



In the Matter of a *
Petition for Declaratory Ruling By *
*
Town of Middlebury *
*

DECLARATORY RULING

Summary

The Town of Middlebury (Town/Petitioner) submitted a petition for a declaratory ruling (the Petition) regarding the Department of Energy and Environmental Protection’s (DEEP/Department) decision to issue new source review permits to CPV Towantic, LLC (CPV Towantic) for a proposed electric generating facility located on Woodruff Hill Road in Oxford.

The following ruling addresses the allegations in the Petition regarding the adequacy of the Department’s review of the CPV Towantic’s applications and alleged errors of law. This ruling represents a final attempt, in a lengthy dialogue between the Department and the Town, to reassure the Town that this permit application review was conducted professionally, accurately, completely, and in accordance with law.

At this time, Connecticut General Statutes § 4-176(e) requires that I take one of the following actions on the Petition: (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action. Conn.Gen.Stat. § 4-176(e).

I have reviewed the public comments and the filings from the Petitioner, DEEP staff and the intervening party. In accordance with Conn.Gen.Stat. § 4-176(e)(1), I elect to issue a declaratory ruling at this time. DEEP staff and the intervening party directed me to numerous items in the permit application review record that confirm that the permit review was conducted in accordance with the applicable statutes, regulations, and guidelines. The Petitioner provided no information for the record to refute materials that support the decision to issue the permit. Based on the record, I decline to make the findings or grant the relief requested by the Petitioner.

Procedural History

DEEP received a Petition for a Declaratory Ruling (the Petition) from the Town on January 8, 2016 regarding DEEP's decision to issue new source review air permits to CPV Towantic to construct and operate a stationary source. In response to the Petition, CPV Towantic requested status as an intervening party on January 20, 2016 and was granted status as an intervening party in a ruling dated February 1, 2016. On February 8, 2016, the Department directed the Petitioner to correct deficiencies in the Petition by providing newspaper notice of the Petition on or before February 12, 2016 in accordance with Regs., Conn. State Agencies § 22a-3a-4(a). The Petitioner complied with this directive and newspaper notice was published in the Waterbury Republican-American on February 12, 2016. In addition, the Department posted the notice on its website along with a copy of the Petition. The Department provided the public until February 26, 2016 to file comments on the Petition. The Petitioner, CPV Towantic, and DEEP staff were also instructed to make any filings regarding the merits of the petition by February 26, 2016.

DEEP staff submitted two affidavits and supporting documents from the application review record. CPV Towantic submitted a filing that addressed each allegation raised by the Petition and also provided documents from the application review record. Raymond Pietrorazio, a signatory to the Petition, submitted an e-mail that indicated the Petitioner would make no further filing. The e-mail also expressed the continued request for additional modeling analysis. Mr. Pietrorazio requested status as an intervenor on an individual basis. I denied this request in a separate ruling. Members of the public submitted thirty-one comments for the record that generally supported the Petitioner's request for additional review of the project. Some of the more specific comments focused on the use of weather data from Danbury Airport rather than Oxford Airport. Some comments discussed issues irrelevant to the petition, including wetlands, property values, aesthetics, and water pollution. Other comments were submitted in general opposition to the project citing health and environmental concerns regarding air pollutants.

Findings of Fact¹

1. CPV Towantic filed applications for new source review air emission permits for five stationary sources proposed to be located at a proposed electric generating facility on Woodruff Hill road in Oxford (the Applications). As part of the Applications, CPV Towantic submitted an Ambient Impact Analysis, which includes a modeling analysis performed by Tetra Tech, Inc. on behalf of CPV Towantic. (Exs. 1, 2, and 5).
2. DEEP's Bureau of Air Management reviews applications for new source review air emission permits. James Grillo was the permit analyst assigned to review the Applications. As part of the review, Mr. Grillo sought assistance from the Bureau's Technical Services Group. Jude Catalano, from the Technical Services Group, reviewed the modeling analysis performed by

¹ References are to exhibits listed at the end of the ruling and include documents submitted for the record in this ruling and otherwise publicly available in the overall permit application review record. References to Appendix W are to 40 CFR 51, Appendix W.

Tetra Tech and drew conclusions regarding the adequacy of the modeling and its results that were relayed to Mr. Grillo in a memorandum and attached Air Modeling Checklist. (Exs. 2, 3, 4, 5, and 8).

3. The modeling analysis performed by Tetra Tech utilized AERMOD. This modeling tool is specifically recognized by Appendix W to 40 CFR Part 51 (Appendix W). Mr. Catalano was aware of Appendix W at the time he conducted his review of the modeling analysis. The modeling analysis complied with the guidelines in Appendix W. Neither Appendix W, nor DEEP's own guidance on modeling analysis for new source review applications required that an alternate modeling analysis be conducted. (Exs. 1, 3, 4, 8, and 9).
4. CALPUFF is an alternative to AERMOD, recognized in Appendix W that can be used when the surrounding terrain results in complex wind patterns. Use of CALPUFF must be reviewed and approved on a case by case basis. The terrain at the site does not cause complicated wind pattern and did not require use of CALPUFF. (Exs. 3, 4, 8, and 9).
5. At the direction of DEEP, the modeling analysis used meteorological data from Danbury Airport. The data available from Oxford Airport lacked consistency and regularity to be compatible with the AERMOD modeling tool. Oxford airport data is not collected on the one-minute interval resulting in 19% of the hours from 2008-2012 noted as calm and 9% of the data missing. Calm hours are treated as missing and result in a calculated concentration of zero in AERMOD. The high percentage of calm hours from Oxford Airport would result in underrepresenting maximum concentrations. The comments submitted to DEEP staff after the Notice of Tentative Determination asked for reconsideration of the use of Danbury Airport data. In the expert opinion of DEEP staff, the weather data from Danbury Airport was more appropriate for use in the modeling analysis for this project given the limitations of the data at the Oxford Airport. (Exs. 1, 3, 4, and 8).
6. The modeling analysis was run using the permitted stack heights of 150 feet for each stack and the permitted emissions. The modeling analysis conducted by Tetra Tech demonstrated that the operation of the proposed air emission sources with the permitted stack heights and emission limits would not interfere with attainment or maintenance of ambient air quality standards or Prevention of Significant Deterioration increments. (Exs. 1 and 2).
7. The Department provided the public with an opportunity to comment on the applications and the Department's tentative determination to approve the Applications. The Department held a public information meeting at Oxford High School on September 14, 2015 that included an opportunity to provide oral comment on the record. The deadline for written comments was September 24, 2015. The Department received numerous comments, both written and oral. No one filed a request to intervene in the permit proceeding or requested any additional hearing on the project. There was no contested case hearing held on the applications as defined by the Uniform Administrative Procedure Act. DEEP staff responded to the oral and written

comments in a response to comments document attached to the final recommendation of staff to issue the permits, dated November 30, 2015. (Exs. 5, 7, 10, and 11)

8. The Town of Middlebury submitted a document, to the attention of James Grillo, on September 26, 2015 that it characterized in its e-mail transmission as a petition. In the document, the town requested that additional modeling be conducted. The Department responded to that document along with other comments in its response to comments document. (Exs. 5, 6, and 8).
9. Appendix W requires a modeling analysis to be conducted at 100%, 75%, and 50% loads. The analysis conducted by Tetra Tech was conducted at 100%, 75%, and 50% loads. Tetra Tech also conducted modeling at load levels lower than 50% at two ambient temperatures.² Tetra Tech did not conduct additional modeling at 30% because the levels for the criteria pollutants at the ambient temperatures that were modeled at lower than 50% load were not in the higher range of the modeling results. Additional modeling at the 30% load was not required. (Exs. 1, 8).

Analysis and Conclusions

The Petition is split into two sets of allegations. The first set, under the heading Error of Law, asserts that Appendix W³ applied to the permit applications filed by CPV Towantic and that DEEP failed to consider Appendix W in its review. The second set of allegations under the heading Additional Good Cause can be placed into two categories. One includes additional allegations that the modeling analysis was inadequate, improper, or conducted in error. The other includes allegations that provide neither facts which substantiate the allegation nor legal standards under which the Department's actions could be deemed insufficient. The Petitioner maintains that, collectively, these allegations support the request for a reversal of the Department's decision to issue permits to CPV Towantic.

On its face, the Petition does not allege that an agency regulation is invalid. Further, the Petition does not directly question the applicability of a statute, regulation, or final decision to a specified set of circumstances. Conn.Gen.Stat. § 4-176(a). The gravamen of the allegations as stated in the Petition is to seek an examination of the permit application review conducted by DEEP staff for compliance with applicable statutes, regulations, and guidelines with a specific emphasis placed on the modeling analysis submitted in support of the applications. This ruling will focus on the modeling analysis and whether it complied with the applicable legal requirements.

² DEEP staff indicates in Exhibit 8 that modeling at 30% load was conducted at two ambient temperatures. Table L-5 from Appendix L to the Applications indicates modeling was conducted of a 30% load scenario at 59 degrees Fahrenheit and of a 41% load scenario at 100 degrees Fahrenheit. Both scenarios modeled at lower than 50% load had emission rates lower than the scenarios modeled at 50%, 75% and 100%.

³ Appendix W to Part 51 is promulgated by U.S. Environmental Protection Agency (EPA) as part of the Code of Federal Regulations.

Alleged Error of Law - Application of Appendix W

The Regulations of Connecticut State Agencies require applicants for new source review permits to demonstrate that they will

[o]perate such stationary source ... without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standards or any Prevention of Significant Deterioration increments[,] ... without preventing or interfering with the attainment or maintenance of any National Ambient Air Quality Standard in any other state and without interfering with the application of the requirements in any other state's implementation plan.

Regs., Conn. State Agencies §§ 22a-174-3a(d)(3)(B) and (C). Applicants for new source permits make this demonstration through air dispersion modeling conducted in accordance with U.S. EPA and state guidelines.

To the extent that the first set of allegations in the Petition seeks a determination on the applicability of Appendix W to new source review of a major source, the Department through this ruling affirms that Appendix W does apply and that compliance with Appendix W is considered by the Department when it reviews new source review permit applications.⁴ Appendix W provides federal recommendations for air quality modeling, and 40 CFR 51.166 specifically requires state air permitting programs to implement Appendix W as part of new source review. DEEP's Ambient Impact Analysis Guideline: A Guideline for Performing Stationary Source Air Quality Modeling in Connecticut, July 2009 confirms the applicability of Appendix W as part of DEEP's program. Air modeling analysis submitted to the Department is reviewed for consistency with Appendix W.

The remainder of the first set of allegations continues to allege that the “[t]he CT-DEEP did not utilize ANY of the above referenced 40 CFR 51 Appendix W modeling guidelines ...” The materials in the permit application review record clearly indicate otherwise. The analysis submitted by Tetra Tech and Mr. Catalano's memorandum dated May 28, 2015 clearly demonstrate an awareness of the applicability of Appendix W and consideration of compliance with its recommendations. DEEP concluded that the modeling was conducted in accordance with Appendix W based on Mr. Catalano's findings and his 35 years of experience.

When considering technically complex issues, such as the one under consideration here, administrative agencies typically rely on experts, as I do now. See *River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission*, 269 Conn. 57, 78 (2004) (determination of impacts on an inland wetland is a technically complex matter for which inland wetlands commissions typically rely on evidence provided by experts). Department staff are experts and their conclusions form a substantial basis in fact from which I may act. I further rely on the Department's experts

⁴ In part, the Petition references state regulations that govern the Title V permit program which are comprehensive operating permits issued to already-operating sources in accordance with the requirements of that program. Despite the fact that the Department is not issuing a Title V permit at this time, federal regulations clearly require that modeling in applications for new source review permits for major sources must adhere to Appendix W. 40 CFR 51.166(l).

to evaluate the information within their area of expertise, including information supplied by others, and determine what information is reliable. “When the application of agency regulations requires a technical, case-by-case review, that is precisely the type of situation that calls for agency expertise.” *MacDermid v. Department of Environmental Protection*, 257 Conn. 128, 139 (2001). “An agency may rely on its own expertise in evaluating evidence within the area of its expertise.” *Connecticut Building Wrecking Co. v. Carothers*, 218 Conn. 580, 593 (1991).

Mr. Catalano’s Air Quality Modeling Checklist supports the conclusions in his memorandum that the modeling analysis submitted in support of the Applications was conducted in accordance with Appendix W. The checklist reviews in greater detail the modeling approach used by Tetra Tech and its conformance with applicable guidelines. In addition, the checklist shows that the Department carefully considered whether to require additional analysis using alternate modeling tools and determined that it was unnecessary. For example, Mr. Catalano considered impacts of terrain on wind condition and determined that winds were not severe enough to warrant use of an alternate model. Mr. Catalano also considered the use of Oxford Airport weather data but found its poor quality warranted use of data from Danbury Airport. This unrefuted analysis serves as justification for Mr. Catalano’s determination and subsequently that of the Department when it issued the permits that “[t]he modeling was performed in general conformance with current Environmental Protection Agency (EPA) modeling guidance summarized in Appendix W of 40 CFR Part 51, and with recent EPA modeling guidance memorandum pertaining to modeling for the 1-hour NO₂ and SO₂ National Ambient Air Quality Standards (NAAQS).”

More specifically, Appendix W provides:

[f]or a wide range of regulatory applications in all types of terrain, the recommended model is AERMOD. This recommendation is based on extensive developmental and performance evaluation Differentiation of simple versus complex terrain is unnecessary with AERMOD. In complex terrain, AERMOD employs the well-known dividing-streamline concept in a simplified simulation of the effects of plume-terrain interactions.

40 CFR Part 51, Appendix W, 4.2.2.

Based on a comparison between the Tetra Tech modeling analysis and Mr. Catalano’s checklist, it is clear Appendix W was considered in the selection and use of the AERMOD modeling tool. As confirmed by Mr. Catalano, Tetra Tech employed the recommended AERMOD tool in its modeling analysis in accordance with Appendix W and DEEP’s guidelines. As indicated above, Appendix W recognizes AERMOD as the recommended modeling tool for analysis of stationary sources. The documents in this record clearly demonstrate that the modeling analysis submitted with the application and reviewed by DEEP staff, was completed in consideration of and in compliance with Appendix W, DEEP guidelines, and any interim federal guidelines. The Petitioner, on the other hand, provides no basis, in fact or in law, for its allegation that Appendix W was not adhered to. There is, therefore, no support for its allegation that there was an error of law in the way the analysis was conducted or reviewed.

In appeals of agency decisions, courts have held that mere conclusory assertions without the benefit of evidence are insufficient. *Connecticut Coalition Against Millstone v. Connecticut Siting Council*, 286 Conn. 57, 87 (2008).⁵ Because the Petition is rife with unsubstantiated assertions about Appendix W, including many that are clearly refuted by material in the record, there was no error of law regarding the use of Appendix W in the Department's review of the modeling analysis.

Additional Good Cause – Additional Allegations Regarding the Modeling Analysis

The second set of allegations in the Petition, in part, continues the Petitioner's attempted assault on the modeling analysis without factual support whether from the Petition or from the permit application review record. The Petitioner cites to these allegations or issues as "Additional Good Cause" to support its requested reversal of the Department's permitting decision.

Because the Petitioner provided no information in support of the allegations in the Petition or in a subsequent filing, my review of these allegations relies on the documents assembled as part of the Department's review of the Applications and those referenced in CPV Towantic's filing regarding the Petition. The Petitioner made the following additional allegations identified in the petition as 2a, 2b, 2d, and 2e related to the modeling analysis and its review:

2a. The Town of Middlebury also claims the CT-DEEP did not maintain the careful and diligent adherence to the United States Department of Environmental Protection (EPA) Guidelines and Regulations in its conduct of dispersion modeling reviews and proper determination of adequate stack height and performance of the twin 150 ft. high stacks of the CPV project, particularly that contained in: Clean Air Act #123, 42 USC and, EPA - 450/4-80-023R, June 1985, Guideline for Determination of Good Engineering Practice Stack Height (Technical Support Document For the Stack Height Regulations)(Revised), also constituting errors of law.

2b. Improper use of Danbury Airport weather data in lieu of local Oxford data.

2d. Improperly allowing capricious and erroneous classification of site with respect to complex terrain impacts.

2e. Inadequate modeling of the emissions.

The allegations stated at 2a., 2b., and 2d. are specific enough or provide an adequate reference to a standard that can be used in their evaluation. However, the allegations remain unsupported by the record and the Petitioner failed to provide additional material to support the allegation. My inquiry must be based on my review of the documents assembled by the Department, which unequivocally demonstrate that the modeling analysis and its review was professional, complete, and appropriate. For me to find otherwise, I would need to be presented

⁵ The Petitioner is fully aware of this legal precedent based on a recent ruling by the Superior Court on its appeal of a decision by the Connecticut Siting Council regarding the same project. *Town of Middlebury v. Connecticut Siting Council*, Docket No. HHBCV156029869S, 2016 WL 490298 *, 6 (Conn.Super. 2016).

with material and reliable evidence of the inadequacy or error, which is absent from the record. It is also important to note that these questions were already considered and answered by DEEP staff prior to the issuance of the Notice of Tentative Determination, in its comment response document, or both. These answers were already provided to the Petitioner and other interested members of the public and I affirm them in this ruling.

Allegation 2a. states that the Department failed to adhere to requirements in regulations and guidelines regarding stack height and its impact on modeling analysis. The allegation about stack height appears to be based on a misunderstanding of the requirements of Appendix W, the federal regulations and DEEP's guidelines. As indicated in Tetra Tech's Ambient Impact Analysis (Appendix L to the Applications) the stack height for the project is limited to 150 feet due to the proximity to Oxford Airport. This site limitation places the stack height below Good Engineering Practice Stack Height. Therefore, in order to meet the federal and state requirements, the dispersion modeling must account for the lower stack height. DEEP staff determined that the applicant, through its modeling approach, demonstrated that the operation of the proposed source at the emission limits in the permits, when combined with the stack height limits, will not violate ambient air quality standards. The modeling adequately considered issues related to stack height in accordance with state and federal requirements by accounting for the stack height set in the permits and independently verifying through the modeling approach that operation of the source with the permitted stack heights and emission limits would not violate ambient air quality standards.

Allegation 2b. states that use of meteorological data from Danbury Airport instead of the more proximate Oxford Airport in the modeling analysis was improper. Department staff clearly understood that meteorological data from Oxford Airport was available but discounted it because of concerns about its consistency and sufficiency for use in AERMOD. DEEP staff, in its expert opinion, concluded that the use of Danbury Airport data was proper given the potential for Oxford Airport data to result in under-predicting maximum air pollutant concentrations in AERMOD. AERMOD treats calm hours as missing and a concentration of zero is calculated for those hours noted as calm. Nineteen percent of the wind speed measurements are noted as calm for Oxford Airport. The more consistent data from Danbury Airport ensures concentrations at lower wind levels, which may be noted as calm at Oxford Airport, will not be included as zero in the average calculation but at the actual concentration calculated by the model. The use of the Danbury Airport data addresses the concerns of DEEP staff that the high percentage of calm hours at Oxford Airport would result in lower concentrations being calculated resulting in under-predicting the maximum impact in the modeling analysis. Brought to a logical conclusion, this represents a conservatism in DEEP's approach that weighs in favor of protecting the environment because higher concentrations are kept as part of the average calculations. If these averages demonstrate exceedances of ambient air quality standards, an applicant may have to make adjustments to its application so the modeling results demonstrate that the source can operate without interfering with attainment or maintenance of ambient air quality standards as required by state regulation. Regs., Conn. State Agencies §§ 22a-174-3a(d)(3)(B) and (C).

The use of the weather data from Danbury Airport was reasonable given its assurance that higher concentrations of air pollutants that occur at lower wind speeds would not be excluded from the averages in the modeling results. DEEP's reasoning that supports the conclusion to rely on Danbury Airport data has been part of the permit review record since before the Notice of Tentative Determination was published. The reasoning was again provided in the response to comments document. The Petitioner has had ample time to review the Department's reasoning and collect or develop information demonstrating that this conclusion was incorrect. The Petitioner did not do so and offers no information whatsoever to support usage of Oxford Airport data other than its proximity to the site. Therefore, the reasoning in the record remains unchallenged other than by a substantially unsupported allegation. The decision to use the data from Danbury Airport was proper.

In Allegation 2d., Petitioner's allegation that there was error in the classification of the site with respect to complex terrain impacts is presented with no factual context to support it and cites to no legal standards under which to review this allegation. Based on the other issues raised, one can surmise that this question concerns the terrain characteristics and their relation to the modeling analysis. Mr. Catalno's Air Modeling Checklist indicates that the terrain's impacts on the modeling analysis was considered during the review he conducted. He found that the terrain at the site was not complex and did not warrant use of an alternate approach to modeling.

Appendix W specifically discusses complex terrain and situations where an alternate to AERMOD is appropriate. CALPUFF is another modeling tool that can be used where complex terrain will sufficiently impact wind and air circulation patterns.

In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characterization of the winds is a balance of various forces, such that the assumptions of steady state straight-line transport both in time and space are inappropriate. In the special cases described, the CALPUFF modeling system ... may be applied on a case-by-case basis for air quality estimates in such complex non-steady-state meteorological conditions.

40 CFR 51, Appendix W.

The Petitioner does not indicate that the site has specific terrain conditions explained in greater detail in Appendix W that would warrant use of CALPUFF. In fact the Petition offers no support for its allegation that Mr. Catalano's conclusion was capricious or erroneous. His conclusion that the terrain was not severe enough to generate complex winds that could dramatically influence the dispersion of the proposed source plume was proper.

Allegation 2e., generally alleges that the modeling was inadequate. Such a general allegation requires little discussion. As discussed throughout this ruling, the materials in the record confirm that the modeling analysis was adequate.

Additional Good Cause – General Allegations

The remaining allegations, identified as 2c. and 2f., lack sufficient factual context or background to clearly understand the issue presented. For those allegations, one can only surmise the issue presented based on a review of available documents.

In item 2c., the Petitioner alleges: “Administrative failure to properly respond to a formal Petition, timely filed by the Town of Middlebury, pertaining to, and as a result of, information obtained in a Freedom of Information request to the CT-DEEP for documentation.”

The Petitioner submitted correspondence to the attention of Mr. Grillo on September 26, 2015 after the conclusion of the public comment period. This correspondence indicated the town was petitioning for additional modeling at 30% load. The correspondence did not seek further process or request any legal ruling. I agree with CPV Towantic that the use of the word “petition” in this communication did not automatically convert it into anything more than an additional comment on the applications and Notice of Tentative Determination.

The Department responded to the Petitioner’s assertion in the September 26th letter that no modeling was conducted at less than a 50% load by explaining that CPV Towantic’s modeling analysis shows two scenarios were conducted at less than 50% despite the requirement in Appendix W that model scenarios conducted at 50%, 75%, and 100% are sufficient. The findings of the modeling scenarios did not warrant further re-modeling at lower operational loads because the results of the two scenarios showed emission rates lower than models run at the higher loads.

The Petitioner presents no legal grounds for the alleged “administrative failure” and cites to no legal obligation it alleges the Department failed to meet. The particular correspondence was specifically referenced in the response to comments and staff provided a reasonable response to the concerns expressed in it. Staff appropriately responded to the correspondence as an additional comment despite its submission after the comment deadline.

In item 2f. the Petitioner alleges: “Capricious acceptance by CT-DEEP of applicant interrogatory responses.”

There is no factual context for this allegation. The department cannot provide a ruling on this issue. There is no record of any interrogatories being issued by the Department to CPV Towantic. The Petitioner failed to provide further information to support this allegation. If, as assumed in CPV Towantic’s filings, the Petitioner is referencing the information exchange that occurs during the application review process, the information in the record leads me to conclude that information submitted by the applicant was closely reviewed and analyzed by DEEP staff in the ordinary course of business for a permit application review. The New Source Review Engineering Evaluation and Air Modeling Checklist are clear examples of the careful review and consideration each piece of information receives. This is not a rubber stamp process and information from the applicant was not accepted by DEEP staff capriciously, but rather was reviewed and analyzed in accordance with applicable legal standards and the Department’s business practices.

Conclusion

The Petition alleged several deficiencies with the Department's review of CPV Towantic's applications. These allegations are substantially unsupported requiring me to focus on the information in the permit review record. This information specifically refutes the Petition's allegations. This exercise clearly demonstrates that the work of DEEP's permit analysts and supporting experts that participated in the application review was completed professionally and in full compliance with applicable laws, regulations and guidelines. The decisions made during the review of the application and ultimately to issue the permits were not made arbitrarily and capriciously. I decline to provide the relief requested in the Petition. The decision to issue permits to CPV Towantic is affirmed by this ruling.



Robert J. Klee, Commissioner

3/8/16
Date

List of Exhibits

Exhibit 1 – Ambient Impact Analysis, Tetra Tech (Appendix L to the Application)

Exhibit 2 – NSR Engineering Evaluation, 9/8/14

Exhibit 3 – May 28, 2015 Memorandum from J. Catalano to J. Grillo and attached Air Modeling Checklist

Exhibit 4 – Affidavit of Jude Catalano, DEEP Air Pollution Control Engineer 3

Exhibit 5 – Affidavit of James Grillo, DEEP Air Pollution Control Engineer 3

Exhibit 6 – Correspondence from R. Pietrorazio to J. Grillo dated September 26, 2015 requesting additional modeling analysis

Exhibit 7 – Affidavit of Janice B. Deshais

Exhibit 8 – Final Decision memorandum and response to comments

Exhibit 9 – DEEP Guidelines for Air Quality Modeling (2009)

Exhibit 10 – Notice of Tentative Determination, July 29, 2015

Exhibit 11 – Notice of Hearing, August 15, 2015

Service List

In the Matter of a Petition for a Declaratory Ruling by the Town of Middlebury

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