

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

**OBJECTION OF NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL  
GRID TO REQUEST FOR PARTY STATUS BY AZTECH GEOTHERMAL, LLC AND  
NEW YORK GEOTHERMAL ENERGY ORGANIZATION**

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**STATE OF NEW YORK  
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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

**OBJECTION OF NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID TO REQUEST FOR PARTY STATUS BY AZTECH GEOTHERMAL, LLC AND NEW YORK GEOTHERMAL ENERGY ORGANIZATION**

**I. INTRODUCTION**

Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) hereby respectfully objects to the request of Aztech Geothermal, LLC (“Aztech”) and New York Geothermal Energy Organization (“NY-Geo,” and collectively with Aztech, the “Requesting Entities”) for “party status” in the above-captioned proceeding (the “Party Request”). The Requesting Entities have no presumptive legal right to participate as a “party” in this proceeding and have failed to demonstrate to the Public Service Commission (the “Commission”) that their participation as a party would contribute to the development of the record or otherwise be fair and in the public interest. Accordingly, the Party Request should be denied.

**II. BACKGROUND**

National Grid filed its Article VII Application for a Certificate of Environmental Compatibility and Public Need pursuant to Public Service Law (“PSL”) Section 121-a(3) in this proceeding on February 1, 2019 (the “Application”). The Application seeks approval for the construction and operation of the Pipeline E37 Reliability and Resiliency Project (the “Project”), which includes the installation of a new 16-inch diameter 7.3-mile long natural gas transmission

pipeline and associated facilities beginning approximately 885 feet north of the Bethlehem Gate Station on River Road in the Town of Bethlehem, and extending east and northeast through a portion of the Town of East Greenbush to the Troy Gate Station located on Bloomingrove Drive in the Town of North Greenbush.

On April 9, 2019, John P. Ciovacco filed the Party Request on behalf of the Requesting Entities. The Party Request includes a statement of the Requesting Entities' interest in the case and how their participation as a party in this proceeding might contribute to the development of a complete record or is otherwise for and in the public interest (the "Party Interest Statement").

The Party Interest Statement provides the following:

I am the president of Aztech Geothermal, a design and installation company of heat pumps systems, a mechanical engineer and board member of NY\_GEO. I have been a party in the last three utility rate cases and presently a party in the ConEd rate case. I am very active in the discussions about non-pipeline alternatives. My company participates in several NYSERDA programs as well as National Grid and Central Hudson programs.

The Party Interest Statement neither avers that the Requesting Entities are entitled to party status as-of-right nor explains how their participation as a party in this proceeding would develop a complete record or be fair and in the public interest.

### **III. ARGUMENT**

The Requesting Parties are not entitled to "party status" as-of-right in this proceeding. The Application was filed pursuant to PSL Section 121-a(3). That Section of the PSL identifies the parties to such a proceeding, stating, inter alia, the following:

A copy of such application shall be served on: (i) the department of environmental conservation; (ii) the department of agriculture and markets; and (iii) each municipality in which any portion of such

line is to be located.... The commission shall serve a copy of such application on such other person or entities as the commission may deem appropriate.... The applicant, the commission and those served shall constitute the parties notwithstanding the provisions of section one hundred twenty-four of this article.<sup>1</sup>

Accordingly, the PSL is clear that the parties to a PSL Section 121-a(3) proceeding are limited to the applicant, the identified state agencies, the municipalities in which the project is proposed to be located, and any person or entity on which the commission has served a copy of the application.<sup>2</sup> This limitation on party status is consistent with the legislative scheme set forth in the PSL for natural gas pipelines less than ten miles long. PSL 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.”<sup>3</sup> Unlike other provisions of Article VII that apply to longer natural gas pipelines, PSL Section 121-a “significantly reduces the amount of information required from the applicant, the scope of the determinations required of the Commission, and the number and type of individuals and entities that are entitled to participate as parties.”<sup>4</sup> In this type of Article VII proceeding, “it is expected that individuals or organizations wishing to provide input into the Commission will do so in the form of written

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<sup>1</sup> PSL § 121-a(3).

<sup>2</sup> To the Applicant’s knowledge, the Commission did not serve a copy of the Application on any person or entity.

<sup>3</sup> 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”), *aff’d* Order Denying Interlocutory Appeal, Issued December 16, 2014 (“VGS Appeal Order”).

<sup>4</sup> *Ibid.*

comments.”<sup>5</sup> As such, the Requesting Entities are not entitled to become parties merely by giving notice of their intention to do so.<sup>6</sup>

The Requesting Entities also fail to demonstrate their entitlement to intervene in this proceeding. The Commission’s regulations limit party intervention in Article VII proceedings to instances where such party is able to show that its participation as a party “is likely to contribute to the development of a complete record or is otherwise fair and in the public interest.”<sup>7</sup> PSL Section 121-a “reflects the legislative determination that it is in the public interest for proceedings involving relatively short gas transmission lines to be completed expeditiously with the minimum process necessary to ensure that the Commission has a sound basis for granting or denying the application.”<sup>8</sup> Commission precedent is clear that it is “neither in the public interest nor fair to admit as parties entities that have not demonstrated the ability to contribute materially to the development of the record.”<sup>9</sup>

Here, the Requesting Entities’ have neither shown that their participation in this proceeding would help to develop a complete factual record or would be in the public interest or fair. The Party Interest Statement claims that the Requesting Entities have been and are parties to other utility rate cases and that they are “active in the discussions about non-pipeline alternatives.” However, neither contention demonstrates that the Requesting Entities should be

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<sup>5</sup> VGS Appeal Order at 4.

<sup>6</sup> *Id.*; see also Case 15-T-0586, *Application by Greenidge Pipeline LLC; Greenidge Pipeline Properties Corporation to Construct a Fuel Gas Transmission Line, Containing Approximately 24,318 Feet of 8" Steel Pipeline, Located in the Towns of Milo and Torrey, Yates County, Ruling Concerning Process and Party Status*, Issued December 28, 2015 at fn. 9.

<sup>7</sup> 16 NYCRR §4.3(c)(1).

<sup>8</sup> VGS Ruling at 4.

<sup>9</sup> *Id.*

entitled to party status in this proceeding. Obtaining party status in one Commission proceeding does not entitle such person or group to party status in another proceeding.<sup>10</sup> Further, simply being in active discussions regarding non-pipeline alternatives does not establish how the Requesting Entities would help to develop a complete record in this proceeding.

Additionally, the Requesting Entities would not be prejudiced by being denied party status; they are able to sufficiently participate in this proceeding through the submission of comments. Furthermore, as the Commission held in the VGS Appeal Order, the appropriate time for the Requesting Entities to seek party status in a PSL Section 121-a(3) proceeding would be when and if they seek rehearing following a determination by the Commission to grant National Grid an Article VII Certificate in this case;<sup>11</sup> to do so at this stage in the proceeding is premature.

#### **IV. CONCLUSION**

Based upon all of the foregoing, the Requesting Entities have failed to meet the requirements of the PSL or the Commission's regulations for attaining party status in this proceeding. Accordingly, National Grid respectfully requests that that the Requesting Entities' Party Request be denied.

Respectfully submitted,

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<sup>10</sup> See generally 16 NYCRR §4.3.

<sup>11</sup> VGS Appeal Order at 7.