

Bunting & Associates  
160 Fairview Avenue  
Suite 133-211  
Hudson, NY 12534  
(917) 334-7792

September 16, 2014

Hon. Administrative Law Judge Kevin J. Casutto  
New York State  
Department of Public Service  
Empire State Plaza, Building 3  
Albany, New York

Re: NYPSC Case No. 13-T-0292  
West Point Transmission Project/ Submerged Line: Athens to Hudson River to Cortlandt, NY

Dear Judge Casutto:

This office represents the Athens Citizens Development Committee with respect to the above-referenced application. At the close of the evidentiary hearings on Friday, September 12, 2014, we received a copy of the letter from the New York State Department of State (DOS) by Kari L. Gathen addressed to you concerning the status of the West Point Partners application.

The concerns and policy prerequisites set forth in the DOS letter cut to the core of what has been wrong with this process since the outset. The applicant, West Point Partners (WPP), has been adamant in pushing for a rapid Article VII process to obtain a Certificate of Environmental Compatibility and Public Need from the New York State Public Service Commission (PSC). Interested and affected parties have intervened and have spent considerable resources in participating in this process over the past several months. Although some of the parties received intervenor funding to defray costs, others, such as Athens Citizens Development Committee (ACDC), the taxpayer-funded Department of Environmental Conservation (DEC) and The Department of Public Service (DPS) did not.

Under the present circumstances any final determination in these proceedings by the PSC concerning the siting of the Northern Converter Station and the Southern Converter Station as well as the in-river route of the DC cable will not be "final" in any meaningful sense. As the DOS has made clear, there can be no "final" determination without WPP first having obtained "precertification" from the DOS that the proposed project is consistent with New York State's Coastal Management Program (CMP). Until the DOS completes its federal consistency review anything and everything so far done in this proceeding could be rendered moot. The DOS could conceivably reject the proposed project in part or in whole.

This same conundrum arises with respect to the review of this project by the United States Army Corps of Engineers (USACE). A “final” determination regarding converter station siting and the in-river route are all subject to review and potential rejection by the USACE, the Environmental Protection Agency (USEPA), the United States Fish and Wildlife Service, to name but a few.

What is particularly damning is that WPP appears to have known about the requirements of a DOS federal consistency review and has ignored them. As the DOS letter makes clear, WPP was informed that their application was incomplete and the file closed in May, 2014. If this inaction by WPP was inadvertent, it could be attributed to negligence. But we do not believe this to be the case.

On July 22, 2014 ACDC filed a Freedom of Information Act request to the USACE respecting the status of WPP’s application to that agency. Due to our prior experience with this and the other federal agencies ACDC was expecting to receive voluminous documentation concerning the application review process which would normally be proceeding full-tilt at this juncture. Instead, ACDC received a disc containing nothing but a copy of WPP’s application and a supplemental application. As this seemed to be an error the undersigned contacted the USACE project manager assigned to the case to enquire why the usual correspondence, meeting notes, inter-agency memoranda, project revisions and similar documentation were not included with the FOIA response. We were informed that no such documentation existed and that the USACE still deemed the application to be incomplete. The project manager also stated that they had not had any communication from WPP for a considerable time.

Does WPP expect the USACE, the USEPA, the Fish and Wildlife Service and all the other federal agencies to merely rubber-stamp whatever “final” converter station siting and in-river route that may emerge from the current PSC proceeding? Does WPP expect the DOS to waive a federal consistency review? In the event that any of the aforementioned agencies will require a partial or complete redesign of the project, does WPP expect all the intervening parties, who at this point have probably exhausted their intervenor funds (if they ever had them), to continue this process at their own expense?

The record for the Champlain Hudson Power Express (CHPE) case demonstrates the proper sequencing of events. The original application placed the northern landfall of the in-river route in Coeymans, New York. Public hearings were held for that route. When the DOS issued its certificate of compatibility and determined that there should be no in-river routes north of Inbocht Bay, CHPE amended and revised its USACE application and new public hearings were held for the affected communities along the revised route. Only then, the record shows, were the evidentiary hearings commenced.

WPP and their counsel have aggressively controlled these proceedings from the outset. At the scheduling hearing held at the NYSPSC on March 20, 2014, WPP made it clear that the preferred route was “not negotiable.” At the close of Friday’s hearing, when the intervening parties sought more time to conduct a review of alternatives in light of the sudden revelation that the National Grid right-of-way was available for access, WPP opposed such an extension as



prejudicial. Throughout this process WPP has acted as though time was of the essence. But we now know that it is not. If anything, the proceedings held to date have been rendered nothing but a farce.

Exactly why must we have site visits in October/November to examine alternate route locations that may be rejected by the DOS or the USACE at a later date? Who is going to reimburse the intervening parties for further participation in a procedure that the DOS may later find inconsistent with the CMP?

In demanding such expedited treatment of its application in the complete and willful absence of proper application to the DOS and the USACE, WPP is acting in bad faith.

If we were proceeding with such a matter in state or federal court and such disclosures came to light, WPP's case would be summarily dismissed and sanctions imposed. At a bare minimum, WPP should be compelled to withdraw its application without requiring that the intervening parties spend further time and money making a formal application for dismissal. As the DOS letter observes there is a compelling public interest to "avoid wasting agency resources." Sadly, such resources have already been wasted along with those of non-agency entities such as Riverkeeper, ACDC, the Town and Village of Athens and the Town of Cortlandt.

Let this letter serve as a formal request by the Athens Citizens Development Committee, an intervening party, that the application by West Point Partners for a Certificate of Environmental Compatibility and Public Need, pending under case number 13-T-0292, be dismissed. In the alternative, ACDC would request that further review of the application be tabled pending WPP's application to the DOS for a certificate of consistency with the CMP. Only when such a certificate is issued and the USACE process initiated should further proceedings on the present application be held. And any such further proceedings should include a provision for additional intervenor funding for all parties.

Thank you for your consideration.

Very truly yours,



Gerald A. Bunting