

May 4, 2022

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Letter in Support of Brownsville Green Justice, the Ocean Hill-Brownsville Coalition of Young Professionals, Mi Casa Resiste and the Indigenous Kinship Collective Title VI Complaint, EPA File No: 02RNO-21-R2, 03RNO-21-R2, 04RNO-21-R2, and Request for Immediate Action.

Dear Ms. Dorka, Ms. Liesner, Mr. Pantziris, and Ms. Goodwill:

We, the undersigned organizations in coordination with, NY Renews, and New York Lawyers for the Public Interest (NYLPI) wish to express our support for the [Title VI Complaint](#) (“the Complaint”) submitted to the Environmental Protection Agency (EPA) and the Department of Transportation (DOT) by Brownsville Green Justice (BGJ) the Ocean Hill-Brownsville Coalition of Young Professionals, Mi Casa Resiste and the Indigenous Kinship Collective on August 30, 2021, regarding disproportionate impacts to a recognized disadvantaged community resulting from approval and operation of National Grid’s Metropolitan Reliability Infrastructure Project, commonly referred to as the “North Brooklyn Pipeline” or “MRI Pipeline.”

The New York State Department of Environmental Conservation (“DEC”) and Department of Public Safety (“DPS”) violated Title VI of the Civil Rights Act of 1964 by bypassing state laws and regulations including the New York State Environmental Quality Review Act (“SEQRA”), DEC Commissioner Policy- 29, *Environmental Justice and Permitting* (“CP-29”), and the Climate Leadership and Community Protection Act (CLCPA) in allowing the construction and operation of National Grid’s North Brooklyn Pipeline without any

environmental or CLCPA analysis of the impact on the communities of color surrounding the pipeline.

For the following reasons, we request the EPA and DOT take corrective action to address the DEC's and DPS' violations to prevent the inequitable negative effects of this project.

On March 2, 2021, DEC issued a "negative declaration," finding no significant environmental impact for an Article 19 Air State Facility permit application related to a limited part of Phase 5 of the North Brooklyn Pipeline. In issuing this finding, DEC impermissibly segmented its review and failed to analyze the "whole action," including Phases 1-4 of the same pipeline project. Further, in doing so, DEC failed to consider the impact of the pipeline on disadvantaged, communities of color, even though it is routed through such communities.

The North Brooklyn Pipeline is a single large infrastructure project that includes a 7-mile, 30-inch gas transmission pipeline, expansion of the liquified natural gas (LNG) processing capacity at the Greenpoint Energy Center through the addition of two new LNG vaporizers, and a proposed LNG trucking operation. National Grid intends for the North Brooklyn Pipeline to bring millions of gallons of fracked gas each day to the Greenpoint facility by replacing a smaller, more limited pipeline currently attached to the Greenpoint facility. Increasing potential gas flow by more than 1.8 million cubic feet per hour, the pipeline would allow National Grid to deliver gas to a maximum of 18,979 residential customers.¹

As outlined in the Complaint, the pipeline adversely impacts the health, safety, and economic circumstances of the predominantly Black and Latinx residents of Brownsville, Ocean Hill, Bushwick, and East Williamsburg by: 1) imposing serious health risks to the surrounding community because of emissions of methane and other toxic substances that will affect the respiratory function of the surrounding community and create other health hazards; 2) exposing the communities to a risk of explosion, exacerbated by the failure to perform basic safety testing; and 3) imposing a disproportionate energy burden on the harmed communities.

The North Brooklyn Pipeline poses serious health risks to the surrounding community including exposure to methane emissions and other toxic chemicals. Additionally, the pipeline carries a risk of explosion, exacerbated by the National Grid's documented failure to perform basic safety testing for other pieces of infrastructure under their jurisdiction. Moreover, the rate hike that was imposed to fund the pipeline represents a disproportionate impact on a community already suffering from high energy burden.

As noted in the Complaint, the North Brooklyn Pipeline is integrally linked to the expansion of LNG vaporizers associated with the Greenpoint Energy Center and should be viewed and analyzed as a whole project rather than segments. However, despite the

¹ See, e.g., NYSDPS, Matter Master: 19-01092/19-G-0309, Dkt. No 131, Exhibit 735, National Grid Response to Request No. DPS-1091 (April 17, 2020), <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-G-0309&submit=Search>. ("Once MRI is in service, the new flow path will allow gas to flow south from Greenpoint into the heart of KEDNY's system without reducing the flow from Con Edison, thereby enhancing the effectiveness of the additional LNG vaporization output or CNG injections in supporting KEDNY customer additions.").

interconnected nature of these projects and their direct impact on communities of color, DEC failed to review the environmental impact of the pipeline when conducting an environmental review of National Grid's application to add the two LNG vaporizers to their Greenpoint facility, in which it found no significant environmental impact.

SEQRA prohibits the segmentation of related actions into discrete parts and requires the DEC to consider the "entire set of activities or steps" including "other simultaneous or subsequent actions which are . . . included in any long-range plan of which the action under consideration is a part."² And, according to DEC, "when actions consist of several steps or sets of activities, the entire set must be considered the action, even if several separate agencies are involved. Segmentation of an action into components for individual review is contrary to the intent of SEQR[A]."³

DEC violated SEQRA by failing to evaluate the pipeline with the LNG expansion contemporaneously before issuing its negative declaration. It is a fundamental principle of SEQRA that interconnected projects must be reviewed together, and by failing to do so DEC has not just violated SEQRA, but also Title VI by disregarding the rights of and disproportionately impacting the health and safety of the Black and Latinx residents that live along the pipeline route. For the DEC to comply with Title VI, as well as state law, it must rescind the negative declaration and undertake a full environmental assessment of the pipeline with National Grid's LNG facility in Greenpoint before making any decision about issuing an air permit to National Grid.

CP-29, which was issued and revised in 2003, establishes the intent of DEC to promote and incorporate environmental justice as part of its programs, policies, and regulations and other activities including, but not limited to, the permit review process, as well as the agency's application of SEQRA. Specifically, the policy amended DEC's previous permitting process by: (1) identifying potential environmental justice areas; (2) providing information on environmental justice to applicants with proposed projects in those communities; (3) enhancing public participation requirements for proposed projects in those communities; (4) establishing requirements for projects in potential environmental justice areas with the potential for at least one significant adverse environmental impact; and (5) providing alternative dispute resolution opportunities to allow communities and project sponsors to resolve issues of concern to the community.

The Complaint includes statements from multiple residents of the impacted area who assert they were never informed by National Grid or DEC about construction and operation of the pipeline, nor the associated risks. As such, DEC failed to comply with their own policy that was promulgated to increase participation of affected residents and provide them an opportunity to propose project alternatives and resolve conflicts directly with National Grid.

The CLCPA, which went into effect on January 1, 2020, includes economy-wide requirements to reduce greenhouse gas (GHG) emissions in New York State by 40% below 1990

² N.Y. ENV'T CONSERV. LAW § 8-0101.

³ <https://www.dec.ny.gov/permits/6208.html>

levels by 2030, and 85% below 1990 levels by 2050. The climate law also requires all electricity generation to result in zero emissions by 2040. Additionally, the CLCPA acknowledges the heightened impact of climate change on disadvantaged communities and mandates the prioritization of the safety and health of these communities. Disadvantaged communities, or DACs, are those that bear the burdens of negative public health effects, environmental pollution, impacts of climate change, possess certain socioeconomic criteria, or comprise high concentrations of low- and moderate-income households. The CLCPA required the Climate Justice Working Group to establish criteria to identify disadvantaged communities statewide, and a draft of that criteria was released on March 9, 2022.⁴ The communities of Brownsville, Ocean Hill, Bushwick, and East Williamsburg along the pipeline route are interim “disadvantaged communities” within the meaning of the CLCPA.⁵ Therefore, when issuing permits, the CLCPA requires DEC to ensure that approved actions “do not result in a net increase in co-pollutants emissions or otherwise disproportionately burden disadvantaged communities.”⁶

DEC’s approval of National Grid’s air permit for pipeline would violate the CLCPA because it: (1) results in a net increase in emissions and the creation of new gas infrastructure and (2) disproportionately burdens disadvantaged communities.⁷ However, the negative declaration does not even acknowledge these harmful, disproportionate impacts borne by the predominantly minority community living along the pipeline route. Further, DEC’s failure to require National Grid to provide a CLCPA analysis and Full Environmental Assessment of the pipeline and LNG vaporizer together in its January 24, 2022, letter repeats and compounds their Title VI violations.⁸

These violations are made worse when considered in conjunction with DEC’s actions in 2018 regarding the Millennial pipeline to supply a power plant in the town of Wawayanda, which is 92% white. DEC denied a permit for a new 7.8-mile section of the pipeline on the ground that the federal review failed to analyze the environmental impact of both the pipeline and the power plant together. DEC even objected to the Federal Energy Regulatory Commission (FERC)’s approval and environmental review of the pipeline without the power station for “fail[ing] to consider or quantify the downstream greenhouse gas emissions from the combustion of the natural gas transported by the project.”⁹ DEC denied permits to the Wawayanda pipeline but failed to make the same considerations with respect to the North Brooklyn Pipeline and the Greenpoint Energy Center. This kind of behavior is part of a troubling pattern of environmental

⁴ *Disadvantaged Communities Criteria*, DEP’T OF ENV’T L CONSERVATION, <https://climate.ny.gov/DAC-Criteria#comment>.

⁵ Disadvantaged Communities are in the process of being finalized. In the interim, New York State has issued a map of interim disadvantaged communities. <https://data.ny.gov/Energy-Environment/Interim-Disadvantaged-Communities-DAC-Map-2020/9tbh-ek86>

⁶ CLCPA §7(2).

⁷ CLCPA §7(3).

⁸ https://greenpointenergycenter.com/wp-content/uploads/2022/01/2022_01_24_RFAI4.pdf

⁹ James Nani, *DEC Denies Permits for CPV Power Plant Pipeline*, RECORD ONLINE (Aug. 31, 2017), <https://www.recordonline.com/news/20170831/dec-denies-permits-for-cpv-power-plant-pipeline>; Letter and attachment from Thomas Berkman, Deputy Commissioner and General Counsel of the Department of Environmental Conservation to Georgia Carter, Vice President and General Counsel of Millenium Pipeline Company, (Aug. 30, 2017) (attached as Exhibit A).

racism, enforcing laws to prevent environmental harms in white communities while ignoring the same environmental harms in communities of color.¹⁰

DEC recently denied two air permits based on the projects' fundamental incompatibility with achieving the GHG emissions reductions required by the CLCPA. First, in denying Astoria Gas Turbine Power's "Replacement Project" request for a Clean Air Act Title V air permit, the DEC found that the project was inconsistent with the attainment of GHG emission limits, because not only did it increase emissions, but also because the project created a new and long-term plan to utilize fossil fuels without creating any plan as to lower the dependence on fossil fuels. Similarly, the DEC denied Danskammer Energy, LLC's Clean Air Act Title V air permit request to replace its current facility with a new natural gas-fired combined-cycle power generation facility on mostly the same grounds.

In both denials, the DEC noted that the projects themselves would result in substantial direct and upstream GHG emissions due to the production, processing, transmission, and combustion of fossil fuels, and that this could not be mitigated by projected reductions that could occur at other GHG emission sources across the State. More importantly, DEC found that the projects would delay and frustrate the statutorily mandated transition away from the use of natural gas, as the construction of new fossil-fuel infrastructure is fundamentally inconsistent with the CLCPA's requirement for emission-free electricity generation by 2040. National Grid's North Brooklyn Pipeline project is similarly incompatible with achieving the greenhouse gas emissions reductions required by the CLCPA, and DEC should exercise greater consistency in the evaluation and subsequent denial of all projects that are inconsistent with New York's climate law. Furthermore, in January 2022—after the community groups filed the complaint that is the subject of the EPA and DOT's ongoing investigation—DEC repeated its Title VI violation by requesting that National Grid conduct an analysis of only the LNG facility under the CLCPA and ignored the interconnected North Brooklyn pipeline, which must be reviewed with the LNG facility under Title VI's anti-discrimination provisions and state law.

¹⁰See, e.g., Sydney Brown and James Jones, *Environmental Justice Must be done in Delavan-Grider*, BUFFALO NEWS (Sept. 17, 2020), https://buffalonews.com/opinion/another-voice-environmental-justice-must-be-done-in-delavan-grider/article_b27bf66c-f901-11ea-a1af-47bac005b439.html (describing concerns about DEC's creation of a formal community Tonawanda Coke Working Group to address remediation in the predominantly white city of Tonawanda, and failure to create a similar working group to address the remediation of American Axle, located in a predominantly African American section of Buffalo); Eliza Sherpa et al., UNCOVERING ENVIRONMENTAL INJUSTICE USING COMMUNITY-BASED PARTICIPATORY RESEARCH IN ALBANY, NY, 16-17 (2014), https://www.skidmore.edu/environmental_studies/capstone/projects/documents/8-SherpaShepherdVidal.pdf (describing community concerns over DEC's failure to assess risks and issuance of a Complete Application and failure to apply CP-29 to Global LLC oil shipments and boiler plant and related facilities in predominantly minority South Albany, which is already disproportionately overburdened environmental justice community); *Lawmaker Screams Environmental Racism After Hamptons Garbage Shipped To His Town*, CBS N.Y. (Jul. 28, 2014), <https://newyork.cbslocal.com/2014/07/28/lawmaker-screams-environmental-racism-after-hamptons-garbage-shipped-to-his-town/> (describing resident and legislators' complaints about DEC's approval to allow garbage from predominantly-white Hamptons to be held in predominantly-minority Brentwood); *N.Y. State Accused of Environmental Racism For Incinerator Site*, CHRISTIAN SCI. MONITOR (February 8, 1994), <https://www.csmonitor.com/1994/0208/08111.html> (describing DEC's failure to address and denial of the environmental hazards of a trash-burning incinerator in a predominantly Black neighborhood in Albany that burned approximately 350 tons of waste each day - sending arsenic, lead, mercury, and other pollutants into the air).

In sum, DEC violated not just SEQRA but their own policy by failing to perform an environmental impact statement for the North Brooklyn Pipeline and LNG facility, but it also bypassed the CLCPA in violation of Title VI. SEQRA, CP-29, and the CLCPA require that DEC consider the environmental impacts on disadvantaged and other environmental justice communities surrounding the unified project. Its failure to do so violated Title VI of the Civil Rights Act because the agency failed to enforce clearly established laws equally and designed specifically to protect the environmental well-being of the communities of color that live on top of and around the North Brooklyn Pipeline.

To comply with Title VI, and the accompanying state regulations, DEC must immediately rescind its negative declaration based on a short, summary assessment form and use a Full Environmental Assessment Form to determine whether the Greenpoint LNG expansion and pipeline *together* may result in significant environmental impacts. Moreover, DEC must prepare an Environmental Impact Statement (EIS) that fully considers the health and environmental impacts of the full project, and “a reasonable range of alternatives” to the proposed project, including the benefits and avoided impacts of the no-action alternative and alternative pipeline routes. Further, if DEC applies the CLCPA in a non-discriminatory manner as required under Title VI, it must both deny the permit and cease operation of the pipeline.

We respectfully request that EPA and DOT find that the DEC and DPS violated Title VI by failing to comply with SEQRA, CP-29, and CLCPA. Further, we request that EPA and DOT take immediate affirmative steps to address these violations and ensure that DEC and DPS comply with all applicable regulations to prevent disparate impacts resulting from the project.

Sincerely,

NY Renews and New York Lawyers for the Public Interest



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