



STOP NY FRACKED GAS PIPELINE
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May 23, 2019

VIA ELECTRONIC SUBMISSION

Hon. Kathleen H. Burgess
Secretary, State of New York Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: Case 19-T-0069 - SNYFGP Comments on 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

Dear Secretary Burgess:

I represent Stop NY Fracked Gas Pipeline (“SNYFGP”) in this proceeding. SNYFGP and the New York Climate Advocacy Project (“NYCAP”) NYCAP submit these comments in opposition to the granting of a Certificate of Environmental Compatibility and Public Need to Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid” or “the Applicant”) for a 7.3 mile natural gas pipeline that is proposed to go through the Town of Bethlehem in Albany County and the Towns of North Greenbush and East Greenbush in Rensselaer County, also known as the Pipeline E37 Reliability and Resiliency Project (the “Project”).

I. Introduction and Summary

SNYFGP was formed in the Spring of 2014 by residents of Rensselaer, Albany and Columbia counties concerned about a proposal by the Kinder Morgan company to construct a gas pipeline popularly known as the Northeast Energy Direct pipeline, and associated infrastructure (the “NED Project”). Since the withdrawal by Kinder Morgan of its application to the Federal Energy Regulatory Commission to construct the NED Project in May of 2016, SNYFGP has expanded its work to educate the public and to conduct advocacy activities in opposition to fossil fuel projects in general and to support renewable energy alternatives. Through its education and advocacy work, SNYFGP has developed a list of over 1800 supporters, including 200 residents of the towns of East Greenbush, North Greenbush and Bethlehem (the “impacted towns”), and has amassed considerable expertise on topics like the health and safety impacts of natural gas pipelines and renewable alternatives.¹

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 and in Support of a Request for a

NYCAP was formed in 2016 by grassroots climate activists and experts to identify statewide policy solutions to the climate crisis and to support local organizations through networking, information sharing and training. NYCAP’s mission is to stop the buildout of new fossil fuel infrastructure and promote a rapid and just transition to 100% renewable energy. NYCAP’s board members collectively have decades of experience working with and within state agencies on environmental, consumer and health policies.

The five necessary findings the Public Service Commission (“PSC” or “Commission”) must make in order to approve a certificate of environmental compatibility and public need of less than ten miles are: 1) “the ... need for 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); and 5) “that the facility will serve the public interest, convenience and necessity...”² Presumably, the Applicant has the burden of proof as to each of these five factors.

As explained below, the Applicant has not made the necessary showing as to the first and fifth factors (need for the facility; public interest, convenience and necessity). In summary, 1) the Applicant’s claim that the Project is needed to address projected growth in natural gas demand is insufficiently supported to enable the Commission to make a determination that it is necessary and in the public interest; 2) the Applicant’s claim that the Project is needed to address a potential supply interruption is unsupported and the Commission should examine whether systems to avoid predicted supply interruptions exist or can be established before even considering approval of the Project; 3) National Grid did not seriously consider the non-pipeline alternatives of energy efficiency of renewable energy and energy efficiency; 4) National Grid did not adequately analyze whether the projected growth in natural gas demand could be met through the alternatives to the pipeline National Grid considered in its February 1, 2019 Article Application for a Certificate of Environmental Compatibility and Public Need (the “Application”); 5) encouraging customers to switch from fuel oil to natural gas is not a supportable basis for allowing this pipeline; and 6) making an appropriate adjustment to the depreciation period allowed for the Project to reflect the expected useful life of the pipeline will make it much more likely the Project is uneconomic and not in the public interest.³ For these reasons, the Application should be rejected by the Commission.

Hearing in this Matter (April 29, 2019), ¶¶ 3, 6-7, 9-10; Response of Stop the [sic] 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 for a Request for a Hearing in this Matter (April 30, 2019), at 5 (“SNYFGP Response”).

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 National Grid has opposed the request of SNYFGP to be a party in this proceeding, contending, among other things, that the appropriate mechanism for SNYFGP to participate in this proceeding is through comments. Objection of Niagara Mohawk Power Corporation D/B/A National Grid to Request for Party Status by Stop NY Fracked Gas Pipeline, at 4 (the “Objection”). It is clear that PSC rules and precedent permit the participation of non-profits like SNYFGP as parties in appropriate circumstances, as set forth in SNYFGP’s response to National Grid’s objection to its participation as a party. See SNYFGP Response, at 3-6. On information and belief, there is nothing in statute or the Commission’s rules that entities have to elect to either comment or participate as a party. In any event, given that the Commission has not to date ruled on the Applicant’s objection to SNYFGP’s party status and presumably will not do so until at least the June 6th procedural conference in this case, *after* the May 24th date

II. Arguments

1. **The Applicant's claim that the Project is needed to address projected growth is insufficiently supported to enable the Commission to make a determination that it is necessary and in the public interest.**

In the Application, National Grid justifies the Project on the ground that it needs to accommodate “continued system growth” (in addition to improving “system reliability”). The Applicant projects an average annual growth of 1.1% per year.⁴ However, the Application does not consider numerous factors that are relevant to the ultimate question as to whether the Project is needed, including, but not limited to: 1) the calculation of the projected growth rate of 1.1% per year; 2) the potential renewable energy alternatives to natural gas to serve the needs of residential and businesses customers in the Project's service territory; 3) the availability of alternative sources of supply, including from renewable energy suppliers; and 4) the impact on the projected demand for natural gas supplies if different energy efficiency measures were undertaken. Absent such an analysis, and given the national and state projections that natural gas demand will be flat or even decline in the next decade,⁵ the Commission should attach little or no weight to the 1.1% projection, nor approve a natural gas pipeline, in contradiction to state energy policies to encourage greenhouse gas reductions.

2. **The Applicant's claim that the Project is needed to address a potential supply interruption is unsupported in the Application. Further, before even considering approval of the Project, the Commission should examine whether systems to avoid supply interruptions exist or can be established.**

SNYFGP and NYCAP dispute the Applicant's claim that the Project is needed to address a potential supply interruption as total conjecture. Specifically, in the Application, National Grid asserts that it seeks to close the “Albany Loop”, thereby “improving system reliability to existing customers as well as allowing for continued system growth.”⁶ 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, based on two unsupported scenarios, a supply interruption to 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 to DETI supply at minus 10 degrees, which could result in the loss of service to an unspecified higher number of customers.⁷

However, as Kevin P. Donovan, an impacted resident of the Albany County Town of Bethlehem 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. As Mr. Donovan's comments state, for the December to March period from 2013 to 2019, there were

comments are due in this proceeding, SNYFGP respectfully contends it would be manifestly unfair not to consider these comments.

⁴ Application, at 15, 17.

⁵ See 350.org, *False Demand: The Case Against the Williams Fracked Gas Pipeline* (March 2019), at 20-21, https://350.org/wp-content/uploads/2019/03/Stop_Williams_False_Demand.pdf

⁶ Application, at 15.

⁷ *Id.* at 15.

only eight days in which the average 24 hour temperature was 5 degrees or lower, or slightly more than one day a year.⁸ 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 clean energy, cannot be authorized, and the enormous costs passed onto ratepayers, merely on supposition”.⁹ The possibility of a supply interruption of roughly one day a year is a totally insufficient basis to approve this Project, especially given the available alternatives discussed below.

This is particularly true given that *customers will presumably have their service interrupted (if at all) on days of peak demand*. A recent report on the proposed Williams fracked gas pipeline, detailed, among other things: that peak demand typically lasts for a few hours, that National Grid “already has a system in place of supplemental gas sources and demand reduction strategies to address peak demand”, and that many large customers like institutions and industrial and election generators can choose a cheaper “interruptible” gas service, “under which they voluntarily switch to other fuel or reduce nonessential uses during peak demand hours”.¹⁰ We join the authors of this report in cautioning that regulators should not allow National Grid to engage in “unreasonable fear-mongering”.¹¹ At a minimum, the Commission should closely scrutinize the Application to determine whether there is a realistic danger of serious service interruptions and whether existing systems exist or can be established to avoid service interruptions before even considering the approval of a new fracked gas pipeline; the PSC should not rely on for its decision the Applicant’s utter conjecture that service interruptions will occur and as to the number of customers that would be impacted.

3. The Application should be rejected because National Grid did not seriously consider non-pipeline alternatives.

In the Application, National Grid proposed two alternatives to the Project: 1) a lateral to the northern end of the Albany Loop near the DETI Troy city gate, and 2) two non-pipeline alternatives: a “demand response” project and a portable CNG (compressed natural gas) facility. National Grid defines “demand response” as reducing system demand “during the peak usage period to a level that is closer to the average usage period”; the Applicant states that such a step would “not reduce the total demand on the system over the course of a given day”.¹²

This approach is not in accord with current state policies, including the reduction of fossil fuel use and steps to encourage use of renewables like geothermal. The State Energy Plan provides that “state policies and programs must demonstrate consistency” with the state goal of reducing greenhouse gas (GHG) emissions, specifically the goal in Executive Order 166 for a 40% reduction in GHG emissions over 1990 levels by 2030. “State agencies have been directed to implement measures that have been identified to reduce emissions.”¹³ Further, on February 7, 2019, the Commission approved in part a Non Pipeline Alternative (NPA) Portfolio that included: 1) targeting gas energy efficiency proposals; 2) use of geothermal heat pumps and air source heat pumps for certain residential customers; 3) renewable natural gas (RNG)

⁸ *Id.* at 2.

⁹ Kevin B. Donovan Comments, at 2.

¹⁰ False Demand, at 18.

¹¹ *Id.*, at 18.

¹² Application, at 17-19.

¹³ New York State Energy Research and Development Association, *The Energy to Lead: Biennial Report to the 2015 State Energy Plan*, at 54, <https://energyplan.ny.gov/Plans/2015-Update>.

production plants in Westchester County and New York City; and 4) trucked supplies of compressed natural gas (CNG) and liquefied natural gas (LNG) in Westchester. The Commission reasoned that such steps are necessary given that “State energy policy calls for reduced reliance on fossil fuels.”¹⁴ The PSC also publicly announced on that date that the Department of Public Service staff was conducting a “review of how utilities across the state are meeting customer needs in a manner that is consistent with the State’s energy and environmental goals.”¹⁵ In light of recent Commission precedent and state policies to reduce greenhouse gas emissions, National Grid’s failure to engage in any consideration of the use of renewable energy or energy efficiency that concretely reduces natural gas demand as an alternative to building a pipeline should in itself be a ground for rejection of the Project.

4. The Application did not adequately analyze whether projected growth needs could be met through the alternatives it considered, including demand response and compressed natural gas.

As stated in Point 3 above, SNYFGP and NYCAP support a policy of mitigating energy demand from fossil fuels through, among other things, energy efficiency and increasing the reliance on renewables and contend this is already state policy. However, even the alternatives to the Project National Grid has considered -- demand response and compressed natural gas (CNG) -- were not sufficiently analyzed in the Application to permit the Commission to make a reasoned decision as to whether the proposed pipeline is necessary and in the public interest. For example, in the Application, National Grid rejected as an alternative to the Project a demand response project based on the NMPC Rate Case, given that its “initial review” of the potential participating customers for the proposed Project were of a different mixture of customers than the customers in the 2017 case, commercial and industrial in the former and office and residential in the later. National Grid stated it therefore was “not yet possible to assess the potential of this program.”¹⁶

This is not acceptable. SNYFGP and NYCAP urge that the Commission and Department of Public Service staff insist that the Applicant do a full analysis of demand response and CNG, so that the PSC’s decision can be based on an informed assessment of whether and to what extent they -- combined with other alternatives like renewables -- are an adequate substitute for the proposed pipeline.¹⁷

Similarly, the Applicant’s claim that supply issues might arise at DETI’s Troy city gate, resulting in the loss of gas service by up to 50,000 customers, resulting in a “substantial outage” costing “up to \$50 million in restoration costs, including claims for property damages, lost business, etc.”¹⁸ is totally conjectural, both as to the probability of a supply disruption and as the consequences, and should therefore be disregarded by the Commission.

¹⁴ Case 17-G-0606, *Order Approving With Modifications the Non-Pipeline Solutions Portfolio* (February 7, 2019), at 2, 4, 25, 36.

¹⁵ Case 17-G-0606, Press Release, *PSC Approves Con Edison’s Request to Use Innovative Solutions to Lower Natural Gas Demand* (February 7, 2019).

¹⁶ Application, at 18.

¹⁷ We also note that the uncertainty as to the adequacy of demand response as an alternative involves factual questions which could and should be developed in an evidentiary hearing, as it has requested.

¹⁸ Application, at 19.

5. Allowing customers to switch from fuel oil to natural gas is not a supportable basis for allowing this pipeline.

As these comments have already stated, National Grid’s primary justification for this Project is “systems growth” -- attracting new customers -- rather than addressing reliability (in particular, see Point Two above). It appears that a key component of National Grid’s business plan is to switch some existing customers, particularly business customers, from heating oil to natural gas. For example, the Application says that without the Project or “significant upgrades”, DETI “cannot increase deliveries to the East Gate”, and that once the Project is completed, “commercial and industrial businesses and other energy customers will be able to use clean, efficient natural gas rather than less environmentally friendly fuels such as heating oil”, thus supporting economic development.¹⁹

SNYFGP and NYCAP respectfully assert that moving existing heating oil customers to natural gas should not be a basis for approving a fracked gas pipeline. First, there is every reason to doubt that increasing the use of natural gas should be approved as a more “environmentally friendly” policy, especially when better alternatives, such as demand reduction, energy efficiency and renewable energy are available right now. No support is provided for the company’s assertions that natural gas is “clean” and “more environmentally friendly” -- a subject that is, at a minimum, heavily disputed in the scientific community.²⁰ Neither is any support provided for National Grid’s assertion that expanding the use of natural gas as compared to available alternatives will “support economic development”.

Second, the Commission should not be encouraging regulated utilities to make new significant investments in energy sources like natural gas which shortly will have to be retired anyway to meet the state’s policy goals to vastly reduce the use of fossil fuels, especially when sources of renewable energy are rapidly coming on line.²¹ For example, the PSC predicts that its Value of Distributed Energy Resources energy policy will “create the potential for more than 1,000 megawatts (MW) of additional community distributed projects beyond the 500 MW of projects also initiated; solar has already grown nearly 1,500% since 2011 in New York State.”²²

6. Allowing a new pipeline and other policies to encourage additional natural gas use will create stranded assets that are depreciated over longer than the useful life of the pipeline, increasing costs for residential and commercial utility ratepayers. When adjusted for a shorter depreciation period, the costs to ratepayers makes it much more likely the Project will be uneconomic and not in the public interest.

¹⁹ *Id.*, at 16-17.

²⁰ *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, 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 fuels when methane gas emissions are included”).

²¹ See, for example, Larry Rulison, *Solar firm’s market grows: Change by Public Service Commission lets Common Energy sell to businesses*, Albany Times Union (May 15, 2019)(describing plans by local firm to provide community solar to businesses as well as residential customers due to PSC April order), <https://www.timesunion.com/business/article/Community-solar-expands-into-business-market-with-13848026.php>.

²² Case 15-E-0751, *PSC Accelerates Community Solar Development* (April 18, 2019).

Gas utilities like National Grid at present “currently depreciate their mains and service connections assuming 60 to 80 year (or longer) expected economic life”.²³ Yet, in light of state policies like Governor Andrew Cuomo’s Executive Order No. 166 of 2017 and the 2015 State Energy Plan goals to reduce greenhouse gases economy-wide 40% by 2030 and 80 percent by 2050 as compared to 1990 emissions levels,²⁴ New York, like other states, is likely to face significantly lowered demand for natural gas over the next thirty years, leaving pipelines as stranded assets.²⁵ Shortening the depreciation period to more accurately allocate costs, which we recommend the PSC mandate, will likely result in higher near-term gas rates, thus making renewables and other non-pipeline alternatives more competitive.²⁶ We believe that making this appropriate adjustment in depreciation polices strengthens the argument that the Project is uneconomic for ratepayers and that the Project should therefore not be approved.

Thank you for the opportunity to offer the comments of SNYFGP and NYCAP in the above captioned matter. Please do not hesitate to contact me at bcohen@citizenactionny.org or at (518) 465-4600 x104 concerning these comments.

Very truly yours,



Bob Cohen, Esq., Policy Director
Citizen Action of New York

Cc: Administrative Law Judge Ashely Moreno
Administrative Law Judge Anthony Belsito
DPS Staff Counsel Graham Jesmer
DPS Staff Counsel Cassandra A. Partyka
All persons listed under “Party List” on DMM for this proceeding

²³ Bob Wyman, *Natural Gas Utility “Death Spiral” is much more likely than with electric utilities*, Medium (web article, April 13, 2018)(“Natural Gas Utility Death Spiral”), <https://medium.com/@bobwyman/natural-gas-utility-death-spiral-is-much-more-likely-than-with-electric-utilities-57925d8987ab>.

²⁴ See False Demand, at 6.

²⁵ *Id.*, at 2; McKinsey & Company, *Are US gas utilities nearing the end of their golden age?* (web article, September 2018), <https://www.mckinsey.com/industries/electric-power-and-natural-gas/our-insights/are-us-gas-utilities-nearing-the-end-of-their-golden-age>.

²⁶ Natural Gas Utility Death Spiral.