



February 22, 2023

Karen Gaidasz, Project Manager
Bureau of Energy Project Management
NYSDEC - Division of Environmental Permits
625 Broadway, 4th Floor, Albany, NY 12233-1750
Phone: (518) 402-9167, Fax: (518) 402-9168

RE: Written Comments Submitted by New York Lawyers for the Public Interest Requesting Denial of Pending Air State Facility Permit for the Iroquois Enhancement by Compression Project, DEC Application #3-1326-00211/00001

Dear Ms. Gaidasz:

My name is Anthony Karefa Rogers-Wright and I currently serve as the Director of Environmental Justice for New York Lawyers for the Public Interest (NYLPI), a 45-year-old civil rights organization based in New York City. On behalf of NYLPI's Environmental Justice Program, I urge you to deny the Air State Facility (ASF) permit for the Dover Compression Station, a component of the larger Iroquois Enhancement by Compression Project (ExC Project), proposed by Iroquois Gas Transmission System, LP (Iroquois).

The fact that the climate crisis is intensifying is irrefutable. Last year global emissions reached an all-time annual high of approximately 36.6bn tons of carbon dioxide, including a 1.5 percent increase in the United States from 2021.¹ That said, while we know that toxic emissions and climate change impact all of us, they don't impact all of us equally. In its most recent strategic plan, the United States Department of Justice (DOJ) indicates, "In recent years, the instability created by natural disasters and extreme weather events associated with climate change has emerged as a national security threat. Low-income and underserved communities, as well as communities of color, are disproportionately impacted by these events."² For these reasons and more, New York passed the Climate Leadership and Community Protection Act (CLCPA or the "climate law"), which specifically declares, "Climate change especially heightens the vulnerability of disadvantaged communities, which bear environmental and socioeconomic burdens as well as legacies of racial and ethnic discrimination. Actions undertaken by New York state to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities..."³

In a Combined Notice for the ExC Project dated December 28, 2022, the New York State Department of Environmental Conservation (NYSDEC) noted, "Prior to issuing any final permits for the [ExC Project], NYSDEC would need to ensure that it can meet the requirements of both Section 7(2) and Section 7(3) of

¹ <https://www.carbonbrief.org/analysis-global-co2-emissions-from-fossil-fuels-hit-record-high-in-2022/>

² <https://www.justice.gov/doi/doi-strategic-plan/objective-35-advance-environmental-justice-and-tackle-climate-crisis>

³ <https://legislation.nysenate.gov/pdf/bills/2019/S6599>

the Climate [Leadership and Community Protection] Act. NYSDEC has yet to make either determination.”¹ As this written testimony will demonstrate, since NYSDEC cannot demonstrate the ExC Project’s compliance with the climate law in a way that is legally defensible, the Air State Facility permit must be denied.

Iroquois Has Not Adequately Demonstrated Compliance with CLCPA Section 7(2)

Section 7(2) of the climate law enjoins NYSDEC to determine if, “issuance of any permit would be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits.”⁴ Furthermore, Section 7(2) stipulates that if NYSDEC determine that a proposed project would be inconsistent or interfere with emissions reduction mandates, it must: 1) provide a detailed statement of justification for the project; and 2) identify mitigation alternatives or mitigation measures as a condition of granting a permit.

On March 5, 2021, NYSDEC sent a request to Iroquois for more information to determine if the ExC Project would comply with Section 7(2) of the climate law. Specifically, NYSDEC indicated, “Regardless of any de minimis arguments (e.g., the project is less than x% of total NYS emissions), projects that contribute to the continued use of fossil fuels must be reviewed for alignment with the CLCPA emission limits because fossil fuels are the main source of all GHG emissions in New York State.”⁵ Iroquois’ response to this request dated October 13, 2021⁶ contains both inaccurate and inadequate data that does not allow NYSDEC to make an informed decision about the proposed project’s consistency with Section 7(2). For instance, Iroquois inaccurately declares, “DEC’s DAR Technical Guidance Memo, titled Climate Leadership and Community Protection Act (CLCPA) and Permit Applications, dated September 1, 2020, provides that CLCPA consistency review is required for applications for new permits and significant permit modifications. Accordingly, since the Applications seek neither new permits nor significant modifications to Iroquois’ permits, pursuant to DEC’s guidance, a CLCPA consistency review is not required.”

Additionally, the technical memo that Iroquois cites is antiquated and obsolete as NYSDEC released a policy memo, Division of Air Resources 21 (DAR 21), “The Climate Leadership and Community Protection Act and Air Permit Applications” on December 14, 2022. DAR 21, “outlines the requirements for analyses developed pursuant to Section 7(2) of the [CLCPA] in support of air pollution control permit applications.” Therein, the policy memo stipulates that NYSDEC can require an applicant to submit a CLCPA analysis *regardless of the applicability* of the permit type to ensure requirements of Section 7(2) are satisfied.⁷

This notwithstanding, Iroquois refers to an “End-Use Greenhouse Gas Analysis of the Enhancement by Compression Project” (End Use Report) prepared by the consultant group M.J. Bradley and Associates (MJB&A) to demonstrate the ExC Project’s consistency with Section 7(2). Unfortunately for Iroquois, the arbitrary nature of the End Use Report, coupled with its inadequate and incomplete information does not provide NYSDEC with enough requisite information to make an informed decision on whether to grant this permit. First, the End Use Report concludes that the ExC Project’s life cycle greenhouse gas (GHG) emissions would be less than GHG emissions from “viable alternative energy sources.” This conclusion is based largely on arbitrary assumptions associated with “projected demand for natural

⁴ *ibid*

⁵ https://www.iroquois.com/site/assets/files/1200/2021_10_13_iroquois_response_to_nydec_rfai_no1_questions_1-3_1.pdf

⁶ https://www.iroquois.com/site/assets/files/1200/2021_10_13_iroquois_response_to_nydec_rfai_no1_questions_1-3_1.pdf

⁷ https://www.dec.ny.gov/docs/air_pdf/dar21.pdf

gas,” and that the only forms of viable energy sources, as analyzed, are electric heat pumps and heating oil. However, these assumptions do not account for major legislative initiatives including, but not limited to, New York City’s Local Law 154 of 2021, which effectively bans natural gas hookups for the construction of new buildings after 2027, and New York City’s Local Law 97, which will require most buildings to meet energy efficiency and emissions reduction requirements by 2030. Furthermore, the End Use Report makes no mention of the recently passed Inflation Reduction Act, which includes billions of dollars in direct payments, tax incentives, and grant programs that are projected to assist with a massive buildings decarbonization and efficiency effort. Finally, the End Use Report makes no mention of new, cleaner energy sources slated to serve New York City and Long Island in the next five to 15 years including Clean Path New York and the Champlain Hudson Power Express projects.

Pursuant to DAR 21, “For DAR to determine whether a given project is consistent with the requirements of the CLCPA, the applicant must provide an objective analysis of the GHG and carbon dioxide equivalent (CO₂e) emissions from the project, that includes any upstream or downstream emissions known to be attributable to the project, including upstream emissions attributed to production, transmission, and use of fossil fuels or imported electricity.” As demonstrated above, Iroquois’ End Use Report analysis is neither objective nor adequate to provide NYSDEC with enough requisite information to determine that the ExC Project would comply with Section 7(2) in a way that is legally defensible.

Furthermore, projected emissions of the ExC Project are based on analysis included as part of Iroquois’ response to NYSDEC’s Request for Additional Information dated March 5, 2021.⁸ Therein, Iroquois estimates that the total potential emissions of carbon dioxide equivalent for the ExC Project will be approximately 93,157 tons per year. The Environmental Assessment, as well as subsequent environmental review documents, for the ExC Project concludes that this amount of emissions would not cause or contribute to an exceedance of the National Ambient Air Quality Standards (“NAAQS”), which are designed to be protective of human health and welfare. Yet, in a letter from the United States Environmental Protection Agency (EPA) to the Federal Energy Regulatory Commission, the federal lead agency for the ExC Project, dated December 20, 2021 (EPA 2021)⁹, the agency determined, “Based on our assessment of the environmental analysis, EPA finds that the final EIS [FEIS] inadequately discloses the estimated climate damages of greenhouse gas (GHG) emissions from the proposed action and is insufficient to meet the purposes of NEPA.” EPA 2021 further concluded, “As part of its permit process, the New York State Department of Environmental Conservation required Iroquois to submit a lifecycle assessment for greenhouse gas emissions, which includes upstream emission estimates (Accession No. 20211015-5198). These estimates were excluded in the discussion of upstream emissions in the final EIS.”

As noted above, DAR 21 directs all project applicants to include upstream or downstream emissions known to be attributable to the project, including upstream emissions attributed to production, transmission, and use of fossil fuels or imported electricity as a condition of permit approval. Iroquois’ fails to do this as noted by EPA and, therefore, NYSDEC must deny the ASF permit for the ExC Project or risk noncompliance with its own policy. EPA recommended the FERC do the same in EPA 2021, “...EPA strongly recommends that the Commission postpone any decision on this proposed action and similar pending applications until the Commission has considered all input received...”

⁸ https://www.iroquois.com/site/assets/files/1200/2021_05_14_iroquois_response_to_nydec_rfai_no1_questions_4-6.pdf

⁹ https://elibrary.ferc.gov/eLibrary/docinfo?accession_number=20211220-5086

Another salient revelation of EPA 2021 that Iroquois failed to disclose is the amount of climate change-related damage that would be directly attributable to the ExC Project. According to EPA, the aggregate emissions attributable to the ExC Project would result in approximately \$3.78 Billion in climate damages. To put this into perspective, according to the New York State Energy Research and Development Authority (NYSERDA), New York must invest \$10 Billion per year for the next 30 years to adequately implement the climate law. The climate damage associated with the ExC Project would be more than one third of NYSEERDA's prescribed annual investment. Iroquois will certainly not commit to paying for climate damages it would generate with the ExC Project, so New Yorkers should not commit to granting them a permit to pollute with impunity.

NYSDEC Must Demonstrate Consistency in Its Decision-Making Process for the Climate Law to be Executed Efficaciously

It should be noted that NYSDEC denied an air permit for the Astoria Gas Turbine Power (NRG Astoria) permit nearly two years ago. NRG Astoria would have emitted approximately 90,766 tons of carbon dioxide per year. Based on this and other factors, NYSDEC concluded NRG Astoria would not have been consistent with Section 7(2) noting in its denial letter, "...this determination of inconsistency is based primarily on the fact that the Project would be a new source of a substantial amount of GHG emissions, including both direct and upstream GHG emissions, as well as the fact that the Project would constitute a new and long-term utilization of fossil fuels to produce electricity without a specific plan in place to comply with the requirements of the Climate Act."¹⁰

According to Iroquois, the ExC Project would result in more emissions per year than NRG Astoria at approximately 93,157 tons per year. Furthermore, based on the 20-year lifespan, it would be fair to conclude that, like NRG Astoria, the ExC Project would result in a long-term utilization of fossil fuels. While Section 7(2) grants NYSDEC the opportunity to provide justification for approving the ExC Project even if it cannot demonstrate consistency with the climate law, the agency would not be able to demonstrate consistency with previous decisions that denied a permit for a project that would have resulted in less emissions. And while it's true that DAR 21 stipulates, "each determination [of a permit approval or denial] will be based on the facts surrounding the project itself," the policy also lists a set of causes that would render a proposed action inconsistent with the climate law including, but not limited to:

- The project creates or enables a significant new source of GHG emissions;
- The project will be directly responsible for a significant increase in demand for a known source of GHG emissions;
- The project prevents or makes it more difficult or expensive for the State to reduce GHG emissions;
- The project facilitates the expanded or continued use of fossil fuels through new infrastructure development; and/or •
- The project interferes with the attainment of the zero-emissions electric generation sector by 2040 requirement.

As demonstrated above, the ExC Project is more consistent with these causes of inconsistency than it is with the climate law. And while the End Use Report analysis, "assumes improvement in upstream

¹⁰

https://www.dec.ny.gov/docs/administration_pdf/nrgastoriadecision10272021.pdf

methane emission rates (consistent with historical trends) throughout the study period and increasing amounts of low- and zero-carbon gas supplies (e.g., renewable natural gas, or RNG, and hydrogen) blended into the pipeline supply during the study period,” mention of these nascent and unproven technologies did not satisfy NYSDEC in its evaluation of NRG Astoria. In fact, NYSDEC cited the prospect of these technologies, in part, as a reason for denying NRG Astoria’s permit, “... the Applicant’s plan for compliance with the Climate Act’s emission-free by 2040 generation requirement is uncertain and speculative in nature. Astoria has not established the feasibility of either RNG or hydrogen as a compliance pathway, from either a supply or GHG emission perspective.”¹¹ Iroquois, like NRG Astoria, does not establish the feasibility of RNG or hydrogen in its End Use Report. Therefore, NYSDEC must demonstrate consistency and deny the ExC Project’s ASF permit.

Iroquois Has Not Adequately Demonstrated Compliance with CLCPA Section 7(3)

Section 7(3) of the climate law directs that NYSDEC, when considering the issuance of a permit, “shall not disproportionately burden disadvantaged communities.”¹² NYSDEC in a letter to Iroquois dated September 15, 2022, requested information on the ExC Project’s potential impacts on Disadvantaged Communities. In response, Iroquois contracted Mott MacDonald to prepare a report entitled, *Disadvantaged Communities (DAC) Evaluation: Iroquois Gas Transmission System, LP, Enhancement by Compression (ExC) Project* (DAC Report). Therein, the DAC Report indicates that the proposed Dover compression station would be situated 0.13 mile from the nearest Draft DAC, Census Tract 36027040003 (Wingdale DAC).¹³ The DAC Report concluded that the ExC Project would not subject the Wingdale DAC to disproportionate impacts because, “The NEPA review determined that Project emissions, when considered with existing and background concentrations, would not cause or contribute to an exceedance of the [NAAQS], which are designed to be protective of human health and welfare.” However, as noted above, EPA admonished the FERC that Iroquois failed to adequately disclose the estimated climate damages associated with GHG emissions associated with the ExC Project. Additionally, EPA 2021 points to the fact that the FEIS for the ExC Project itself acknowledges that, “NAAQS attainment alone may not assure there is no localized harm to populations with environmental justice concerns due to project emissions of volatile organic compounds (VOC), hazardous air pollutants (HAP), as well as issues such as the presence of non-project related pollution sources, local health risk factors, disease prevalence, and access (or lack thereof) to adequate health care.”

Moreover, in EPA 2021, the agency states, “...the FEIS should have acknowledged and addressed the fact that the impacts of climate change are not equally distributed, and already overburdened communities with environmental justice concerns are disproportionately affected by GHG emissions. This points to the need to address climate justice by reducing the project’s GHG emissions wherever practicable, and considering whether deploying all practicable reductions and mitigation can be sufficient to address climate justice concerns.” EPA 2021 further indicates, “Further, climate change in the aggregate — beyond the proposed project’s GHGs — also disproportionately impacts these overburdened communities and this should be explicitly taken account in identifying and addressing environmental justice concerns as well.” Rather than considering and adhering to EPA 2021’s recommendations, the DAC Report doubles down on the same flawed syllogism as the final EIS for the ExC Project, providing the residents of Dover, nor the NYSDEC with the information necessary to adequately estimate the project’s potential impacts on DACs. Yet, in a myopic effort to demonstrate that the ExC Project would be innocuous, the DAC Report indicates, “...all Project components are proposed to be sited within the

¹¹ https://www.dec.ny.gov/docs/administration_pdf/nrgastoriadecision10272021.pdf

¹² *ibid*

¹³ https://www.iroquois.com/site/assets/files/1200/2022_11_07_iroquois_response_to_nydec_rfai_no3_revised_dac_evaluation.pdf

existing property boundaries of Iroquois' existing compressor stations such that the Project compressor station footprints will not be expanded within a DAC or closer to a DAC." While this may be somewhat true for the construction phase, emissions associated with the ExC Project will not remain stationary, that is, within the existing property boundary of the Dover Compression Station. The fact of the matter is that emissions travel, which is why it's common practice to evaluate a proposed project's air emission impacts as far away as three miles, and sometimes farther. Iroquois' attempt to deny basic science is even more of a reason for NYSDEC to deny the ASF permit.

Finally, Iroquois has not actually demonstrated how its proposed mitigation measures – installation of vent recovery systems (VRSs)– would reduce emissions to a point of little to no significant impact. In fact, according to a 2004 workshop on VRSs conducted by Pioneer Natural Resources, Inc, this technology is used to *increase* the use of natural gas. Specifically, the workshop indicated that "recovered vapors" from the use of VRS's have a higher British thermal unit content than natural gas and further advised, "Recovered vapors are more valuable than natural gas and have multiple uses [including] Re-injected [them] into pipeline to recover natural gas liquids and utilization as on-site fuel."¹⁴ Iroquois makes no declaration that vapors recovered from its use of the proposed VRS would not be utilized in a way that could result in an increase in natural gas usage and associated emissions.

Based on the demonstrated inadequacies and inconsistencies of the DAC Report, NYSDEC cannot conclude the ExC Project would comply with Section 7(3) of the climate law in a way that is legally defensible.

Conclusion

The climate law is lucid, NYSDEC cannot issue a permit if a proposed project cannot demonstrate consistency with Section 7(2) and Section 7(3) contemporaneously. This said, in addition to the climate law, NYSDEC must also consider the fact that additional laws designed to increase protections for DAC and reduce our state's emissions economy-wide will be ratified during the 20-year lifespan of the proposed ExC Project. For instance, Governor Hochul recently signed the Cumulative Impacts bill ([S.8830/A.2103D](#)) that ensures cumulative impacts are taken into consideration in the State's environmental permitting processes when potentially polluting facilities seek permits in disadvantaged communities. This law goes into effect in two years and will be a key law of the State when Iroquois would be required to apply for an ASF permit renewal.

NYSDEC must consider this as part of its decision. It must further consider the reality of the need to take more aggressive measures to comply with the emissions reduction mandates of the climate law as we get closer to milestones including economy-wide greenhouse gas emissions reduction of 40 percent by 2030, and no less than 85 percent by 2050 from 1990 levels. Approval of the ExC Project will make this closer to impossible than the state and the residents of Dover can afford.

For the reasons as well as those discussed above, NYLPI declares that NYSDEC must deny this ASF Permit such that we collectively honor our landmark climate law, which is largely the result of grassroots organizing, scholarship, and the tireless work of residents and advocates of DACs who demand expeditious and consistent climate justice.

Thank You,

¹⁴ <https://www.epa.gov/sites/default/files/2017-09/documents/installingvaporrecovery.pdf>

Anthony Karefa Rogers for the NYLPI EJ Program

¹ https://www.iroquois.com/site/assets/files/1200/2022_12_28_iroquois_exc_project_combined_notice.pdf