

December 27, 2001

William V. Slade
New York Power Authority
Environmental Division
123 Main Street
White Plains, New York 10601
Fax (914) 287-3294

Re: New York Power Authority In-City Generation Project

Dear Mr. Slade:

Please accept these comments on behalf of New York Lawyers for the Public Interest (NYLPI) concerning the draft environmental impact statement (DEIS) for the New York Power Authority (NYPA) In-City Generation Project for the siting, construction and operation of ten 47 MW electric generating turbines in New York City. NYLPI, along with our co-counsel, represented UPROSE, El Puente de Williamsburg, Neighbors Against Garbage, Stop the Barge, Williamsburg Watch, 426 East 149th Street Housing Development Fund Corporation, The Point Community Development Corporation, We Stay/Nos Quedamos Committee, Curtis Seyfried, and the New York City Environmental Justice Alliance in the litigation challenging the turbines. As you know, the Appellate Division of the Second Department found NYPA to be in violation of the State Environmental Quality Review Act (SEQRA) and ordered that an EIS be prepared to study the potential health impacts associated with the turbines (Decision attached).

We are extremely troubled by both the public participation process for attaining public comment as well as the substance of the DEIS. In light of the following comments, we urge NYPA to prepare a new DEIS that takes into account a full analysis of potential harm associated with fine particulate matter (PM 2.5) emissions and a proper alternatives analysis, conduct further SEQRA hearings, and outline mitigation measures that will benefit the local communities effected by the plants.

Public Process

Just as NYPA did last December with its initial environmental assessment, NYPA has once again limited the process for public participation and comment. The Second Department, in its July 23, 2001 ruling, gave NYPA six months in which to prepare an EIS before the stay of the injunction on operation is lifted. As part of that process, under SEQRA regulations, NYPA was required to provide for sufficient notice of and comment on the DEIS. Further, reviewing the criteria contained in the SEQRA regulations, there is no question that a public hearing was required. See 6 N.Y.C.R.R. §617(a).

On August 9, 2001, less than three weeks after the court's decision, we requested that NYPA undertake a public "scoping" process to determine, with public input, the parameters and methodologies for preparing the EIS. That request was ignored. After the Court of Appeals refused to disturb the Appellate Division's decision, we renewed that request on November 26, 2001. This time the request was refused on December 3, 2001, although the sole reason that NYPA gave was that it was now too late because they had already prepared a DEIS. (See attached letters.) This is convenient circular reasoning purposefully designed to cut out meaningful public participation.

On November 28, 2001, NYPA issued the DEIS to the public. Last year when NYPA and DEC issued the notice for hearings on the permits and the Negative Declaration the day before Thanksgiving and scheduled the hearings for December 14th, we thought it could not get much worse. But, NYPA has topped itself in deliberate mean-spiritedness. NYPA scheduled this hearing for December 19th, less than one week from Christmas, with the deadline for written comments set for New Years' Eve!

There is no reason why NYPA could not have held the hearings after the holidays. In fact, the SEQRA Handbook specifically encourages the lead agency to extend the comment period in cases where there is substantial public interest. According to the SEQRA Handbook, "The minimum period [for public review of the DEIS] is thirty days, beginning from the notice of Completion. If the document is lengthy or there is a delay in its distribution or there is substantial public interest, the lead agency should expand the review time. The time allowed for draft EIS review may be considerably longer than the minimum, depending on whether public hearings are held, how long they last and whether the lead agency desires to extend the comment period." Handbook at 71.

NYPA has stated through its press blitz that the court ordered that this process be completed before January 31, 2002. That is a simply a lie. When the court found that NYPA had violated SEQRA, it ordered NYPA to stop operating. The court then stayed the order to allow the six months for NYPA to comply. First, there was nothing preventing NYPA from starting this process earlier through the scoping process discussed above. NYPA's unsuccessful attempt at an appeal did not delay NYPA's obligation to comply with the law. Second, the court further stated NYPA could request an extension of the stay from the Supreme Court if it so chose. Decision at 2. Finally, NYPA can extend the comment period to provide adequate opportunity for public input simply by not operating until the process is complete. Temporarily refraining from operation would

not have been difficult if NYPA had not misled the public about the purpose of rushing the siting process in the first instance. NYPA maintained that these plants were temporary and were to be operated in the summer as “peakers.” We now know that these plants are not temporary nor are they peakers. In fact, they are operating at this very moment in a season where there is plenty of other supply to meet demand. NYPA’s new pronouncement regarding the turbines’ displacement effect is extremely problematic. See Carrion letter. If the turbines are truly needed because of a shortage of power supply as NYPA has claimed, then all available power would be needed during peak times and there would be no way that the turbines could displace dirty power. Now, it is clear that the turbines are used year-round regardless of need. However, state-sponsored displacement actions should be considered as part of the state energy planning process rather than on an ad-hoc basis to justify already built power plants.

NYPA’s actions with respect to the siting of these turbines demonstrate nothing short of contempt for the public, the law and the court. A further and rather stark example of this contemptuous attitude is the way NYPA kept the settlement with Silvercup Studios a secret until after the public hearing. That way, NYPA could avoid the wrath of the communities ignored by NYPA and consequently negative press.

A press release dated December 19th, but not released to the public until a few days later, announced that NYPA made a deal with Silvercup Studios and the City of New York to remove the Queens turbines by September 25, 2004. While NYPA engaged in active negotiations with Silvercup Studios, it refused to negotiate with community groups in Brooklyn or the South Bronx, other communities faced with negative repercussions as a result of the turbines.

It is logical to conclude that if the Queens turbines are shut down, there will be more pressure on the other turbines to remain indefinitely. According to NYPA’s press release, “The agreement, reached after months of negotiations, achieves major energy, economic development and environmental goals established by Gov. George E. Pataki and ends a lawsuit that had sought to block construction and operation of the small, clean generators on Vernon Boulevard along the East River.” What are these so-called environmental goals established by the Governor that would allow removing the turbines next to the Silvercup Studio yet allow four turbines to remain in the South Bronx? In fact, what the agreement reveals is that both NYPA and the City of New York are placing a higher priority on so-called economic development in Queens over health and the environment throughout the City.

Finally, to unnecessarily hasten the DEIS review process ordered by the court, NYPA scheduled only one hearing on the DEIS. In response to complaints made by the residents and borough presidents of the Bronx and Staten Island about forcing communities which house these turbines to travel to one hearing place in Brooklyn, the initial response from NYPA, through its community liaison Luis Rodriguez, was that the hearing could only be held in Brooklyn because the lawsuit was filed in Brooklyn. Where the lawsuit was filed has nothing to do with the appropriate place for a DEIS hearing. NYPA eventually agreed to have meetings, not formal hearings, in the Bronx

and Staten Island. Rather than giving proper notice for public hearings in these boroughs, which would have resulted in the hearings being held in January, NYPA remained undeterred in its mission to take advantage of the holidays to rush through the public process.

PM 2.5

Turning to the substance of the DEIS, NYPA determined that there will be no significant impact on the community or the environment. There is no dispute that the turbines will add new air pollution emissions to already polluted neighborhoods. The EIS was supposed to be a comprehensive study of the environmental and health impacts of the increased air pollution. The draft, only 28 pages long, demonstrates that NYPA merely provided “lip service” to its legal obligation.

NYPA has not done a health assessment of the neighborhoods. There is no analysis of the health impacts of PM 2.5 on the people living and working near the plants. NYPA did not even consider the fact that the asthma hospitalization rates in these areas are among the highest in the U.S. (up to nine times the national average). NYPA concluded that there will be only a “slight” increase in PM 2.5 and therefore, there will be no impact. However, NYPA neglected the fact that given the already high levels of PM 2.5 in the neighborhoods surrounding the turbines, and in New York City generally, even a small increase in PM 2.5 could have a significant adverse impact on health.

The Appellate Division found that “Particulate matter is a nonthreshold pollutant, which means that there is some possibility of an adverse health impact from particulate matter at any concentration.... The health effects associated with PM 2.5 emissions include: premature mortality and increased hospital admissions and emergency room visits, primarily in the elderly and individuals with cardiopulmonary disease; increased respiratory symptoms and disease in children and individuals with cardiopulmonary disease such as asthma; decreased lung function, particularly in children and individuals with asthma; and alterations in lung tissue structure and in respiratory tract defense mechanisms.” Decision at 4. The Court went on to say, “In light of the undisputed potential adverse health effects that can result from PM 2.5 emissions, we conclude that NYPA failed to take the requisite hard look at this area of environmental concern... The analysis undertaken by NYPA... is not an adequate substitute for addressing the health impacts of PM 2.5 emissions.” Id.

A health risk assessment must be prepared to comply with SEQRA and the Court’s order. According to Dr. Patrick L. Kinney, an Associate Professor in the Division of Environmental Health Sciences at Columbia School of Public Health, who reviewed the DEIS with us, the projected emissions of PM 2.5 will likely result in some significant adverse health effects when added to a background of already elevated PM 2.5 levels. This is due in part to the large population that will be exposed to these levels, and also to the high numbers of vulnerable persons in the population (i.e., children, the elderly, asthmatics). Furthermore, overwhelming scientific research has demonstrated that even small increases in particulate levels will result in increased premature mortality.

Therefore, the effects of long-term PM 2.5 concentrations on mortality risk should also be evaluated. See 6 N.Y.C.R.R. §617.9 (b)(5)(iii)(a).

In the DEIS, NYPA devotes considerable text to a discussion of uncertainties regarding the relative toxicity of various particles types. In a nutshell, NYPA claims that fine particles from natural gas combustion are not harmful. There is absolutely no scientific basis upon which to assume that these particles are any less toxic than other PM 2.5 particles. To the contrary, fine particles generated from fossil fuel combustion, including condensed organics and nitrates from natural gas, are a significant public health concern. Further, NYPA has underestimated the emissions from the plants by ignoring secondary nitrate formation, and secondary sulfate formation due to the high ammonia slip. The secondary formation will have significant regional impacts as well as local impacts due to stack tip downwash, occurring at even moderate wind speeds and having significant repercussions for short and long-term health effects. Id. Other deficiencies exist with respect to the emissions estimates such as the use of inappropriate emission factors in the calculations.

With respect to the modeling for predicting air quality impacts, the ISC model used by NYPA does not consider the effects of complex building downwash, particularly where there is a nearby presence of multiple buildings. It also does not deal with terrain differences, which are particularly prevalent at the Williamsburg and Sunset Park sites, and somewhat in the Bronx. In addition, a 1-degree angle increment should be used in the receptor grid instead of 10 degrees, to avoid missing points of maximum impact.

Finally, NYPA's attempt at a PM 2.5 cumulative impact analysis is inadequate because it fails to examine its impact cumulatively with other existing sources of PM 2.5 and with other pending power plant projects. Some of the pending power plant projects have already received permits, such as the barge project approved for Williamsburg over substantial objection from the community, the Consolidated Edison East River expansion across the river and upwind from Williamsburg, the reactivation of the "permanently" shut Consolidated Edison Hudson Avenue Boiler 100, one of the dirtiest in the City, and the multiple Astoria power projects across the river from the South Bronx where four turbines have been located. Not a single one of these facilities is included in the background data already indicating high PM 2.5 levels. Id.

Alternatives Analysis

SEQRA requires the applicant to conduct an alternatives analysis as part of the EIS. See 6 N.Y.C.R.R. §617.9 (b)(5)(v). See also E.C.L. § 8-0109(2) and 6 N.Y.C.R.R. §617.9 (b)(5)(iii)(e) concerning additional requirements for electric generating projects. This analysis is supposed to identify and evaluate all reasonable alternatives to the proposed project such that it will result in the choice of the alternative that will provide the most benefit with the least impacts. NYPA clearly did not take this obligation seriously. Instead of fully analyzing alternative options to building and operating ten turbines and analyzing potential alternative locations for these turbines, NYPA created a document to justify what it had already done. Starting with a list of potential sites and

brief reasons why they are inadequate (a list which was created contemporaneously with the litigation), NYPA added a few sites and summarily dismissed these too as real possibilities.

NYPA's list of criteria for judging the alternatives has fostered a slanted and inaccurate picture of alternatives appropriate for achieving the proposed project's goals. First and foremost, we continue to question the need for some or all the turbines to fill the so-called power gap last summer and for future summers. Just because NYPA says it over and over again certainly does not make it true. There has been no valid assessment of the need for the project in the first instance. The conservation-only alternative was not properly considered and alternative sources of energy were completely ignored. The notion, pervasive throughout the DEIS, that natural gas is a pollution free fuel avoids the fact that it creates pollution, is a scarce resource and has significant price volatility. Instead of honestly evaluating all the environmental, health and economic impacts associated with the various alternatives, the June 1, 2001 deadline as a baseline by which the project must be completed was considered paramount. A number of alternative sites were eliminated from consideration simply because they would not be available by June 1, 2001. But if one hasn't properly assessed the need for the turbines or looked at alternative sources of power through conservation and renewable sources, citing the artificial criterion of the June 1, 2001 deadline as virtually the only criterion used to eliminate certain alternatives as options is improper and violates SEQRA. The June 1st date was simply a self-imposed deadline that should not be included in the criteria by which to compare alternatives.

Further, the section discussing the conservation-only alternative states that the conservation programs are insufficient as they would not be able to meet the summer 2001 demands. DEIS at 3-2. However, in reaching this conclusion, NYPA did not take into account programs that have or will be developed since summer 2001, power plants in the process of being permitted, and the demand projections for 2002. The court did not order the DEIS as an avenue for NYPA to justify its past decisions but rather as a means of fully analyzing the potential significant impacts and reducing those impacts as much as possible to protect public health and the environment.

Finally, the alternatives analysis is inadequate in that NYPA only compared sites within a borough. So, for example, its conclusion that 34-24 Vernon Boulevard and 34-50 Vernon Boulevard are closer to a housing project and parks than the chosen site reveals little. See DEIS Exhibit 3. Is it possible that they are better sites than those chosen for Brooklyn or the Bronx? Why is it a given that the Bronx will house 4 turbines, Brooklyn 3 turbines, Staten Island 1 turbine, Queens 1 turbine and Long Island 1 turbine? Putting the title of EIS on an obviously inadequate document will not comply with SEQRA or the Court's order, nor will it end this controversy. NYPA's assumption in the DEIS at 3-5, 3-6 that "given the regional nature of PM 2.5 concentrations, selection of any of the alternative sites ... would not have had any significant effect on PM 2.5 concentrations" is completely baseless.

Conclusion

Considering all of the above problems with the DEIS, we urge NYPA to prepare a new DEIS, one that includes a comprehensive analysis of PM 2.5 levels that will result from the operation of the turbines (both the emissions and the background levels), a full health study of the impacts of the PM 2.5 emissions, and a proper alternatives analysis. We request that NYPA conduct hearings on the new DEIS and provide for appropriate public input and participation. Lastly, we ask that NYPA focus its mitigation measures to alleviate localized impacts in particular.

Sincerely,

E. Gail Suchman, Esq.
Senior Environmental Counsel

Gail E. Horwitz, Esq.
Staff Attorney

Attachments