

**STATE OF NEW YORK**  
**DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Denial of the Application for New York State Title V Air Permit,  
DEC ID: #3-3346-00011/00017 Pursuant to Title 6 of the Official Compilation of Codes, Rules  
and Regulations of the State of New York (6 NYCRR), Section 621.10(f),

- of -

**DANSKAMMER ENERGY CENTER,**

Applicant.

DEC Permit ID No.:           3-3346-00011/00017

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**RULING ON DANSKAMMER ENERGY CENTER'S REQUEST FOR A STAY**

June 15, 2023

By email dated June 8, 2023, Danskammer Energy Center (Danskammer) advised me and the parties that Danskammer has decided not to appeal my April 4, 2023, Ruling on Issues and Party Status (Issues Ruling). Danskammer further requested that the Title V permit proceeding be stayed for one year to allow the policies and rulemakings being developed by the New York State Department of Environmental Conservation (DEC or Department), New York State Public Service Commission (PSC), and New York State Energy Research and Development Authority (NYSERDA) to further implement the Climate Leadership and Community Protection Act to conclude. After one year, Danskammer submits that it will either:

- (i) withdraw the existing Title V application for the Project, thereby terminating the current proceeding and, at the same time, withdraw or otherwise terminate the related Public Service Law (PSL) article 10 proceeding; or
- (ii) modify the Project and submit a new/amended Title V modification application to the Department, and make any applicable changes to the PSL article 10 filings.

Department staff, Sierra Club and Orange RAPP, and Scenic Hudson also advised me by emails on June 8, 2023 that they did not intend to appeal the Issues Ruling. On June 13, 2023, I convened a procedural conference with Danskammer, Department staff, Sierra Club and Orange RAPP, Scenic Hudson and Riverkeeper to hear the parties' positions on Danskammer's request. Erika Bergen and Anthony Belsito, the presiding examiners in the joint PSL article 10 proceeding, and Heather Behnke, Assistant Counsel at the Department of Public Service, were also in attendance.<sup>1</sup>

Department staff did not object to Danskammer's request for a stay, but questioned what would be gained procedurally if the stay resulted in the submission of a new or modified Title V application. Staff expressed the opinion that a new or modified Title V permit application would result in the commencement of a new permit review process pursuant to 6 NYCRR parts 621 and 624. Sierra Club and Orange RAPP, Scenic Hudson, and Riverkeeper did not object to the request for a stay, but echoed Department staff's procedural concerns.

### **Discussion**

Danskammer bases its request for a stay on New York State's continuing development of policy, procedure, and regulations to address climate change. For instance, the PSC recently issued an Order Initiating Process Regarding Zero Emissions Target, May 18, 2023 (Case No. 15-E-0302), which seeks public comment on how zero emissions should be defined, what technologies and resources should be included in the term zero emissions, and other substantive provisions related to the zero emissions goal. In addition, DEC is developing regulations pursuant to ECL 75-0109(1) to ensure compliance with the statewide greenhouse gas emission

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<sup>1</sup> The joint PSL article 10 proceeding has been adjourned without date to allow the Title V proceeding to align procedurally with the article 10 adjudicatory proceeding (*see Application of Danskammer Energy LLC*, Ruling Adjourning Schedule, Case No. 18-F-0325, January 26, 2022).

reduction limits. The regulations will include measures to maximize reductions of greenhouse gas emissions and co-pollutants on, and maximize benefits for, disadvantaged communities. Also in May 2023, DEC and NYSERDA announced stakeholder sessions on development of an economywide Cap-and-Invest Program to further assist in greenhouse gas emission reductions.

In brief, Danskammer asserts that these policies, regulations, and programs may substantively affect the design of the proposed facility and the technology employed or may impact whether the proposed project will even be pursued subsequent to the development of the regulations and programs. Given that background, Danskammer's request is reasonable. There are no prohibitions to granting a request for a stay of the proceeding in 6 NYCRR part 624. As noted above, none of the parties objected to the request for a one year stay of the Title V proceeding.

**Ruling**

Accordingly, Danskammer's request for a stay of the proceeding is granted. The Title V matter pending before me is stayed until June 17, 2024. On or before June 17, 2024, Danskammer shall advise the service list whether applicant is withdrawing the Title V application and terminating this proceeding or modifying the project and submitting a modified or new Title V permit application. Any further request to stay the proceeding beyond June 17, 2024 must be made on notice to the parties with an opportunity to be heard on the request.

\_\_\_\_\_/s/\_\_\_\_\_  
Michael S. Caruso  
Administrative Law Judge

To: Attached service list