

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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Application of Niagara Mohawk Power Corporation d/b/a
National Grid for a Certificate of Environmental
Compatibility and Public Need Pursuant to Article VII
of the Public Service Law for the Pipeline E37
Reliability and Resiliency Project in the Town of
Bethlehem, Albany County and the Towns of East
Greenbush and North Greenbush, Rensselaer County
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Case 19-T-0069

**RESPONSE OF STOP THE NY FRACKED GAS PIPELINE TO OBJECTION OF
NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID TO
REQUEST FOR PARTY STATUS BY STOP NY FRACKED GAS PIPELINE AND IN
SUPPORT OF REQUEST FOR A HEARING IN THIS MATTER**

By: Bob Cohen, Esq.
Citizen Action of New York
Attorney for Stop NY Fracked
Fracked Gas Pipeline
94 Central Avenue
Albany, NY 12206
(518) 465-4600 x104
bcohen@citizenactionny.org

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

CASE 19-T-0069 - Application of Niagara Mohawk Power Corporation d/b/a National Grid for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law for the Pipeline E37 Reliability and Resiliency Project in the Town of Bethlehem, Albany County and the Towns of East Greenbush and North Greenbush, Rensselaer County

RESPONSE OF STOP THE NY FRACKED GAS PIPELINE TO OBJECTION OF NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID TO REQUEST FOR PARTY STATUS BY STOP NY FRACKED GAS PIPELINE AND IN SUPPORT OF A REQUEST FOR A HEARING IN THIS MATTER

I. INTRODUCTION

Stop NY Fracked Gas Pipeline (“SNYFGP”) respectfully disputes the contentions of Niagara Mohawk Corporation d/b/a National Grid (“National Grid” or “the Applicant”) that its participation as a party would not contribute to the development of the record in this proceeding and is not fair or in the public interest. Therefore, SNYFGP’s request for party status should be granted. SNYFGP also requests that a hearing be held in this proceeding, which would allow SNYFGP and other parties to provide evidence as to several important issues of material fact of importance to this proceeding.

II. BACKGROUND

This case concerns the February 1, 2019 Article VII Application for a Certificate of Environmental Compatibility and Public Need of National Grid pursuant to Public Service Law (“PSL”) § 121-a(3) (the “Application”) seeking approval for the construction and operation of the Pipeline E37 Reliability and Resiliency Project (the “Project”). The Project includes the installation of a 16-inch diameter 7.3 mile-long natural gas transmission pipeline and associated facilities beginning at a location in the Town of Bethlehem in Albany County, and extending through portions of the Towns of East Greenbush and North Greenbush in Rensselaer County. (Together, the Towns of Bethlehem, East Greenbush and North Greenbush are referred to below as the “three impacted towns.”)

As indicated in the Objection of Niagara Mohawk Power Corporation D/B/A National Grid to Request for Party Status by Stop NY Fracked Gas Pipeline (the “Objection”), on April 12, 2019, Rebecca

Meier filed a Party Request on Behalf of Stop NY Frack Gas Pipeline (“SNYFGP”) stating as a justification for its standing as a party in this proceeding as follows:

Stop NY Fracked Gas Pipeline was formed by local residents in 2014 to educate local residents in the Capital District area about the health, safety and environmental dangers of fracking for gas, distributing fracked gas, and building additional gas infrastructure. Since the E37 Reliability and Resiliency Project is proposed to build additional gas infrastructure which will bring additional fracked gas to our area, this falls directly in our mission. We feel that the “record” needs to include information about how this project hurts the environment and endangers the health of our residents. We feel that there are non-pipeline alternatives to this project which must be addressed.

SNYFGP’s educational and advocacy work has included intensive education, advocacy and mobilization of residents of Rensselaer and Albany counties, not only about the general concerns provided by fracking and the building of fracking infrastructure, but in successful opposition to a proposal by the Kinder Morgan corporation to build a pipeline through parts of Rensselaer and Albany Counties (the “NED Pipeline”). Through this work, SNYFGP has compiled a list of 1800 supporters, of which at least 200 are residents of the three impacted towns.¹ Moreover, as further discussed below, SNYFGP has access to considerable knowledge and expertise that would be helpful to the development of the record in this proceeding, including but not limited to the health, safety and environmental impacts of the Project, particularly on area residents.

III. ARGUMENT

SNYFGP IS ENTITLED TO PARTY STATUS

In *National Fuel Gas Supply*, the U.S. Court of Appeals for the Second Circuit set forth the standards the Public Service Commission (“PSC” or “Commission”) must apply in determining whether a certificate of environmental compatibility and public need for a gas line extending for less than ten miles should be approved. The court stated that the “five necessary findings are: 1) “the basis of the need for

¹ Affidavit in Support of Response of Stop NY Fracked Gas Pipeline to Objection by Niagara Mohawk D/B/A National Grid to Request for Party Status by Stop NY Fracked Gas Pipeline, at ¶¶ 3-4, 6-9 (“Affidavit in Support of SNYFGP Response”).

the facility”; 2) “the nature of the probable environmental impact;” 3) “...that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line”; 4) “that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder”; [with exceptions omitted]; and 5) “that the facility will serve the public interest, convenience and necessity...”.²

In challenging SNYFGP’s party status, National Grid does not assert that SNYFGP’s participation would not be helpful to resolving the factual issues in this proceeding. Instead, the Applicant states that SNYFGP is not entitled to party status “as-of-right”, and suggests that its concerns can be addressed through the submission of public comments without being a party.³ Applicant initially notes that it is proposing to construct a natural gas pipeline under ten miles long under PSL § 121-a, reasoning that section 121-a “provides an abbreviated and expedited process for the consideration of applications to construct natural gas transmission lines shorter than ten miles in length.”⁴

SNYFGP does not take issue with the claim that it is not entitled to party status as of right without a further showing. However, as the VGS Ruling cited by National Grid holds, even in cases like the present one where PSL § 121-a applies, non-profit organizations like SNYFGP have the right under Commission Rule 4.3(c)(1) to party status if such participation would “contribute to the development of a complete record or [be] otherwise fair and in the public interest”.⁵

The participation of SNYFGP clearly meets that standard. It is apparent that SNYFGP has the ability to contribute to the record as to several of the required five findings for approval of National Grid’s application, including but not limited to the “basis of the need for the facility”; “the ... probable

² *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d. Cir. 1990), cert. denied, citing PSL § 126(1); also see PSL § 121-a (7).

³ Objection, at 4.

⁴ *Id.*, at 3, citing Case 14-T-0406, *Application of Vermont Gas Systems Inc. to Construct a Fuel Gas Transmission Line in the Town of Ticonderoga, Essex County, New York, Pursuant to Section 121-a of the Public Service Law*, Ruling on Requests for Party Status of the Vermont Public Interest Research Group and the Atlantic States Legal Foundation, Issued October 17, 2014 (“VGS Ruling”), at 4; affirmed Order Denying Interlocutory Appeal, Issued December 16, 2014.

⁵ VGS Ruling, at 5, citing Commission Rule 4.3(c)(1).

environmental impact;” the conformance with applicable state and local laws and regulations; and “that the facility will serve the public interest, convenience and necessity...”. In particular, the Affidavit submitted by SNYFGP co-founder and board member Rebecca Meier indicates that SNYFGP, as a widely supported neighborhood organization with a history of mobilizing residents in the three impacted towns in the two counties where the E37 pipeline is proposed to be built, has expertise in such issues as energy demand, the availability of renewable energy alternatives to the proposed pipeline, and the impact on residents of building the proposed pipeline, including health, safety and environmental impacts. Moreover, SNYFGP has access to individuals with significant expertise in fields relevant to this proceeding, including biologists, environmental protection, and solar and geothermal alternatives. Finally, SNYFGP has made clear its willingness to retain consultants with additional appropriate expertise if necessary to effectively participate in this proceeding.⁶

Further, basic fairness and the public interest argues for SNYFGP’s participation.⁷ On information and belief, no other organization that represents the residents of the impacted three towns is a party in this proceeding or has sought party status, except for Community Advocates for Sustainable Energy, which is closely affiliated with SNYFGP. Without one of these organization’s participation, it will at a minimum be extremely difficult for the PSC to ascertain the views of area residents, regional energy needs or the health, safety or environmental hazards presented by the proposed pipeline. Excluding SNYFGP under such circumstances would therefore be fundamentally unfair.

Nothing in the VGS Ruling relied upon by the Applicant in any way argues against participation by SNYFGP. In that case, the Administrative Law Judge denied party status to two non-profit public interest organizations, the Vermont Public Interest Research Group (“VPIRG”) and the Atlantic States Legal Foundation (“Atlantic States”). VPIRG and Atlantic States both contended that there were no material issues of fact in that proceeding requiring a hearing. “Therefore, it would be neither in the public interest nor fair to admit as parties entities that have not demonstrated the ability to contribute materially

⁶ Affidavit in Support of SNYFGP Response, at ¶¶ 3-4, 7-10.

⁷ See Commission Rule 4.3(c)(1).

to the development of the record.”⁸ The ALJ made clear that the *legal* arguments that VPIRG and Atlantic States wished to make could be made through filing of comments which would be included in the record.⁹

In contrast, in this case, SNYFGP and CASE are, by this motion, requesting an evidentiary hearing and have indicated that they intend to put forth factual evidence that is directly relevant to the case and have set forth their qualifications to put forth such evidence. Among other things, SNYFGP wishes to establish that there has been an insufficient showing of need on the part of the Applicant, that the Project does not benefit the residents of the three impacted towns and other Albany and Rensselaer county residents, and that there are non-pipeline alternatives to the Project.¹⁰ As an organization with roughly 200 supporters in the three impacted towns and hundreds more elsewhere, and a history of advocating for such residents¹¹ that has demonstrated expertise in several issues relevant to this proceeding, it is clear that SNYFGP’s participation as a party would “contribute materially to the development of the record.”¹² In this respect, SNYFGP is in a position similar to the Independent Power Producers of New York, which was granted admission as an intervenor in the HTP case, in that “IPPNY represented that it was uniquely qualified to engage in cross-examination and briefing on ... important factual issues” -- in that case, the impact of the proposed facility on market competition.¹³ Finally, as to National Grid’s claim that comments are sufficient to address the issues raised by SNYFGP, only parties may examine and cross-examine witnesses under Commission rules;¹⁴ a hearing is necessary in this instance, given the unsupported or thinly supported statements in the Application purportedly justifying the Project (a few of which are discussed below). Therefore, SNYFGP merits admission as a party.

8 VGS Ruling, at 5.

9 *Id.*, at 6.

¹⁰ See SNYFGP Party Interest Statement; Affidavit in Support of SNYFGP Response.

¹¹ See Affidavit in Support of SNYFGP Response, at ¶ 7.

¹² VGS Ruling at 5.

¹³ *Id.* at 5.

¹⁴ Commission Rule 4.3(a).

AN EVIDENTIARY HEARING SHOULD BE HELD IN THIS CASE

Under PSL § 121-a(7) and Commission Rule 4.1, hearings in cases like this one involving gas pipelines less than ten miles are discretionary on the part of the Commission.¹⁵ Hearings may be held upon a determination that “there are material issues of fact requiring adjudication.”¹⁶

It is clear from the Application that there are several material issues of fact that require adjudication, as the Application is filled with conclusory, unsupported or thinly supported statements relevant to the need for this Project. Two examples are provided here; no attempt is made to be comprehensive.

First, in projecting the need for the natural gas carried by the proposed project, the Application focuses on “clean efficient natural gas rather than less environmentally friendly fuels such as heating oil”, as well as a “demand response” alternative, while failing to consider other alternatives such as increased energy efficiency, and use of renewable energy.¹⁷ Further, no support is provided for the assertions that natural gas is “clean” and “more environmentally friendly” (a subject of considerable controversy among scientists), and the assertion that expanding the use of natural gas as compared to available alternatives will “support economic development.”¹⁸ Further, given the rapid growth of the alternative energy market and the strong state commitment made to reduction of greenhouse gas emissions,¹⁹ SNYFGP asserts that it is not in the public interest to allow a proposed expansion of natural gas capacity, at least without a thorough examination of whether the alleged future demand projected to be met by the Project can instead

¹⁵ See PSL § 121-a(7), providing for a normal sixty day period for Commission decisions for gas pipelines less than ten miles, but stating that “[w]here the commission has required a hearing it may extend the time to render a decision.” [emphasis added]

¹⁶ VGS Ruling, at 5.

¹⁷ Application, at 17.

¹⁸ *Id.*, at 17. As to the scientific controversy, see, for example, Robert W. Howarth (Department of Ecology and Environmental Biology, Cornell University), *Methane emissions and climatic warning risk from hydraulic fracturing and shale gas development: implications for policy*, Energy and Emissions Control Technologies (2015), at 50; available at https://www.eeb.cornell.edu/howarth/publications/f_EECT-61539-perspectives-on-air-emissions-of-methane-and-climatic-warmin_100815_27470.pdf (“total greenhouse gas footprint of shale gas is substantially greater than that of the other fossil fuel when methane gas emissions are included”).

¹⁹ See, for example, Governor’s Executive Order No. 24 (2009) (establishing a state goal to reduce greenhouse gas emissions 80% by the year 2050).

be met through other measures like increased energy efficiency and/or the expansion of the supply of renewable energy to National Grid customers.

Second, in regard to the alleged need for enhancing systems reliability, the company claims -- without any stated justification -- that there is a danger of a supply interruption to roughly 139,000 customers in the company's eastern region, apparently based on two hypothetical scenarios, a supply interruption by Dominion Energy Transmission Inc. (DETI), on a day with an average temperature of 5 degrees Fahrenheit (which allegedly could result in 50,000 customers losing gas service), and an interruption of supply by DETI of minus 10 degrees, which could allegedly result in the loss of service to an unspecified higher number of customers.²⁰

However, as Kevin P. Donovan, an impacted resident of the Town of Bethlehem in Albany County states in his comments in this proceeding, the Applicant provided no historical temperature data as a basis for its claim that customers would be seriously impacted. We agree with Mr. Donovan that “a project of this magnitude, which intrudes on the Hudson River and runs counter to efforts to move our State to renewable energy, cannot be authorized ... merely on supposition.”²¹ Moreover, as Mr. Donovan's research indicates, for the December to March period from 2013 to 2019, there were only 8 dates when the average 24 hour temperature was 5 degrees or lower, or slightly more than one day a year.²²

Several issues just raised, including the dangers of a supply interruption, the numbers of customers impacted, and the likely projected future demand for energy (measured by, among other things, temperature data), are material facts that could be resolved through hearings.

²⁰ *Id.* At 15.

²¹ Kevin B. Donovan Comments, at 2.

²² *Id.* at 2.

IV. CONCLUSION

Based on the foregoing, SNYFGP respectfully urges that it has established that it should be admitted as a party in this proceeding and that an evidentiary hearing should be held.

Respectfully submitted,



Bob Cohen
Citizen Action of New York
Attorney for Stop NY Fracked Gas Pipeline

Dated: Albany, New York
April 30, 2019

Served on the following parties:

- Lisa Zafonte, National Grid/Niagara Mohawk Power Corporation
- Tara Wells, NYS Department of Agriculture and Markets
- Harrison Watkins, NYS Laborers' Organizing Fund
- John Van De Loo, Riverside Avenue, East Greenbush, LLC
- Joseph Van De Loo, ADG Properties, Inc.
- Kathleen Tylutki, NYS Department of Agriculture and Markets
- Michael Saviola, NYS Department of Agriculture and Markets
- James Naughton, Island Park, LLC
- David Metcalfe, Niagara Mohawk Power Corporation
- Rebecca Meier, Stop NY Fracked Gas Pipeline
- Michael Mager, Multiple Intervenors
- Seth Herman, Niagara Mohawk Power Corporation
- Karen Gaidasz, NYS Department of Agriculture and Markets
- Sita Crounse, NYS Department of Environmental Conservation
- Robert Connors, Community Advocates for a Sustainable Environment
- John Ciovacco, Aztech Geothermal; New York Geothermal Energy Organization