

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on May 8, 2014

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Garry A. Brown  
Gregg C. Sayre  
Diane X. Burman

CASE 10-E-0501 - Petition of CPV Valley, LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approval of Financing Pursuant to Section 69 and for Approval of a Lightened Regulatory Regime.

ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY,  
AUTHORIZING LIGHTENED RATEMAKING REGULATION,  
AND APPROVING FINANCING

(Issued and Effective May 9, 2014)

BY THE COMMISSION:

INTRODUCTION

CPV Valley, LLC (CPV Valley) proposes to construct and operate a natural gas-fired, combined-cycle electric generating facility with a nominal rating of 630 MW, located in the Town of Wawayanda, Orange County (Project). On October 14, 2010, CPV Valley filed a petition with the Commission requesting: 1) a Certificate of Public Convenience and Necessity (CPCN) pursuant to Public Service Law (PSL) §68; 2) approval of a lightened regulatory regime; and, 3) approval of financing pursuant to PSL §69 (Petition). Along with its request for a CPCN, CPV Valley filed a motion requesting an expedited proceeding pursuant to 16 NYCRR §21.10 (Motion), so that the hearing required by PSL §68 may be held before the Commission on the Petition and any

information filed by the parties, without oral testimony. In this order the Commission grants a CPCN with conditions, authorizes lightened ratemaking regulation, and approves the proposed financing with respect to the Project. In addition, the Commission denies the Motion, having held a Public Statement Hearing to receive comments.

THE PETITION

The Petition filed by CPV Valley on October 14, 2010 was supplemented in filings made on the following dates: 1) November 1, 2010 (providing Affidavits of Service and Publication with respect to the Petition); 2) March 26, 2012 (providing a copy of the Final Environmental Impact Statement); 3) October 11, 2013 (providing the necessary municipal consents as part of an Effluent Water Supply and Process Water Discharge Services Agreement with the City of Middletown); 4) November 19, 2013 (providing updates regarding required permits and approvals, and clarifying the MW nameplate capacity for the Project); 5) April 8, 2014 (providing information with respect to seismic conditions); 6) April 9, 2014 (providing Affidavits of Service and Publication with respect to the Public Statement Hearing and Procedural Conference); and, 7) April 10, 2014 (providing the CPV Valley company agreement and certificates of good standing).

The Petitioner

CPV Valley is a limited liability company organized under the laws of the state of Delaware. CPV Valley is a wholly-owned subsidiary of CPV Power Development, Inc., which is a wholly-owned subsidiary of Competitive Power Venture Holdings, LLC (CPV Holdings). CPV Holdings is developing approximately 5,000 MW of natural gas generation projects, while it manages approximately 6,100 MW of natural gas generation assets. CPV

Holdings is also developing approximately 5,000 MW of wind projects.

Proposed Project

The Petition describes the Project, referred to as the CPV Valley Energy Center, as a natural gas combined-cycle generating facility with a nominal rating of 630 MW, and a maximum summer rating of 656 MW at 85 degrees Fahrenheit. Approximately 373 MW of this power would be produced using two F Class gas combustion turbines (Siemen's SGT6-5000F), while a Heat Recovery Steam Generator (Siemen's KN8.7) with natural gas duct burners would provide approximately 304 MW of additional power. CPV Valley estimates approximately 21 MW will be used for station power use, which would result in a net peak summer electric output of 656 MW. CPV Valley indicates that the Project will have a nameplate generating capacity of 820 MW, using two gas combustion turbines rated at 235 MW, and one heat recovery steam turbine generator rated at 350 MW. The primary fuel would be natural gas, with ultra-low sulfur distillate oil serving as a back-up fuel. The use of oil would be limited to 720 hours per year, per turbine.

The Project would employ emissions control technology, including a Selective Catalytic Reduction technology to control nitrogen oxides and an oxidation catalyst to control carbon monoxide emissions. Air-cooled condensing would be used to minimize water use and avoid visual impacts associated with potential cooling plumes.

The CPV Valley Energy Center would be constructed on approximately 22 acres of a 122 acre privately owned land parcel. In connection with the generating facility, CPV Valley plans to construct a gas lateral for its fuel supply, an approximately one mile electrical interconnection with the New York Power Authority's existing 345 kV transmission system, a

process water pipeline to supply treated grey water from the City of Middletown Wastewater Treatment Facility (WWTF), a pipeline for discharged process water back to the WWTF, an interconnection with the municipal water system along Route 6 for potable water, and a sewage interconnection. Underground electric cables would be located along the eastern edge of the Project site, and within the New York State Department of Transportation Route 17M right-of-way, and interconnect with a new substation adjacent to the New York Power Authority's Marcy South transmission line. Final locations for the Facility utilities described above are subject to pending approvals.

CPV Valley plans to undertake construction on a continuous cycle over 31 months. The Project is estimated to create upwards of 660 jobs during construction. Approximately 25 operations and maintenance personnel would be employed once the Project is operational.

CPV Valley indicates that the electrical output from the Project will be sold exclusively into the wholesale markets administered by the New York Independent System Operator, Inc. or neighboring control areas, and will not be sold at retail. CPV Valley anticipates the wholesale sales will be made pursuant to the wholesale spot markets, power purchase agreements, or financial hedge contracts.

The Project's construction and operation would be funded through a combination of debt and equity, with CPV Holdings retaining an ownership position and management responsibility. The total financing for the Project is expected to be \$680 million. CPV Valley intends to enter into a sale/leaseback arrangement with the Orange County Industrial Development Agency. The Petition asserts that CPV Valley and its affiliates will bear all the financial risk associated with the financing arrangements. CPV Valley requests authorization

to substitute financing entities and charge payment terms and amounts of financing without Commission approval, so long as the total financing is less than or equal to \$680 million.

SUMMARY OF PUBLIC COMMENTS

Notice of the Petition and Motion was published by CPV Valley in The Times Herald-Record, a newspaper of general circulation in the vicinity of the Project, on October 18, 2010. No public comments were received within the ten-day comment period prescribed under the Commission's regulations at 16 NYCRR Part 21.10(b)(2). In addition, in conformance with the State Administrative Procedure Act (SAPA), notice of the rulemaking issues under consideration here was published in the State Register on November 24, 2010 [SAPA 10-E-0501SP1]. No public comments were received within the minimum 45-day comment period established pursuant to SAPA.

On February 13, 2014, a notice was issued by the Commission indicating that a Public Statement Hearing and Procedural Conference would be held on February 25, 2014, with regard to CPV Valley's request for a CPCN.<sup>1</sup> Notice of the Public Statement Hearing and Procedural Conference was also published by CPV Valley in The Times Herald-Record on February 20, 2014. On February 25, 2014, Administrative Law Judge (ALJ) Paul Agresta conducted a Public Statement Hearing and Procedural Conference in Middletown, NY. Approximately 50 people spoke at the public statement hearing. In response to requests to extend the public comment period, ALJ Paul Agresta issued a ruling dated February 26, 2014, which extended the deadline for

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<sup>1</sup> A Public Statement Hearing and Procedural Conference was previously scheduled and subject to public notice for February 13, 2014, but was cancelled due to inclement weather.

comments until March 5, 2014. Approximately 190 written comments were received.

Comments were filed indicating both support and opposition for the Project. Supporters primarily included local government officials, union representatives, and the various local Industrial Development Authorities or Agencies (IDAs). The supporters generally noted that the Project would be good for the local economy and would result in job creation. The IDAs stated that they worked side-by-side to develop a Payment-In-Lieu-Of-Taxes program with CPV Valley, and they are supportive of the Project being sited in the area.

The Town of Wawayanda (Town) noted that the proposed project was known in 2008, and since that time the Town has completed a comprehensive review costing hundreds of thousands of dollars. Further, it was indicated that the Project has received all necessary approvals from both the Town and the City of Middletown. Following on this theme, Orange County officials stated that because all local approvals and authorizations have been received there is no reason why the Project should not go forward at this late stage. The Orange County Chamber of Commerce noted that CPV Valley properly completed its due diligence and obtained all necessary local permits and urged the Commission to grant a Certificate.

Local business representatives also stated their support and noted that CPV Valley made a significant effort to notify the public about its plans. These entities maintain that natural gas is a clean burning fuel and that Project benefits would include future opportunities for local service suppliers.

Generally, objections with the proposed Project included the need for siting a major generating facility in the region, and concerns regarding the environment, health, and safety. Concerns were also raised with property value impacts

on the surrounding community, and the adequacy of public notice concerning the Project. Approximately one thousand people signed two petitions in opposition to the Project.

Many residents objected to the Project, stating that they did not believe that additional electric generation capacity is necessary. A representative for the Sierra Club stated that according to New York Independent System Operator, Inc. (NYISO) reports there is enough generating capacity until 2020, and suggested that transmission system upgrades to deliver the proposed facility output to the downstate area would be expensive and the interconnection may cause congestion on the Marcy South line. Commenters also alleged that New York State currently has excess electric power generation capacity and only utilizes approximately 41% of existing generation capacity. They identified the NYISO Power Trends 2013 Report and referred to the New York State Energy Plan to support their allegation that there is no current or anticipated shortage of electrical power supply in the State. They claimed that while the price downstate consumers pay for electricity is comparatively high to other parts of the State, they believe there is no need for the electricity CPV Valley plans to generate.

Several speakers suggested that renewable energy development in the region is more appropriate than development of additional fossil-fueled generation. They claim that the Project will increase the level of greenhouse gasses in the environment and that the Commission should instead seek to build renewable energy supplies from wind, solar, and hydro power. There were also concerns raised about facility operational impacts, including noise, and that natural gas is not a clean burning fuel and contributes to smog and climate change. Further, concerns were expressed about pollutants contaminating the air and water in the area. For example, some argue that the

Project will increase greenhouse gas emissions leading to more severe climate events, such as with Hurricane Sandy, and that the Project would emit 2.2 million metric tons of CO<sub>2</sub> annually and release large amounts of methane into the air.

According to some commenters, a recent report by the International Panel on Climate Change states that methane is 34 times more potent as a greenhouse gas than CO<sub>2</sub> over a 100-year period and 86 times more potent over a 20-year period. This is higher than formerly reported in Cornell University's study by Robert Howarth, et al., which reported that methane was 72 times more potent than CO<sub>2</sub> over a 20-year period. Moreover, it was claimed that because gas infrastructure leaks large amounts of methane into the air and the total leakage exceeds 3.2%, natural gas becomes worse for the climate than coal. This Project, it is asserted, would likely result in even greater leakage rates because power plants and compressor stations have large numbers of valves which are known to leak excessively, especially during cold temperatures.

Many comments expressed opposition to the hydraulic fracturing process being used to develop additional natural gas reserves that would allegedly be used to power the generating facility. Concerns were expressed about potential chemical spills or explosions, and the capability of local emergency responders was questioned.

Some commenters raised concerns over potential natural disasters including earthquakes, flooding, and extreme heat. One local resident noted that the Project site is located on a fault line and on an Indian burial ground. The Ramapough Lenape Nation indicated that it is monitoring the Tennessee pipeline in New Jersey at the pipeline's cost and seeks a similar arrangement here.



Other commenters submit that construction has already begun for this Project prior to the Commission's approval and noted that certain site work has already progressed, including felling several large trees in the direct path proposed for the underground electric cables for this Project. Many of these same trees were identified as roosting sites for the endangered species, the Indiana Bat. These individuals noted that PSL §68 specifies that no construction is to begin until permission and approval is granted by the Commission. Furthermore, in areas known to be inhabited by the Indiana Bat, such as the Project site, a permit from the United States Fish and Wildlife Service is required to cut down trees greater than five inches in diameter. Many of the trees that were cut span over four feet in diameter. Moreover, requests were made that all permits and approvals required by agencies should be obtained before any tree clearing is allowed to begin.

In line with these environmental comments, several commenters stated that the State Environmental Quality Review Act (SEQRA) review was insufficient and request that the Project be evaluated through a supplemental Environmental Impact Statement (EIS). In particular, Senator Avella notes that the SEQRA EIS failed to address all environmental concerns, is seriously deficient, and that litigation remains pending with regard to the NYS Department of Environmental Conservation air permit. The EIS did not, according to Senator Avella, 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 Valley's production.

Moreover, commenters argue that the impacted electricity that is imported into the region from the PJM Regional Transmission Organization system and from Canada via

the traditional grid was completely ignored and must be evaluated to determine its impact on the market share and necessity for CPV Valley. It is suggested that 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 Valley's sales, as will other proposed projects such as that presented by Boundless Energy, Inc. (Boundless). Commenters argue that Boundless provides one of the least expensive, least intrusive, and technologically advanced solutions to address upstate transmission congestion.

In addition, commenters state that the Commission, through its Alternating Current Transmission Upgrade initiative (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, commenters submit, occurred while the EIS was completed and were excluded from consideration, but are critical to CPV Valley's Petition and must thoroughly be evaluated by means of a Supplemental EIS.

Some local residents noted that the Minisink Compressor Station is already interfering with their normal activities. One woman stated that she can't go outside and farm her land anymore because the compressor station makes her physically sick. This was confirmed by another person who filed comments. They believe it will get worse when the proposed plant is operational and emits alleged toxins.

Some residents stated that they were angry that the plant will now be over 800 MWs, as opposed to the approved 630 MWs. Because of this, residents believe that the air permit

should be re-evaluated. They believe that there will be more emissions as a result of this "increase" in generating capacity.

Many commenters stated that the plant should not be sited on the selected lot. They claim the area is zoned agricultural/residential and includes a wetland. A few residents raised concern over the proximity of the plant to the local school (within 5 miles of the school). Many residents noted that according to local law, nothing is supposed to be built within 100 feet of any cemeteries in town.

Other local residents stated that their property values would decrease. Moreover, many opponents commented that the proposed project is dependent on ratepayer and taxpayer subsidies. According to many commenters, these subsidies are not appropriate and will burden taxpayers and ratepayers in Orange County and beyond. It was additionally noted that the Federal Energy Regulatory Commission has created a New Capacity Zone (NCZ) which will increase electricity bills. According to Hudson River Sloop Clearwater, Inc., adding the proposed construction costs of the project, IDA incentives and cost increases of the proposed NCZ, will result in severe financial impacts on residents and businesses, especially those on the margin or living in poverty. In its opinion, it is unfair to require the public to bear these costs along with the environmental and health risks associated with the Project. In addition, many opponents believe that since demand for electricity from power plants has declined, CPV Valley will only succeed at the expense of existing power plants, such as Athens Generating Plant, and will compete with the repowered Roseton and Bowline and the new Cricket Valley Energy Center.

Finally, several residents complained that they did not receive proper notification regarding the Project and only recently learned about it. They requested an additional 30-day

comment period for residents who just heard about the Project to learn about the issues and provide meaningful input. There were further requests for additional hearings. Certain residents asked for party status and requested an "issues hearing" or technical conference to provide an opportunity to raise specific issues and to receive answers, including all Project ramifications.

## DISCUSSION

### Procedural Matters

#### Expedited Proceeding

CPV Valley moved for an expedited proceeding under 16 NYCRR § 21.10, so that the hearing required by PSL §68 may be held before the Commission on the Petition and any information filed by the parties, without oral testimony. As noted above, notice of CPV Valley's Petition and motion for an expedited proceeding was published by CPV Valley in The Times Herald-Record, a newspaper of general circulation in the vicinity of the Project, on October 18, 2010. Although no public comments were received within the ten-day comment period prescribed under our regulations, the Commission held a Public Statement Hearing and Procedural Conference in Middletown, NY on February 25, 2014, in order to receive oral comments. Accordingly, CPV Valley's motion for an expedited proceeding is denied.

#### Request for Party Status and Evidentiary Hearing

On March 6, 2014, Pramilla Malick requested an evidentiary hearing with respect to alleged tree clearings on the Project site and other matters related to the SEQRA review process. On April 7, 2014, Ms. Malick submitted a request for party status in this proceeding.

On April 15, 2014, CPV Valley responded to Ms. Malick's request for party status, arguing that the request

should be denied. CPV Valley maintained that Ms. Malick failed to make a timely request for party status, to serve the request on the parties,<sup>2</sup> or to provide information that was likely to contribute to the development of a complete record. CPV Valley further asserted that Ms. Malick would not be impacted by the Project because she lives outside the area where the modeled concentrations of NO<sub>2</sub> will be in excess of background levels.

DPS Staff conducted an investigation with regard to the alleged tree clearings and determined that they occurred on a different parcel of land from the proposed Project site and are not associated with the development of the Project. We find that Ms. Malick has failed to provide information that warrants an evidentiary hearing. All of the issues she raised relate to the SEQRA review process, which is not an evidentiary hearing process, and her substantive comments in that regard will be included in the record of this proceeding. Party status is not necessary for the submission of comments, and therefore there is no need for us to act on her request for party status. Accordingly, Ms. Malick's request for an evidentiary hearing is denied.

Ms. Malick also filed a request on May 6, 2014, seeking an issues conference with respect to alleged "new information not presented during the SEQRA review." CPV Valley responded in opposition to this request on May 7, 2014, noting that the request is untimely and raises issues that have already been addressed, or that are irrelevant or beyond the scope of this proceeding. Ms. Malick further responded to CPV Valley's opposition by reiterating her SEQRA-related issues and concerns with the use of fracked gas. For the same reasons we deny Ms.

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<sup>2</sup> The ALJ transmitted the request for party status to CPV Valley and Department of Public Service Staff (DPS Staff).

Malick's request for an evidentiary hearing, we also deny her request for an issues conference. Ms. Malick raises issues that have already been addressed or that are beyond the scope of this proceeding, and has thus failed to provide information warranting an issues conference. Moreover, we find her request is untimely and is therefore denied.

Public Convenience and Necessity

PSL §68 requires an electric corporation to obtain a CPCN prior to the construction of gas or electric plant. We are authorized to grant a CPCN to an electric corporation pursuant to PSL §68, after due hearing and upon a determination that construction of the electric plant is necessary and convenient for the public service. In this regard, our rules establish pertinent evidentiary requirements for a CPCN application. They require a description of the plant to be constructed, the manner in which the costs of the plant would be financed, evidence that the proposed plant is in the public interest and is economically feasible, and proof that the applicant is able to finance the project and render adequate service.<sup>3</sup> In addition, a petitioner must certify that it is authorized to provide electric service and document that it has obtained all necessary municipal consents.

CPV Valley has met the requirements of PSL §68. CPV Valley has provided thorough information describing the Project. The various aspects of the Project design are described above

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<sup>3</sup> 16 NYCRR §21.3. Where an electric corporation requires the consent of a municipal authority, a verified statement that the corporation has received such consent must be provided before we may issue a CPCN.

and included in the record.<sup>4</sup> CPV Valley also describes its proposed financing arrangement for the Project as including a combination of debt and private equity. Total financing for construction and operation of the Project is expected to be approximately \$680 million. CPV Valley proposes to enter into a sale/leaseback arrangement with the Orange County Industrial Development Authority as part of its financing arrangement. While CPV Valley seeks flexibility to substitute financing entities, as discussed below, it notes that CPV Holdings receives equity funding from Warburg Pincus, a well recognized private equity investor. We anticipate these factors, along with the Project's efficiency and proposed points of interconnection with electric and gas facilities, will assist in ensuring the Project is economically feasible.

Further, the Petition describes the manner in which the Project would be consistent with the 2009 New York State Energy Plan and advance the public interest. In particular, the Project would further various objectives identified in the most recent final State Energy Plan, such as assuring a reliable energy system, improving the State's energy independence by developing in-state energy supply resources, addressing affordability concerns caused by rising energy bills, and improving the State's economic competitiveness. The Project would incorporate high-efficiency combined-cycle technology, and is expected to enhance electric system reliability by adding a new generation resource and increasing fuel diversity in the region and providing congestion relief. Given these anticipated benefits, we reject the suggestions raised by certain commenters

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<sup>4</sup> The record in this case consists of the Petition, as supplemented, documents filed in the proceeding, and comments submitted in writing and provided orally, as included in the transcript of the Public Statement Hearing.

that surplus generation exists in the upstate region and that the Project is not needed.

The Project would also provide positive economic benefits through job growth and increased local revenues. CPV Valley estimates the Project would provide an average of \$2.35 million in annual revenues to the Town of Wawayanda, the local school and fire district, and Orange County.

The Petition also articulates the basis by which the Project would provide safe and adequate service. CPV Valley has committed to incorporate, and implement as appropriate, standards and measures for engineering design, construction, and operation. Any impacts on the electric system would be addressed through the NYISO's interconnection process. Procedures for emergency response and facility maintenance would also be established.

CPV Valley has also demonstrated that it is authorized to provide electric service as a duly incorporated entity in good standing under the laws of Delaware and certified by the New York Department of State to do business in the State. CPV Valley's company agreement provides that the purposes of the limited liability company is to

develop, design, construct, own, operate, maintain, and/or sell a natural gas-fired electric generation facility to be located in the State of New York (the "**Project**"), (ii) manage the Project's development, design, equipment supply, construction, ownership, operation, maintenance and/or sale opportunities, and (iii) engage in all activities related or incidental thereto.

CPV Valley has obtained the requisite municipal consent from the City of Middletown (City). The Project is designed to use effluent from the City's Wastewater Treatment Facility (WWTF) for process water, and to discharge that water back to the WWTF for disposal. The water supply and return



lines would need to be constructed on property owned by the City. Pursuant to Section 25-4 of the City Code, the City may lease, sell, or franchise any of its property through a vote by a majority of the Common Council authorizing the Mayor to sign legal documents necessary to implementing such actions. On September 17, 2013, the City Common Council voted unanimously to authorize the Mayor to sign an agreement with CPV Valley for providing treated effluent from the WWTF. On October 11, 2013, CPV Valley filed a copy of an agreement, signed by the Mayor, authorizing CPV Valley to construct the pipelines and related facilities necessary to deliver treated effluent and process water, and to discharge the rejected effluent.

We conclude, based upon a thorough review of the record developed here, that the Project has met the requirements of PSL §68 and that the construction and operation of the Project is necessary and convenient for the public service. Accordingly, we grant CPV Valley a CPCN along with appropriate conditions to ensure safe, reliable, and adequate service. For example, the certificate conditions included within this order require CPV Valley to submit all final approvals, consents, and design plans prior to installation of any utilities associated with the Project.

#### Lightened Regulation

CPV Valley seeks an order approving a lightened regulatory regime whereby limited provisions of the PSL will be applied to CPV Valley, consistent with previous Commission orders involving Exempt Wholesale Generators (EWGs). We find that CPV Valley may be lightly regulated in its ownership of the Project because it would provide electric service from the facility on a wholesale basis, as a participant in organized wholesale electric markets. The lightened regulatory regime that CPV valley requests be applied to its wholesale electric

operation in New York is similar to that afforded to other wholesale generators participating in competitive electric markets. Its petition is therefore granted, to the extent discussed below.

In interpreting the PSL, we have examined what reading best carries out the statutory intent and advances the public interest. Consequently, in the Carr Street and Wallkill Orders, it was concluded that new forms of electric service providers participating in competitive wholesale markets would be lightly regulated.<sup>5</sup> Under this approach, PSL Article 1 applies to CPV Valley, because it meets the definition of an electric corporation under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1)(b). It is therefore subject to provisions, such as PSL §§11, 19, 24, 25 and 26, that prevent producers of electricity from taking actions that are contrary to the public interest.<sup>6</sup>

All of Article 2 is restricted by its terms to the provision of service to retail residential customers, and so is inapplicable to wholesale generators like CPV Valley. Certain

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<sup>5</sup> Case 98-E-1670, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (Carr Street Order); Case 91-E-0350, Wallkill Generating Company, Order Establishing Regulatory Regime (issued April 11, 1994) (Wallkill Order).

<sup>6</sup> The PSL §18-a assessment is imposed on PSL-jurisdictional gross intrastate revenues; so long as CPV Valley sells exclusively at wholesale, there are no PSL-jurisdictional revenues and no assessment is collected.

provisions of Article 4 are also inapplicable because they are restricted to retail service.<sup>7</sup>

The Commission decided in the Carr Street and Wallkill Orders to apply the remaining provisions of Article 4 to wholesale generators.<sup>8</sup> Application of these provisions is deemed necessary to protect the public interest. We have interpreted the Article 4 provisions in a fashion that limits their impact on the operation of competitive electric markets. Under PSL §66(6), wholesale generators satisfy Annual Report filing requirements through a format designed to accommodate their particular circumstances.<sup>9</sup> Filings required under other provisions of Article 4 are reviewed with the scrutiny commensurate to the level the public interest requires. This analysis of Article 4 adheres to CPV Valley.

Regarding PSL §69, prompt regulatory action is possible through reliance on representations concerning proposed financing transactions. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for these financings because lightly-regulated

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<sup>7</sup> See, e.g., PSL §§66(12) (optional tariff filings); §66(21) (retail electric corporation storm plans); §67 (inspection of meters); §72 (hearings and rate proceedings); §72-a (reporting increased fuel costs); §75 (excessive charges); and, §76 (rates charged religious bodies).

<sup>8</sup> PSL §68 provides for certification of the construction of new plant or the retailing of electricity to customers via direct interconnections. PSL §69, §69-a and §70 provide for the review of securities issuances, reorganizations, and transfers of securities or works or systems.

<sup>9</sup> Case 11-M-0295, Annual Reporting Requirements, Order Adopting Annual Reporting Requirements Under Lightened Ratemaking Regulation (issued January 23, 2013).

participants in competitive markets bear the financial risk associated with their financial arrangements.<sup>10</sup>

Regarding PSL §70, it was presumed in the Carr Street and Wallkill Orders that regulation would not “adhere to transfer of ownership interests in entities upstream from the parents of a New York competitive electric generation subsidiary, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.”<sup>11</sup> In those Orders, however, wholesale generators were also advised that the potential for the exercise of market power arising out of an upstream transfer would be sufficient to defeat the presumption and trigger PSL §70 review. CPV Valley may avail itself of this presumption. Under PSL §§66(9) and (10), we may require access to records sufficient to ascertain whether the presumption remains valid.

Turning to PSL Article 6, several of its provisions adhere only to the rendition of retail service. These provisions do not pertain to CPV Valley because it is engaged solely in the generation of electricity for wholesale.<sup>12</sup> Moreover, application of PSL §115, on requirements for the competitive bidding of utility purchases, is discretionary and will not be imposed on wholesale generators. In contrast, PSL §119-b, on the protection of underground facilities from damage

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<sup>10</sup> See, e.g., Case 10-E-0405, NRG Energy, Inc., Order Approving Financing (issued November 18, 2010); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

<sup>11</sup> Carr Street Order, p. 8; Wallkill Order, p. 9.

<sup>12</sup> See, e.g., PSL §112 (rate order enforcement); §113 (repairs and refunds); §114 (temporary rates); §114-a (lobbying costs in rates); §117 (consumer deposits); §118 (bill payments via an agency); §119-a (use of utility poles and conduits); and §119-c (tax benefits in rates).

by excavators, adheres to all persons, including wholesale generators.

The remaining provisions of Article 6 need not be imposed generally on wholesale generators.<sup>13</sup> These provisions were intended to prevent financial manipulation or unwise financial decisions that could adversely impact rates charged by monopoly providers. In comparison, so long as the wholesale generation market is effectively competitive, or market mitigation measures yield prices aligned with competitive outcomes, wholesale generators cannot raise prices even if their costs rise due to poor management. Moreover, imposing these requirements could interfere with wholesale generators' plans for structuring the financing and ownership of their facilities. This could discourage entry into the wholesale market, or introduce inefficiencies into the operation of that market, to the detriment of the public interest.

As discussed in the Carr Street Order, however, market power issues may be addressed under PSL §§110(1) and (2), which afford us jurisdiction over affiliated interests. CPV Valley has not reported any affiliation with a power marketer, foreclosing that avenue to the exercise of market power. Consequently, we impose the requirements of §§ 110(1) and (2) on CPV Valley only conditionally, to the extent a future inquiry into its relationships with an affiliate becomes necessary.

Finally, notwithstanding that it is lightly regulated, CPV Valley is reminded that it and any other entities that exercise control over the operations of the CPV Valley facility

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<sup>13</sup> These requirements include approval of: loans under §106; the use of utility revenues for non-utility purposes under §107; corporate merger and dissolution certificates under §108; contracts between affiliated interests under §110(3); and, water, gas and electric purchase contracts under §110(4).

remain subject to the Public Service Law with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements of PSL Articles 1 and 4, to the extent discussed above and in previous orders.<sup>14</sup> Included among these requirements are the obligations to conduct tests for stray voltage on all publicly accessible electric facilities,<sup>15</sup> to give notice of generation unit retirements,<sup>16</sup> and to report personal injury accidents pursuant to 16 NYCRR Part 125.

### Financing

Approval of CPV Valley's financing plans is appropriate under lightened regulation. The scrutiny applicable to monopoly utilities may be reduced for lightly-regulated companies like CPV Valley that operate in a competitive environment. As a result, we need not make an in-depth analysis of the proposed financing transactions. Instead, by relying on the representations that CPV Valley makes in the Petition, prompt regulatory action is possible.

The proposed \$680 million in financing would be for a statutory purpose and be consistent with the public interest. CPV Valley's proposed financing is therefore approved up to a maximum amount of \$680 million. Given that CPV Valley will be

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<sup>14</sup> See, e.g., Case 07-M-0906, Iberdrola, S.A., Order Approving Transfer, Providing For Lightened Ratemaking Regulation, Establishing Rate Treatment and Making Other Findings (issued October 18, 2013).

<sup>15</sup> Case 04-M-0159, Safety of Electric Transmission and Distribution Systems, Order Instituting Safety Standards (issued January 5, 2005) and Order on Petitions for Rehearing and Waiver (issued July 21, 2005).

<sup>16</sup> Case 05-E-0889, Generation Unit Retirement Policies, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

regulated lightly, as discussed above, it is afforded the flexibility to modify, without our prior approval, the identity of the financing entities, payment terms, and the amount financed, so long as it does not exceed the maximum amount stated above.<sup>17</sup> Affording CPV Valley this financing flexibility avoids disruption of its financing arrangements and enables it to operate more effectively in competitive wholesale electric markets. Additional scrutiny is not required to protect captive New York ratepayers, who cannot be harmed by the terms arrived at for this financing because CPV Valley will bear the financial risk associated with its financial arrangements.

Environmental Quality Review

The purpose of SEQRA is to incorporate consideration of environmental factors into the existing planning, review and decision-making processes of State, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that agencies determine whether the actions they are requested to approve may have a significant impact on the environment. If it is determined that an action may have a significant adverse impact, an Environmental Impact Statement (EIS) must be prepared.

Where an EIS is prepared, the Lead Agency and each other Involved Agency must adopt a formal set of written findings based on the Final EIS (FEIS). The SEQRA Findings Statement of each agency must:

- (i) consider the relevant environmental impacts, facts, and conclusions disclosed in the FEIS;

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<sup>17</sup> See, e.g., Case 03-E-1181, Dynegy Danskammer LLC and Dynegy Roseton LLC, Order Authorizing Entry Into Credit Facility and Issuance of Secured Notes (issued November 26, 2003); Case 01-E-0816, Athens Generating Company, L.P., Order Authorizing Issuance of Debt (issued July 30, 2001).

- (ii) weigh and balance relevant environmental impacts with relevant social, economic, and other considerations;
- (iii) provide the rationale for the agency's decision;
- (iv) certify that the requirements of 6 NYCRR Part 617 have been met; and
- (v) certify that, consistent with social, economic, and other essential considerations, and considering among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures identified as practicable.<sup>18</sup>

Once the findings are adopted, the SEQRA process is completed, and the Lead Agency and any Involved Agencies can begin to approve, approve with conditions, or disapprove the proposed project.

A comprehensive environmental review of the Project was conducted pursuant to SEQRA.<sup>19</sup> On March 10, 2008, CPV Valley submitted a Full Environmental Assessment Form to the Town of Wawayanda Planning Board (Wawayanda Planning Board). On June 11, 2008, the Wawayanda Planning Board assumed the role of Lead Agency under SEQRA. The Wawayanda Planning Board issued a positive declaration regarding the Project on June 25, 2008, requiring the preparation of a Draft Environmental Impact

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<sup>18</sup> 6 NYCRR §§617.11(c) and (d).

<sup>19</sup> SEQRA is codified in Article 8 of the Environmental Conservation Law, and the implementing regulations are contained in 6 NYCRR Part 617 and 16 NYCRR Part 7.



Statement (DEIS). Following the approval of a final scoping document on October 14, 2008, a DEIS was prepared by CPV Valley.

On November 18, 2008, CPV Valley submitted a DEIS to the Wawayanda Planning Board. On February 23, 2009, the Wawayanda Planning Board accepted the DEIS and sought public comments. A Notice of Complete Application and Legislative Hearing, including notice of the availability of the DEIS and draft permits, was published in the Environmental Notice Bulletin on March 4, 2009. The deadline for comments was extended from April 22, 2009, to May 14, 2009. On April 8, 2009, the Wawayanda Planning Board, acting as Lead Agency, held a public hearing at the Wawayanda Town Hall.

Additional studies were performed at the request of the Wawayanda Planning Board in response to comments on the DEIS. These studies included seasonally dependent ecological field surveys, a more detailed visual impact assessment of the above ground electric transmission lines, and analysis of the visible plume and secondary formation of fine particulate matter. Comments on these studies were solicited between March 8, 2010, and March 22, 2010. CPV Valley prepared a proposed FEIS to address all substantive comments received on the DEIS and the additional studies.

An FEIS was submitted to the Wawayanda Planning Board on November 30, 2011. The proposed FEIS was revised and ultimately accepted by the Wawayanda Planning Board on February 8, 2012, and thereafter noticed, filed, and distributed as required under 6 NYCRR Section 617.12. On May 23, 2012, the Wawayanda Planning Board accepted and adopted a Findings Statement certifying that the requirements of SEQRA had been met. The Wawayanda Planning Board concluded that the Project was consistent with the social, economic, and other essential considerations of the proposed action; considers reasonable

alternatives; and, considers mitigation measures specified in the DEIS and FEIS seeking to avoid or minimize adverse environmental impacts to the maximum extent practicable.

On March 22, 2013, the Wawayanda Zoning Board of Appeals issued variances in connection with the Project, while the Wawayanda Planning Board issued a Special Use Permit and Site Plan Approval on May 9, 2013. The NYS DEC issued a findings statement and permits for air emission sources and wetlands disturbance for the Project on July 25, 2013.

Because the Commission has approval authority under PSL §68 in deciding whether to grant a CPCN related to the Project, the Commission is an involved agency for purposes of SEQRA review. The lead agency is, however, responsible for taking a hard look at the relevant areas of environmental concern,<sup>20</sup> then making findings on that basis. By contrast, an involved agency has a more limited role regarding SEQRA matters and relies primarily upon the lead agency's review and issuance of a Final EIS.<sup>21</sup> As an involved agency, the Commission may not generally require the preparation of SEQRA documents in connection with proposed actions.<sup>22</sup> However, we must make a written findings statement that, inter alia, weighs and balances relevant environmental impacts with social, economic, and other considerations and provides a rationale for our decision.<sup>23</sup> In making such a decision, we may consider the views expressed by parties and non-parties, but must rely primarily on the FEIS

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<sup>20</sup> Jackson v. NY Urban Dev. Corp., 67 N.Y.2d 400, 417(1986).

<sup>21</sup> Matter of Turkewitz v. Planning Board of City of New Rochelle, 24 A.D.3d 790, 791 (2d Dep't 2005); Matter of Gordon v. Rush, 299 A.D.2d 20, 29 (2d Dep't 2002), aff'd 100 N.Y.2d 236 (2003).

<sup>22</sup> 6 NYCRR §617.6(b)(3)(iii).

<sup>23</sup> ECL §8-0109(8) and 6 NYCRR §617.11(c) and (d).

prepared by the lead agency and give serious consideration to environmental issues.<sup>24</sup>

In reviewing the Petition, DPS Staff pursued clarification and resolution of certain environmental matters dealt with in the FEIS and pursuant to the Parks, Recreation and Historic Preservation Law §14.09 review related to aspects of facility safety and security, infrastructure and utility co-location, and minimization of impacts on cultural resources. Nevertheless, the review of environmental issues is primarily the responsibility of the lead agency. As part of its review of the impacts of electric generating facilities, the lead agency must also ensure that any Final EIS include

a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan....<sup>25</sup>

That showing was made. One comment, filed by Central Hudson Gas and Electric, a regional electric service, indicated its support for the petition by CPV Valley, and stated that the project would be beneficial to its customers.

The provisions under PSL §68 are not in the nature of comprehensive siting requirements. Rather, the criteria applicable under §68 include a verification that the municipality on whose property part of the facility would be located has granted its consent to construct the electric plant.<sup>26</sup> Primary siting responsibility, therefore, is at the local level. The requirements of SEQRA, including development

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<sup>24</sup> Nash Metalware Co., Inc. et al. v. New York City, 14 Misc. 3d 1211a (S.Ct. NY Co., 2006).

<sup>25</sup> ECL §8-1009 (2) (h).

<sup>26</sup> Matter of Penn-York Natural Gas Corporation v. Maltbie, 164 Misc. 569 (S.Ct. Albany Co., 1937).

of an EIS that addresses the adopted Scoping Requirements, and issuance of findings based on the FEIS, fall principally on the lead agency.

The record in the SEQRA proceeding contains extensive information regarding the potential impacts on land and land use, visual resources, air quality, noise, wetlands and water resources, ecological resources, socioeconomics and environmental justice, traffic and transportation, cultural resources, soils, geology and seismology, and wildlife. The FEIS addresses the potential environmental impacts, and provides protective measures tailored to avoid, minimize, and mitigate the environmental impacts.

Most of the comments received relate to environmental matters already considered by the lead agency in the SEQRA process and addressed in the Final EIS. The predominant concerns of both parties and non-parties appear to center on: compatibility with existing land uses, and potential effects on area residents and property values; impacts on wildlife, including rare, threatened and endangered species; potential impacts on water resources; emissions of air pollutants from the facility; alternative sources of energy, opposition to the use of natural gas derived by hydraulic fracturing; and the need for the addition of a major natural gas-fired electric generating facility in the area.

Potential impacts on wildlife, including rare, threatened and endangered species, are considered in the EIS. The comments and pleadings filed express dissatisfaction with the depth and extent of studies performed by CPV Valley. Issues regarding impacts to wildlife were, however, addressed by the lead agency and are also within the jurisdiction of the DEC, which is an involved agency in the SEQRA review of this project, and which has issued permits for development of this project.

The environmental review conducted pursuant to SEQRA and that relating to PSL §68 review overlap to some extent; however, our primary focus under §68 relates to statewide and regional concerns, as well as to the protection of public infrastructure and services. Potential impacts on air quality and the adverse effects of using natural gas including the siting and development of gas transmission pipeline, and potential use of fuel gas developed by hydraulic fracturing or "fracking" for electric power generation garnered many comments. While the Public Service Law Article VII generally addresses siting of major gas transmission pipelines not subject to exclusive jurisdiction of a federal agency, the project proposal will involve a new gas transmission pipeline subject to the federal Natural Gas Act, and thus will be exempt from PSL Article VII. The nature of impacts of that project component were addressed in the EIS, and the DPS did not address that facility in the §68 review.

The air quality impacts associated with plant operation are also statewide or regional in character. Those impacts were addressed by the EIS. The Department of Environmental Conservation, which is the responsible Agency for issuing the Air quality permits, has fixed the emissions from the units. The Draft EIS estimated the plant emissions due to operation, and DEC has issued appropriate permits pursuant to its jurisdiction. The plant emissions limitations are directly tied to the nameplate ratings of the units, while the likely output from the Project under actual operating conditions is

expressed as the nominal output.<sup>27</sup> Therefore, the designation of the nameplate capacity for the Project as 820 MW would not cause any incremental increases in air emissions from the Project greater than those authorized under the permits issued by DEC.

Comments regarding the regional and site-specific seismic conditions were received by CPV Valley on the DEIS and in this record. In response to comments received on the DEIS regarding the seismic conditions of the project area, CPV Valley acknowledged in the FEIS the presence of regional fault lines and fault lines systems potentially associated with earthquakes common in New York State. In a supplemental filing dated April 8, 2014, CPV Valley states that it has reviewed the Orange County Water Authority online mapping resources and acknowledges the presence of a mapped bedrock fracture trace in the southwest corner of the project site. CPV Valley has indicated that the current New York State Building Code (2010) does not preclude the construction of a facility on a site with known or suspected bedrock fractures or faults.

DPS Staff reports that seismic design requirements are predominantly based on the existing geotechnical conditions and location of a project site. CPV Valley performed preliminary geotechnical studies at the Project site and preliminary conclusions have been made from this data, as reported in the EIS. The April 8, 2014 supplement states that "the preliminary geotechnical evaluation will be followed by a final geotechnical evaluation to support the final detailed design of the

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<sup>27</sup> Nameplate ratings reflect guarantees provided by the equipment manufacturer to the developer based on specific, agreed upon equipment operating parameters or standards. The summer ratings reflect expected real world operating conditions, such as air temperature and density, station loads and losses, and the developers expected equipment operating parameters.

facility.” Also, the EIS and supporting documents indicate that final design of the facility will include containment areas designed to prevent leakage and contain overflow of back-up fuel oil in case a seismic event occurs. We accept DPS Staff’s recommendation that we condition our granting of a CPCN by requiring submittal of final design drawings and all supporting data including final geotechnical studies and specification of protective measures against seismic activities, as well as demonstrations that final design adheres to all applicable codes, including the New York State Building Code. Accordingly, a condition has been included as part of this order requiring CPV Valley to submit all supporting data of final design and all final design drawings for the Project.

On the basis of our consideration of the relevant environmental impacts presented in the FEIS and our review of the documents filed by parties, the comments submitted by non-parties, and responses to these materials, we conclude that we can make the findings required by ECL §8-0109(8) and 6 NYCRR 617.11(c) and (d). Importantly, we conclude that the applicable design and conditions placed upon the Project would avoid and minimize adverse environmental impacts to the maximum extent practicable.

Cultural Resources/Historic Preservation Review

CPV Valley provided an evaluation of probable impacts to cultural resources due to construction and operation of the Project. Archaeological surveys were conducted on the proposed construction impact areas of the site to determine if there would be an impact to any cultural resources eligible for inclusion in the National Register of Historic Places (NRHP). Also, an architectural survey was conducted to assess structures within the Area of Potential Effect (APE), which was defined as

an area within a half mile radius of the Project for this analysis.

The New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) provided comments regarding the Project in a letter dated December 23, 2008. Potential archeological sites on the Project site were encountered during the initial survey and additional testing was conducted. OPRHP confirmed in a November 5, 2009 letter that the potential archeological sites are not eligible for listing on the State or National Register of Historic Places.

CPV Valley identified refinement of electrical and process water interconnection facilities and locations in a letter dated November 11, 2011. The electrical interconnect design proposed underground 345 kV electric transmission cables and a building to house switches and breakers at the interconnection location adjoining the NYPA Marcy-South 345 kV transmission facility. Process water supply and wastewater return lines connecting the generating facility to the City of Middletown wastewater treatment plant were proposed to follow one of three alternative alignments along existing roadways generally using public rights-of-way.

In response to CPV Valley's November 11, 2011 letter, OPRHP indicated that it needed additional documentation of previous disturbances of the interconnection facility alignments, including subsurface disturbance, and requested that additional Stage 1B (shovel) testing be completed prior to construction. On January 9, 2012, CPV Valley offered to commit to providing additional testing results following selection of a final route and prior to commencing construction of the water lines. By letter dated February 1, 2012, OPRHP stated that it had no objections to the proposed pre-construction testing program as detailed in the January 9, 2012 CPV Valley letter,



provided that final permits or SEQRA findings include a condition requiring that the additional testing be completed. By correspondence dated April 14, 2014, OPRHP reported that the January 9, 2012 recommendation for investigation of final routing of the water lines should be applied to all of the interconnection facilities, including the electric transmission facility, due to the archeological sensitivity of the project area.

Two historic cemeteries were identified in the project vicinity: one is located on the Project site, and another is on an adjoining property. The Cooley Cemetery is located in the far north-west corner of the Project site. Field observations revealed that Cooley Cemetery is comprised of displaced and upright head stones and footstones within an approximate 9 meter by 9 meter area. Some stones also appeared to have been displaced from the original positions, having been displaced by grazing livestock on this former agricultural property. This cemetery will not be significantly disturbed by the construction of this Project. In response to inquiries regarding protection of the un-maintained Cooley Cemetery due to construction of the project, CPV Valley has proposed measures to protect the cemetery, including the installation of a gated fence around the cemetery and an access path to the cemetery from the CPV Valley parking area. In a response dated April 13, 2009, OPRHP noted that the addition of the fence around the cemetery should help protect the surviving head stones from further deterioration.

During review of the proposed location, DPS Staff identified a potential for site disturbance due to installation of the project site perimeter security fencing, and recommended that CPV Valley determine the outer extent of burial plots via non-intrusive means such as ground-penetrating radar, to assure that there is no disturbance to this site due to fence

construction. DPS Staff recommends that the CPCN be conditioned on a requirement to develop a cemetery site protection plan, including identification of measures to protect the resource. We will adopt this recommendation and require the additional review prior to the start of construction.

The Pine Hill Cemetery is located directly adjacent to the Project site to the northeast. This cemetery will not be directly disturbed by construction activities of the Project. CPV Valley will develop an unanticipated discovery plan in the case that sensitive sites are discovered during construction. Discovery of any potentially significant archaeological resources during construction will be handled in accordance with the most recent *Standards for Cultural Resource Investigations and Curation of Archaeological Collections in New York State*.

In conclusion, no archeologic or historic resources listed or eligible for listing on the State or National Register of Historic Places were identified on the proposed CPV Valley Project site or within the off-site electric interconnection and water/wastewater pipeline corridors. Based on the record information and the requirements for final review by OPRHP and for site protection plan for the Cooley Cemetery, the responsibility of the Commission to comply with the requirements of Parks, Recreation and Historic Preservation Law §14.09 has been addressed.

#### CONCLUSION

As discussed above, the Commission is granting a CPCN with conditions, authorizing a lightened ratemaking regulation, and approving the proposed financing with respect to CPV Valley's Project. We are also denying CPV Valley's Motion, having held a Public Statement Hearing to receive oral comments.

We have reviewed the extensive record in this proceeding and find that the required findings may be made pursuant to SEQRA.

The Commission orders:

1. The motion for an expedited proceeding on the non-contested application of CPV Valley, LLC is denied, as discussed in the body of this order.

2. A Certificate of Public Convenience and Necessity is granted, authorizing CPV Valley, LLC to construct and operate the electric plant within New York described in the body of this Order.

3. The financing arrangements described in the Petition filed in this proceeding and discussed in the body of this Order are approved, up to the maximum amount of \$680 million.

4. CPV Valley, LLC and its affiliates shall comply with the Public Service Law in conformance with the requirements set forth in the body of this Order.

5. CPV Valley, LLC shall obtain all necessary federal, state, and local permits and approvals, and shall implement appropriate mitigation measures defined in such permits or approvals.

6. CPV Valley, LLC shall file with the Secretary to the Commission (Secretary) final Site Plans and construction drawings for the project components, turbine sites, GIS Building, access roads, supply and water and wastewater lines, and electric lines associated with the Project for review before the start of construction.

7. Prior to commencing construction of: (a) the electric transmission interconnection, not including minor activities required for testing and development of final engineering and design information, CPV Valley, LLC shall

provide to the Secretary final design plans and profile drawings of the substation and the transmission interconnection and proof of acceptance of the design by the New York Power Authority; (b) the electric transmission lines and the water supply and wastewater return pipelines, CPV Valley LLC shall provide results of walkover survey and subsurface investigation, and concurrence of the Office of Parks, Recreation and Historic Preservation - Historic Preservation Field Services Bureau that construction of those facilities may commence; (c) the site perimeter fence in the vicinity of the Cooley Cemetery, CPV Valley LLC shall provide results of testing and a final detailed plan for avoiding adverse impacts to the cemetery and individual grave sites within the cemetery.

8. The authorized electric plant shall be subject to inspection by authorized representatives of DPS Staff pursuant to §66(8) of the Public Service Law.

9. CPV Valley, LLC shall incorporate, and implement as appropriate, the standards and measures for engineering design, construction, inspection, maintenance and operation of its authorized electric plant, including features for facility security and public safety, utility system protection, plans for quality assurance and control measures for facility design and construction, utility notification and coordination plans for work in close proximity to other utility transmission and distribution facilities, vegetation and facility maintenance standards and practices, emergency response plans for construction and operational phases, and complaint resolution measures, as presented in its Petition, its Environmental Impact Statement and this Order.

10. CPV Valley, LLC shall file with the Secretary, within three days after commencement of commercial operation of

the electric plant, an original and three copies of written notice thereof.

11. CPV Valley, LLC shall file a copy of the System Reliability Impact Study (SRIS) performed in accordance with the New York Independent System Operator, Inc's (NYISO) Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission), and all appendices thereto, reflecting the interconnection of the facility.

12. CPV Valley, LLC shall design, engineer, and construct facilities in support of the authorized electric plant in accordance with the applicable and published planning and design standards and best engineering practices of NYISO, the New York State Reliability Council (NYSRC), Northeast Power Coordinating Council (NPCC), North American Electric Reliability Council (NERC) and successor organizations, depending upon where the facilities are to be built and which standards and practices are applicable. Specific requirements shall be those required in the SRIS as performed in accordance with the NYISO's OATT and by the Interconnection Agreement (IA) and the facilities agreement with NYPA.

13. CPV Valley, LLC shall work with NYPA, and any successor Transmission Owner (as defined in the NYISO Agreement), to ensure that, with the addition of the electric plant (as defined in the IA between the Company and NYPA), the system will have power system relay protection and appropriate communication capabilities to ensure that operation of the NYPA transmission system is adequate under NPCC Bulk Power System Protection Criteria, and meets the protection requirements at all times of the NERC, NPCC, NYSRC, NYISO, and NYPA, and any successor Transmission Owner (as defined in the NYISO Agreement). CPV Valley, LLC shall ensure compliance with applicable NPCC criteria and shall be responsible for the costs

to verify that the relay protection system is in compliance with applicable NPCC, NYISO, NYSRC and NYPA criteria.

14. CPV Valley, LLC shall operate the electric plant in accordance with the IA, approved tariffs and applicable rules and protocols of NYPA, NYISO, NYSRC, NPCC, NERC and successor organizations. CPV Valley, LLC may seek subsequent review of any specific operational orders at the NYISO, the Commission, the Federal Energy Regulatory Commission, or in any other appropriate forum.

15. CPV Valley, LLC shall comply with the applicable reliability criteria of NYPA, NYISO, NPCC, NYSRC, NERC and successors. If it fails to meet the reliability criteria at any time, the CPV Valley, LLC shall notify the NYISO immediately, in accordance with NYISO requirements, and shall simultaneously provide the Commission and NYPA with a copy of the NYISO notice.

16. CPV Valley, LLC shall file a copy of the following documents with the Secretary:

- a. All facilities agreements with NYPA, and successor Transmission Owner throughout the life of the plant (as defined in the NYISO Agreement);
- b. Any documents produced as a result of the updating of requirements by the NYSRC;
- c. The Relay Coordination Study, which shall be filed not later than six months prior to the projected date for commencement of commercial operation of the facilities; and a copy of the manufacturers' "machine characteristics" of the equipment installed (including test and design data);
- (d) a copy of the facilities design studies for the Electric Plant,

including all updates (throughout the life of the plant);

- d. A copy of the IA and all updates or revisions (throughout the life of the plant); and,
- e. If any equipment or control system with different characteristics is to be installed, the Company shall provide that information before any such change is made (throughout the life of the plant).

17. CPV Valley, LLC shall obey unit commitment and dispatch instructions issued by NYISO, or its successor, in order to maintain the reliability of the transmission system. In the event that the NYISO System Operator encounters communication difficulties, CPV Valley, LLC shall obey dispatch instructions issued by the NYPA Control Center, or its successor, in order to maintain the reliability of the transmission system.

- a. After commencement of construction of the authorized Electric Plant, CPV Valley, LLC shall provide NYPA with a monthly report on the progress of construction and an update of the construction schedule, and file with the Secretary copies of current construction progress reports during all phases of construction. In the event the Commission determines that construction is not proceeding at a pace that is consistent with Good Utility Practice, and that a modification, revocation, or suspension of the Certificate of Public Convenience and Necessity (Certificate) may therefore be warranted, the Commission may issue

a show cause order requiring CPV Valley, LLC to explain why construction is behind schedule and to describe such measures as are being taken to get back on schedule. The Order to Show Cause will set forth the alleged facts that appear to warrant the intended action. CPV Valley, LLC shall have thirty days after the issuance of such Order to respond and other parties may also file comments within such period. Thereafter, if the Commission is still considering action with respect to the Certificate, a hearing will be held prior to issuance of any final order of the Commission to amend, revoke or suspend the Certificate. It shall be a defense in any proceeding initiated pursuant to this condition if the delay of concern to the Commission:

- (1) arises in material part from actions or circumstances beyond the reasonable control of CPV Valley, LLC (including the actions of third parties);
- (2) is not in material part caused by the fault of CPV Valley, LLC; or,
- (3) is not inconsistent with a schedule that constitutes Good Utility Practice.

b. CPV Valley, LLC shall file with the Secretary, no more than four months after the commencement of construction, a detailed progress report. Should that report indicate that construction will not be completed within twelve months, CPV Valley, LLC shall include in the report an explanation of the



circumstances contributing to the delay and a demonstration showing why construction should be permitted to proceed. In these circumstances, an order to show cause will not be issued by the Commission, but a hearing will be held before the Commission takes any action to amend, revoke or suspend the Certificate.

- c. For purposes of this condition, Good Utility Practice shall mean any of the applicable acts, practices or methods engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Company is located. Good Utility Practice shall include, but not be limited to, NERC criteria, rules, guidelines and standards, NPCC criteria, rules, guidelines and standards, NYSRC

criteria, rules, guidelines and standards, and NYISO criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time (including the rules, guidelines and criteria of any successor organization to the foregoing entities). When applied to the Company, the term Good Utility Practice shall also include standards applicable to an independent power producer connecting to the distribution or transmission facilities or system of a utility.

- d. Except for periods during which the authorized facilities are unable to safely and reliably convey electrical energy to the New York transmission system (e.g., because of problems with the authorized facilities themselves or upstream electrical equipment) CPV Valley, LLC's electric plant shall be exclusively connected to the New York transmission system over the facilities authorized herein.

18. CPV Valley, LLC shall work with NYPA system planning and system protection engineers to discuss the characteristics of the transmission system before purchasing any system protection and control equipment or equipment related to the electrical interconnection of the Project to the transmission system, and to ensure that the equipment purchased will be able to withstand most system abnormalities. The technical considerations of interconnecting the electric plant

to the transmission facility shall be documented by CPV Valley, LLC and provided to the Secretary and NYPA prior to the installation of transmission equipment. Updates to the technical information shall be furnished as available (throughout the life of the plant).

19. CPV Valley, LLC shall work with NYPA engineers and safety personnel on testing and energizing equipment in the authorized substation. A testing protocol shall be developed and provided to NYPA for review and acceptance. CPV Valley, LLC shall provide a copy of the testing design protocol to the Secretary within 30 days of NYPA's acceptance. CPV Valley, LLC shall make a good faith effort to notify DPS Staff of meetings related to the electrical interconnection of the Project to the NYPA transmission system and provide the opportunity for DPS Staff to attend those meetings.

20. CPV Valley, LLC shall call the Bulk Electric System Section within six hours to report any transmission related incident that affects the operation of the Electric Plant. CPV Valley, LLC shall submit a report on any such incident within seven days to DPS Staff and NYPA. The report shall contain, when available, copies of applicable drawings, descriptions of the equipment involved, a description of the incident and a discussion of how future occurrences will be prevented. CPV Valley, LLC shall work cooperatively with NYPA, NYISO and the NPCC to prevent any future occurrences.

21. CPV Valley, LLC shall make modifications to its Interconnection Facility, if it is found by the NYISO or NYPA to cause reliability problems to the New York State Transmission System. If NYPA or the NYISO bring concerns to the Commission, CPV Valley, LLC shall be obligated to address those concerns.

22. If, subsequent to construction of the authorized electric plant, no electric power is generated and transferred

out of such plant for a period of more than a year, the Commission may consider the amendment, revocation or suspension of the Certificate.

23. In the event that a malfunction of the authorized electric plant causes a significant reduction in the capability of such plant to deliver power, CPV Valley, LLC shall promptly provide to DPS Staff and NYPA copies of all notices, filings, and other substantive written communications with the NYISO as to such reduction, any plans for making repairs to remedy the reduction, and the schedule for any such repairs. CPV Valley, LLC shall provide monthly reports to the Secretary and NYPA on the progress of any repairs. If such equipment failure is not completely repaired within nine months of its occurrence, CPV Valley, LLC shall provide a detailed report to the Secretary, within nine months and two weeks after the equipment failure, setting forth the progress on the repairs and indicating whether the repairs will be completed within three months; if the repairs will not be completed within three months, CPV Valley, LLC shall explain the circumstances contributing to the delay and demonstrate why the repairs should continue to be pursued.

24. No less than 60 days prior to the commencement of operation, CPV Valley, LLC shall file with the Secretary Operation and Maintenance Plan(s) for the Electric Plant, including but not limited to a complete documentation of its emergency procedures and a list of emergency contacts. Any modifications to such Operation and Maintenance Plan(s) or emergency procedures or emergency contacts shall be documented and filed by CPV Valley, LLC with the Secretary within 14 days of such modifications.

25. If CPV Valley, LLC participates in the NYISO's Black Start program, CPV Valley, LLC shall demonstrate annually that the unit can be black started. CPV Valley, LLC shall

schedule with the NYISO and NYPA the black start test and demonstrate black start procedures. If the black start test fails, CPV Valley, LLC shall produce a report describing the test and what actions or changes are being made to the black start procedures. A copy of such report shall be submitted to NYPA, NYISO and the Secretary. CPV Valley, LLC shall provide the opportunity for DPS Staff to observe the black start testing. CPV Valley, LLC shall effectuate a successful black start annually to qualify for the Black Start program.

26. CPV Valley shall submit all pipeline transportation contracts to the Department of Public Service Information Records Access Officer. All submissions should be labeled confidential and include this case number prominently in the name of the filing.

27. Prior to supplying any gas for testing or blow downs at the generating facility the applicant shall: a) provide a safety program and emergency procedures for initially supplying any amount of gas to the plant; and, b) meet with the Department of Public Service's Gas Safety Section.

28. Development of final facility design shall be based on additional geotechnical investigations and analyses of the facility site to fully characterize the site including the nature and extent of soft clay soils identified during preliminary geotechnical studies. CPV Valley, LLC shall submit to Department of Public Service Staff for review a report summarizing the results of additional geotechnical investigations and analyses. This report shall include the following information to be used to support final design of the foundation systems:

- a. The final designated Site Class;
- b. The final designated Seismic Design Category;

- c. A description of all required structural tests and special inspections to be employed during construction as a result of the final seismic calculations. This description shall include all specific design and code requirements due to the classification of the Project site.

29. Prior to construction, CPV Valley, LLC shall file with the Secretary:

- a. Final Structural Drawings of the facility including full size drawings at an appropriate scale, with the following details:
  - (1) General Structural Notes (Provide notes describing any specific protective measures and code requirements due to the final Seismic Design Category);
  - (2) Foundation Plans;
  - (3) Foundation Sections and Details;
  - (4) Concrete General Notes;
  - (5) Concrete Details;
  - (6) Any Hardware/Assembly Details;
  - (7) Final Secondary Containment Plans, Details and Notes; and,
  - (8) Any other final structural drawings not listed above.
- b. A written statement describing how final design of the facility meets or exceeds all applicable criteria for regional and site specific seismic hazard risks.

30. The Secretary shall have sole discretion to extend the deadlines set forth in this order. Any request for an extension must be in writing, must include a justification

for the extension, and must be filed at least one day prior to the affected deadline.

31. This proceeding is closed, pending compliance with Certificate Conditions 6, 7, 10, 11, 16, 24, 26, 27, 28, and 29 above.

By the Commission,

KATHLEEN H. BURGESS  
Secretary

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 10-E-0501 - Petition of CPV Valley, LLC for a Certificate of Public Convenience and Necessity Pursuant to Section 68 of the Public Service Law, Approval of Financing Pursuant to Section 69 and for Approval of a Lightened Regulatory Regime.

Statement of Findings

This statement was prepared in accordance with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act (SEQRA). The Town of Wawayanda Planning Board acted as Lead Agency and the Public Service Commission (Commission) is an Involved Agency.

The address of the Lead Agency is:

Town of Wawayanda  
80 Ridgebury Hill Road  
Slate Hill, NY 10973

The address of the Commission is:

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

Questions concerning the quality or content of this document can be directed to Philipose Philip, at 212-417-2208, or to the Commission at the address above.

Project Description

The Project Petitioner is CPV Valley, LLC (CPV Valley). The proposed CPV Valley Energy Center (Project) will be located on an approximate 22 acre portion of a 122 acre parcel of open land in the northeast portion of the Town of Wawayanda. The 122 acre parcel is bounded by Interstate-84 (I-84) to the south, Route 17M on the east, and Route 6 to the north and west. The



development site parcel is currently undeveloped land used previously for agricultural purposes and wooded areas. There is a private cemetery (Cooley Cemetery) located on the far western corner of the Project site, which will not be impacted by the Project.

The Project consists of a combined-cycle facility proposed to generate a peak of approximately 630 megawatts (MW) of electricity. Approximately 365 MW of this power will be produced using two F Class combustion turbine generator sets. Exhaust heat from the combustion turbines will be sent to heat recovery steam generators (HRSGs) to produce steam to drive a steam turbine generator. The HRSGs will include a natural gas-fired (supplemental "duct burner" firing system that allow for additional electrical production during select periods. The steam turbine generator will provide approximately 288 MW. Approximately 23 MW will be consumed within the Facility to power necessary systems, which leaves a net nominal electric output of 630 MW.

The Project will be equipped with state-of-the-art emissions control technology; including selective catalytic reduction (SCR) technology to control oxides of nitrogen (NOx) and an oxidation catalyst to control carbon monoxide (CO) and volatile organic compound (VOC) emissions. Exhaust steam from the steam turbine will be cooled (i.e., condensed) and then returned to the HRSG using an air-cooled condenser.

Natural gas will be used as the primary fuel with ultra-low sulfur distillate oil serving as a back-up fuel for reliability purposes. Use of the back-up fuel will be limited to the equivalent of 720 hours per year, per turbine, so that the Facility can reliably support the electrical system in the event that natural gas supplies are needed to meet residential heating or other demands. To accommodate short-term operation

on ultra-low sulfur distillate oil, the proposed Project will include a 965,000-gallon fuel oil storage tank and associated off-loading facilities. The fuel oil tank capacity is designed to allow for three, twelve-hour days of operation on fuel oil for two combustion turbines, at base load and average ambient conditions.

The Project will interconnect with the New York Power Authority's (NYPA) 345-kilovolt (kV) transmission system, which is located less than 1 mile north of the Project site, via new underground cables and a new 345 kV gas insulated switchgear (GIS) switchyard, to be located adjacent to the NYPA transmission lines. The underground transmission lines will extend easterly along the Project site parallel to I-84 towards Route 17M. At the eastern portion of the site, the transmission line route will turn and extend north paralleling Route 17M in the New York State Department of Transportation (NYSDOT) Route 17M right-of-way.

Process water requirements for the Facility will be met through use of treated effluent from the City of Middletown Sewage Treatment Plant. Treated effluent (currently discharged to the Wallkill River) from the city Treatment Plant will be conveyed to the Project site via a new water pipeline, filtered and chlorinated for reuse as process makeup water. Project process water discharge will be conveyed back to the City of Middletown Sewage Treatment Plant via a new wastewater transmission pipeline for treatment prior to discharge to the Wallkill River. Potable water will be obtained through an interconnection to the municipal system along Route 6.

#### Discussion

A comprehensive environmental review of the project was conducted in conformance with the State Environmental

Quality Review Act (SEQRA) with The Town of Wawayanda Planning Board acting as SEQRA Lead Agency. The Commission is an Involved Agency in the SEQRA review. Following the issuance of a final scoping document on October 14, 2008, a Draft Environmental Impact Statement (DEIS) was submitted by CPV Valley Energy Center to the lead agency on November 18, 2008. The DEIS was determined to be complete on February 23, 2009, and was made available to the Public. Comments on the DEIS were accepted by the lead agency until May 14, 2009. Town of Wawayanda Planning Board held a public hearing on the DEIS on April 8, 2009 and additional studies comment period was open from March 8 through March 22, 2010.

In response to written comments, as well as the comments raised during the public hearing, CPV Valley Energy Center submitted a Final Environmental Impact Statement (FEIS) on November 30, 2011 and the Lead Agency accepted the FEIS on February 8, 2012.

The Final EIS evaluates the environmental impacts identified in the DEIS Scope as well as comments provided in response to the DEIS. Record information identifies resources and provides evaluation of impacts on land and land use, visual resources, air quality, noise, ecological resources including wildlife, wetlands and water resources, socioeconomics, traffic, cultural resources, soils, geology, and seismology. Cumulative impacts associated with an off-site gas transmission pipeline (subject to additional siting review authority by the Federal Energy Regulatory Commission) were also identified. The FEIS addresses the potential environmental impacts, and provides protective measures tailored to avoid, minimize and mitigate those impacts. These measures include: use of highly efficient combined cycle technology, air-cooled condensers and state-of-the-art emissions control technology; location of electric

transmission lines underground to reduce visual impacts of the facility; and use of treated wastewater as process water.

In its Findings Statement, the Lead Agency concluded that the CPV Valley project has been designed, and where necessary, revised, to avoid, minimize, and mitigate adverse environmental impacts. The New York State Department of Environmental Conservation issued a Findings Statement and permits related to air emissions and wetlands disturbance.

Air emissions in general will be minimized through the use of emission control devices and strategies representing the most stringent limitation achieved in practice or which can reasonably be expected in practice. Permanent impacts will be avoided and temporary impacts will be avoided or minimized by proper handling of top soil, grading of the site and storm water management systems. Impacts to wetlands will be avoided and minimized through construction practices and protective plantings. The project is not expected to have significant adverse impacts on wildlife or significant habitat areas. The project represents the best alternative among those considered.

Although some adverse environmental impacts may be expected from the project, when those impacts are weighed against the benefits, we concluded that the CPV Valley project is in the public interest. It would be a modern electric generation facility and would incorporate various measures to increase efficiency and capacity and avoid or minimize adverse environmental impacts to the greatest extent practicable.

As an additional source of power generation in the Hudson Valley, the project will help meet long-term electric system capacity needs and may relieve short term reliability concerns due to generation retirement.

Conclusions

The potential benefits identified in the FEIS outweigh the potential adverse effects that would result from construction and operation of the proposed facilities. The mitigation measures proposed are reasonable responses to identified impacts, and would avoid or minimize the identified adverse effects to the extent practicable.

Upon considering the environmental impacts, facts, and conclusions in the FEIS, we conclude that the project would avoid and minimize adverse environmental impacts to the maximum extent practicable. Other findings pursuant to SEQRA, as extensively discussed in the Findings Statements issued by the Lead Agency, are reasonable and appropriate. Those findings consider the relevant environmental impacts, facts and conclusions as discussed in the FEIS.

The Commission certifies that the requirements of SEQRA have been met, based on the procedural measures administered by the Lead Agency, the input of Involved Agencies, and the substantive mitigation of adverse effects based on facility design and the requirements of the agencies findings, the various permits to be issued, and the requirements of the Certificate of Public Convenience and Necessity.

The Commission also certifies that, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts would be avoided or minimized to the maximum extent practicable because of the incorporation of conditions requiring appropriate

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mitigation measures in the Certificate of Public Convenience and Necessity.

KATHLEEN H. BURGESS  
Secretary