

NEW YORK STATE
PUBLIC SERVICE COMMISSION

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

Case 19-T-0069

**OBJECTION OF NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL
GRID TO REQUEST FOR PARTY STATUS BY SANE ENERGY PROJECT**

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I. INTRODUCTION

Niagara Mohawk Power Corporation d/b/a National Grid (“National Grid”) hereby respectfully objects to the request of Sane Energy Project (“SEP”) for “party status” in the above-captioned proceeding (the “Party Request”). SEP has no presumptive legal right to participate as a “party” in this proceeding and has failed to demonstrate to the Public Service Commission (the “Commission”) that its participation as a party would contribute to the development of the record or would 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 May 28, 2019, Kim Fraczek, filed the Party Request on behalf of SEP. The Party Request includes a statement of SEP's purported interest in the case and how its participation as a party in this proceeding might contribute to the development of a complete record or is otherwise fair and in the public interest (the "Party Interest Statement"). The Party Interest Statement states the following: "We work on alternatives to gas expansion in New York State, in support of our climate goal mandates. We work together with state agencies on renewable development, and alternatives to fossil fuels."

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

III. ARGUMENT

SEP is 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.¹

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.² 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.”³ 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.”⁴ As such, SEP is not entitled to become a party merely by giving notice of its intention to do so.⁵

SEP also fails to demonstrate its entitlement to intervene in this proceeding. The Commission’s regulations limit party intervention in Article VII proceedings to instances where

¹ PSL § 121-a(3).

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

³ 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”) at 2.

⁴ *Ibid.*

⁵ *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.

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.”⁶ 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.”⁷ SEP’s Party Interest Statement simply claims that SEP works “on alternatives to gas expansion...renewable development, and alternatives to fossils fuels.” The Party Interest Statement fails to specify how SEP would contribute materially to the development of the factual record in this proceeding.

Additionally, SEP would not be prejudiced by being denied party status. 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.”⁸ 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 comments.”⁹ Thus, SEP is able to sufficiently participate in this proceeding through the submission of comments. In fact, on May 28, 2019, Lee Ziesche of SEP submitted comments to the Commission Secretary in this proceeding that have been posted to the DMM website.

Furthermore, as the Commission explained in the VGS Appeal Order, the appropriate time for SEP to seek party status in a PSL Section 121-a(3) proceeding would be when and if it

⁶ 16 NYCRR §4.3(c)(1).

⁷ VGS Ruling at 3.

⁸ VGS Ruling at 3.

⁹ VGS Appeal Order at 4.

seeks rehearing following a determination by the Commission to grant National Grid an Article VII Certificate in this case;¹⁰ to do so at this stage in the proceeding is premature.

IV. CONCLUSION

Based upon all of the foregoing, SEP has 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 SEP's Party Request be denied.

Respectfully submitted,

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¹⁰ VGS Appeal Order at 7.