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April 10, 2009

Via Overnight Delivery and E-mail

Michelle L. Phillips, Administrative Law Judge
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Jeffrey E. Stockholm, Administrative Law Judge
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Application of New York Regional Interconnect Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII of the Public Service Law
Case No. 06-T-0650

CARI Response to NYRI's April 6 and 8, 2009 Withdrawal Letters

Dear Judge Phillips and Judge Stockholm:

Counsel for the applicant, New York Regional Interconnect ("NYRI"), stated on the record of the evidentiary hearing in this proceeding held on April 3, 2009 that NYRI's investors were "withdrawing their Article VII application." In response to your request that NYRI follow-up this statement with a written letter, NYRI's letters dated April 6, 2009 and April 8, 2009 confirm that NYRI has indeed "withdrawn its application for a Certificate of Environmental Compatibility and Public Need pursuant to Article VII of the Public Service Law in Case No. 06-T-0650."¹ On April 3, 2009, you indicated that active parties in the proceeding would have one week to respond to NYRI's written confirmation that it was withdrawing its application. This

¹ See Letter from Leonard Singer to ALJs Phillips and Stockholm (Apr. 8, 2009). To the extent that NYRI's letter dated April 6, 2009 stating that it was "suspending its application" created any ambiguity as to the status of NYRI's Article VII application, NYRI stated in its letter dated April 8, 2009 that it had not intended to state anything different in its April 6, 2009 letter than what was stated during the April 3 hearing – that is, that it had *withdrawn* its application. Furthermore, CARI does not believe that NYRI's April 6, 2009 had any effect on NYRI's statement made on the record at the April 3, 2009 hearing.

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letter serves as Communities Against Regional Interconnect's ("CARI") response to NYRI's letters dated April 6, 2009 and April 8, 2009.

First, CARI acknowledges NYRI's withdrawal of its Article VII application in this proceeding and recommends the termination of the evidentiary hearing and closing of the record of this proceeding. Before the record of this proceeding is closed, however, a few items should first be addressed with respect to the record of the evidentiary hearings.

On the first day of evidentiary hearings, March 16, 2009, NYRI had certain exhibits marked for identification and moved their admission into the evidentiary hearing record, which motion was granted. Those exhibits included exhibits sponsored by NYRI Panel C, whose members were not presented for cross-examination prior to the close of hearings on April 3, 2009. In anticipation that a foundation for the exhibits would be laid by the testimony of NYRI Panel C witnesses scheduled for later hearing days (which never occurred), these exhibits were admitted into the hearing record without being properly introduced into the hearing record and without giving parties an opportunity to cross-examine the witnesses on those exhibits or the witnesses' related testimony. Given that the evidentiary hearings should not continue in the wake of NYRI's withdrawal of its application and should necessarily be brought to a close, those exhibits, as set forth below, should be stricken from the hearing record.

Panel C Exhibits to be Stricken	
Hearing Exhibit 6	NYRI Supplemental Filing (February 2008) – Exhibit 6
Hearing Exhibit 13	NYRI Supplemental Filing (February 2008) – Exhibit E4
Hearing Exhibit 23	NYRI Supplemental Filing (February 2008) – Appendix H
Hearing Exhibit 25	NYRI Supplemental Filing (February 2008) – Appendix K
Hearing Exhibit 35	NYRI Supplemental Filing (February 2008) – Appendix U

Also, at the time that NYRI announced the withdrawal of its Article VII application, NYRI witnesses Lesser and Puga appeared for cross-examination. You granted a motion made by Department of Public Service staff to strike a portion of Messrs. Lesser and Puga's testimony, but as of the time of NYRI's withdrawal, not all parties were given an opportunity to cross-examine Messrs. Lesser and Puga on the remainder or their rebuttal testimony or the exhibits they sponsored. Consequently, the remaining portion of the rebuttal testimony of Messrs. Lesser and Puga that has not already been stricken from the hearing record, and the exhibits they sponsored, should also be stricken from the hearing record, as set forth below:

Lesser & Puga Testimony and Exhibits to be Stricken	
Copied into the hearing transcript	Rebuttal Testimony of Jonathan A. Lesser & J. Nicolas Puga
Hearing Exhibit 326	JAL-JNP-01
Hearing Exhibit 327	JAL-JNP-02
Hearing Exhibit 328	JAL-JNP-03
Hearing Exhibit 329	JAL-JNP-04

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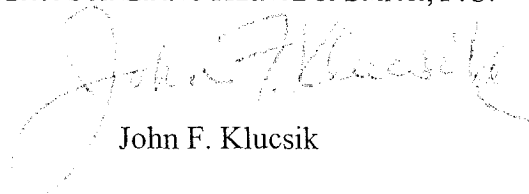
Lesser & Puga Testimony and Exhibits to be Stricken	
Hearing Exhibit 330	JAL-JNP-05
Hearing Exhibit 331	JAL-JNP-06
Hearing Exhibit 332	JAL-JNP-07
Hearing Exhibit 333	JAL-JNP-08
Hearing Exhibit 334	JAL-JNP-09
Hearing Exhibit 335	JAL-JNP-10
Hearing Exhibit 336	JAL-JNP-11
Hearing Exhibit 337	JAL-JNP-12
Hearing Exhibit 338	JAL-JNP-13
Hearing Exhibit 339	JAL-JNP-14
Hearing Exhibit 340	JAL-JNP-15
Hearing Exhibit 341	JAL-JNP-16
Hearing Exhibit 342	JAL-JNP-17
Hearing Exhibit 343	JAL-JNP-18
Hearing Exhibit 344	JAL-JNP-19

Once the above-referenced testimony and exhibits are stricken from the hearing record, CARI believes that, based on NYRI's unequivocal, clear and voluntary withdrawal of its Article VII Application, the Commission should accept NYRI's withdrawal, remove NYRI's Article VII application from the Commission's docket and officially close the record of this proceeding. Furthermore, the Commission should make clear that as of the date NYRI's application is removed from the docket and the proceeding is ended, there will be no NYRI application either "filed" with the Commission or pending on any docket before the Commission.

We appreciate the Judges' and the Commission's efficient and judicious administration of this proceeding, especially given the unique circumstances presented by the potential application of Section 216 of the federal Energy Policy Act of 2005.

Very truly yours,

GILBERTI STINZIANO HEINTZ & SMITH, P.C.



John F. Klucsik


JFK/bdc

cc: Hon. Jaclyn Brillling (via overnight delivery and e-mail)
Service List for Litigation Documents as of March 23, 2009 (via e-mail)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Communities Against Regional Interconnect's Response to NYRI's April 6 and 8, 2009 Withdrawal Letters upon Administrative Law Judge Phillips and Administrative Law Judge Stockholm, by e-mail and Federal Express, upon Secretary Jaclyn A. Brillling, by e-mail and Federal Express, and upon each person designated on the Service List for Litigation Documents dated March 23, 2009, compiled by the Secretary in this proceeding by e-mail.

Dated: April 10, 2009
Syracuse, New York



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Attorneys for Communities Against Regional Interconnect