February 25, 2014

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

Subject: Case 10-E-0501 Petition of CPV Valley, LLC (CPV) 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: Randolph J. Hurst, LMSW – Sierra Club/Ramapo-Catskill Conservation Committee, Protect Orange County.org and STOPMCS.org and Jurgen Wekerle, Co-chair Sterling Forest-Highlands Committee, Sierra Club Atlantic Chapter.

Sierra Club Atlantic Chapter and Protect Orange County.org are grassroots organizations committed to protecting the natural and human environment that we share. We have come together with local citizen groups including 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, which were ignored in the SEQRA Environmental Impact Statement (EIS) that preceded this hearing. The EIS did not evaluate the market price and supply impacts that surplus upstate electricity, which can be transferred into this region, will have on ratepayer costs and on CPV's production. Further, the impacted electricity that is imported into our region from the PJM ISO system and from Canada via the traditional grid must also be evaluated for its impact on the market share and CPV. The Champlain Hudson Power Express submarine cable from Canada to New York City, which is in the final stages of the approval process, will also impact CPV's sales.

Also, the negative impact new CPV production will have on the finances and the viability of existing power plants such as Athens Generating Plant and closed plants slated for redevelopment such as Roseton and Bowline must be evaluated together with the new Cricket Valley Power Plant in Dutchess County which, like CPV is gearing up for construction.

Major new energy developments occurred while the EIS was completed that the EIS does not consider, but which CPV must thoroughly evaluate now. The Commission, through its Energy Highway Blueprint initiated Alternating Current Transmission Upgrade – comparative with the Proceeding (Case #13-E-0488), knows that system-wide efficiencies and improved access to surplus power due to grid upgrades and new transmission technology will reduce the need for traditional power plant generation in general and will preclude the need for the electricity to be generated by CPV. Further, there is NO energy shortage or business justification to support the issuance of a Certificate of Convenience and Necessity for this project even without implementation of the planned transmission upgrade. Noteworthy are the findings concerning recent NYS Energy Plan hearings, which indicate that NYS is only using 41% of its current electricity generating capacity. Given government's responsibility to provide for the general welfare of the people and plan for their public service needs including lower pollution and lower ratepayer costs, the Commission understands better than any other agency that the immediate problem in New York State is the imbalance of power supply and demand between regions within the state, not additional CPV production that can only raise electricity prices for ratepayers and exacerbate the existing regional imbalance.

The current surplus of low cost electricity generated by power plants north of Orange County including clean NYPA hydropower and Tug Hill Wind Power cannot be delivered to high cost, high consumption markets south of Orange County due to constraints in the connecting transmission system. As a consequence, power plants to the north, including the new state of the art, gas-fired Athens Generating Plant, are facing financial difficulty and the prospect of closure. At the same time, consumers in the Mid-Hudson Region/Metro New York Regions are paying unreasonably high electricity prices. Further, the volatility of rising gas prices, which we are now witnessing in the commodity market, not only causes consumer bills to spike upward, but also causes gas-fired power plants to lose market share and profits to existing power plants having lower overhead and less costly fuel.

The planned Energy Highway initiative 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 and similar power plant proposals such as Cricket Valley in Dutchess County, and the Champlain Hudson Power Express cable from Canada to New York City.

Moreover, any production from CPV would compete for transmission capacity via the Marcy South Power Line, which is slated to convey the surplus upstate supply to market. The PSC must evaluate the new upstate transmission demands being placed on the Marcy South Power Line and the prospect of new congestion caused by CPV production. If CPV should manage to come to fruition it may, therefore, be required to construct its own power line to the Rock Tavern Substation much like the Cricket Valley power plant must construct its own transmission line from Dover to the Pleasant Valley Substation in Dutchess County.

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 people's health as well. The generating alternatives, the impact on existing power plant operations, the advent of statewide grid modernization and the utility scale efficiencies were all omitted from the CPV SEQR EIS which preceded this PSC Hearing.

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.

Illustrative is that in the study, "Examining the Feasibility of Converting New York State's All-Purpose Energy Infrastructure to One Using Wind, Water and Sunlight," Dr. Mark Jacobson, a senior fellow of Stanford University, with Cornell University Professor of Engineering, Dr. Anthony Ingraffea, Cornell Professor of Ecology and Evolutionary Biology, Dr. Robert W. Howarth and University of California Davis scientist Dr. Mark Delucchi reports an estimated decline of 4,000 air-pollution related deaths annually, a savings of $33 billion or 3% of the state's gross domestic product in related costs every year, a savings that alone would pay for the power infrastructure needed in short order. Decreased pollution would reduce climate change costs, such as coastal erosion and extreme weather damage by an estimated $3.2 billion per year. Those greenhouse gas consequences and evaluations required by the DEC were also omitted from the EIS by CPV and the Lead Agency, and must now be considered by the PSC. Would the PSC dismiss this research to accommodate CPV's profit interest?

The next issue the PSC must address is whether CPV can finance the proposed power plant and repay its lenders from sales and earnings. 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 them with 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 pays $25 million in Sales Tax and $5 million in ***annual*** property taxes in California. In contrast, the Town of Wawayanda, has surrendered a tax ratable to profit a power plant in Orange County New York for which IDA incentive were never intended.

The Orange County IDA has committed to a property purchase/lease-back arrangement, which gifts reduced interest and below market rate financing, in addition to the above tax exemptions. Nevertheless, those financial inducements to support CPV may be inadequate to sustain its operation on its own merit. Since CPV was first proposed, market development for power plant generation has 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 and that made each plant unprofitable. 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 is entering an already well-supplied highly competitive market that is becoming even more competitive due to slumping sales and loss of market share to other power plants, to net-meter installations, to large scale power purchase agreements, and to the rise of Energy Service Companies (ESCO), which by themselves supply over 10% of New York State electricity accounts.

In addition, it has recently come to light that the Federal Energy Regulatory Commission (FERC) has created a new "Capacity Zone," which will increase the electricity bills of Mid-Hudson region customers from 6 to 15 percent in the spring of 2014. The increase appears to be nothing less than an unnecessary ratepayer fee to subsidize electric power generators such as CPV, Cricket Valley Energy Center at Dover in Dutchess County and/or to repower shuttered plants like Danskammer and Roseton in the Town of Newburgh to produce power that we do not need.

An article in the local Times Herald Record, dated October 23, 2013, by Jessica DiNapoli, reports that the FERC Capacity Zone scheduled to go into effect in May 2014 is being challenged by utilities, including Orange and Rockland, Central Hudson as well as by the NYS Power Authority and by the NYS Public Service Commission. Reportedly, the PSC stated that power plants in the zone would take several years to build, but that transmission projects proposed by Gov. Andrew Cuomo's Energy Highway Initiative can be constructed sooner and will reduce the need for existing and proposed power plants as well. DiNapoli also noted that Steve Remillard, vice president of CPV supports both the new FERC zone that promotes new generation, as well as the Energy Highway transmission upgrades that eliminate the need for new generation - two actions that are mutually opposed to each other.

And, in another article published February 2, 2014 in the Times Herald Record, the same reporter quotes John Maserjian; a spokesman for Central Hudson Gas & Electric Corp. as saying that the FERC Power Zone will just enrich current generators at the expense of our customers.

The fact is that CPV cannot provide a realistic market based Business Plan that demonstrates 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, taxpayer and ratepayer subsidies, which undermines its fiscal creditability. The PSC must now take into account current market conditions that have rapidly evolved since the completion of the EIS, which discredit and undermine the need for CPV power plant construction.

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 green house gases and carcinogens including methane, neurotoxins, endocrine or hormone disruptors, CO, CO_2, NO, Sulfuric Acid Mist, Volatile Organic Compounds and more into the atmosphere of Orange County annually. This unacceptable pollution is reportedly justified by the purchase of questionable pollution offset credits from the state of Pennsylvania. Moreover, the proposed infrastructure including diesel and chemical storage tanks will create unnecessary hazards and threaten the safety, health and welfare of people who live nearby; local residents fear gas pipeline or power plant explosion, 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" 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?"

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 abrogating 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 air quality standards. 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 a 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 adjourn this permit determination process until the court action has been concluded.

The State Environmental Quality Review ACT (SEQRA) process requires an evaluation of the public need and benefits of the CPV Project and requires the taking of a "HARD LOOK" at the CPV proposal in all its aspects as well as at the full range of alternatives and strategies that could also satisfy the project's stated purpose. Clearly this was not done by CPV or the Town of Wawayanda Planning Board as Lead Agency. The NYISO, which manages the supply/reliability of electricity produced and traded among New York merchants, has confirmed prior to Wawayanda's EIS Findings Statement that there is no existing or anticipated need for additional power supply in New York State during the next 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 noted based on replacement factors and a hoped for rebound in economic development, but supplying that potential increase in demand relied on in-kind replacement of equipment and production, and did not consider rapid improvements in technology and the impact of grid modernization efficiencies.

Reflecting NYISO's acknowledgement of adequate long term supplies are the four Rockland County and Orange County power plant shut downs noted above. Even with the lost production previously provided by those four plants, no shortage of electricity has been experienced. Remarkably, the replacement source of electricity for Lovett came from Orange & Rockland Utility's reconstruction of a major substation and local distribution upgrades. Utility scale efficiencies were created that offset the loss of the Lovett power output. In short, the results of grid modernization called for by the Energy Highway Initiative provided that replacement power.

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, which 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 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 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.

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

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 other gas and zero-emission options 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.

In the event that an increase in electricity demand occurs, many alternatives exist beyond the reflexive response to increasing generating capacity. In their SEQRA review, Wawayanda did not even consider the impacts of the full range of alternatives that would accomplish the stated objectives of CPV's project. They never looked at competing proposals/technologies; efficiency and conservation initiatives; changing economic/consumption conditions as required by the New York State Renewable Portfolio Standards (RPS) and consistent with state and national policy to reduce greenhouse gas emissions. Nor did they examine the impact of reduced power needs due to alternate supplies, efficiency and conservation programs conducted by the New York State Energy Research and Development Authority (NYSERDA) or by the New York Green Bank, which contribute to make the CPV unnecessary.

As an aside and to exemplify the point, Mr. and Mrs. Hurst's home, which is of passive solar design that they General Contracted and built in 1987, has a Photo Voltaic array of 36 panels that generates approximately eight (8) KW's of electricity, which is more than their family uses on an annual basis. And, in a small way, they contribute electrical energy to the state grid and avert thousands of pounds of CO_2 emissions. Many neighbors and friends have also joined the Hurst's efforts to reduce their carbon footprint. Thousands more residents across our state and country are doing the same. That expansion of household net meter installation and industry-municipal-school district Power Purchase Agreements are gaining market share and are reducing our need for power plant generation.

Remarkably, CPV seeks to enter an energy market that already has an oversupply of electricity at a time of constrained economic activity and business climate fostering energy efficiency and conservation initiatives that collectively are reducing the demand even further.

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!

Given the economic climate and the prospect that any new business will be using less power than its predecessor, 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. In the case of CPV, it is obvious that the required SEQRA "Hard Look" has not been taken and that public subsidies will be misallocated and lost, while forfeiting the opportunity to fund zero pollution and more efficient energy initiatives such as grid modernization that must occur anyway and truly are in the public interest.

Finally, in view of the foregoing, there is no justification to afford CPV a lightened regulatory regime. This 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 natural gas resources obstructing and delaying our transition to renewable energy and a cleaner, sustainable environment. CPV's subsidy dependent production will interfere with the transport of low cost electricity, will unfairly harm the financial stability of competing power plants, and, will raise electricity prices to the detriment of homeowners and businesses alike. Moreover, CPV will inhibit long-term high paying job creation in the sustainable energy field, which can truly return a robust economy to the United States and enable us to become more competitive in the global marketplace. To attract and create jobs in Orange County, we must lower energy costs not raise them.

The availability of cheaper surplus power will continue to under price CPV production and lower ratepayer costs to the advantage of all public and private customers.

Further, a discrepancy has emerged regarding the production capacity of this plant. The application identified a capacity of 630 MGW, whereas a letter dated November 18, 2013 from the applicant's attorney to the PSC indicated a capacity of 820 MGW. The reason for the change and the relative impact that the increased capacity will consequently have, especially as it relates to increased greenhouse gas emissions and toxic air pollution, need to be evaluated and should also be included in a Supplemental EIS.

We, therefore, ask the PSC to deny CPV the required Certificate of Convenience and Necessity, deny the approval of financing and deny approval of a Lightened Regulatory Regime at this time. We also ask that the PSC direct CPV to commence a Supplemental EIS proceeding to evaluate the circumstances that have occurred during the EIS process that has since been concluded, especially the impacts of lower prices and increased power supply to be derived from the PSC-initiated "AC Transmission Upgrade Process" (Case 13-D-0488) that is underway.

Additionally, the legal notice for this February 25, 2014 hearing states that comments must be received by the PSC Secretary by February 26, 2014 – a window of less than 24 hours, which is as unreasonable as it is uncommon for hearings such as these. It is, therefore, requested that the deadline for comments be extended for at least 30 days after the conclusion of the public hearing.

Finally, we request that the PSC suspend these certificate deliberations until after the pending Air Quality Permit litigation has been concluded.

Respectfully submitted by

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