

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**PETITION OF CPV VALLEY, LLC FOR AN
ORDER GRANTING A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY PURSUANT TO
SECTION 68 OF THE PUBLIC SERVICE LAW,
APPROVING FINANCING PURSUANT TO
SECTION 69 OF THE PUBLIC SERVICE LAW AND
APPROVING A LIGHTENED REGULATORY
REGIME**

Case 10-E-_____

PETITION OF CPV VALLEY, LLC

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Dated: October 12, 2010

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INTRODUCTION

CPV Valley, LLC (“CPV Valley” or “Petitioner”) hereby petitions the State of New York Public Service Commission (“Commission”) for an order: 1) granting a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to Section 68 of the Public Service Law; 2) approving financing pursuant to Section 69 of the Public Service Law; and 3) providing for a lightened regulatory regime.

CPV Valley is also requesting expedited treatment of its Petition for a Certificate of Public Convenience and Necessity under Section 21.10(a) of the Commission’s Rules and Regulations (16 NYCRR §21.10(a)).¹ Expedited treatment is necessary in order that the construction of the facility can commence in an orderly and reasonable manner.

¹ As required by Section 21.10(a)(3) of the Commission’s Rules and Regulations (16 NYCRR §21.10(a)(3)), within 14 days of the filing of this Petition, CPV Valley will publish in the Times Herald-Record, a newspaper of general circulation in Wawayanda, a notice of this application for a CPCN. The proposed Notice is attached as Exhibit 1 hereto.

Correspondence relating to the Petition should be addressed to:

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CPV Valley, LLC

CPV Valley is a limited liability company organized under the laws of the state of Delaware and is a wholly-owned subsidiary of CPV Power Development, Inc., a wholly-owned subsidiary of Competitive Power Venture Holdings, LLC (“CPV”). A copy of CPV Valley’s Certificate of Formation is attached hereto as Exhibit 2. CPV is a leading North American electric power generation development and asset management company. Since its inception in 1999, CPV has been dedicated to increasing America’s electrical sustainability; both economically and environmentally. Using domestically available fuel sources, like wind and natural gas, and partnering with host communities to support their tax base and school districts, CPV works to stabilize and improve local and state economies. CPV currently has nearly 5,000 megawatts (MW) of conventional natural gas generation projects in various stages of development, 6,100 MW of natural gas generation under management in the company’s asset management division, and another 5,000 MW of wind projects in various stages of development across the county. In the past year, three CPV wind projects totaling 516 MW have executed long term power purchase agreements and are expected to be operational by 2013.

Project Description

CPV Valley is proposing to construct the CPV Valley Energy Center, a natural gas, combined-cycle generating facility with a nominal rating of 630MW² (“Project”). The Project requires the construction of a gas lateral for its fuel supply, a water line to supply processed water from the City of Middletown Wastewater Treatment Facility (“WWTF”), a discharge line back to the WWTF, a sewage interconnect for domestic uses and an electrical interconnect consisting of a radial line terminating in a 345kV substation. Further details regarding the Project are provided in Section 2.0 of the DEIS, “Project Description”, Section 2.0 of the FEIS, “Project Refinements”, as well as in Exhibit 3 that is attached to this Petition. These supplements address specific information requested by Department of Public Service staff to support the application under Section 68 of the Public Service Law.

The Project will be confined to a 22 acre area of a 122 acre private piece of land in the Town of Wawayanda, NY. The Project will be constructed in one continuous phase that is anticipated to last approximately 31 months. It is expected that there will be upwards of 660 people working onsite at the peak of construction. Approximately twenty-five operations and maintenance personnel will be employed at the facility once it is operational.

The Project will sell its electrical output exclusively at the wholesale level and will not be a retail provider. The Project anticipates selling its electrical output into one or a combination of: the spot markets administered by the New York Independent System Operator (“NYISO”), neighboring control areas, pursuant to power purchase agreements, or financial hedge contracts.

Status of Environmental Review and Other Permits and Approvals

On November 18, 2008, CPV Valley submitted a Draft Environmental Impact Statement (“DEIS”) to the Town of Wawayanda Planning Board, the lead agency under the State

² CPV Valley, LLC is listed as queue position 251 in the NYISO Interconnection Queue and has a maximum summer output (“SP (MW)”) rating of 656 MW. The output of the facility varies depending on weather conditions. The 656 MW output represents the facility’s maximum summer net output @ 85°F.

Environmental Quality Review Act (“SEQR”). The DEIS was accepted by the Town Planning Board on February 23, 2009.

Since the completion of the DEIS, various public and agency comments have been received. The DEIS includes analysis on potential impacts to soils, water resources, air quality, visual resources, historical and archeological resources, noise, traffic and transportation, socioeconomics, public safety, community facilities and services, environmental justice areas, cultural resources, community character, land use and zoning. The DEIS includes proposed general and specific mitigation measures, alternatives to the Project, and cumulative impacts. A Final Environmental Impact Statement (“FEIS”) is being prepared and will be submitted to the Town Planning Board within the near future.

A list and status of permits and approvals required for the Project is included in the attached Exhibit 3.

Need for the Project and the Public Interest - Section 68

The Commission is authorized to grant a CPCN pursuant to Section 68, upon a determination that the construction of an electric plant is necessary and convenient for public service. The evidentiary requirements for the CPCN are contained in 16 NYCRR § 21.3, and as relevant to lightly regulated entities, are:

- A description of the plant to be constructed
- A description of the manner in which the cost of such plant is to be financed;
- Evidence that the proposed plant is in the public interest and economically feasible; and
- Proof that the applicant is able to finance the project and render adequate service.³

³ Case 05-E-0098, *Caithness Long Island, LLC*, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Issued and Effective November 15, 2006), p. 32. As noted by the Commission therein, the provisions of 16 NYCRR § 21.3(a), concerning the population of the franchise territory, and (e), concerning the estimated revenues, expenses and the number of prospective customers only apply where retail service will be provided.

As will be more fully demonstrated herein, the Project meets these evidentiary requirements.

Plant Description

The Project consists of a combined-cycle facility capable of generating a summer peak of approximately 656 MW of electricity at 85°F. Approximately 373 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 “duct burner” (supplemental firing system). The duct burners will allow for additional electrical production during select periods. The steam turbine generator will provide approximately 304 MW, the balance of the Facility’s gross output. When the Project is running, it will use up to approximately 21 MW to power necessary systems, which leaves a net peak summer electric output of 656 MW.

The Project will be equipped with state-of-the-art emissions control technology, including a selective catalytic reduction technology (SCR) to control oxides of nitrogen (NOx) and an oxidation catalyst to control carbon monoxide (CO) emissions. Air-cooled condensing will be employed to minimize water use and eliminate potential cooling tower plume impacts. The steam from the steam turbine will be cooled (i.e. condensed) via the air-cooled condenser and then returned to the HRSG.

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 Project can reliably support the electrical system in the event that natural gas supplies are needed to meet residential heating or other demands.

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.

The Project's new 345kV switchyard will be located adjacent to the proposed generating station near the step-up transformers. The electrical interconnect segment from the switchyard to the 345kV substation located adjacent to the 345kV Marcy South transmission line will consist of a radial cable that will be routed to the eastern edge of the Project site, and then within the New York State Department of Transportation (NYSDOT) Route 17M right-of-way.

Process water requirements for the Project will be met through use of grey water from the WWTF. Treated effluent currently discharged to the Wallkill River will be filtered and chlorinated for reuse as process makeup water. Process water discharge will be conveyed back to the WWTF for treatment and discharge. Potable water will be obtained through an interconnect with the municipal water system along Route 6.

Public Interest

The Project is consistent with several of the policy objectives set forth in the 2009 New York State Energy Plan. The most recent Energy Plan states the following five (5) policy objectives:

1. Assure that New York has reliable energy and transportation systems;
2. Support energy and transportation systems that enable the State to significantly reduce greenhouse gas emissions;
3. Address affordability concerns of residents and business caused by rising energy bills, and improve the State's economic competitiveness;
4. Reduce health and environmental risks associated with the production of energy; and
5. Improve the State's energy independence by developing in-state energy supply resources.⁴

The Energy Plan further states "*[p]roduction and use of in-state energy resources – renewable resources and natural gas – can increase the reliability and security of our energy*

⁴ 2009 New York State Energy Plan, p. *xiii*.

*systems, reduce energy costs and contribute to meeting climate change, public health and environmental objectives.”*⁵

The addition of the Project to the generation resources of New York will enhance the system reliability as well as increase the fuel diversity in the region. As a combined-cycle facility, the Project will be one of the most efficient methods of generating dispatchable electricity. The high efficiency of combined-cycle technology equates to less fuel consumed to produce electricity, and therefore, less emissions. The efficiency of combined-cycle technology along with the clean burning nature of natural gas provides significant reductions in greenhouse gas emissions⁶ when compared to existing alternative generation resources in the state, and more specifically, in the NYISO's Zone G⁷. The Project's combined-cycle technology along with the clean burning natural gas fuel is another step towards improving New York's health and reducing environmental impacts associated with power generation.

The NYISO has confirmed that the expansion of natural gas combined-cycle power generation facilities has improved New York's air quality while reducing overall costs for the consumer⁸. The CPV Valley Energy Center will continue this trend of improved air quality and benefits to the public.

⁵ *Id.* at p. xiv

⁶ On April 21, 2009, the NY ISO issued a press release entitled “*Power Plant Emission Rates Improve: Double-Digit Decline in Past Decade*”. This document, describes the increased efficiency of power plants as the root of the significant reductions in greenhouse gas and other pollutant emission rates in New York State. Over the ten year period from 1999 to 2008, SO₂ rates have dropped 77%, CO₂ rates 28%, and NO_x rates 61%. Combined cycle, natural gas facilities are by far the most efficient of the fossil fuels at generating power, and as the press release points out, “...the lower the heat rate the less fuel is required to produce the same amount of electricity.”, resulting in lower emissions.
http://www.nyiso.com/public/webdocs/newsroom/press_releases/2009/Power_Plant_Emission_Rates_Improve_04212009.pdf

⁷ The Danskammer facility is a 460 MW facility, of which 370MW is coal fired and 123MW is simple-cycle. As a fuel, coal does not achieve the objective of improving health and environmental risks associated with power generation. Simple-cycle technology is not the most efficient technology available. The Roseton facility is a 1,185MW steam generation facility operating on fuel oil. Although the capacity factor is considered low, it remains an active generation facility that if needed could be called on to serve load.

⁸ On May 12, 2009, the NY ISO issued a press release entitled “*Wholesale Electricity Prices Drop Again: Wholesale energy price in April at a level not seen since 2002*”. This document credits the more efficient natural gas facilities that have been added to the fleet for driving down wholesale energy prices. “The prices of wholesale electric energy in New York State have dropped to their lowest level since 2002...” Over a ten year period, 1999 to

The location of the proposed Project is consistent with the State's Energy Plan to increase in-state generation and energy independence. Further, the NYISO's CARIS process concluded that the addition of new resources located in the Hudson Valley region, which includes Zone G would provide congestion relief and resulting economic benefits to the consumers. The Project is located in Zone G⁹.

The Project represents a significant capital investment in New York that will stimulate the local economy through construction and operational job creation. As more fully described in Section 7.4 of the DEIS, the economic stimulus provided by the Project once in operation is in excess of \$23 million annually. In addition, the Project is estimated to provide an average of \$2.35 million annually in additional revenues to the Town of Wawayanda, the local school district, the local fire district and Orange County through payments in lieu of taxes and other host community payments. The economic and job growth created is based on a private entity, CPV Valley, responding to market signals to invest in New York's energy infrastructure and market. This is an indication that the New York energy market is sending appropriate signals to market participants to attract new investment within the State.

Based on these considerations, it is respectfully submitted that the Commission should find that the Project is consistent with the State's Energy Plan objectives, provides significant

2008, the system-wide heat rate has improved 21% due to the addition of the efficient fossil-fueled facilities. NYISO President and CEO Stephen G. Whitley was quoted as saying "While the latest drop in energy prices is largely attributable to lower natural gas costs, New York also has a much more efficient fleet of power plants today. Natural gas prices may go back up, but the efficiency improvements will not disappear." The economic, environmental, and reliability benefits for a natural gas facility are unlike any other power generation technology.

http://www.nyiso.com/public/webdocs/newsroom/press_releases/2009/NYISO_Wholesale_Electricity_Prices_Drop_Again_05122009.pdf

⁹ The NYISO released the "2009 Congestion Assessment and Relief Integration Study, CARIS-Phase 1", This study evaluated the impacts of adding various resource types on the projected congestion costs from 2009 to 2018. In the study, the congestion costs for three regions of the transmission system were calculated for the ten years period. Then, the addition of generic resources were added to those regions to determine the impact on congestion costs. The analysis concluded that the addition of a generic 500MW combined-cycle in the Hudson Valley region, which includes Zone G, would provide significant congestion cost benefits. Of the three regions evaluated, the Hudson Valley region was projected to experience the greatest amount of congestion costs (estimated at \$1.3 billion) over the 10-year study period. The study estimated that the location of 500 MW of combined-cycle generation in this region would create \$346 million (net present value) of production cost savings.

environmental and economic benefit to the public, is in the public interest, and therefore should be approved by the Commission.

Render Adequate Service

The proposed Project will provide safe and adequate service. The Petitioner is committed to comply with the relevant engineering codes, standards, guidelines and practices applicable to the Project, as well as the design, construction and operational requirements of not only the Town of Wawayanda, Orange County, but also the various agencies at both the State and Federal levels.¹⁰ The Project will address any impacts or reliability concerns through the NYISO interconnection process. CPV Valley will establish appropriate emergency response and facility maintenance procedures for the life of the electric plant. The DEIS describes the measures that the Petitioner will take to ensure that adverse impacts to the environment will be minimized and that the public safety will be protected during construction and operation of the Project.

CPV, the parent of Petitioner, as previously noted, is a leading North American electric power generation development and asset management company that has the financial capability to arrange for the proposed financing described in the ensuing section of this Petition.

Based on these considerations, it is respectfully submitted that the Commission should find that the proposed Project is economically feasible, will provide safe and adequate service and is in the public interest.¹¹

¹⁰ For a complete listing of the engineering codes, standards, guidelines and practices that CPV Valley intends to conform with when planning, designing, constructing, operating and maintaining the generating facility power plant, substation, transmission line, inter-connection and associated buildings and structures, please see Appendix A.

¹¹ In Case 05-E-0098, *Caithness Long Island, LLC*, Order Granting a Certificate of Public Convenience and Necessity, Providing for Lightened Regulation and Approving Financing (Issued and Effective November 15, 2006), the Commission found that where the facility provided benefits by enhancing competition, that the facility was economically feasible and in the public interest. *Id.* p. 32. As demonstrated above, CPV Valley will enhance competition in the energy markets, and therefore, the CPV Valley Energy Project should be found to be economically feasible and in the public interest on this basis alone.

Financing - Section 69

Pursuant to Section 69 of the Public Service Law, Commission authorization is necessary for an “electric corporation” to enter into indebtedness payable at periods of more than 12 months. Since the Project will be a competitive wholesale provider of electricity and will not serve retail customers, the scrutiny applicable to monopoly utilities under PSL §69 may be reduced. See Case 06-E-0843 - *Noble Clinton Wind Park I, LLC, et al.*, Order Approving Financing Subject to a Condition (issued September 25, 2006). The Project’s construction and operation will be funded by a combination of debt and equity, with CPV retaining an ownership position and management responsibility. CPV is backed by significant equity investment from a leading private equity investor, Warburg Pincus. CPV has lead the refinancing of existing generating assets with total loans in excess of \$2 billion, representing roughly 4,200 MW. Additionally, as recent as February 2010, CPV raised approximately \$320 million of long-term debt financing and equity capital for 152 MW of power projects in the United States. In the upcoming months, CPV will be financing an approximate \$1 billion peaking facility located in southern California.

The financing for the Valley Energy Center will be done through the limited liability company, CPV Valley LLC. Total financing will be approximately \$680 million. The proceeds will be issued exclusively for the construction and operation of the generation project authorized by the Commission in the Certificate of Public Convenience and Necessity. As part of the financing for the Valley Energy Center, CPV Valley proposes to enter into a sale/leaseback (or lease/leaseback) arrangement with the Orange County Industrial Development Agency.

As with other financings approved for such facilities, captive New York ratepayers cannot be harmed by the terms of the contemplated financings because the Petitioner and its affiliates bear all the financial risk associated with the financing arrangements. Case 03-E-1179

- *Equus Power I, L.P.*, Order Providing for Lightened Regulation and Approving Financing (issued October 30, 2003).

Petitioner requests, consistent with the Commission's treatment of other financings for lightly regulated wholesale generators, that it be granted the flexibility to substitute financing entities and charge payment terms and amounts of financing without having to seek Commission approval so long as the total financing amount is less than or equal to the \$680 million of approved financing. This flexibility is needed so that the Petitioner may quickly modify the financing to take advantage of changing market conditions.

In sum, it is respectfully submitted that the proposed financing is in the public interest and should therefore be approved by the Commission.

Lightened Regulation

The Petitioner requests that it be regulated under a lightened regulatory regime similar to the regimes that the Commission has applied to other entities engaged in selling electric power exclusively at wholesale.

In the AES and Carr Street Orders¹² the Commission concluded that new forms of electric service providers participating exclusively in the wholesale markets would be lightly regulated. Under the Commission's approach, Public Service Law ("PSL") Article 1 would apply because the Petitioner meets the definition of an "electric corporation" under PSL §2(13) and is engaged in the manufacture of electricity under PSL §5(1) (b). Petitioner, like other independent power producers in the State, would, therefore, be 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.

¹² Case 98-E-1670, Carr Street Generation Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) ("Carr Street Order"); Case 99-E-0148, AES Eastern Energy, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) ("AES Order").

It was also decided in the AES and Carr Street Orders that certain provisions of Article 4 pertain to those engaged in wholesale electric generation.¹³ Although application of these provisions was deemed necessary in light of obstacles to entry into the generation market, they were applied in a fashion that limited their impact in a competitive market, with the extent of scrutiny afforded a particular transaction reduced to the level that the public interest required. Moreover, wholesale generators were allowed to fulfill the PSL § 66(6) obligation to file an annual report by providing a copy of the report they were required to file under federal law. The Commission further decided that it would presume that PSL § 70 regulation would not apply to transfers of ownership interests in entities upstream from the owners of wholesale electric generation, unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption. AES Order, p. 7.

As to PSL Article 6, the Commission determined that most of its provisions do not apply to wholesale generators, but that because Carr Street was a generator that would have its capacity marketed by an affiliated power marketer, Carr Street was to comply with PSL § 110(2) which provides the Commission with access to books and records and the authority to require the filing of reports in the event that the affiliate relationship creates a market power issue. Because Petitioner does not intend to have its capacity marketed by an affiliated power marketer, PSL § 110(2) need not be applied to it.

The Commission also ordered Carr Street to comply with PSL § 119-b relating to the protection of underground facilities from damage by excavators, which the Commission observed adheres to all persons, including wholesale generators.

In recent orders, the Commission has reminded wholesale electric generators that they remain subject to the PSL with respect to matters such as enforcement, investigation, safety,

¹³ PSL §68 provides for certification of construction of new electric plant. PSL § 69, § 69-a, and § 70 provide for review of security issuances, reorganizations and transfers of securities, works or systems.

reliability and system improvement and other requirements of PSL Articles 1 and 4 (as discussed in the AES and Carr Street Orders), including the obligation to conduct tests for stray voltage on all publicly accessible electric facilities¹⁴ to give notice of generation unit retirements¹⁵ and to report personal injury accidents pursuant to 16 NYCRR Part 125. *See, e.g.*, Case07-E-1343, *Marble River, LLC*, Order Granting Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued June 19, 2008); Case 07-E-1390 *Empire Generating Co., LLC*, Order Granting Lightened and Incidental Regulation, Approving Financing and Ruling on Review of an Acquisition Transaction (Issued and Effective February 19, 2008).

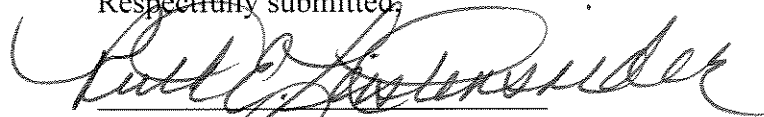
The Petitioner requests that the Commission apply to it the same lightened regulatory regime applied to other wholesale power generators in New York.

CONCLUSION

As demonstrated herein, the CPV Valley Project will provide many public benefits, including reduced emissions, improved reliability, increased energy security, economic development and the potential to reduce energy prices. Petitioner respectfully requests that the Commission issue a Certificate of Public Convenience and Necessity, approve the requested financing and approve a lightened regulatory regime.

Dated: October 12, 2010
Albany, New York

Respectfully submitted,



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¹⁴ 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 Wavier (issued July 21, 1005).

¹⁵ Case 05-E-0889, *Generating Unit Retirement Policies*, Order Adopting Notice Requirements for Generation Unit Retirements (issued December 20, 2005).

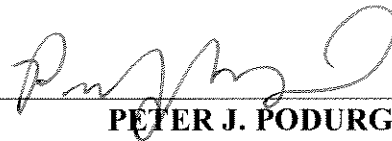
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VERIFICATION

I, Peter J. Podurgiel, authorized representative for CPV Valley, LLC in the
above-entitled proceeding, have read the foregoing Petition and know the contents
thereof and that the same is true and accurate to the best of my knowledge.



PETER J. PODURGIEL

Dated: October 12, 2010

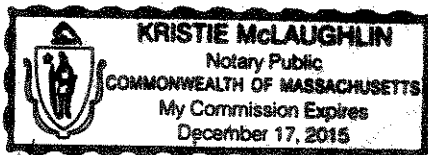


Exhibit 1

NOTICE OF APPLICATION OF
CPV VALLEY, LLC

CPV Valley, LLC, (“CPV Valley”) has filed a petition with the Public Service Commission for a Certificate of Public Convenience and Necessity to construct and operate a nominally 630MW power generating facility in the Town of Wawayanda, Orange County, New York.

CPV Valley has requested that the hearing required by the Public Service Law be held before the New York State Public Service Commission on the basis of the petition and accompanying material and such exhibits, and other information as may have been filed by any party or the Staff of the New York State Public Service Commission.

Any person opposed to the granting of the certificate, within 10 days of the publication of this notice, should notify in writing the secretary of the New York State Public Service Commission at Agency Building 3, Empire State Plaza, Albany, New York 12223, of the reasons for the opposition.