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March 13, 2014

BY FAX & MAIL

Hon. Audrey Zibelman
Chairwoman
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: 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 (PLS), Approval of financing
Pursuant to Section 69 PLC and Approval of a Lightened Regulatory Regime.

Dear Chairwoman Zibelman:

As Vice-Chair of the New York State Senate Environmental Conservation Committee, I am concerned about a project currently under your agency's review, the CPV Valley Energy Project. It has come to my attention that there is considerable new information suggesting that the project would have significant adverse environmental and public health impacts. Moreover, there have also been many changes in the energy markets in the past several years that will dramatically alter the socio-economic context of the project obviating its utility altogether, but at the very least, requiring a supplemental EIS. It is my understanding that there is litigation pending regarding some of these issues. I, therefore, write to request that you deny issuance of a Certificate of Necessity, approval of financing and approval of a lightened regulatory regime and/or to suspend deliberations regarding the above referenced case at this time.

As you may be aware, significant and substantive testimony has been presented in opposition to this highly contentious project. This testimony demonstrates that this project is not only unnecessary but, when perceived in the larger energy spectrum, will (i) increase consumer costs for detrimental fossil fuel infrastructure of highly questionable fiscal viability, and (ii) derail public policy initiatives to transition to renewable energy resources, to reduce Green House Gas (GHG) emissions and to avert costly climate change catastrophes estimated to cost New Yorkers \$10 Billion dollars annually. Moreover, the project will also conflict with the requirements of former Governor Patterson's Executive Order 24, for the state to reduce Green House Gas ("GHG") emissions by 80% of 1990 levels by 2050.

As author of the bill calling for a ban on high volume hydraulic fracturing I am also concerned about this project's dependence on shale gas, be it from neighboring PA, or, as this project anticipates, from New York State. Each day there is new information emerging about the many risks associated with this process, from water contamination to air pollution, radioactivity to volatility, and finally to the incredible amount of methane leaks. New science is now absolutely clear that methane is 30 times worse for climate change than CO2 over a 100 year period and over

80 times worse over a 30 year period. 30 years is the expected life of this project, and within that time we would have well passed the climate tipping point. Science on all these aspects of shale gas is just beginning to emerge and it would be prudent to wait for these studies (Including Commissioner Shah's relevant health review) before approving a project that may result in irreversible loss. Please know that over 800 New York citizens have signed a petition calling for legislative hearings for this project.

Other poignant issues, which are pertinent to your consideration, are the following:

- New York State currently has excess electric power generation capacity and only utilizes approximately 41% of existing generation capacity. As identified in the NYISO Power Trends 2013 Report and supported by the NYS Energy Plan, there is no current or anticipated shortage of electrical power supply in our state. While the price downstate consumers pay for electricity is comparatively high to other parts of the state, there is no need for the electricity CPV plans to generate.
- The immediate energy problem in New York State is the critical imbalance of power supply and demand between regions within the state that deprives downstate consumers of lower priced electricity. The surplus low-cost upstate electricity cannot be delivered for sale to high cost markets south of Orange County due to constraints in the aging transmission system.
- Construction of CPV will increase electricity costs for ratepayers and exacerbate the existing regional imbalance of electricity supply and transmission.
- The planned New York State Energy Highway Blueprint Initiative is implementing transmission upgrades that will remedy the present delivery congestion, create utility scale efficiencies, and facilitate the needed transfer of lower cost upstate electricity into the downstate region.
- 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 to access available supply including hydro, wind and solar in addition to conservation and demand side management strategies. Net meter solar installations supported by NYSERDA and other agencies are also of increasing significance. All of these initiatives would suffer if our state continues to pursue the corporate path of fossil fuel infrastructure development.

Relative to the approval of financing, it is imperative to consider the following:

- CPV cannot proceed with their proposed power plant without government subsidies, tax waivers from all parties and ratepayer surcharges as exemplified by the proposed FERC/NYSISO capacity zone that artificially raises electricity prices for all customers to promote needless GHG polluting electric generation infrastructure. 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 customers can ill afford.
- CPV requires a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement from the Orange County Industrial Development Agency (OCIDA) and the Town of Wawayanda to avoid county and local property tax obligations to the detriment of local taxpayers.

- The OCIDA is also is committed to a property purchase, lease/buy back deal, which accommodates reduced below market rate interest, sales tax exemption and other inducements, which are necessary to bring the project to fruition.
- CPV has not or cannot provide a realistic market-based Business Plan that demonstrates a demand for the power its new plant would produce. It 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. There is no evidence that any earnings would be sufficient to repay bondholders and public agencies. The recent default and bankruptcy of Dynegy’s Danskammer and Roseton power plants are instructive about the zero-sum competition between power plants in a market of declining demand. The resulting increased tax burden placed upon local communities by such defaults undermines not only the school system but also the entire local economy.

In short, CPV will not serve a public need, has no market, has no purchase contracts, and no business plan other than to obtain construction permits and to harvest public subsidies. The fact is that this corporation does not offer a zero emissions, non-polluting technology. Rather, CPV promises a dependency upon the high-risk radioactive Marcellus Shale gas and high volume hydraulic fracturing extraction, transmission and use. This will jeopardize New York’s economy and the air New York residents breathe, their water resources as well as agricultural lands of significance and food supply, which hold the promise of the Mid-Hudson Region’s economic prosperity and hope for the future.

It is also noteworthy that the SEQRA Environmental Impact Statement (EIS) that preceded this hearing failed to address much of the above, remains seriously deficient and litigation remains pending with regard to the NYS DEC Air Permit. The EIS did not, for example, evaluate the market price and supply impacts that surplus upstate electricity, which can be transferred into the lower Hudson Valley, will have on ratepayer costs and on CPV’s production. Further, the impacted electricity that is imported into the region from the PJM ISO system and from Canada via the traditional grid was completely ignored and must 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 as will other proposed projects such as that presented by Boundless Energy, Inc., that provides one of the least expensive, least intrusive and technologically advanced solutions to address upstate transmission congestion. In addition, 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. These major new energy developments occurred while the EIS was completed and were excluded from consideration, but they are critical to CPV’s petition and must thoroughly be evaluated by means of a Supplemental EIS.

As concerns the prospect of CPV rendering safe, adequate and reliable service and providing just and reasonable rates serious questions have been raised that must be addressed. The Environmental Impact Statement documents that the proposed power plant will generate approximately 2.2 million tons of GHGs and carcinogens including methane, neurotoxins, endocrine or hormone disruptors, CO, CO₂, NO, Sulfuric Acid Mist, 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 power plant and gas pipeline explosion, radioactive shale gas contamination of the air, water, land and food their families consume and much more. What is more, who can

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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, it is clearly evident that the CPV’s proposed power plant will not render safe, adequate and reliable service. To attract and create jobs in our state, we must lower energy costs not raise them.

Thank you for your close and considered attention to these significant concerns.

Sincerely,



Tony Avella
State Senator
11th Senatorial District

Cc: Hon. Patricia L. Acampora
Hon. Garry A. Brown
Hon. Diane X. Burman
Hon. Gregg C. Sayre
Hon. Kathleen H. Burgess, Secretary