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VIA E-MAIL CPV_Valley@dec.ny.gov

Hon. Michael S. Caruso
Administrative Law Judge
New York State Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway
Albany, New York 12233-1550

Re: *CPV Valley, LLC*
Application ID: 3-3356-00136/000004 – Air State Facility (ASF)

Dear Judge Caruso:

Please accept this letter as a comment submitted by the Independent Power Producers of New York, Inc. (“IPPNY”) in the above referenced matter. IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 75 companies involved in the development, operation, and ownership of electric generating facilities and the marketing and sale of electric power in New York’s electricity markets.

One issue that IPPNY advocates for on behalf of its members is regulatory certainty. The Department of Environmental Conservation’s (“Department”) denial of CPV Valley LLC’s (“CPV Valley”) renewal application for its ASF permit is causing great uncertainty for IPPNY’s members. It is undisputed that CPV Valley filed a timely and sufficient renewal application for its ASF, which would otherwise entitle CPV Valley to continue to operate under the State Administrative Procedures Act. That permit specifically stated that a Title V permit application was not required to be submitted until 12 months after commencement of operation. Contrary to the express terms of the permit and without notifying CPV Valley of its change in position that a Title V permit application was required prior to what was stated in its permit, the Department denied the renewal application on the grounds that a Title V permit was required.

The Department’s actions in this case are unfair and unprecedented, and they raise concerns regarding the status of fair consideration of otherwise timely and sufficient air and water permit renewal applications. Companies, who have submitted otherwise timely and sufficient applications, should be concerned that the Department will stay silent, as it did with CPV Valley,

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and find an excuse to deny the renewal after the permit expiration date. That is not the way the Department should operate, nor is it conducive to investment by any entity thinking about doing business in New York State. IPPNY's members are actively considering multimillion-dollar investments in new and existing facilities throughout New York; this kind of regulatory uncertainty jeopardizes those investments.

I close these comments with one last thought. The DEC, for decades, has prided itself on consistent application of regulatory requirements, establishing unequivocal guidelines and deadlines for permit applicants and working with said applicants where appropriate. The treatment of CPV Valley is a departure from that precedent. The Department should reverse its ASF permit denial decision forthwith to ensure CPV Valley is treated fairly and provide certainty to other companies with pending permit applications that they will not face unfair and arbitrary treatment by the Department.

Very truly yours,



Gavin J. Donohue
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