it does not plan to affiliate with a power marketer. Consequently, we will not impose the requirements of Article 6 on CPP except for §119-b; we will conditionally impose §110(1) and (2) to the extent discussed above. CPP is reminded, however, that it remains subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed above and in previous orders.¹⁸ Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,¹⁹ to give notice of generation unit retirements,²⁰ and to report personal injury accidents pursuant to 16 NYCRR Part 125.

Project Financing

As a result of our decision that lightened regulation of CPP as an electric corporation is appropriate, we need not make an in-depth analysis of the proposed financing transaction. Instead, by relying on the representations made in the petition, prompt action may be taken, avoiding constraints to financing flexibility that might hinder the development of the competitive market for electricity.²¹ CPP is correct that the SCIDA will not become an electric corporation if it remains a passive participant and

¹⁷ Case 98-E-1670, Supra, pp. 9-10.

¹⁸ See, e.g., Case 05-E-1095, TransCanada Power (Castleton) LLC, Declaratory Ruling on Transfer of Ownership Interests and Order Providing for Lightened Regulation (issued January 26, 2006).

¹⁹ Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

²⁰ Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

²¹ While CPP's financing plans were questioned, particularly as they involve SCIDA, the CWW-AFP raised matters of local concern generally outside our jurisdiction.

does not propose to assume a role in actively owning, managing, or operating the Cohocton Project.²²

The proposed financing appears to be for a statutory purpose and in the public interest. Moreover, given that CPP will not provide retail service, its request for flexibility to change (without our prior approval) financing entities, payment terms, and the amount financed (up to \$185 million) is approved, consistent with our past decisions.²³ This financing flexibility cannot adversely affect the public as CWW-AFP fears. Captive New York ratepayers cannot be harmed by the terms of the contemplated financing since CPP and its affiliates bear all the financial risk associated with their financial arrangements.

The Commission orders:

1. A Certificate of Public Convenience and Necessity is granted to Canandaigua Power Partners, LLC (CPP), authorizing CPP to construct and operate the Cohocton Wind Project, the electric plant described in its petition (as supplemented) and in this Order, subject to the conditions set forth below.

2. A Certificate of Public Convenience and Necessity is granted to Canandaigua Power Partners II, LLC (CPP II), authorizing CPP II to construct and operate the Dutch Hill Wind Project, the electric plant described in the amendment to the petition (as supplemented) and in this Order, subject to the conditions set forth below.

3. CPP and CPP II shall each obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals.

4. CPP and CPP II shall each shall file with the Secretary to the Commission, within 90 days of the issuance of this Order, Final Site Plans as approved by the Town of Cohocton Planning Board, revised design plans and profile drawings of the substation,

²² Case 06-E-0745, AES Greenidge LLC, Order on Regulation of a PILOT and Sale-leaseback Transaction (issued September 29, 2006).

²³ Case 03-E-1179, Equus Power I, L.P., Order providing for Lightened Regulation and Approving Financing (issued October 30, 2003).

the transmission interconnection and the 115 kV and 34.5 kV transmission lines. All further plan revisions shall be filed in a timely manner.

5. Prior to construction of the substation and transmission interconnection, not including minor activities required for testing and development of final engineering and design information, CPP shall provide to the Staff of the Department of Public Service (DPS) proof of acceptance of the design by New York State Electric & Gas Corporation (NYSEG).

6. The authorized electric plant shall be subject to inspection by authorized representatives of the DPS pursuant to §66(8) of the Public Service Law.

7. CPP and CPP II shall each continue to cooperate in the development of, and comply with, the final historic resources mitigation plan developed in consultation with the Office of Parks, Recreation and Historic Preservation (OPRHP) and DPS Staff; consultation shall be on-going regarding the historic mitigation program components, reporting requirements, and funding levels; a final historic mitigation program plan shall be presented for approval to OPRHP and involved agencies within 60 days following issuance of this Order; the final program plan shall include any comments received by CPP and CPP II; funding for final historic mitigation program plan component projects shall be available for mitigation project implementation by CPP and CPP II within one year following the issuance of this Order; reporting on final historic mitigation program plan projects shall be provided by CPP and CPP II; reports shall summarize program status, expenditures, and estimated dates of completion, and shall be presented semi-annually, by project heading, until program completion is reported.

8. CPP and CPP II shall each incorporate, and implement as appropriate, the standards and measures for engineering design, construction and operation of its authorized electric plant, including features for facility security and public safety, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, and

complaint resolution measures, as identified in their supplements of July 24 and 27, 2007 and identified in this Order.

9. CPP and CPP II shall each file with the Secretary to the Commission, within three days after commencement of commercial operation of the electric plant, an original and three copies of written notice thereof.

10. CPP and CPP II shall develop final construction and vegetation management plans to address; (a) initial clearing and construction and (b) subsequent long-range management of the 115 kV transmission right-of-way (ROW). Before vegetation clearing or construction of the 115 kV transmission facility may commence, CPP and CPP II shall submit for Staff approval, plans and specifications for facility design, construction including off-ROW access locations, the initial clearing and disposal of vegetation along the 115 kV ROW and ROW restoration. The Plan shall also address: vegetation clearing specifications; the acceptable vegetation species list; vegetation disposal methods and locations, invasive species controls, follow-up treatments; and oversight responsibilities by a qualified vegetation management professional. Within one year after energization of the 115 kV transmission line, CPP and CPP II shall file, for DPS Staff's review and approval, a Long-Range ROW Management Plan.

11. CPP and CPP II shall each design, construct and operate electric plant including transmission facilities in accordance with the Agricultural Mitigation Guidelines recommended by the New York State Department of Agriculture and Markets.

12. CPP and CPP II shall each continue to consult with the New York State Department of Environmental Conservation (DEC) and the U.S. Fish and Wildlife Service (FWS) in the preparation of a work plan for post-construction monitoring and mitigation of avian and bat impacts; a draft work plan for first season operations monitoring shall be submitted to DPS Staff, DEC and FWS by November 15, 2007; a revised plan for additional post-construction monitoring approved by DEC and FWS shall be provided to DPS Staff by February 5, 2008; a final report shall be presented upon conclusion of the post-construction monitoring studies; the final report shall include an adaptive management strategy, including identification of a commitment to employ

necessary mitigation measures in the event that post-construction monitoring studies identify significant adverse impacts to populations of resident or migratory birds or bats from operation of the wind energy facilities; any disputes or unresolved issues regarding the studies or management plans shall be reported to the Commission for resolution.

13. CPP and CPP II shall each design, engineer, and construct facilities in support of the authorized electric plant as provided in the System Reliability Impact Study (SRIS) approved by the New York Independent System Operator (NYISO), the Transmission Planning and Advisory Subcommittee (TPAS), the NYISO Operating Committee, and the NYISO Class Year 2007 Annual Transmission Reliability Assessment Study, and in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, NYSEG, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations, depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required by the NYISO Operating Committee and TPAS in the approved SRIS and by the Interconnection Agreement (IA) and the facilities agreement with NYSEG.

14. CPP and CPP II shall each work with NYSEG, and any successor Transmission Owner (as defined in the NYISO Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between CPP, CPP II and NYSEG), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NYSEG Transmission System is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and NYSEG, and successor Transmission Owner (as defined in the NYISO Agreement). CPP and CPP II shall each ensure compliance with applicable NPCC criteria and shall be responsible for the costs to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NYSEG criteria.

15. CPP and CPP II shall each operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NYSEG, NYISO, NYSRC,

NPCC, NERC and successor organizations. CPP and CPP II may seek subsequent review of any specific operational orders at the NYISO, the Commission, the Federal Energy Regulatory Commission, or in any other appropriate forum.

16. CPP and CPP II shall each be in full compliance with the applicable reliability criteria of NYSEG, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, CPP and/or CPP II, as the case may be, shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Commission and NYSEG with a copy of the NYISO notice.

17. CPP and CPP II shall file a copy of the following documents with the Secretary to the Commission:

- (a) all facilities agreements with NYSEG, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO Agreement);
- (b) the SRIS applicable to each approved by the NYISO Operating Committee;
- (c) any documents produced as a result of the updating of requirements by the NYSRC;
- (d) the Relay Coordination Study, which shall be filed not later than four months prior to the projected dates for commencement of commercial operation of the facilities; and a copy of manufacturers' "machine characteristics" of the equipment installed (including test and design data);
- (e) a copy of the facilities design studies for the Electric Plants, including all updates (throughout the life of the plant);
- (f) a copy of the Interconnect Agreement and all updates or revisions (throughout the life of the plant); and

- (g) if any equipment or control system with different characteristics is to be changed out the CPP or CPP II as appropriate shall provide that information before such changes are made (throughout the life of the plant);

18. CPP and CPP II shall each obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, CPP and/or CPP II, as the case may be, shall obey dispatch instructions issued by the NYSEG Control Center, or that its successor, in order to maintain the reliability of the transmission system.

- (a) After commencement of construction of the authorized Electric Plant, CPP and CPP II shall each provide the DPS Staff and NYSEG with a monthly report on the progress of construction and an update of the construction schedule. In the event the Commission determines that construction is not proceeding at a pace that is consistent with Good Utility Practice, and that a modification, revocation, or suspension of the Certificates may therefore be warranted, the Commission may issue a show cause order requiring CPP and/or CPP II, as the case may be, to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. CPP and/or CPP II, as the case may be, shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate. It shall be a defense in

any proceeding initiated pursuant to this condition if the delay of concern to the Commission:

1. arises in material part from actions or circumstances beyond the reasonable control of CPP and/or CPP II (including the actions of third parties);
2. is not in material part caused by the fault of CPP and/or CPP II; or
3. is not inconsistent with a schedule that constitutes Good Utility Practice.

(b) CPP and CPP II shall each file with the Secretary to the Commission, no more than four months after the commencement of construction, a detailed progress report. Should that report indicate that construction will not be completed within twelve months, CPP and/or CPP II shall include in the report an explanation of the circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order to show cause will not be issued by the Commission, but a hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate.

(c) For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability

and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which CPP and CPP II are located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, New York State Reliability Council criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to CPP and CPP II, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

- (d) Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) CPP's and CPP II's electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.

19. CPP and CPP II shall each work with NYSEG's system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment related to the electrical interconnection of the Project to the NYSEG transmission system. This discussion is designed to ensure that the equipment purchased will be able to withstand most system

abnormalities. The technical considerations of interconnecting the electric plant to the NYSEG 230 kV transmission facility shall be documented by CPP and CPP II and provided to DPS Staff and NYSEG prior to the installation of transmission equipment. Updates to the technical information shall be furnished as available (throughout the life of the plant).

20. CPP shall work with NYSEG's engineers and safety personnel on testing and energizing equipment in the authorized substations. A testing protocol shall be developed and provided to NYSEG for review and acceptance. A copy shall be provided to DPS Staff following NYSEG approval. CPP shall make a good faith effort to notify DPS Staff of meetings related to the electrical interconnection of the Project to the NYSEG transmission system and provide the opportunity for DPS Staff to attend those meetings. A copy of the testing design practical will be provided to staff of the Bulk Transmission Section.

21. CPP and CPP II shall each call DPS's Bulk Transmission Section within six hours to report any transmission related incident that affects the operation of the Electric Plant. CPP and CPP II shall each submit a report on any such incident within seven days to DPS's Bulk Transmission Staff and NYSEG. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. CPP and CPP II shall each work cooperatively with NYSEG, NYISO and the NPCC to prevent any future occurrences.

22. CPP shall make modifications to its Interconnection Facility, if it is found by the NYISO or NYSEG to cause reliability problems to the New York State Transmission System. If NYSEG or the NYISO bring concerns to the Commission, CPP shall be obligated to address those concerns.

23. If, subsequent to construction of the authorized electric plants, no electric power is transferred over such plant for a period of more than a year, the Commission may issue an Order to Show Cause requiring CPP and/or CPP II, as appropriate, to explain why power has not been transferred for such period, and specifying what, if any, action the Commission may be considering with respect to the

Certificate(s) and the basis for such action. CPP and/or CPP II, as the case may be, shall have thirty days after issuance of such Order to respond, and other parties may file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate(s), a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate.

24. In the event that an equipment failure of the authorized Electric Plant causes a significant reduction in the capability of such Plant to deliver power, CPP and/or CPP II shall promptly provide to DPS Staff and NYSEG copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. CPP and/or CPP II shall report monthly to the DPS Staff and NYSEG on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, CPP and/or CPP II shall provide a detailed report to the Secretary to the Commission, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, CPP and/or CPP II shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued. A hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate(s).

25. Within 60 days of the issuance of this Order, CPP and CPP II shall each file with the Secretary of the Commission Operation and Maintenance Plan(s) for the Electric Plant.

26. CPP and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

27. CPP is authorized to enter into the financing transactions in an amount of up to \$185 million as described in the petition and discussed in the body of this Order.

28. This proceeding is continued pending compliance with ordering clauses 7, 9, 10, 12, 17(d), 18(b), 19, 21, 23 and 25; following compliance, it will be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-E-0138 – Petition of Canandaigua Power Partners, LLC and Canandaigua Power Partners II, LLC for an Original Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approving Financing Pursuant to Section 69 of the Public Service Law and Approving a Lightened Regulatory Regime.

FINDINGS STATEMENT

This statement was prepared in accordance with Article 8 of the Environmental Conservation Law. The construction of two wind generation electric plant in the Town of Cohocton, Steuben County are a Type I action. The Town acted as lead agency and the Public Service Commission (the Commission) is an involved agency. The address of the lead agency is Town of Cohocton Planning Board, P.O. Box 327, Cohocton, New York 14826; the address of the Commission is Jaclyn A. Brillling, Secretary, New York State Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350. Questions may be directed to Norman Morrisson at (518) 486-6075, or to the Commission at the address above. The projects are briefly described below:

Cohocton

The Cohocton Project will consist of 35 wind turbines, 8.8 miles of 16-foot and 36-foot turbine access roads, 15.4 miles of underground electrical lines, a collection substation, a 9.0 mile long overhead 115 kV transmission line, an interconnection substation, a construction staging area, two permanent meteorological towers, and a centrally located operation and maintenance facility.

Dutch Hill

The Dutch Hill Project will consist of 16 wind turbines, approximately 5 miles of access roads, 2.6 miles of underground electrical lines, 3.8 miles of 34.5 kV transmission line (of which approximately 2.7 miles will be underground, and approximately 1.1 miles will be aboveground) to a collector substation, a construction staging area, and one permanent meteorological tower. The Project will share the 115 kV transmission line, substations, an operations center and maintenance building with the Cohocton Wind Power Project.

The Draft Environmental Impact Statements (DEISs) and Final Environmental Impact Statements (FEISs) analyzed potential environmental impacts on land use and zoning, visual resources, socioeconomic issues, traffic and transportation, air quality, noise, soils, geology, terrestrial and aquatic ecology including threatened and endangered species, effects on communications facilities, storm water management, impacts of construction, and proposed general and specific mitigation measures. The Town determined, based upon field investigations and review of the DEISs and the FEISs, that

the proposed actions with the mitigation measures incorporated in the FEISs minimize or avoid significant environmental impact to the maximum extent possible. The mitigation measures discussed in the FEISs include: compliance with conditions and any mitigation measures required by any federal, state, and local permits and approvals; implementation of appropriate mitigation measures defined in such permits or approvals; facility phasing and design that avoid concentrating construction-related impacts in any one area; facility layout and location that avoid areas with concentrations of residents or sensitive environmental features; minimum setbacks from residences to limit noise, visual and public safety impacts; and employment of environmental monitors to assure compliance with all environmental commitments and permit requirements. The Town determined that a large-scale wind power-generating project will result in significant environmental and economic benefits to the area.

As requested by Department of Public Service (DPS) Staff, Canandaigua Power Partners, LLC and Canandaigua Power Partners II, LLC (the Companies) provided additional information regarding management of environmental impacts and other matters related to electric transmission facility engineering, construction and operation. DPS Staff was particularly concerned with the design details and environmental management plan for the 115 kV transmission line and associated substation facilities. Pursuant to responsibilities for compliance with Parks, Recreation and Historic Preservation Law (PRHPL) §14.09, additional information regarding mitigation of indirect impacts on historic resources of interest to the State was also provided as requested.

Construction and operation of the transmission line requires a balance between safety and reliability of the facility and the impacts of construction and life-time maintenance. To that end we have required submission of construction and vegetation management plans to address clearing and construction, as well as the long-range management of the 115 kV transmission right-of-way.

Citing provisions requiring conformance with §14.09 of PRHPL, DPS Staff raised concerns with the Company about analysis of potential historic resource impacts, and fulfilling the requirements regarding consultation with Office of Parks, Recreation and Historic Preservation (OPRHP) Staff.¹ On June 26, 2007, OPRHP indicated that it had no concerns regarding impacts to archeological resources listed or eligible for listing on the State or National Registers of Historic Places. OPRHP stated that the project would have an "adverse effect" on cultural resources (architectural and cultural heritage) within the area of potential effect. OPRHP indicated that consultation regarding potential mitigation to offset impacts should be continued. OPRHP explained that, due to the significant scale of wind turbine structures, visual contrasts are not readily minimized and historic resource settings may be adversely affected. Consultation with OPRHP

¹ Pursuant to PRHPL §14.09, DPS Staff has been engaged in ongoing consultation with OPRHP Staff.

regarding mitigation measures to minimize adverse effects resulted in development of an offset mitigation strategy and plan.

In addition to the historic resource impacts discussed above, impacts on avian and bat species are anticipated due to facility operations. The FEIS identifies potential mortality estimates based on analysis of site conditions and operating experience at other wind-powered electric generation projects. The FEIS indicates that post-construction mortality reporting and an adaptive management strategy to minimize significant impacts should be developed with additional input from the U.S. Fish and Wildlife Service and the New York State Department of Environmental Conservation. This approach is appropriate to the mitigation of adverse wildlife effects, provided that the adaptive management strategy is required to be implemented in facility operations. Critical periods of potential highest risk, land cover management opportunities, or similar adaptive management strategies, may be identified by monitoring mortalities and operations. Results will indicate impact avoidance, or minimization strategies, appropriate to the facility sites.

Other findings pursuant to the State Environmental Quality Review Act (SEQRA), as extensively discussed in the Findings Statements adopted by the Town, are reasonable and appropriate. Those findings consider the relevant environmental impacts, facts and conclusions as discussed in the FEISs. The significant benefits identified in the FEISs will accrue to the local community through increased employment, payment of taxes, Payments In Lieu of Tax, and Host Community Agreement incentive payments. The FEISs identified a long-term beneficial impact on air quality due to electricity generation without any emissions to atmosphere, and potential displacement of emissions from fossil-fuel based generation. Initiatives of New York State are served by the increased availability of renewable electricity to be provided by the wind facilities.

The potential benefits identified in the FEISs outweigh the potential adverse effects that will result from construction and operation of the proposed wind generation facilities. The mitigation measures proposed are reasonable responses to identified impacts, and will avoid or minimize the identified adverse effects to the extent practicable. Offset measures to the identified adverse effects on historic resources will provide for the establishment or enhancement of historic preservation programs in the project vicinity, and will advance the understanding, appreciation and preservation of historic resources and historic values in the community. Implementation of the adaptive management strategy discussed in the FEIS will minimize adverse impacts on wildlife species.

The Commission certifies that the requirements of SEQRA have been met, based on the procedural measures administered by the Lead Agency, the input of involved agencies, and the substantive mitigation of adverse effects based on facility design and the requirements of the agencies findings, the various permits to be issued, and the requirements of the Certificates of Public Convenience and Necessity. The Commission

also certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the actions are one that avoid or minimize adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable because of the incorporation of conditions requiring appropriate mitigation measures in the Certificates of Public Convenience and Necessity.

JACLYN A. BRILLING
Secretary