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August 23, 2012

VIA E-MAIL

Hon. Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Empire State Plaza
Agency Building Three
Albany, NY 12223-1350

Re: Case 11-T-0401 – Application of Bluestone Gas Corporation of New York, Inc. for a Certificate of Environmental Compatibility and Public Need Pursuant to Article VII for the Construction and Operation of a 20" Natural Gas Gathering System and Dehydration and Compression Facilities, in the Town of Sanford, Broome County, and Request for Approval of Environmental Management and Construction Standards and Practices

Case 12-G-0214 – Petition of Bluestone Gas Corporation of New York, Inc., for an Order Granting Certificate of Public Convenience and Necessity

Dear Secretary Brilling:

This letter is submitted on behalf of Elisabetta Iaboni ("Iaboni"), a party in this proceeding in respect to the application by Bluestone Gas Corporation of New York, Inc. ("Bluestone/NY") for the grant of a Certificate of Environmental Compatibility and Public Need ("CON") pursuant to Public Service Law ("PSL") Article VII for Bluestone/NY's proposed pipeline.

Bluestone/NY has not established that it would be in the public interest to grant its Application. Further, the proposed pipeline route places an unnecessary and disproportionate burden on Iaboni.

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Bluestone/NY is a gas corporation organized under Article 2 of the New York Transportation Corporation Law ("TCL"). TCL § 11(3-b) gives Bluestone/NY broad authorization to acquire property through the Eminent Domain Procedure Law ("EDPL").

Bluestone/NY filed an Application with the PSC for a CON on July 27, 2011. Bluestone/NY proposes to construct, own and operate a 9.2 mile, twenty inch natural gas pipeline. It plans to run the pipeline through 2,176 linear feet of Iaboni's property in the Town of Sanford, Broome County, New York. A petition for an Order Granting Certificate of Public Convenience and Necessity was filed on May 10, 2012, and was revised June 26, 2012.

On August 10, 2011, the PSC issued Bluestone/NY a deficiency letter, stating that the CON Application required additional information. Bluestone/NY responded on September 6, 2011, and the PSC stated the Application was cured on September 21, 2011.

Bluestone/NY filed a Notice of Impending Settlement Negotiations on May 4, 2012 for Case 11-T-0401 and on June 8, 2012 for Case 12-G-0214. The parties to the negotiation included Bluestone/NY, Department of Public Service Staff ("DPS"), New York State Department of Environmental Conservation Staff ("DEC"), New York State Department of Agriculture and Markets Staff ("Ag & Mkts"), and Laser Northeast Gathering Company LLC and DMP New York, Inc. Eleven more parties were notified about the negotiations on Case 11-T-0401. Iaboni was not party to either negotiation because it was unaware the negotiations were occurring.

The parties held several meetings in May and June of 2012. Bluestone/NY claims that all parties were given an opportunity to discuss the pipeline, (Couch White letter, dated June 29, 2012 ("6/19/12 Letter"), page 3), but Iaboni, through whose land the pipeline would traverse, was, without explanation, left out of these negotiations. The Application improperly represented that an agreement was being finalized when, in fact, no agreement had been reached or pending.

Nevertheless, DPS recommended that the PSC grant Iaboni party status. (DPS Letter, dated July 2, 2012.) On July 11, 2012, the PSC granted Iaboni party status. It noted that: 1) Iaboni has property rights that Bluestone/NY's pipeline will affect; 2) granting party status will not cause Bluestone/NY to suffer unfair prejudice; and 3) in the event Bluestone/NY exercises its eminent domain powers, the issuance of a CON is determinative of the public use/purpose aspect under EDPL § 204, is excepted under § 206(B), and therefore Iaboni will be deprived of the opportunity to be heard in an eminent domain proceeding on this issue if not granted party status.

PSC SHOULD DENY BLUESTONE/NY'S APPLICATION

Bluestone/NY's Application and Joint Proposal is legally and factually deficient on the following grounds:

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1. **Bluestone/NY Must Provide Financial Assurances**

In the public's interest, Bluestone/NY must provide satisfactory assurance that it has the financial capabilities to construct, own, and operate this pipeline. However, Bluestone/NY does not satisfy the basic requirement.

Bluestone/NY must show the "manner in which the cost [of the pipeline] is to be financed," 16 NYCRR § 21.3(c), and provide "proof of [its] ability to finance the [pipeline] and to render adequate service," 16 NYCRR § 21.3(f).

As a public agency, the PSC is charged with the duty of assuring that an applicant has the necessary qualifications, including financial qualifications. PSC has not confirmed that Bluestone/NY has the short and long-term capability of fulfilling all the obligations it is assuming in its Application, Joint Proposal and leases, including possible environmental liabilities to the State, local government, and the public.

That this is a real concern and is also reflected in the eminent domain context. EDPL § 402(B)(3)(f) provides:

if a non-governmental condemnor subject to the jurisdiction, supervision and regulation of the public service commission or the commissioner of transportation, it shall include in its petition for acquisition, notice that it shall deposit a bond or undertaking with the clerk of the court prior to vesting of title to the real property described in such petition in an amount to be fixed by the court on the return date of the petition. The court shall direct that the bond or undertaking will be applied in the amount necessary, for any default by the condemnor in the payment of all or part of the damages determined in the acquisition proceeding or the abandonment thereof. (Emphasis added.)

It is PSC's obligation to examine applicant's financial capability to fulfill its responsibilities. This regulatory responsibility is not only enunciated in 16 NYCRR § 21.3, but also in other regulatory provisions. The PSC may appoint a temporary operator of a gas corporation if the PSC determines that the gas corporation lacks the financial capacity or ability to provide the service. PSL § 112-a(a)(ii), (b)(i). In a similar vein, the PSL provides the right for a utility to require customers to pay a security deposit in case of default. PSL § 13.7(a)(1).

This type of inquiry is an essential and a basic administrative inquiry. It is the predicate to the grant of any government privilege or franchise. For example, all New York State citizens must obtain and provide proof of auto insurance in order to drive a car. Vehicle and Traffic Law ("VTL") § 310. Every corporation engaged in the business of carrying passengers for hire in certain motor vehicles shall file a corporate surety bond or a policy of insurance. VTL § 370(1).

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Even before permitting a fireworks display, an applicant must provide adequate bonds or an indemnity insurance policy with liability coverage and indemnity protection. Penal Law § 405.00(4).

The Application does not adequately address these concerns. Bluestone/NY – which was first formed in 2010¹ – is an indirect subsidiary corporation of DTE Energy. The Application/ Joint Proposal states that Bluestone/NY's parent company, DTE Pipeline Company, is internally financing the pipeline. "DTE Pipeline Company is a wholly owned subsidiary of DTE Energy Company []. DTE Energy is a publicly traded company listed on the New York Stock Exchange with \$8.5 billion in equity market capitalization [], [and] \$26 billion in assets[.]" (Joint Proposal, Paragraph 121.) However, no commitment is made by DTE Energy that it is legally responsible for Bluestone/ NY's obligations.

If Bluestone/NY fails to fulfill its obligations, the State, local governments, the public and the affected property owners will bear the burden of Bluestone/NY's liabilities because Bluestone/NY may not have (or DTE has not committed) sufficient resources. The PSC should require Bluestone/NY to provide the necessary financial information showing that this subsidiary corporation is financially self-sufficient, or require that DTE Energy Company agrees to hold itself liable for Bluestone/NY's obligations.

2. Bluestone/NY Incorrectly States the EDPL

In Appendix C, 1(q) of the Joint Proposal, in respect to the situation where the use of eminent domain becomes necessary, it indicates that construction - and therefore possession - will begin five (5) days after "Bluestone [NY] shall file with the Secretary proof that it has filed a Notice of Pendency and a Petition pursuant to New York Eminent Domain Procedure Law § 402[.]" This is not in accordance with the EDPL. The filing of a Notice of Pendency and Petition does not confer any rights of possession. Instead, a condemnor must seek a writ of assistance for possession, pursuant to § 405. Bluestone/NY can only construct after the court grants possession.

Bluestone/NY tries to sidestep the issue with Paragraph 116 of the Application, which states that "Bluestone [NY] agrees that it is prohibited by law from commencing construction of the [pipeline] on any parcel of property if it has not obtained the necessary property rights for such parcel of property." However, Bluestone/NY does not define the vague term "necessary property rights." Filing a Notice of Pendency and a Petition under EDPL § 402 does not give Bluestone/NY "necessary property rights." Bluestone/NY must comply with the law.

Any operating plan approved by the PSC should clearly require Bluestone/NY to comply with these requirements of the EDPL should eminent domain become necessary, in respect to both vesting of title and possession.

¹ See the attached filing report from New York State Department of State, Division of Corporations.

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3. Bluestone/NY Does Not Need the Iaboni Property

Assuming, *arguendo*, that the PSC determines the pipeline is for a public interest, PSC should deny the Application to the extent that Bluestone/NY does not need to route the pipeline through Iaboni's property or, alternatively, does not need it to the extent claimed.

The original Exhibit G that Bluestone/NY submitted to the PSC on July 27, 2012, showed that Bluestone/NY required a 986 linear foot right of way through Iaboni's property.² However, the current, revised Exhibit G states that Bluestone/NY now requires 2,176 linear feet through Iaboni's property, effectively traversing the entire property from south to north. If Bluestone/NY can change its proposed route once, it can do so again and minimize the effect on Iaboni's property.

4. The Effect on Remaining Property

Iaboni and other property owners both in and adjacent to the right of way also have mineral deposits on and under the property (i.e., bluestone and gas/shale). The Application/Joint Proposal does not adequately address what adverse effects the pipeline easement will cause to a property owner's ability to realize this mineral (or any other mineral) deposits' potential. To the extent that other property owners have already entered into agreements or commitments, has Bluestone/NY made them aware of these consequences? Since it is the PSC's statutory mandate to protect the public interest (PSL § 4), this is a matter which is properly within its purview in reviewing the Application or Joint Proposal.

5. Other Concerns

In the original Exhibit G, it stated that Iaboni³ was "finalizing agreement." This was untrue. It is puzzling how Bluestone/NY could state that when Iaboni was completely unaware of the negotiations. Moreover, Bluestone/NY had the opportunity to correct this misstatement but, instead, the revised Exhibit G stated the same error. Bluestone/NY continues to leave this in place even after becoming aware of the error.

SRF:rh
Enclosure

cc: Hon. Kevin Casutto (via E-Mail)
Active Parties (via E-Mail)

Respectfully submitted,



Saul R. Fenchel

² The listed landowner is Luigi Paniccia, Iaboni's brother.

³ See footnote 2.

Cases 11-T-0401 and 12-G-0214

**ATTACHMENT TO LABONI'S STATEMENT, DATED AUGUST 23, 2012, IN
OPPOSITION TO THE APPLICATION/JOINT PROPOSAL OF BLUESTONE
GAS CORPORATION OF NEW YORK, INC.**

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 16, 2012.

Selected Entity Name: BLUESTONE GAS CORPORATION OF NEW YORK, INC.

Selected Entity Status Information

Current Entity Name: BLUESTONE GAS CORPORATION OF NEW YORK, INC.

DOS ID #: 3939690

Initial DOS Filing Date: APRIL 21, 2010

County: ALBANY

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O CT CORPORATION SYSTEM

111 EIGHTH AVENUE

NEW YORK, NEW YORK, 10011

Registered Agent

CT CORPORATION SYSTEM

111 EIGHTH AVENUE

NEW YORK, NEW YORK, 10011

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	Par Value	1

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
APR 21, 2010	Actual	BLUESTONE GAS CORPORATION OF NEW YORK, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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