

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
NOTICE OF PUBLIC COMMENT PERIOD, LEGISLATIVE PUBLIC COMMENT
HEARING, DEADLINE FOR PETITIONS FOR PARTY STATUS AND ISSUES
CONFERENCE

Applicant: Danskammer Energy LLC
994 River Rd
Newburgh, NY 12550

Project Location: Danskammer Energy Center
994 River Rd
Newburgh, NY 12550

Applicant's Attorney: Brenda D. Colella, Esq.
Barclay Damon Tower
125 East Jefferson Street
Syracuse, NY 13202

DEC Applications: Article 19 Air Title V Facility (ID No. 3-3346-00011/00017)

Project Description: Danskammer Energy, LLC (Danskammer, Facility, or Project) is proposing to construct a new natural gas fired combined cycle power generation facility, the Danskammer Energy Center, in the Town of Newburgh, Orange County, New York, which will consist of an optimal 536 net megawatt (MW) facility located at the site of its existing Danskammer Generating Station. The proposed Facility (combustion turbine) will be primarily fueled by natural gas with ultra-low sulfur diesel (ULSD) as a backup fuel for up to the full load equivalent of 720 hours per year. On October 27, 2021, the New York State Department of Environmental Conservation (Department or DEC) issued a notice of denial of the Title V permit application pursuant to title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) 621.10(f). DEC's denial of Danskammer's application was based upon DEC's determination that the Project would be inconsistent with or would interfere with the attainment of the Statewide greenhouse gas emission limits established in Environmental Conservation Law (ECL) Article 75. DEC also cited the lack of short- or long-term reliability need for the Project and the failure of Danskammer to identify adequate alternatives or greenhouse gas emission mitigation measures as reasons for denying the Title V permit application. DEC concluded that the Project does not satisfy the requirements of the Climate Leadership and Community Protection Act. The October 27, 2021, notice of denial provides in detail the reasons for DEC's determination. Danskammer submitted a request for hearing on DEC's denial dated November 23, 2021.

SEORA Status: The Project is a Type II action under ECL article 8 (State Environmental Quality Review Act [SEORA]) and 6 NYCRR 617.5(c)(44).

Prior Notices of Complete Application and Legislative Public Comment Hearings: On June 30, 2021, DEC issued a Notice of Complete Application (NOCA) in the Environmental Notice Bulletin (ENB) commencing the public review and comment period for the referenced draft permits and associated applications. More specific information on these draft permits can be found in the NOCA at: https://www.dec.ny.gov/enb/20210630_reg3.html#333460001100017.

On July 21, 2021, the Department issued a Notice of Legislative Public Comment Hearing as amended by Amended Notice of Public Comment Hearing issued August 11, 2021, in the ENB at: https://www.dec.ny.gov/enb/20210721_not3.html and https://www.dec.ny.gov/enb/20210811_not3.html, respectively. Virtual legislative public comment hearings were held on August 23, 2021 at 1:00 p.m. and 6:00 p.m. and on August 25, 2021 at 1:00 p.m. and 6:00 p.m.

Current Notice: This Notice serves to provide the public notification that DEC will hold a legislative public comment hearing, provide a written public comment period, set deadlines for petitions for party status, and hold an issues conference regarding Danskammer's Title V permit application, the draft permit, DEC's notice of denial, and Danskammer's request for a hearing as described below. PLEASE NOTE THE ADMINISTRATIVE LAW JUDGE IS ACCEPTING ALL ORAL STATEMENTS PROVIDED AT THE AUGUST 23 AND 25, 2021 LEGISLATIVE PUBLIC COMMENT HEARINGS AND WRITTEN COMMENTS SUBMITTED TO DEC STAFF PURSUANT TO THE PREVIOUS NOTICES INTO THE ADMINISTRATIVE RECORD OF THIS PROCEEDING.

Legislative Public Comment Hearing: A legislative public comment hearing pursuant to 6 NYCRR part 624 to hear and receive unsworn comments from the public will be held on **Tuesday, February 15, 2022 at 5:00 p.m. The hearing will be conducted electronically through the Webex Events electronic webinar platform.** Instructions for participating in and attending the webinar are provided on the Department's website at <https://www.dec.ny.gov/permits/123412.html> or by calling (518) 402-9003.

All persons, organizations, corporations, or government agencies who may be affected by the project are invited to attend the hearing and comment on Danskammer's Title V permit application, the draft permit, DEC's notice of denial, and Danskammer's request for a hearing. Lengthy comments should be submitted in writing. Equal weight will be given to oral and written statements. The Administrative Law Judge (ALJ) may limit the time available for oral comments to 2 minutes per person, depending on the number of people wishing to speak, to ensure that all persons have an opportunity to be heard. **Please be advised that speakers will be called in the order they register with preference given to publicly elected officials and those who did not speak at one of the previous four legislative public comment hearings held on August 23 and 25, 2021. If you spoke at one of the previous hearings, you will only be called if time allows.**

Because the hearing is being conducted by electronic webinar, it is reasonably accessible to persons with a mobility impairment. Interpreter services shall be made available to deaf persons, and translator services shall be made available to persons with limited English proficiency, at no charge for either service, upon written request. Requests must be submitted by **Wednesday, February 2, 2022** and directed to the NYSDEC Office of Communication Services, either by mail (address: NYSDEC, Office of Communication Services, 625 Broadway, Albany, New York 12233-4500), by telephone (518 402-8044) or by e-mail (language@dec.ny.gov).

Written Public Comments: Written comments concerning Danskammer's Title V permit application, draft permit, DEC's notice of denial, and Danskammer's request for a hearing must be postmarked by **Tuesday, February 22, 2022** and mailed to Administrative Law Judge Michael S. Caruso at DEC's Office of Hearings and Mediation Services, 1st Floor, 625 Broadway, Albany, NY, 12233-1550, or emailed to ALJ Caruso at DanskammerEnergy@dec.ny.gov by **5:00 p.m. on Tuesday, February 22, 2022.** Written statements will be considered equally with oral statements given at the legislative public

comment hearing, provided they are postmarked by Tuesday, February 22, 2022 or emailed by 5:00 p.m. on that date.

Issues Conference: Pursuant to 6 NYCRR 624.4(b), a pre-adjudicatory issues conference will be conducted by ALJ Caruso electronically through the Webex Events electronic webinar platform. The conference will begin at **10:00 a.m. on Wednesday, March 16, 2022**. The purpose of the issues conference is to determine party status for any person or organization that has properly filed a petition (as indicated below), to consider DEC's notice of denial, Danskammer's statement of issues, and to narrow and define those issues, if any, that will require adjudication in this matter. Participation at the issues conference shall be limited to Department staff, applicant, and those persons or organizations requesting party status. Issues proposed for adjudication must be both substantive and significant in accordance with 6 NYCRR 624.4(c). Members of the public may observe the issues conference by attending the electronic webinar. Instructions for attending the webinar are provided on the Department's website at <https://www.dec.ny.gov/permits/123412.html> or by calling (518) 402-9003.

Filing for Party Status and Proposed Issues: Persons seeking to participate at the issues conference and the subsequent adjudicatory hearing, if one is necessary, must file a written petition explaining whether their request is for full party status or amicus status. For the required contents of petitions for full party status, see 6 NYCRR 624.5(b)(1) and (2). To determine whether an issue is substantive, see 6 NYCRR 624.4(c)(2), and to determine whether an issue is significant, see 6 NYCRR 624.4(c)(3). For the required contents of a petition seeking amicus status, see 6 NYCRR 624.5(b)(1) and (3).

All petitions requesting party status to participate at the adjudicatory hearing **must be received** at DEC's Office of Hearings and Mediation Services **no later than 5:00 p.m. on Wednesday, February 23, 2022**. Address all petitions to Administrative Law Judge Michael S. Caruso, DEC's Office of Hearings and Mediation Services, 1st Floor, 625 Broadway, Albany, NY, 12233-1550, telephone: (518) 402-9003, email: michael.caruso@dec.ny.gov. At the same time and in the same manner that the petition is furnished to the ALJ, a copy of the petition must be furnished to applicant's attorney, Brenda D. Colella, Esq., Barclay Damon Tower, 125 East Jefferson Street, Syracuse, New York 13202, telephone: (315) 425-2722, email: bcolella@barclaydamon.com, and to Department staff's attorney, Mark Sanza, Deputy General Counsel, New York State Department of Environmental Conservation, 625 Broadway, 14th Floor, Albany NY 12233-1500, telephone: (518) 402-9185, email: mark.sanza@dec.ny.gov. Any questions about the filing requirements or other hearing procedures may be addressed to ALJ Caruso by telephone at (518) 402-9003. DEC's permit hearing regulations may be found at <http://www.dec.ny.gov/regs/2488.html>, and a guide to permit hearing procedures may be found at <http://www.dec.ny.gov/permits/6234.html>.

Statement of Issues: Danskammer must submit a statement of issues **no later than 5:00 p.m. on Wednesday, February 23, 2022** addressed to the ALJ and Department staff's attorney. The statement of issues must: (a) identify issues for adjudication which meet the criteria of 6 NYCRR 624.4(c); (b) present an offer of proof specifying the witness(es), each witness's qualifications, the nature of the evidence the applicant expects to present at the evidentiary hearing and the grounds upon which the assertion is made with respect to each issue; and (c) identify whether each identified issue is an issue of fact or law. The statement of issues must also be provided to all persons who filed petitions for party status no later than 5:00 p.m. on February 28, 2022.

Responses: Department staff may submit a response to Danskammer's statement of issues and Department staff and Danskammer may submit responses to petitions for party status provided they are submitted no later than **5:00 p.m. on Thursday, March 10, 2022**. Responses must also be provided to all persons who filed petitions for party status no later than March 10, 2022.

Filing by Email: Filing of petitions for party status, Danskammer's statement of issues and responses from Department staff and Danskammer by email is authorized provided the petitions, statement of issues and responses are received by all of the parties or petitioners, as directed above, by the 5:00 p.m. deadline for each filing, and a conforming hard copy is sent by first class mail and postmarked by the respective deadline date. Telefaxed petitions will not be accepted.

Document Availability: Filed application documents, draft permit and notice of denial are available for review at <https://www.dec.ny.gov/permits/123412.html> and <https://www.danskammerenergy.com/documents/>. For further information contact Michael Higgins, Project Manager, NYSDEC - Division of Environmental Permits, Bureau of Energy Project Management, 625 Broadway, Albany, NY 12233-1750, Phone: (518) 402-9179, E-mail: DanskammerEnergy@dec.ny.gov.

Statutory and Regulatory Provisions: This proceeding is being conducted according to ECL article 3, title 3 (General Functions), ECL article 19 (Air Pollution Control), ECL article 70 (Uniform Procedures), ECL article 75 (Climate Change); 6 NYCRR part 621 (Uniform Procedures), part 624 (Permit Hearing Procedures), and part 201-6 (Air Title V); and 40 CFR 72 through 78.

Michael S. Caruso
Administrative Law Judge

January 12, 2022
Albany, New York