

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
NOTICE OF PUBLIC COMMENT PERIOD AND  
LEGISLATIVE PUBLIC HEARING AND DEADLINE FOR PETITIONS FOR PARTIAL  
STATUS

RECEIVED  
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City Clerk  
City of Middletown

**Applicant:** CPV Valley, LLC, 3330 Route 6, Middletown, New York 10940.

**Permit and Application Numbers:** Application ID: 3-3356-00136/000004 – Air State Facility (ASF).

**Project Description:** The CPV Valley Energy Center (CPV) consists of a combined cycle natural gas powered 660 megawatt (MW) electric generating facility and interconnection substation.

**Air State Facility (ASF) Permit:** On January 24, 2018 the New York State Department of Environmental Conservation (DEC) received a renewal application for an ASF permit issued pursuant to 6 NYCRR part 201 for the CPV facility. On August 1, 2018, DEC issued a notice of denial on that renewal. CPV submitted a request for hearing dated August 2, 2018 on DEC's denial. DEC's denial of CPV's renewal application was based upon DEC's determination that the application did not, as a matter of law, meet all applicable requirements of 6 NYCRR part 201, and specifically, DEC's determination that 6 NYCRR subpart 201-6 requires owners and operators of a new facility subject to permitting under subpart 201-6 to submit a complete application and obtain a Title V Clean Air Act (CAA) permit prior to operation of the facility.

**Additional Regulatory Provisions:** New York State Environmental Conservation Law (ECL) and implementing regulations. In addition to any specific statutes and regulations cited above, the subject ASF is being processed by DEC staff pursuant to ECL article 3, title 3 (General Functions), title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) part 621 (Uniform Procedures), and part 624 (Permit Hearing Procedures).

**SEQRA Status:** DEC staff determined that CPV's request to renew the ASF permit is a Type II action as designated by 6 NYCRR part 617. Section 617.5(c)(26) – license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities.

**State Historic Preservation Act (SHPA) Determination:** Permit renewals are not subject to SHPA.

**Coastal Management:** This project is not located in a designated Coastal Management Area, and is not subject to the Waterfront Revitalization and Coastal Resources Act.

**Tentative NYSDEC Staff Position and Document Availability:** DEC staff made a determination to deny the renewal application. DEC issued a notice of denial on August 1, 2018 pursuant to 6 NYCRR 621.10(f). The August 1, 2018 notice of denial provides in detail the reasons for DEC's determination. The application materials and notice of denial are available for review at the following locations during normal business hours between 9:00 AM and 4:00 PM, Monday through Friday:

1) DEC Office of Hearings and Mediation Services, 625 Broadway, First Floor, Albany, New York 12233-1550. Contact: Administrative Law Judge Michael S. Caruso at (518) 402-9003;

2) DEC Division of Environmental Permits, 625 Broadway, Albany, New York 12233-1750. Contact: Christopher M. Hogan, Project Manager, at (518) 402-9151; and

3) DEC Region 3 Office, 21 South Putt Corners Road, New Paltz, New York 12561. Contact: John Petronella at (845) 256-3054.

These materials are also available at the following repository:

Town of Wawayanda Town Hall, 80 Ridgebury Hill Road, Slate Hill, New York 10973  
Phone: (845) 355-5700.

**Written Comments:** All written comments concerning CPV's ASF permit renewal application, DEC's notice of denial, and CPV's request for a hearing must be postmarked by **Friday, October 5, 2018** and mailed to Administrative Law Judge (ALJ) Michael S. Caruso, DEC Office of Hearings and Mediation Services, 625 Broadway, First Floor, Albany, New York 12233-1550, or e-mailed to ALJ Caruso at [CPV\\_Valley@dec.ny.gov](mailto:CPV_Valley@dec.ny.gov) by 5:00 PM on **Friday, October 5, 2018**. Written comments will be considered equally with oral statements delivered at the legislative public hearing, provided they are postmarked by Friday, October 5, 2018 or e-mailed by 5:00 PM on that date.

**Legislative Public Hearing:** Legislative public hearing sessions will be held pursuant to 6 NYCRR part 624 to hear and receive unsworn statements from the public on CPV's ASF renewal application, DEC's notice of denial, and CPV's request for a hearing. The hearing sessions will be held at 2:00 PM and 7:00 PM on **Wednesday, September 26, 2018** at the Middletown High School, 30 Gardner Road Ext., Middletown, New York 10940. All persons, organizations, corporations, or government agencies that may be affected by the project are invited to attend the hearing and to submit oral or written comments. It is not necessary to file in advance to speak at the legislative hearing. Lengthy statements should be in writing and summarized for oral presentation. Reasonable time limits may be set for each speaker to afford everyone an opportunity to be heard. Equal weight will be given to both oral and written statements. The hearing location is fully accessible to persons with a mobility impairment. Translator services shall be made available, at no charge, upon written request to the ALJ at least 10 days prior to the legislative hearing sessions. Interpreter services shall be made available to deaf persons at no charge upon written request to the ALJ at least 10 days prior to the legislative hearing sessions. All requests must be made to ALJ Caruso at: DEC Office of Hearings and Mediation Services, 625 Broadway, 1<sup>st</sup> Floor, Albany, New York 12233-1550 or e-mailed to ALJ Caruso at [CPV\\_Valley@dec.ny.gov](mailto:CPV_Valley@dec.ny.gov).

**Issues Conference:** Pursuant to 6 NYCRR 624.4(b), a pre-adjudicatory hearing issues conference will be held. A separate notice of the scheduled issues conference will be published in the future. The purpose of the issues conference will be to determine party status for any person who has properly filed a written petition (as indicated below), and to narrow and define the scope of issues which may require adjudication. Participation at the issues conference will be limited to DEC staff, applicant, and those persons timely requesting party status. Following the issues conference, the participants will be advised of the ALJ's rulings on issues and party status, and whether an adjudicatory hearing will be scheduled for a later date. The ALJ's determination

whether to conduct an adjudicatory hearing shall be based on whether the parties raise questions of fact relating to the issues that require a hearing. Questions of law only do not require an adjudicatory hearing but will be subject to legal briefing. Only those persons granted party status may participate in any adjudicatory hearing or legal briefing that is scheduled. If no petitions for party status are filed with respect to the issues, or if any filed objections are withdrawn and the issues are satisfactorily resolved before the issues conference, the conference will be canceled and no adjudicatory hearing will be held.

**Filing for Party Status:** Persons seeking to participate in the issues conference and any subsequent adjudicatory hearing must file a written petition (statement) explaining whether the request is for full party status or amicus status. For the required contents of a petition for full party status, see 6 NYCRR 624.5(b)(1) and (2). For the required contents of a petition seeking amicus status, see 6 NYCRR 624.5(b)(1) and (3). To determine whether an issue is considered *substantive*, see 6 NYCRR 624.4(c)(2), and to determine whether an issue is *significant*, see 6 NYCRR 624.4(c)(3).

**ALL PETITIONS REQUESTING PARTY STATUS MUST BE RECEIVED AT DEC'S OFFICE OF HEARINGS AND MEDIATION SERVICES NO LATER THAN 3:00 PM ON FRIDAY, OCTOBER 5, 2018.** Address all petitions to Michael S. Caruso, Administrative Law Judge, Office of Hearings and Mediation Services, New York State Department of Environmental Conservation, 625 Broadway, 1<sup>st</sup> Floor, Albany, New York 12233-1550. **Telefaxed or e-mailed petitions will not be accepted.** Send copies of any petitions at the same time and in the same manner to counsel for DEC staff: Mark D. Sanza, Esq., Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, 14<sup>th</sup> Floor, Albany, New York 12233-1500; and to applicant's counsel, Ruth E. Leistensnider, Esq., Nixon Peabody LLP, 677 Broadway, Albany, New York 12207. Any questions about filing requirements or other hearing procedures may be addressed to ALJ Caruso by telephone at (518) 402-9003. In addition, DEC's permit hearing procedures may be found at <http://www.dec.ny.gov/permits/6234.html>, Hearings and Mediation Services, Guide to Permit Hearings.

James T. McClymonds  
Chief Administrative Law Judge  
Albany, New York

August 29, 2018