

STERLING FOREST/HIGHLANDS COMMITTEE

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February 26, 2014

To: The Honorable Paul Agresta, Administrative Law Judge and
The Honorable Kathleen H. Burgess, Secretary
New York State Public Service Commission

**Subject: Power Plant Case 10-E-0501 Petition of CPV Valley, LLC,
(CPV) Town of Wawayanda for a Certificate of Public Convenience
and Necessity Pursuant to Section 68 of the Public Service Law,
Approval of Financing Pursuant to Section 69 PSL and for Approval of
a Lightened Regulatory Regime.**

From: Jurgen Wekerle, Co-chair Sterling Forest-Highlands Committee, Sierra
Club Atlantic Chapter.

Sierra Club Atlantic Chapter is a grassroots organization committed to protecting the natural and human environment that we share. We have come together with local citizen groups including Protect Orange County.org, Stop the Minisink Compressor Station.org and Minisink Matters.org and others to advocate against the costly and unnecessary 820 MGW CPV power plant and against the equally unnecessary pollution and net increase in greenhouse gas emissions that will result from the methane that CPV will burn. Public health, air quality, cost of living and property values are all placed at risk by the operation of this power plant and by the companion gas pipeline infrastructure that will deliver radioactive, radon-rich fracked shale gas to fuel CPV.

We have concerns that were ignored in the SEQRA Environmental Impact Statement (EIS) that preceded this hearing. We feel that the residents of the Town of Wawayanda and Orange County have suffered a grave disservice by the NYS Department of Environmental Conservation (DEC) for relinquishing the SEQRA lead agency responsibility to the Wawayanda Town Planning Board due to the complexity of the issues and the greater regional impacts of the project such as land, air and water quality. The EIS did not evaluate the market price and supply impacts that surplus upstate electricity will have on ratepayer costs or on CPV's earnings potential once that electricity is transferred into the Hudson Valley-Metro NY market. Likewise, the impact of power that is imported into our region by way of the Pennsylvania, New Jersey and Maryland (PJM ISO system), and from Canada via the traditional grid was not evaluated. Nor were the supply consequences evaluated from three recently constructed submarine cables delivering over 1,300MGW of new power into the Metro NY market.

Also shortchanged in the EIS was the steady gain in market share at the expense of power plants caused by non-traditional supply from net-meter installations, large scale private power purchase agreements, and the rapid expansion of Energy Services Companies (ESCO), which, by themselves supply over 10% of New York State's customer accounts for electricity purchases.

Omitted was the negative impact that new CPV production will have on the revenue of existing power plants that also generate electricity for this shared market.

The State Environmental Quality Review ACT (SEQRA) require CPV and the Lead Agency to take a "HARD LOOK" at the need for the power plant project and at its cumulative fiscal impacts, especially since its production would have a disproportionate influence on its partners, competitors, public policy, and on all ratepayers due to the monopoly-like aspects of an industry hobbled by receding demand and a loss of market share. In the past, industry has artificially manipulated electricity prices upward to rig shareholder profits at the expense of ratepayers.

The New York Independent Systems Operator (NYISO) is a private entity, which manages the supply and reliability of electricity produced and traded among its member New York merchants, confirmed that there is no existing or anticipated need for additional power supply in New York State during the current 10-year planning cycle through 2020 or beyond. In addition, NYS is experiencing its seventh year-over-year decline in power consumption from **power plant generation** since 2007. Future needs are soft estimates based on power plant retirement factors and a hoped for rebound in economic development. But planning for any new supply has relied primarily on in-kind replacement of existing designs and production methods that did not anticipate rapid improvements in technology or the impact of grid modernization efficiencies that continue to reduce demand even further after transmission reinforcements are completed.

Reflecting NYISO's acknowledgement of declining need for production from power plants are the four recent Rockland County (Lovett and Bowline) and Orange County (Danskammer and Roseton) power plant shutdowns. Even with the lost production previously provided by those four power plants, no shortage of electricity has been experienced in the Hudson Valley Load Zones "G", "H", and "I".

Further, during 2007, the New York Regional Interconnect (NYRI) proposed a merchant transmission power line to deliver a new power supply from Canada into the NY Metro market. Generators and utilities would pay fees for use of the power line. Earnings coupled with DOE-federal stimulus grants/incentives-IDA subsidies, etc., would pay for construction costs. However, no demand materialized, no actual market existed, and no merchant contracts were signed. NYRI then petitioned FERC for a special surcharge on all ratepayers, like that of

the recently proposed FERC Capacity Zone, to shift construction costs from investors to the ratepayers. FERC denied this outrageous surcharge request at which time NYRI's lack of a credible business plan was unmasked. When the private investors refused to risk their own money, NYRI withdrew its application before the PSC, which on April 21, 2009, dismissed the NYRI application "with prejudice."

During 2010, the Champlain Hudson Power Express (CHPE) applied to the PSC for a merchant transmission submarine power cable permit to deliver 2,000 MGW of electricity from Canada to the NY Metro region and to New England. During July 2010, CHPE abruptly withdrew half of its proposal due to the lack of demand. A 1,000 MGW proposal targeting the NY Metro market remains under review.

The deregulation of the electric utility industry has separated ownership of power plants, which produce electricity for sale in the wholesale market, from Utilities which continue to own and operate transmission facilities, and sell electricity to retail customers. Deregulation has achieved its goal to increase competition between producers and to stimulate supply from multiple power generating sources. CPV is attempting to join a crowded, highly competitive market that is becoming even more competitive due to existing power plant capacity, to non-traditional suppliers, and to new, proposed generation facilities expanding total supply in a market already having excess generating capacity and flat/declining demand.

Consider that both the proposed Cricket Valley power plant in Dover, Dutchess County, and the proposed Champlain Hudson Power Express (CHPE) cable from Canada are in the same final stages of obtaining permits and financing approvals, as is CPV. Combined, those three projects would deliver over 2,630 MGW of new, additional supply into this market.

Consider, too, that Roseton and Bowline power plants have emerged from bankruptcy and have new owners intending to rebuild and convert each to new gas-fueled plants. Note that both have gas units that can start up right now, and that all necessary fuel supply and power line infrastructure is already in place. Those plants have a combined capacity of over 2,000MGW. Further, Roseton's new owners expressed plans to construct a second 1,000MGW plant on the Roseton site.

Consider that power line constraints leading to insufficient localized supply prompted Iberdrola to announce plans to construct a new cable in the I-87 Thruway corridor from Albany to the Kingston area to serve its NYSEG customers. This project would deliver new supply from existing producers that will deflect market share from Hudson Valley power plants.

And, consider the special circumstances of the Athens Generating plant, a new state-of-the-art gas power plant that opened some eight years ago without a

sufficient customer base. Athens has faced ongoing financial difficulties. Because of constraints in the transmission corridor between the Capitol Region and northern Dutchess County, Athens Gen cannot offer its production for sale in the Lower Hudson-Metro NY, high use market. As a consequence, Athens Gen has affiliated with a merchant transmission developer, West Point Partners, which has applied for a 1,000 MGW submarine cable permit to transport production from Athens under the Hudson River to Westchester County. That power is from an existing plant in Load Zone “G”, but becomes a new supply source to our current market, which negates the need for CPV.

Over 7,500 MGW of new power supply is slated to enter a market that already has sufficient supply. A cutthroat, zero-sum outcome is emerging where the financial success of any one project will come at the expense of another proposal or existing power producer. The Starbucks business plan for expansion and market saturation is not a good model for power plant developers to follow especially where customers strive to reduce power costs and consumption. The enormous capital investment, over capacity, absorption of public subsidies and misguided incentives drained by superfluous power plants will lead to a higher cost of living and higher electricity costs for all employers and customers, which is not in the interest of commerce or community development.

The single most important new energy development that has taken place since the completion of the CPV EIS is the current implementation of the Governor’s 2012 Energy Highway Blueprint Initiative as evidenced by the Alternating Current Transmission Upgrade Proceeding (PSC Case 13-E-0488) that is underway. The PSC understands better than any other agency that the critical problem in New York State is not a lack of electrical power that would require more generation, but the imbalance of exiting power supply and demand between regions within the state caused by an inadequate, aging power line system.

A current surplus of low cost electricity is generated by power plants north of Orange County including clean NYPA hydropower and Tug Hill wind power that cannot be delivered for sale to high cost, high consumption markets south of Orange county due to constraints in the connecting transmission system. Consequently, power plants to the north, such as Athens Gen are facing financial difficulties and the prospect of closure. At the same time, consumers in the Mid-Hudson/Metro-NY regions are unable to purchase that cheaper surplus electricity and are forced to pay unreasonably high utility prices. Further, the volatility of rising natural gas prices that we are now witnessing in the commodity market creates an immediate upward surge in costs to gas-fueled power plants. Not only would consumer bills spike upward, but also gas power plants would lose market share and profits to competing power suppliers having lower overhead and less costly fuel.

The scheduled Energy Highway transmission upgrades will remedy the present delivery congestion, unblock and equalize the upstate supply – downstate demand equation, and facilitate the transfer of lower cost upstate electricity into

our region, thus obviating the need for CPV's project and similar new supply proposals such as the Cricket Valley Energy Center in Dutchess County, the Champlain Hudson Power Express Cable from Canada to New York City, as well as the Iberdrola/ NYSEG Thruway Cable and the Athens/West Point Partners Hudson River Cable.

Given these examples of excess capacity and flat demand, CPV must also detail the mechanisms by which the ISO auction system actually will benefit them since CPV has no current utility contracts and will be dependant on the NY ISO merit order system to absorb its electric output that will compete at a disadvantage with lower cost upstate production.

CPV itself may cause additional power line congestion that does not now exist. CPV is to use the NYPA Marcy-South Power Line to move its production to the Rock Tavern Substation in New Windsor for transmission beyond Orange County. However, any production from CPV would claim transmission capacity earmarked for surplus upstate supply that is also to be delivered by Marcy-South (Case 13-M-0457). The PSC must evaluate the new upstate transmission demands being place on Marcy-South and the prospect of new congestion caused by CPV production. If CPV should come to fruition, it may be required to construct its own power line from Middletown/Wawayanda to the Rock Tavern Substation just as the Cricket Valley power plant must construct its own transmission line from Dover to the Pleasant Valley Substation in Dutchess County.

The most significant impact of the Energy Highway Transmission Upgrade is the transition to new power line technology and digital electricity management controls that will drastically reduce power dissipation between production and end use. The evolving utility-scale efficiencies resulting from smart grid technology will replace entire power plants as we now know them.

The decommissioning of the Lovett Power Plant is an instructive case study. The replacement source that allowed Lovett to be demolished was achieved by upgrading a major substation and local distribution improvements. The power lost was offset by transmission efficiencies gained, not by replacement generation.

Revolutionary cost reduction through transmission upgrades have also been proposed for two money losing, upstate coal-fired power plants that have requested PSC permission to shut down. The National Grid Utility has proposed replacing the output from the Dunkirk coal-fired power plant in Chautauqua County with several power line enhancements at a cost of \$63 Million, as opposed to a politically driven plan to use public funds to convert Dunkirk to gas a t a cost of \$506 Million. Likewise, the NYSEG Utility has proposed upgrading distribution infrastructure to replace the Cayuga Coal Power Plant in Tompkins County at a cost of \$30 Million as opposed to a cost of \$370 Million needed to

repower that plant. The gigantic savings from grid upgrade efficiencies, Zero emissions and zero health risks cannot be denied.

The impact of the transmission upgrade proceeding and the congestion potential posed by CPV should be evaluated in a Supplemental Draft Environmental Impact Statement for CPV.

CPV seeks to enter an energy market that is facing a decline in demand at a time of constrained economic activity and business efforts fostering energy efficiency and conservation initiatives that collectively are reducing demand even further. Also, the prospect that any new business will install new technology, and will be using less power than its predecessor must be considered. The PSC must address whether CPV can finance the proposed power plant and repay its lenders from sales and earnings due to existing market realities. CPV cannot finance the proposed electric power plant based on free-market return-on-investment conditions alone. CPV has had to obtain local municipal and Orange County Industrial Development Agency (IDA) subsidies to provide a deferred Payment in Lieu of Taxes (PILOT) agreement to avoid property tax, school tax and sales tax obligations. That overly generous tax dodging, however, was not allowed for their Sentinel Energy Center in Southern California. CPV states in a press release that it paid \$25 million in Sales Tax and pays \$5 million in **annual** property taxes in California. In contrast, the Town of Wawayanda and Orange County have surrendered a tax ratable to profit a power plant in Orange County New York for which IDA business incentives were never intended.

The Orange County IDA has committed to a property purchase/lease-back arrangement, which also gifts reduced interest and below market rate financing in addition to the above tax exemptions. Those financial inducements to support CPV may be inadequate to sustain its operation on its own merit. Since CPV was first proposed, market developments for power plant generation have stalled as demand has flat-lined. Witness the recent bankruptcy proceedings for Mirant (Bowline and Lovett power plants) and Dynegy (Danskammer and Roseton power plants), which revealed that power production had been at or less than 25% of capacity since 2007 that made each plant unprofitable. The same reduced demand and sales were noted by the plant owner requests to mothball Dunkirk and Cayuga. Witness the announcement by Entergy, the owner of Indian Point, that it was closing its Vermont Yankee Nuclear Plant due to unprofitability from reduced demand.

CPV cannot demonstrate a demand for the power its new plant would produce. CPV has presented no evidence of an existing need, only the speculative claim of “future need,” dependent upon government and taxpayer subsidies, as well as ratepayer surcharges, which discredits its fiscal viability.

The PSC must consider the risks of financial default of CPV requiring a New York State and federal government financial rescue. Will its earnings from sales be

sufficient and sustainable to cover debt service and operating expenses without additional public subsidies or a total bailout? And, doesn't this beg the question about whether CPV can offer any assurance that it can provide reliable service? Moreover, what risk and exposure would an investor; customer, taxpayer and other merchants have in the event of default and bankruptcy? How would the Town of Wawayanda, County of Orange, and Minisink School District revenue and property taxes be affected? The bankruptcies noted above of Mirant and Dynegy are instructive. The property tax revenue from the power plants in the Towns of Stony Point, Haverstraw, Newburgh and Marlboro plummeted at the same time taxes on all other properties dramatically increased. Would the PSC subject more taxpayers and ratepayers to the risk of such circumstances?

An honest public policy reality check must take place throughout government and among the electric power merchants regarding the industry-wide transformation taking place because of new technology, renewable alternatives, and changing patterns of consumption.

Further, electric generating facilities require a closer scrutiny to be consistent with the state Energy Plan and NYDEC Greenhouse Gas Emissions Policy. Specifically, it is not reasonable for CPV to claim that its smoke stack emissions will be cleaner than obsolete coal power plants that are closing when the true comparison should be with other gas plants, and with zero-emission options that are available and more cost effective. It is not reasonable when CPV electricity production is not only superfluous, but is also more expensive and will cause a net increase in air pollution and greenhouse gas emissions that could be completely avoided.

The corporation does not offer a zero emissions, non-polluting technology. Rather, CPV promises to increase pollution of the air beyond current levels, increase contamination of New York's water resources and some of New York's most precious agricultural Lands of Significance. It also promises to promote our dependence on toxic, radioactive shale gas resources thus obstructing and delaying our transition to renewable energy and a cleaner, sustainable environment.

Can CPV render safe, adequate and reliable service and provide just and reasonable rates? The Environmental Impact Statement documents that the proposed power plant will generate approximately 2.2 million tons of greenhouse gases and carcinogens including methane, neurotoxins, endocrine or hormone disruptors, CO, CO₂, NO, Sulfuric Acid Mist (Acid Rain), Volatile Organic Compounds, Particulate Matter and more into the atmosphere of Orange County annually; already a nonattainment Ozone region. This unacceptable pollution is reportedly justified by the purchase of questionable pollution offset credits from the state of Pennsylvania. Those pollution credits, however, are financial constructs that will not alleviate the actual pollution that Orange County residents will inhale. Moreover, the proposed infrastructure including diesel and ammonia storage tanks will create unnecessary hazards and threaten the safety,

health and welfare of people who live nearby; local residents fear gas pipeline explosion, radioactive shale gas, contamination of the air, water, land and food their families consume and much more.

Who could believe that emissions from the CPV Valley Energy Center will not jeopardize the air quality of Wawayanda, and all surrounding municipalities exposed to the prevailing winds that carry such toxic discharges? Who would knowingly choose to maintain residence or knowingly purchase a home proximate to CPV's power plant or establish a business nearby? Who knowingly would expose their family, their children to such toxic emissions? What is more, who can guarantee the uninterrupted availability of the "natural" radioactive shale gas fuel necessary for plant operations? And how long could the plant operate on its diesel fuel backup? Given the above, how could anyone honestly state that the proposed power plant will render "safe, adequate and reliable service?"

The DEC also issued approval of the CPV Valley Air Permits after disallowing and ignoring health concerns expressed by many residents and disregarded comments by experts in the field. As consequence litigation over the validity of the pollution credit purchase and issuance of the DEC Air Quality Permits was initiated and remain under court review. The PSC should suspend this permit determination process until the court action has been concluded.

There are many less detrimental, more environmentally compatible alternatives to address our need for electric energy if in fact a need arises. And, in the long run those alternatives are less costly not only in terms of taxpayer and ratepayer dollars, but public health as well.

The Commission currently considers many approaches to address the electrical energy needs of our state: upgrades to the electrical grid including transmission and substation technology efficiencies, new transmission capacity in existing corridors to access available generation and renewable resources including hydro, wind and solar, in addition to conservation and demand side management strategies. The recently established NYISO/FERC "Capacity Zone" conflicts with and undermines each of those approaches.

NYISO and its member, the Independent Power Producers of New York (IPPNY), have witnessed a steady reduction in power demand caused by the national economic downturn and by the out-migration of industry and population away from New York State. The high costs to maintain aging plant facilities, increased fuel costs and the incremental erosion of market share attributed to competition from new energy suppliers promoted by deregulation, have all caused a loss of profitability for all incumbent power plant operators.

Delivery obstacles caused by grid constraints have been well known to the power supply industry for decades. However, when knowledge of those constraints was made public by the 2005 U.S. Energy Policy Act, corrective action became a

priority. The Governor's 2012 Energy Highway Initiative was the catalyst for the 2013 PSC Alternating Current Transmission Upgrade Proceeding now underway. The result will eliminate identified constraints by reinforcing the transmission system and introducing smart grid technology that will allow the matching of supply and demand and the transfer of low-cost surplus electricity between regions. Some power plant producers will benefit, but all consumers will benefit from lower power prices.

However, IPPNY and NYISO were also acutely aware that transmission upgrades would also create new efficiencies that would further reduce ratepayer prices, further diminish the need for power plant generation, and further damage the profitability of all power plant operators.

The PSC solution to resolve transmission constraints/congestion was to modernize the grid, which must be accomplished anyway.

To preserve its power market hegemony, NYISO and its client-members countered with a diametrically opposed solution that would undermine the economical transmission upgrade outcomes, and, instead would promote cost-prohibitive unnecessary power plants constructed between constraints and the intended market. NYISO subsequently prevailed upon the Federal Energy Regulatory Commission (FERC), which has jurisdiction to set wholesale power prices, to establish a "Capacity Zone" within the Hudson Valley and New York City. That Zone is a financial contrivance that would defeat the benefits offered by transmission upgrades. The Zone would nullify the low-priced surplus upstate electricity, nullify market-based determination of electricity prices, and would instead, artificially raise prices for all business, government and residential ratepayers above current levels in order to guarantee a windfall profit to existing power plants, provide windfall incentives to repower closed plants or to construct new plants such as CPV and Cricket Valley.

The new Zone would not remedy power line constraints, but would preserve those constraints to justify the operation of power plants that we do not need in order to sell electricity at extravagant prices that we cannot afford. Because of the higher Capacity Zone price fixing, the new owners of coal-fired Danskammer, which was purchased at bankruptcy auction and is slated for demolition and disposal as scrap, have already gained Bankruptcy Court approval to change plans and to restart the coal units to benefit from the guaranteed profits.

The higher manipulated power prices will cause far greater damage to the regional economy than did imposition of the MTA payroll tax and the MTA sales tax surcharge. The increased power costs can only accelerate out-migration of businesses and inhibit the establishment of new industry. In order to attract and retain jobs in our region, we must lower energy costs, not raise them.

Beyond the direct impact on CPV, the FER/NYISO Capacity Zone is a separate issue that must have its own fiscal impact evaluation and its own public review

pursuant to the National Environmental Policy Act (NEPA). Without such review, implementation of the Capacity Zone should be abandoned.

In view of the foregoing, there is no justification to afford CPV a Certificate of Convenience and Necessity. ***The fact is that the CPV Valley Energy Center will not serve a public need, has no market, has no purchase contracts, and has no business plan other than to obtain construction permits and to harvest public subsidies. CPV will, however, needlessly add green house gases and carcinogenic pollution to the Orange County atmosphere!***

We, therefore ask the PSC to deny CPV the required Certificate of Convenience and Necessity pursuant Section 68 PSL, deny the approval of financing pursuant to section 69 PSL, and deny approval of a Lightened Regulatory Regime at this time. We also ask that the PSC direct CPV to commence a Supplemental Draft Environmental Impact Statement process to evaluate the circumstances noted above that have occurred since the current EIS was completed such as the PSC Transmission Upgrade Proceeding and transmission capacity conflicts with other March-South Merchants.

Further, a discrepancy emerged regarding the production capacity of CPV's proposed power plant. The application identifies a capacity of 630 MGW, whereas a letter dated November 18, 2013 from the petitioner's attorney, Nixon/Peabody, LLC, indicated a capacity of 820 MGW. The reason for the change and the relative impact of the increased MGW should also be included in a Supplemental DEIS.

We also request a suspension of deliberations until after the pending Air Quality litigation concerning an Article 78 proceeding has been concluded.

Finally, the fiscal impact of the newly created NYISO/FERC Capacity Zone price increase must be evaluated in the CPV SDEIS.

Respectfully submitted by

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