

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Application of Garrison Energy Center, LLC for an Air Pollution Control Permit to Construct a 309 Megawatt Gas-Fired Combined Cycle Electric Generating Station in Dover, Kent County

DATE: January 18, 2013

I. PROCEDURAL HISTORY

On November 1, 2011, Garrison Energy Center, LLC (Applicant or GEC) submitted to the Department of Natural Resources and Environmental Control's (DNREC or Department) Division of Air Quality (DAQ) an application for permits¹ to construct a 309 Megawatt (Mw) natural gas-fired combined cycle electric generating station (Facility) at the Garrison Oak Technology Park in Dover, Kent County.

DAQ indicated that the application was administratively complete based on its preliminary review that all forms were included and the filing fee received. DAQ proceeded to conduct its more extensive technical review of the application, and requested additional information from the Applicant on January 13, 2012, January 30, 2012, March 21, 2012, March 22, 2012, April 9, 2012, and April 19, 2012. DAQ also held a March 21, 2012 conference call with the Applicant in order to gather information.

The Applicant in letters dated February 21, 2012, March 27, 2012, and May 4, 2012 responded to DAQ's requests. May 4, 2012 is when the application was technically complete under Section 3.14.2 of Regulation I 125, and the Regulation's definition of "complete" when the last information was received from the Applicant.

¹ The permits generically are known as Prevention of Significant Deterioration (PSD) permits under federal regulations and Department Regulation 1125's Section 3.0. *7 DE Admin Code 1125.*

On July 6, 2012, DAQ issued the draft permits for public comment. The drafts represent a tentative decision to issue permits, which DAQ identified as APC-2012/0098 for the air emissions from the generation equipment, APC-2012/0038 for the air emission from the 86,000 gallon per minute cooling water tower for use in the combustion turbine, and APC-2012/0039 for the air emissions from the storage tank for 1.4 million gallons of ultra-low sulfur diesel (ULSD) as the turbine's back up fuel in the event there was not sufficient natural gas. In addition, each draft permit included a technical memorandum prepared by experts in DAQ in order to demonstrate compliance with Regulation 1125.

The Department published on July 8, 2012 public notice of the draft permits in area newspapers to open the thirty day public comment period, which would conclude at an August 8, 2012 public hearing.

On August 8, 2012, the Department held a public hearing on the application and draft permits in order to provide the public with the opportunity to comment at the public hearing. The public comment period closed at the conclusion of the public hearing with no requests to extend it. DAQ provided for the public hearing's record all the written comments timely received during the thirty day public comments period that included letters from Delaware Chamber of Commerce, White Oak Solar Energy, LLC and Dover Sun Park. I indicated at the hearing that the Department reserved the right to develop the record to support the Secretary's final decision.

In an August 20, 2012, letter Applicant provided a response to the timely submitted public comments as allowed by Department Regulation 1125 Section 3.14.26.

In an August 22, 2012 memorandum to DAQ, I requested technical expert assistance to address the public comments.

On September 13, 2012, the Department received a request from counsel for Harman Bros, LLC, (Harman Bros), a landowner adjacent to the Facility, to re-open the public comment period for 15 days. The stated reason for the request was Harman Bros' lack of actual notice of the proceeding due to the principals not being in the area. In a September 13, 2012 letter to counsel for Harman Bros, I deferred ruling on the request to re-open and allowed Harman Bros 15 days to provide some description on what Harman Bros' comments would be. I also provided the Applicant with the opportunity to respond to the request to re-open.

In a September 24, 2012 letter, Applicant opposed any re-opening based upon the fact that proper notice had occurred and that the permit application review process had expected a decision to allow a mid-2012 construction start date and commercial operation by June 1, 2015. DAQ also indicated to me orally that it strongly opposed the request due to the potential to delay the final decision, and that all proper notice had been provided so that Harman Bros should have been aware of the proposed Facility, including its possible construction from the signage from local government's land use proceedings.

On September 20, 2012, Harman Bros' counsel contacted me concerning its efforts to acquire information in the Department files via use of the Freedom of Information Act (FOIA), which was handled by DAQ. In a September 28, 2012 cover letter, Harman Bros submitted its proposed comments, along with its FOIA requests to obtain information on the application and draft permits. The proposed comments were prepared by D. Howard Gebhart, Manager, Environmental Compliance Section, of Air Resource Specialists, Inc.

I also provided Applicant the opportunity to respond to the proposed comments in the event I or the Secretary re-opened the public comment period. Applicant provided a response that addressed the proposed Harman Bros' comments. I indicated to Harman Bros' counsel that I would address the re-opening request in this Report in response to Harman Bros' request for a

determination on the pending request to re-open, which cited the time and expense entailed in preparing the proposed comments.

In a November 27, 2012 letter, DAQ provided Applicant's parent with the nitrogen oxide credit balance that showed sufficient credits well in excess of the amount required for a permit to the Applicant, as determined in DAQ's technical memorandum for the combustion turbine.

In the attached December 12, 2012 Technical Response Memo, DAQ's expert, Tom Lily, P.E, provided a full review of the timely public comments. In addition, this TRM provided revised draft permits that addressed some of the concerns raised in the public comments.

I consider the record, as reviewed below, complete for decision. I include the Harman Bros. comments in the summary solely to allow the Secretary to review them in order that he may make the final decision on my recommendation, which is to not re-open the public comment period to allow them to be included in the record, as discussed *infra*.

II. SUMMARY OF THE RECORD

This Report considers the record, which includes the oral and written comments timely received during the public comment period, and the documents and information identified in this Report as in the record, including the technical advice provided by the DAQ's experts that support this Report. DAQ's technical memoranda, its TRM and draft permits, as revised December 12, 2012, are included, and Applicant's responses to the timely public comments. I include the above documents recited in the procedural history except the comments and response thereto that are the subject of the request to re-open.

The public comment portion of the record contains a verbatim transcript² of the public hearing, and the documents introduced in the record at the public hearing as exhibits. At the

² This summary is provided but the entire transcript is the best source of the public hearing comments in the event this summary misstates anything in the transcript. The public hearing transcript has public comments present for the record without swearing of witnesses, cross-examination or other trial methods to test the veracity of the comments.

public hearing, DAQ's representatives Paul Foster, P.E., Environmental Program Manager II of the Compliance, Joanna French, P.E., Program Manager I, and Tom Lilly, P.E., Environmental Engineer, were present for DAQ. DAQ provided for the public hearing record³ the following documents as exhibits: DNREC Exhibit (Ex) 1- the Applicant's November 1, 2011 permit application for permits to construct a 86,000 gallon per minute process water cooling tower, a 1.4 million gallon ultra-low sulfur diesel storage tank, and a 309 Mw combined cycle generating system; DNREC Ex. 2-DAQ's emails dated January 13 and 30, 2012 requesting additional information from the Applicant; DNREC Ex 3- Applicant's February 21, 2012 response to DAQ email requests, DNREC Ex. 4-Applicant's March 27,2012 response with additional information; Ex.5-DAQ's letters dated April 9 and 19, 2012 requesting additional information; Ex. 6 is Applicant's May 4, 2012 response to DAQ's requests; Ex 7- DAQ's July 6, 2012 draft permits and technical support memorandum for each permit; Ex. 8-DAQ's letter notice to Applicant of the public hearing; Ex.9-the affidavits of publication of public notice of the application, draft permits, and the opportunity for public comment, including at an August 8, 2012 public hearing; Ex. 10-August 7, 2012 letter from the United States Environmental Protection Agency (EPA) commenting on the draft permits; and Ex. !!-Delaware Chamber of Commerce comments in support of the application. In addition, written comments dated August 7, 2012 from White Oak Solar Energy, LLC and Dover Sun Park were received during the hearing.

The Applicant made a brief presentation from Stu Widom, Director of Governmental and Regulatory Affairs of Calpine Corporation's (Calpine) North Region Office in Wilmington, New Castle County. He indicated that Calpine had acquired GEC in 2010. Mr. Widom described

Instead, I rely on DAQ's technical expertise to provide factual support for this Report. The public comment portion of the record under Chapter 60 in that public comments are to be considered before a final decision is made.

³ The Department does not have an obligation to develop the public hearing record. The DAQ prepared draft permits as required by the permit process, but has no burden of proof to develop the entire record at the public hearing to support the Secretary's final decision, which is made after consideration of the public comments and the inclusion of information from sources other than the public hearing, including from this Report. The Department develops a basic public hearing record for the public's benefit in presenting public comments.

Calpine as the largest independent power producer in the United States, which in 2010 acquired the generating assets of Conectiv. Calpine is the largest energy producer in Delaware with almost 2,000 MWs of generating capacity. He described the proposed Facility as a 309 MW combined cycle generating station to be located on 37 acres in the Garrison Oak Technical Park that has access to necessary industrial infrastructure. 193 MWs of generation would be from a natural gas fired combustion turbine, General Electric model 7FA, which could also burn low sulfur diesel oil as a temporary back up fuel. The Facility's remaining 116 MW capacity would be from the 'Heat Recovery Steam Generating' (HRSG) unit that allows greater efficiency to the generating process that makes the process an efficient combined cycle system. He detailed the air pollution control technologies to be used to comply with the Best Available Control Technology (BACT) and Lowest Achievable Emissions Rate (LAER) requirements established pursuant to the federal and Department regulations under the Clean Air Act, as administered by the Department. He further discussed the noise abatement technology and equipment that would be employed and the cooling water technology. Finally, he provided written comments on the draft permits.

The following summarizes the public comments presented at the hearing or timely received by the Department.

Harry Gravell spoke as the President of the Delaware Building and Construction Trades Council in favor of the Facility, which he said would be a source of 250 jobs for the Council's 5,000 members, of which 2,000 are unemployed. His support highlighted the other air quality control construction projects undertaken in Delaware by his Council's members.

The Honorable Crawford Carey, Mayor of the City of Dover, spoke in support of the Facility, which he said would be at a good location to add generating capacity and eliminate

congestion in the electric system to the north. The Facility, he said, would result in lower power costs to the City, its electric customers and other electric customers in Delaware.

Scott Koenig, City Manager of Dover, spoke in support of the Facility. He indicated the Facility received the financial support from the Dover City Council with \$6 million in funding for infrastructure improvements. He mentioned that the Facility will be the single largest industrial development project in Dover. The Facility will allow lower electricity costs and expand low cost natural gas service in Dover. He noted how the Facility will create local jobs and allow Dover to receive an estimated additional \$2.3 million from fees, municipal services and taxes.

The August 7, 2012 comments (received August 8, 2012) from Caroylne Wass of White Oak Solar Energy, LLC, and Dover Sun Park (jointly referred to as White Oak). These entities apparently are affiliated and occupy the property that would be adjacent to the Facility. The companies operate a 10 MW solar energy generating station, and the comments raised concerns with the permits because of the potential dust from construction, the increased air emissions from traffic during the Facility's construction, and the increased air emissions if the Facility is allowed to operate, including the combustion emissions and the water vapors from the use of the water cooling tower. The comments also questioned whether the Facility represents BACT that followed proper analytical procedures for such a BACT determination. The comments also questioned the LAER determination, and specifically questioned the use of diesel fuel to fire the combustion turbine on occasion when needed. The comments also claimed that the dry cooling equipment was not considered as an alternative to the water cooling tower selected for use with the combustion turbine. Finally, the comments disputed that the application complied with Section 2.4.4 of Regulation 1125 in its analysis of possible alternatives to the Facility's construction at the location.

The public comment period closed at the conclusion of the public hearing without any request to extend it. Applicant, as allowed by the Department Regulation 1125, provided on August 20, 2012, a response to the EPA comments, which response explained the selection of the General Electric turbine, the LAER analysis that selected the dry, low NOx combustors and selective catalytic reduction as the technology and equipment to be used. The response also provided an explanation for the use of an oxidation catalyst as BACT for carbon monoxide and that the catalyst will operate when the generating station is operating. Finally, the response explained the need for flexibility in the operating limits for the combined cycle generation in draft permit sections 3.1.1 and 3.1.2 that EPA had commented on.

Applicant also provided a response to the comments from White Oak that disputed the lack of analysis of the turbine. The response also defended the reliance on the five step BACT determination process as consistent with Delaware's administration of the State Implementation Plan and Clean Air Act New Source Review program that the PSD permit is within. Applicant explained that the BACT for particulate matter emissions (PM) from the combustion turbine was use of natural gas or ultra low sulfur diesel as a fuel. Applicant proposed these fuels. Further control on PM emission was from drift control to a BACT determined level of 0.0005%, or the drift elimination rate of 99.9995% proposed for GEC. The Applicant noted that the BACT for the combustion turbine's emissions of hydrogen sulfur is based upon the fuel and the fuels to be used satisfy the BACT. The Applicant noted that the BACT for carbon monoxide was reduced below the PSD threshold by the proposed oxidation catalyst to lower emissions to less than 100 tons per year.

The second issue White Oak raised was the possible use of fuel oil, but Applicant's response indicates that fuel oil usage will be limited to 480 hours annually when natural gas is

unavailable, to comply with testing requirements, and when natural gas use is not practicable such as when there is low pressure.

The third issue raised was the use of the proposed water cooling tower as opposed to White Oak's suggestion that a dry cooling tower be considered. The Applicant explained that the wet cooling tower meets BACT emission limits and that the tower is an integral part of the combustion turbine and that any use of dry cooling would increase emissions and would reduce the Facility's efficiency by 2.25%.

The fourth issue raised what the consideration of alternatives and alternate locations, and Applicant's response indicated that the City of Dover sought electric generation for the 385 acre industrial park and that the location is especially suitable for electric generation.

DAQ provided its TRM that provided separate responses to Applicant's comments, EPA's comments, and White Oak's comments along with revised draft permits. The TRM is incorporated into this Report, but due to its approximately 90 pages is not attached to the original but instead has been provided electronically to the Secretary. The TRM provides a response to each of the comments received during the public comment period and explains the reasons for rejecting the suggested changes sought in the public comments and if a change was determined to be made or other explanation that addresses the public comments.

The record does not include at this time the proposed public comments of Harman Bros, as prepared by D. Howard Gebhart, Manager, Environmental Compliance Section of Air Resources Specialists, Inc. located in Fort Collins, Colorado. I provide this review of the proposed comments solely for the benefit of the Secretary should he want to include re-open the public comment period to include them in the record, which is contrary to my recommendation discussed *infra*.

The proposed comments present six reasons for changing or even denying the permit. Mr. Gebhart's technical analysis is based upon his admittedly limited review of the relevant documents and Harman Bros' apparent attempt to seek even more time for its request to re-open the public comment period. The first issue raised in the proposed comments relates to the emission control technology to be used for emissions. Mr. Gebhart claims that the selected technology in the application, as accepted by DAQ's experts, does not comply with the proper BACT determination. The second issue he raised was the identification of specific offsets for the nitrogen oxide (NO_x) emissions, which he claimed should have been included in the application. The third issue raised in the proposed comments was the use of EPA's approved computer modeling program known as SCREEN, which he claimed was not proper and inaccurate based upon the proximity of adjoining properties and the use of the "Urban" dispersion scenario. The modeling also was alleged to be inaccurate because it was based upon operating conditions that may not be representative of actual operations, which may produce more emissions if operating at less than full capacity. The recommendation was to run SCREEN model using multiple operating conditions. The fourth issue in the proposed comments was the lack of disclosure in the application or DAQ documents of all the underlying information that were used to run EPA's AERMOD and CALPUFF computer models in order to determine compliance with the Class I and II PSD increments. The proposed comments' fifth issue was whether there was a proper and complete evaluation of potential alternatives as provided by Section 2 of Regulation 1125. The comments from the adjoining solar park were cited as an example of an adverse impact of the air emissions that had not been considered by the Applicant or DAQ in the technical analysis. The sixth issue raised was the ammonia storage and its associated risk management plan requirement, which the proposed comments alleged to have been a consideration that the Department had

ignored. The proposed comments expressed concern to Harman Bros from any release of this substance and requested that the final permit provide notification and protection from this risk.

Applicant, as I allowed, provided a proposed response to the proposed comment to further protect its interest as allowed by Section 1125 without waiting for a ruling by me or the Secretary on the re-opening request. Applicant's proposed response addressed the technological review issue by pointing out its comments in the record. The second issue was NOx credit and Applicant points to the ability to obtain credits from the Delaware Development Office or from its parent corporation from other sites in Delaware. The third issue was the SCREEN modeling, and Applicant's cited its reliance on the EPA model, and DAQ's review and independent determination of its use should be sufficient support for the permits. The fourth issue was the AERMOD and CALPUFF modeling and the lack of disclosure of all the underlying data that was used. Applicant disagrees and points to the Appendix D of the application where the data was provided to support the Air Quality Related Values and PM analysis. The fifth issue was the consideration of alternatives, and Applicant's was response that both the Applicant and DAQ satisfied this requirement recognizing that it is impossible to review all alternatives that can be imagined, but the record has a reasonable and acceptable review of alternatives. The sixth issue was the ammonia storage and risk management plan and Applicant indicates that such a plan will be prepared consistent with the Delaware administration of this requirement.

The above review of the substance of Harman Bros' comments supports denying the request to re-open and also rejecting their substance should comments be included in the record. I agree with the Applicant's reasoning as set forth in its proposed response to the Harman Bros' comments and if the Harman Bros comments are included, the Applicant's response should be as well.

I consider the record as sufficient to support the recommendation within this Report and the recommended conclusion that an Order be issued that approves DAQ's issuance of the permits to the Applicant.

III. DISCUSSION OF FINDINGS AND REASONS

This Report reviews the pending permit application pursuant to the Department's authority in *7 Del C. Chapter 60* and *Regulation 1125, Requirements for Preconstruction Review, 7 DE Admin 1125*, in the Department's *Regulations Governing the Control of Air Pollution (Air Regulations), 7 DE Admin. §§1100 et seq.*

I find that the record amply supports a final decision to issue the permits as drafted by DAQ that accompanied its TRM. I recommend that the Department issue the draft permits to allow the Facility to be constructed consistent with the permits to be issued, which will allow the Facility to be constructed in compliance with all applicable air quality laws and regulations. I specifically rely on the facts and analysis included in the information DAQ provided for the record, based upon my experience with DAQ's experts and DAQ's role to protect the environment and public health from any undue risk of harm.

I address Harman Bros' request to re-open the public comment period to allow its proposed comments, which caused the most controversy in this proceeding. I deny that request to re-open despite the considerable time and effort spent to submit the proposed comments. My first reason for this recommendation to deny the request to re-open is that it was made on September 12, 2012, which is well after the close of the public comment period on August 8, 2012. If the request had been made soon after the close of the public comment period, then the lateness of the request would not have had as much adverse impact on this proceeding. Indeed, the Department's practice often allows the public comment period to be extended for good cause, and where a reasonable request is not opposed. The request was made an unreasonable time

after the close of the public comment period, and was not supported by any valid justification for its lateness, and was opposed.

I find that no good cause to re-open the public comment period present under the circumstances. The request was made over a month after the close of the public comment period, which opened on July 8, 2012 with the public notice. The failure to know about the public comment period alone cannot justify the request to re-open because that would render meaningless the legal public notice requirement that the General Assembly imposed on the Department as the only method for public notice.

I also find a reason to deny the request is the strong opposition by the Applicant. I agree with Applicant's position that under the circumstances the Applicant should not have its application's review by the Secretary unreasonably delayed by a request to re-open the public comment period. Few Department application proceedings impose a deadline for decision, but Regulation 1125 does. I find that the reason is to benefit the Applicant and consequently the Applicant's opposition is particularly decisive. I agree with Applicant's stated reasons for its opposition and find nothing in Harman Bros' request to explain the delay in a manner that allows its request to be granted, particularly when Harman Bros is apparently an entity that has considerable resources at its disposal to review filings and legal notices. I also rely on DAQ's strong opposition as expressed to me informally. The grant and denial of a request to re-open the public comment period is a matter of discretion and my decision is made after weighing the positions for and against the request. The balancing of reasons considers the preference to receive public comments in order that the Secretary may consider them in making a final decision, even if he decides contrary to the public comments. I recognize that often such requests are granted as a matter of courtesy, but then such grants of relief do not occur when

opposed. Thus, the lateness is not adequately explained and the request was opposed for sound regulatory reasons. .

The second reason is the concern with the impact on the timing of the final decision should the public comment period be re-opened, particularly given the regulatory deadline for a decision one year after receipt of all required information from the Applicant, which would be May 2013.⁴ The Secretary should be afforded ample time to review this matter and the enormous amount of information already in the record. Consequently, I consider that time is of the essence in Regulation 1125 application, and consequently any request to re-open should be evaluated based upon its adverse impact on the Department's decision-making.

The fact that Harman Bros requested a 15 day time period for its comments I consider to weigh against granting the request because Harman Bros already had a 30 day public comment period, as required by law and regulation. In effect, Harman Bros sought a 50% increase to the allowable time period, but also waited 30 days after the 30 day time period for public comments before making its request. Thus, I recommend a finding that Harman Bros was provided ample opportunity to timely submit public comments during the 30 day public comment period and has not justified its request to re-open the record well beyond the close of the public comment period and for 50% more time than otherwise allowed by law and regulation.

I allowed Harman Bros to provide a description of what would be in the proposed comments. This was consistent with the Department's internal hearing procedures⁵ that, while

⁴ The regulation does not impose any sanction for non-compliance and that question will be moot if final action is taken before the one year time period, but public policy to protect the environment and public health would weigh in favor of having a permit granted as a matter of law.

⁵ h) The record may be re-opened after it has closed to allow consideration of new important information. A person may request that the record be re-opened by submitting a written request to the Hearing Officer that includes the new and important information that should be considered, and provide an adequate explanation of the reasons the information was not provided when the record was

not formally adopted, have been used as guidance for several years. The guideline on re-opening requests have a ruling to be made based upon what would be presented because the Department recognizes that the Secretary should consider information, even if late submitted, that is "new and important." This determination requires some information on the public comments, and Harman Bros provided much more than a brief description, but its proposed comments in its entirety. Harman Bros proposed comments are new information in the sense that some of the information is not now in the record, but this alone does not justify re-opening the record when it would delay the decision-making considerably. Instead, I find that the information to be offered into the record if the public comment period is re-opened would provide technical expertise analysis and not any new facts. This analysis is different than the expert technical opinion in the record from the Applicant and DAQ. That difference alone does not make it important enough to re-open the public comment period and impose a substantial delay to the Department's decision-making.

As a matter of sound Department policy, I agree with the Applicant that this request to re-open the record would impose a substantial burden to the decision-making process, particularly where Applicant is entitled to respond to the public comments. While Applicant provided a conditional response to the proposed comments, arguably Applicant could have another response if the Harman Bros' request to re-open is granted. Moreover, DAQ did not provide any response to the proposed comments because my request for DAQ's technical response to the public comments occurred on August 22, 2012, or prior to when the proposed comments were submitted September 28, 2012. DAQ took almost three months to prepare its TRM that

open. In the exercise of discretion, the Hearing Officer will consider whether the delay is justified balanced against the value of the information expected to be received. The Hearing Officer will determine whether the re-opening of the record requires further public notice.

addressed Applicant's and White Oak's comments. Thus, if the public comment period is re-opened to receive Harman Bros' comments, then I recommend that the Secretary have DAQ provide its response to them, but unfortunately that would result in an undue delay that the Department cannot justify based upon the substance of the proposed comments.

Indeed, the submission of the request itself already has delayed the proceeding for almost a month and possibly longer in light of the FOIA requests that burdened the DAQ staff while it was trying to provide me with its TRM. DAQ's personnel were trying to comply with Harman Bros' extensive list of documents in its FOIA request, which could not have provided Harman Bros with timely information in the 15 day time period since the Department has 30 days to provide a FOIA response. While Harman Bros' use of FOIA is permitted to prepare public comments, such a method of gathering information imposes a burden on DAQ.

Harman Bros submitted the proposed comments and based upon my review I found no new and important information in the proposed comments that warranted re-opening the record. I agree with Applicant's response to the substance of the proposed comments. DAQ also reviewed the proposed comments and determined not to provide any response to them. I conclude that DAQ's decision not to respond supports not finding that the Harman Bros comments provide any new and important information for the Secretary to consider. Harman Bros' first comment was to the technological review of options for the equipment to be used for the generation and pollution control. Applicant noted that its own comments in response to EPA's comments and DAQ's investigation provide ample support for the technology and equipment selected. I agree with Applicant's response and DAQ's analysis in its technical memorandum.

The second issue Harman Bros raised was the disclosure of the NO_x credits and I find that Applicant has enough disclosed credits to satisfy the 138 tons needed to offset the Facility's

NOx emissions. Applicant also points to the available sources in the Delaware Economic Development Office as support for the offsets. I agree that Applicant's parent has sufficient credits available that the Department has certified that allows their use an offset. The specific sources need not be disclosed to provide the public with the opportunity to comment on the draft permits, but merely the sources to obtain the necessary credits. The fluid market conditions for such credits should allow flexibility in providing them as an offset, particularly when there is no assurance a permit will be issued.

The third issue was the use of the SCREEN model and its "Urban" scenano when Harman Bros claims a "Rural" scenario should have been used. As explained by Applicant, the "Urban" scenario used makes the results more conservative than if a "Rural" scenario has been used. I agree with the Applicant that the "Urban" scenario provides more protection of the environment than the "Rural" scenario. Moreover, it was appropriate to use the "Urban" in light of the industrial development in the area and its future development of the industrial park.

The Harman Bros fourth comment was on the use of the AERMOD and CALPUFF models and the non-disclosure of all the underlying data inputs. Applicant disagrees with the non-disclosure and cites its Appendix D for the data. I agree with Applicant and even if some underlying data may not be in the record, I find that as a whole there is sufficient support to base a decision that the modeling was done properly.

The fifth issue Harman Bros raised was the consideration of alternatives and this issue also was raised by White Oak and EPA comments. I find that Applicant and DAQ provided an adequate review of alternatives and considered the alternative offered in the comments in the responses to the comments. The consideration of alternatives does not impose any obligation to consider every possible alternative, which could be infinite. Instead, the record shows a careful

deliberation of the selection process and addressed the concerns raised by White Oak about the air emissions.

The sixth issue of the concerns with ammonia storage and the risk management plan requirement were addressed by Applicant that explained the procedure in Delaware that such responsibility was delegated to the Department's Emergency Prevention and Response Section. I agree that this issue properly was considered and does not provide any obstacle to issuance of the permits subject to such procedural delegation. The Department welcomes Harman Bros input into this process as an adjacent landowner who should be notified of an emergency with the ammonia storage system once constructed.

In sum, the proposed comments present an analysis of facts already in the record and were prepared by expert who admittedly did not have enough information to fully comment on the application. While expert analysis may be important to a final decision, I find that the proposed comments do not present any "new and important" facts that warrant granting the request to re-open the public comment period. If the proposed comments had been timely submitted, then they would have been in the record, but again the overriding concern is the impact on the Department's decision-making. It is unfortunate for all the proposed comments were not timely submitted, but I see nothing in the proposed comments to support granting the extraordinary relief requested so long after the close of the public comment period.

I recommend approval of DAQ's draft air pollution control permits for the Facility as consistent with the requirements of Regulation 1125.

IV. CONCLUSION

Based on the record reviewed above, I find and conclude that the record supports approval of the permits, as drafted by DAQ, and I recommend that the Secretary issue an Order consistent with this Report.



Robert P. Haynes, Esquire
Senior Hearing Officer



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Office of the
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Secretary's Order No. 2013-A-0013

Re: Application of Garrison Energy Center, LLC for a Prevention of Significant Deterioration of Air Quality Permit Under Regulation 1125 to Construct a 309 Megawatt Gas-Fired Combined Cycle Electric Generating Station in Dover, Kent County

Date of Issuance: January 29, 2013

Effective Date: January 29, 2013

This Order of the Secretary of the Department of Natural Resources and Environmental Control (Department or DNREC) considers the attached January 18, 2013 Report of recommendations from the Department's presiding hearing officer, who recommends issuance of the permit to allow the construction of Garrison Energy Center, LLC's¹ (Applicant or GEC) 309 Megawatt electric generating station (Facility) to be located in the Garrison Oak Technology Park in Dover, Kent County.

Procedural History

On November 1, 2012, Applicant applied with the Department's Division of Air Quality (DAQ) for a Prevention of Significant Deterioration of Air Quality permit (PSD permit) in order to build the Facility. DAQ commenced its review, which concluded in May 2012 when Applicant provided the last information needed for DAQ to prepare draft

¹ Applicant is a wholly owned subsidiary of Calpine Mid-Atlantic Generation, LLC, which is owned by Calpine Corporation.

permits and the supporting technical memoranda as required by the federal program and Department Regulation 1125.

DAQ prepared the draft permits and technical memoranda on July 6, 2012, and provided public notice on July 8, 2012 to allow the public to comment on the application and draft permits. In addition, the notice provided the opportunity to comment at an August 8, 2012 public hearing. The public comment period closed at the conclusion of the hearing, but the Department received a request to re-open the public comment record to allow additional comment by an adjacent property owner, Harman Bros., LLC (Harman Bros). The presiding hearing officer requested the technical assistance of DAQ, which provided a technical response memorandum dated December 12, 2012 along with revised draft permits that responded to some but not all of the public comments.

Discussion of Findings and Reasons

The Department finds that the Report's recommendations to issue the permits drafted by DAQ are supported by the record. I hereby adopt the Report to the extent it is consistent with this Order, with the only change to allow the Harman Bros' comments in the record along with Calpine's response thereto. The decision to allow these comments is made grudgingly because sound public policy supports not allowing late filed comments because they can unduly delay the Department's decision-making. Harman Bros' comments and Calpine's response thereto were well prepared and reflect considerable time and effort, and this favors including them in the record. The Department in general favors receipt of public comment whenever possible and when they do not unduly delay the decision-making. Had Harmon Bros attended the public hearing and requested fifteen days to submit comments, this modest request would have

been granted by the hearing officer. The problem is that the request was made more than a month after the public comment period had closed, making it hard to justify. In addition, the time that was required of DAQ to provide Harman Bros. the information it requested delayed the Department's decision-making and the preparation of the TRM.

The Report recommends rejecting the Harman Bros' reasons to deny the permit even if the comments are included in the record. I agree and find that DAQ and GEC have provided sound support and reasons why the permits should be issued despite Harman Bros' opposition.

The Department finds that the Facility will be a new state of the art electric generating station in Delaware and that its air emissions are properly controlled to meet federal and state requirements. It will utilize primarily natural gas to fire a 193 MW combustion turbine. The turbine's exhaust will be used, along with natural gas-fired duct burner to generate an additional 116 MW of electric capacity from a heat recovery steam generator (HRSG). Together the Facility will produce 309MW from an efficient combined cycle generating system that is expected to operate as a baseload generating plant operating at 60% to 100% of capacity depending on the grid's demand for its electricity. The generation will emit lower levels of pollutants than most other fossil fuel generation of comparable capacity, and the location of the generation will benefit the Delaware electric grid and allow older and less clean generation to be retired or dispatched less frequently.

The Facility's location in an existing industrial park planned for such industrial processes also will enable natural gas service to be economically extended to the industrial park to allow its use by others. The Facility, once constructed, could provide a

and operation will provide considerable economic benefit to the City of Dover, which strongly supports the Facility's construction as attested by the comments at the hearing by its Mayor and City Manager. Also supporting the Facility's construction was the Delaware Building and Trades Council, whose members would benefit from the 250 construction jobs and also benefit from the economic activity to occur from the Facility.

The opposition to the Facility was from the operators of an adjacent 10 MW solar power generating station and from an adjacent farmer. This opposition was based upon technical reasons associated with the emissions and whether the application complied with the applicable laws and regulations. The Department's experts have fully investigated the claims made by the opponents and believe that the permits they prepared will provide sufficient reasonable protection of the environment to allow the Facility to be constructed. The Department has determined that the Best Available Control Technology will be used and that the Lowest Achievable Emissions Rates for pollutants were used in the design. Once constructed, the Facility will continue to be subject to the Department's permits and regulatory oversight to ensure that the Facility operates properly.

In sum, as more fully described in the reasons and findings above and in the Report, the Department adopts and directs the following as a final order of the Department:

- I. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

public hearing in a manner required by the law and regulations;

3. The Department held a public hearing in a manner required by the law and lower than average cost of electricity to electric customers. In addition, the construction regulations;

4. The Department considered all timely and relevant public comments in the record in making its determination;

5. The Department shall issue the permits, as prepared by DAQ in its TRM attached to the Report; and that

6. The Department shall provide notice of this action as required by law and Department regulation and the Department otherwise determines appropriate based upon the participation in this proceeding, and the Department also shall publish the Order on its web site.


Collin P. O'Mara,

