

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

SANE ENERGY PROJECT, COOPER PARK
RESIDENT COUNCIL, INC., CHRISTINE FACELLA,
ERIC KUN, and WILLIAM VEGA

Petitioners,

-versus-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and
BROOKLYN UNION GAS COMPANY D/B/A
NATIONAL GRID

Respondents.

**VERIFIED
PETITION**

Index No. _____

RJI No. _____

Petitioners, The Sane Energy Project, Cooper Park Resident Council, Inc., Christine Facella, Eric Kun, and William Vega by and through their attorneys, PACE ENVIRONMENTAL LITIGATION CLINIC, INC and UNIVERSITY NETWORK FOR HUMAN RIGHTS as and for their Verified Petition in the above-captioned proceeding for judgment and an order pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), respectfully allege as to their own conduct and upon information and belief as to the conduct of others and matters of public record as follows:

PRELIMINARY STATEMENT

1. This Article 78 special proceeding under N.Y.C.P.L.R section 7801 *et seq.* challenges the New York State Department of Environmental Conservation (“DEC”) regarding its finding of no significant environmental impact and issuance of a negative declaration for an Article 19 Air State Facility permit application related to a major expansion of

National Grid's Greenpoint Energy Center with the addition of two new Liquefied Natural Gas (LNG) vaporizers (the "Project") (*See*, Environmental Assessment Form annexed hereto as Exhibit A).

2. DEC issued a negative declaration despite the fact that the Project, which sits in a Potential Environmental Justice Area, would involve significant increases in potential air emissions from the Greenpoint Facility and create or exacerbate multiple risks to public health. On its face, the application significantly increases the gas vaporization and send-out capacity of the facility and is likely to adversely impact local air quality, which is already poor. A closer look at the figures and assumptions in the application reveals that current and projected Potential to Emit (PTE) data are much larger than the application indicates. The negative declaration flatly ignores multiple actual or threatened environmental harms to environmental justice communities near the Project site and was arbitrary, capricious, and contrary to law. Put simply, DEC is refusing to even *examine* potential environmental impacts of an emissions increase on an already overburdened population.
3. Moreover, DEC's determination of no significant environmental impact ignores public disclosure obligations and rests upon an illegal segmentation of multiple, related projects, including a massive gas transmission pipeline, a new LNG truck station, and LNG trucking operations that would enable transport of LNG by truck to the Greenpoint Facility. None of these additional projects has been examined for its environmental impacts, and no agency has considered the aggregate impacts of these closely related projects as required by New York State environmental law.
4. DEC's conclusions regarding the purported lack of *any potential* environmental impacts from the Project are arbitrary, capricious, and contrary to multiple laws and DEC policy,

including the Environmental Justice and Permitting Policy (Commissioner Policy 29, or “CP-29”) and the Climate Leadership and Community Protection Act (“CLCPA”).

5. On November 2, 2020, DEC issued a negative declaration on the original application. On or about February 19, 2021, National Grid submitted a revised application, and on March 2, 2020, DEC issued a “revised” negative declaration.
6. Petitioners are aware that the fourth and final session of the legislative hearing regarding the revised draft permit for this Project is scheduled for March 18, 2021, that the permit has not yet been issued, and that the public comment period is ongoing. That said, the authority regarding the ripeness of challenges to negative declarations is not entirely clear on when an action can or should be brought, with some cases finding an action ripe after a negative declaration is issued and some finding an action not to be ripe until after the final permit is granted or denied. To be clear, Petitioners do not believe this action fits within the line of cases in which courts have found that the action is ripe once a determination of significance has been issued. Petitioners nonetheless bring this action now because, although National Grid is not allowed to begin major construction on the Project until and unless DEC issues the permit discussed herein, National Grid has stated that the Project is “in progress” and that over \$8.5 million have been spent on the Project. (*See*, Exhibit H, Response 2(b) & Attachment 1). Petitioners file this Petition and supporting papers now in the interest of placing this matter before the court prior to the start of major construction. Petitioners plan to exercise their right to file an amended verified petition and supporting papers under Section 3025 of the CPLR to address any new or different circumstances that arise in the event the permit is issued.

JURISDICTION AND VENUE

7. This court has jurisdiction pursuant to CPLR § 7806, which gives the Court authority to

grant the relief sought by petitioner. Therefore, jurisdiction and venue are proper.

8. This Court is the proper venue for this proceeding pursuant to CPLR § 506(b) as “proceeding against a body or officer shall be commenced in any county within the judicial district where the respondent made the determination complained of.”

Respondent New York State Department of Environmental Conservation operates and maintains its offices within Queens County, New York and made such determinations while operating in Queens County.

THE PARTIES

9. Sane Energy Project (“Sane Energy”) has its principal place of business at 140 2nd Avenue, Suite 405, New York, NY 10003 and operates as part of a larger nonprofit organization called Multiplier.
10. Cooper Park Resident Council, Inc. is a nonprofit organization with principal place of business at 295 Jackson Street, Brooklyn, NY 11211.
11. Christine Facella is a resident of Kings County and resides at 120 Beadel Street, Brooklyn, NY 11222.
12. Eric Kun is a resident of Kings County and resides at 122 Beadel Street, Brooklyn, NY 11222.
13. William Vega is a resident of Kings County and resides at 206 Jackson Street, Brooklyn, NY 11211.
14. Respondent, The New York State Department of Environmental Conservation (“DEC”), operates from and has its offices at 47-40 21st Street, Long Island City, New York. DEC conducted an uncoordinated review of the Project under the State Environmental Quality Review Act (SEQRA) and issued the negative declaration that

gives rise to this Article 78 Special Proceeding. (*See*, Exhibit A).

15. Respondent, The Brooklyn Union Gas Company d/b/a National Grid (“National Grid”), is a multinational public utility company that maintains its office at 1 Metrotech Center in Brooklyn, New York. National Grid owns and operates the Greenpoint Energy Center, National Grid Greenpoint LNG Facility, at 287 Maspeth Avenue in Brooklyn, New York.

PETITIONERS’ STANDING

16. Sane Energy is a decade-old nonprofit organization dedicated to hastening a just transition to 100% publicly-owned, renewable, and sustainable energy in the state of New York. As set forth in the affidavit of Kim Fraczek, Director of Sane Energy, annexed here as Exhibit I, Sane Energy works with impacted communities statewide to stop the development of shale gas and other fossil fuel and nuclear infrastructure projects, end fossil fuel consumption, and reimagine New York’s energy system. Challenging new gas infrastructure proposals is central to Sane Energy’s mission. Sane Energy builds every campaign through a lens of racial, social, and economic justice.
17. Since the Project at issue is a proposal to build additional gas infrastructure, challenging the Project lies at the core of Sane Energy’s mission. In addition, the Project is located in and near DEC-designated “Potential Environmental Justice Areas,” so challenging the Project aligns with Sane Energy’s focus on racial, social, and economic justice (DEC, *Potential Environmental Justice Areas in Kings County, New York*, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/kingsejdetail.pdf [last accessed March 1, 2021]).
18. Kevin LaCherra is a member of Sane Energy and resides at 183 Meserole

Avenue, Brooklyn, NY 11222. Mr. LaCherra's residence is approximately one mile from the Greenpoint Facility. As fully set forth in his affidavit, annexed here as Exhibit J, he is concerned about additional sources of environmental pollution in his community. He is also concerned that emissions from the Project will have adverse health and other impacts on him, and that he faces severe potential health and safety impacts from the Project's associated components—transport of LNG by truck to the Greenpoint Facility and Phase 5 of the Metropolitan Reliability Infrastructure (MRI) pipeline.

19. Sane Energy members, including Mr. LaCherra, who reside in close proximity to the Greenpoint Energy Facility would suffer injury from the adverse environmental impacts of the Project if the draft permit were finalized. Mr. LaCherra and other Sane Energy members who reside in close proximity to the Greenpoint Facility have standing in their own right to challenge the actions of DEC in this Article 78 action, thereby giving organizational standing to Sane Energy (“in-fact injury within the zone of interest of environmental statutes has been established by proof that agency action will directly harm association members in their use and enjoyment of the affected natural resources”. (*Socy. of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 776 [1991]); (*see also*, Memorandum of Law at 4 – 5 (*Citing* 6 NYCRR §617 to explain that the primary intent of the State Environmental Quality Review Act (SEQRA) was to make all agencies in the state of New York aware of their duty as stewards of the air, water, land, and living resources as well as their obligation to protect the environment for the use and enjoyment of this and all future generations (internal quotes omitted)).
20. Cooper Park Resident Council, Inc. (“Cooper Park Resident Council” or “Council”) is a nonprofit organization that represents 701 families who live in Cooper

Park Houses, a housing complex owned by the New York City Housing Authority (NYCHA). As set forth in the affidavit of Elisha Fye, Vice President of Cooper Park Resident Council, annexed here as Exhibit K, the Council's mission is to represent the interests—including health, safety, and environmental interests—of its constituents, who are Cooper Park Houses residents. Challenging this Project is germane to the Council's mission because the Project would harm the health, safety, and environment of Council members and their constituents.

21. The Cooper Park Housing complex, where all members of the Cooper Park Resident Council reside, is located in the evacuation zone of the Greenpoint Energy Facility, approximately one-half of a mile from the facility. Emissions from the Project would adversely impact the air quality of Council members and their constituents. In addition, trucks transporting LNG to the Greenpoint Facility and Phase 5 of the MRI pipeline would adversely impact the health and safety of Council members and their constituents.
22. Elisha Fye is a member and the Vice President of Cooper Park Resident Council. Like all other Council members, Mr. Fye resides in the evacuation zone of the Greenpoint Facility, approximately one-half of a mile from the facility. As described in his affidavit, annexed here as Exhibit K, he is concerned about additional sources of environmental pollution in his community and fears he would suffer health and other adverse impacts from the Project's emissions. He would also suffer harms to his health and safety from LNG trucking and Phase 5 of the MRI pipeline.
23. All Cooper Park Resident Council members, including Mr. Fye, would suffer injury from the adverse environmental impacts of the Project if the draft permit were finalized because they live in close proximity to the Greenpoint Facility. All Cooper

Park Resident Council members, including Mr. Fye, have standing in their own right to challenge the actions of DEC in this Article 78 action, thereby giving organizational standing to Cooper Park Resident Council.

24. Christine Facella is an individual petitioner who resides at 120 Beadel Street, approximately one-third of a mile from the Greenpoint Facility and within the facility's evacuation zone. As set forth in Ms. Facella's affidavit, annexed hereto as Exhibit L, National Grid's Project to add new stacks and sources of pollutants would contribute to the cumulative adverse health and other impacts of longstanding toxic air pollution in the area on her. Ms. Facella is also concerned that trucks loaded with LNG would contribute to already-heavy truck traffic in the area, worsening local air quality with exhaust and fumes, and that truck transport of LNG in her area would create a severe hazard to her health and safety. In addition, Ms. Facella is concerned that she would be harmed by fugitive emissions and radioactive buildup from Phase 5 of the MRI pipeline.
25. Eric Kun is an individual petitioner who resides at 122 Beadel Street, approximately one-third of a mile from the Greenpoint Facility and within the facility's evacuation zone. As Mr. Kun describes in his affidavit, annexed hereto as Exhibit M, he is concerned that he will face health and other adverse impacts of emissions from National Grid's Project. In addition, he fears that truck transport of LNG to the Greenpoint Facility would harm his health and imperil his safety, and that fugitive emissions and spills as well as radioactive buildup from Phase 5 of the MRI pipeline would harm his health.
26. William Vega is an individual petitioner who resides at 206 Jackson Street, approximately three-quarters of a mile from the Greenpoint Facility and within the

facility's evacuation zone. As fully set forth in his affidavit, annexed hereto as Exhibit N, Mr. Vega suffers from asthma and fears that emissions from the Project would put him at even greater respiratory risk, given his pre-existing condition. Mr. Vega is also concerned that increased exhaust and fumes from trucks transporting LNG in his area, as well as fugitive emissions from Phase 5 of the MRI pipeline, would harm his health.

STATEMENT OF THE FACTS

27. The Greenpoint Energy Facility is owned and operated by National Grid, and located at 287 Maspeth Avenue, Brooklyn, New York 11211.
28. Sane Energy has worked with thousands of New Yorkers to prepare and provide public comment and participate in the regulatory process for over a dozen infrastructure projects across the state.
29. On or about May 21, 2020, National Grid submitted a project application and Short Environmental Assessment Form to DEC seeking to re-permit the Greenpoint Energy Center from a Major Title V permit to a minor Air State Facility (ASF) permit. (Exhibit A at 1). Through this Article 19 ASF permit application, National Grid also seeks approval to install two new LNG vaporizers at the Greenpoint Facility.
30. The expansion of the Greenpoint Energy Center with the addition of two new LNG vaporizers (the "Project") is part of a larger "whole action" that includes the Metropolitan Reliability Infrastructure (MRI) project, also known as the North Brooklyn Pipeline; a new LNG trucking station at the Greenpoint Facility; and trucking operations that would enable transport of LNG by truck to the facility. (*See*, Exhibit O at 48 and 52). This "whole action" has never undergone SEQRA review, as required. The North Brooklyn Pipeline, a massive (40,000 foot long, 30 inch wide, 350 psig) gas transmission pipeline

that would extend from Brownsville to Greenpoint, has never undergone SEQRA review either in whole or in part. (Exhibit B at 17).

31. On or about November 2, 2020, DEC issued a negative declaration for National Grid's application to re-permit the Greenpoint Energy Center from a Title V to an Article 19 Air State Facility, add two new LNG vaporizers, and add two new Compressed Natural Gas (CNG) injection heaters. (Exhibit A at 6).
32. On or about November 10, 2020, DEC issued a Notice of Complete Application for an Article 19 ASF permit with the written public comment period ending December 11, 2020. DEC noted that the Project is an Unlisted Action under SEQRA. DEC also noted that a coordinated review was not performed and therefore no SEQR Lead Agency was designated. (*See, DEC, ENB Region 2 Completed Applications 11/10/2020*, https://www.dec.ny.gov/enb/20201110_reg2.html#261010007100024 [last accessed February 19, 2021]).
33. On or about December 9, 2020, DEC issued a notice extending the written comment period to December 28, 2020. (*DEC, ENB Region 2 Notices, 12/09/2020*, https://www.dec.ny.gov/enb/20201209_not2.html) [last accessed February 24, 2021]).
34. Sane Energy submitted a public comment during the December 28 comment period. Sane Energy's comment, annexed here as Exhibit B, discusses why the Project does not meet statutory or regulatory criteria or standards and states that an adjudicatory public hearing is therefore warranted. Specifically, the comment references DEC's segmented review of the Project, the Project's impact on DEC-designated Potential Environmental Justice Areas (PEJAs), the Project's potential significant adverse impacts on the environment under at least seven different SEQRA criteria, and the Project's inconsistency with the Climate Leadership and Community Protection Act (CLCPA),

among other issues.

35. DEC has received over 6,000 public comments regarding the Project's permit application, including the first two of Sane Energy's comments on the Project, annexed here as Exhibits B and C. (*See, The Action Network, Tell Cuomo and the Dept of Environmental Conservation: Say NO to National Grid's Air permit for more fracked gas in Brooklyn*, <https://actionnetwork.org/letters/tell-cuomo-and-the-dept-of-environmental-conservation-say-no-to-national-grids-air-permit-for-more-fracked-gas-in-brooklyn> [last accessed March 17, 2021] (*showing 2,578 letters sent*); *see also, The Action Network, DEC: National Grids Proposal for liquefied and compressed fracked gas expansion breaks our law*, <https://actionnetwork.org/letters/dec-national-grids-proposal-for-liquefied-and-compressed-fracked-gas-expansion-breaks-our-law> [last accessed March 17, 2021] (*showing 2,734 letters sent*); *The Action Network, Our Bang for Their Buck: No Permit for LNG*, <https://actionnetwork.org/letters/our-bang-for-their-buck-no-permit-for-lng> [last accessed March 17, 2021] (*showing 565 letters sent*); *The Action Network, Don't Overlook the Overestimates: No LNG Expansion*, <https://actionnetwork.org/letters/dont-overlook-the-overestimates-no-lng-expansion> [last accessed March 17, 2021] (*showing 443 letters sent*).
36. On or about February 3, 2021, DEC issued a "notice of public comment hearing and public comment period" for a legislative public comment hearing to be held before Administrative Law Judge Molly T. McBride, to receive unsworn statements from the public at 6:00 P.M. March 10, 2021 regarding the Project's permit application. The deadline for the written public comment period associated with this hearing was set for March 17, 2021. (DEC, *Hearing Archives: The Brooklyn Union Gas Company (Greenpoint Energy Center)*, <https://www.dec.ny.gov/enb/122278.html> [last accessed

February 25, 2021])).

37. Sane Energy's second comment was submitted during the March 17, 2021 comment period deadline. This comment served as a supplement to the first, annexed here as Exhibit C. The second comment noted the apparent lack of any regulatory mechanism for relinquishing an active Title V permit in exchange for an ASF permit, as National Grid seeks to do, and highlighted numerous recent peer-reviewed studies and government reports attesting to the severe climate, public safety, and security dangers of LNG facilities and infrastructure.
38. On February 26, 2021, DEC informed those who had registered to speak at the March 10 legislative hearing that approximately 100 speakers had registered thus far and that oral comments were estimated to take 5 hours to complete.
39. On March 1, 2021, DEC notified Sane Energy that National Grid had submitted a revised project application and that DEC had reviewed the updated application and revised the draft permit. DEC attached the updated application and draft permit, which no longer included National Grid's previously proposed CNG injection heaters. National Grid's updated application was dated February 19, 2021.
40. On March 1, 2021, after receiving notification of the revised application and draft permit, Sane Energy asked DEC for confirmation that a new determination of significance would be issued since National Grid had submitted a revised project application and revised Short Environmental Assessment Form (Parts 1 and 2).
41. On March 2, 2021, DEC responded to Sane Energy's query by stating that the changes "are part of the current permit process, which includes the public hearing next week and acceptance of written comments until March 17th." DEC stated that it had attached an "updated negative declaration," that is, the revised Short Environmental

Assessment Form with Part 3 included. Part 3 of the revised form was exactly the same as the original, with a note indicating that the negative declaration was “revised” that same day, March 2, 2021. It therefore appears that DEC “revised” its negative declaration in response to Sane Energy’s query.

42. On March 8, 2021, DEC informed those who had registered to speak at the March 10 legislative hearing that three sessions of the hearing would be held to accommodate the registered speakers. In addition to the originally scheduled session on March 10 at 6pm, second and third sessions would be held on March 11 at 1pm and 5pm. Each registered speaker had been assigned to one of the three sessions depending on the speaker’s date of registration.
43. On March 9, 2021, after receiving a letter from Sane Energy and nearly 1,000 signatories expressing serious concerns about DEC’s last-minute rescheduling, DEC added a fourth legislative hearing session to be held on March 18 at 5pm and extended the written comment deadline to March 22, 2021.
44. In reliance on information from National Grid regarding the facility’s current and projected emissions, DEC concluded that the Project would not have a significant impact on the environment under the SEQRA criteria for determining significance (the negative declaration). (*See* 6 NYCRR § 617.11).
45. This negative declaration was arbitrary, capricious, and contrary to law in part because: (1) DEC conducted a segmented review of the Project, ignoring the related LNG trucking and North Brooklyn Pipeline projects; (2) DEC failed to review “supporting information to identify the relevant areas of environmental concern” and instead appears to have reviewed only the Short Environmental Assessment Form submitted by National Grid; (3) DEC failed to engage in a thorough analysis of the

SEQRA criteria; and (4) DEC failed to provide a “reasoned elaboration” of its determination of significance or “reference to any supporting documentation.”(6 NYCRR § 617.7(b)).

46. On its face, the application seeks to increase the number of LNG vaporizers at the Greenpoint Facility from 6 to 8, increasing the vaporization capacity of the facility by 31% (from 277.5 mmBtu/hr to 363 mmBtu/hr) with a corresponding 31% increase in the vaporizers’ potential emissions. (Exhibit P at 40 and 41). These increased potential emissions alone—especially in an area with already-poor air quality and in a non-attainment area for ozone—warranted a conclusion that the Project may have significant environmental impacts. The Project is likely to have significant adverse impacts on local air quality. (Exhibit D at ¶6).
47. Moreover, although the Project is located in and near DEC-designated “Potential Environmental Justice Areas,” DEC erroneously determined that the Project is not subject to DEC’s Environmental Justice and Permitting Policy (Commissioner Policy 29 or “CP-29”). (DEC, *ENB Region 2 Completed Applications 11/10/2020*, https://www.dec.ny.gov/enb/20201110_reg2.html#261010007100024 [last accessed February 19, 2021]). DEC failed to meet CP-29 requirements for an enhanced public participation plan—including enhanced accessibility to public permit information and documents—to ensure meaningful and effective public notification and participation.
48. DEC’s negative declaration is also not consistent with the greenhouse gas emissions reduction mandates of the Climate Leadership and Community Protection Act (CLCPA). By facilitating the ongoing and increased use of natural gas as an energy source for decades to come, National Grid’s Project would impede the necessary transition to renewable energy and is therefore fundamentally incompatible with the

mandates of the CLCPA.

49. In addition to all of these reasons that the negative declaration was arbitrary, capricious, and contrary to law on its face, DEC's determination of no significant impact was contrary to law because it did not consider the "whole action." The Project is inextricably intertwined with the Greenpoint LNG trucking station, LNG trucking operations, and the North Brooklyn Pipeline, none of which has undergone any environmental review. The negative declaration ignores the additional environmental impacts from these related projects.
50. For all of these reasons, DEC's determination of non-significance for the Project was arbitrary, capricious, and an abuse of discretion due to the following procedural and substantive flaws.

The Project Holds Potential for Significant Adverse Environmental Impacts Under SEQRA Criteria

51. On the face of National Grid's application, and even assuming it were fully complete and accurate, the Project holds potential for significant adverse environmental impacts under SEQRA criteria, and the negative declaration was arbitrary, capricious, and contrary to law. These potential adverse impacts include: adverse changes to natural resources, including air quality; hazards to environmental resources and human health; and increasing the use of fossil fuel energy while failing to incorporate reasonably available energy conservation and renewable energy opportunities (6 NYCRR § 617.7(c)).
52. National Grid is seeking to downgrade its Title V permit for the Greenpoint Facility to an Air State Facility (ASF) permit and, at the same time, build new gas infrastructure that would add new stacks and air pollutant emission sources and increase

emissions.

53. Dr. Anthony Ingraffea, Dwight C. Baum Professor of Engineering Emeritus at Cornell University with professional expertise in civil and environmental engineering, submits an affidavit in support of this Petition stating that, even if one accepts as true all of the representations in the application, Vaporizers 13 and 14 are likely to have significant adverse environmental impacts, and specifically, adverse impacts on local air quality. (Exhibit D at ¶6). As such, on its face, the Project application required a determination that it “may” have significant environmental impacts, and the negative declaration was arbitrary, capricious, and contrary to law.
54. To determine whether an action may have a significant adverse impact on the environment, DEC must “consider reasonably related long-term, short-term, direct, indirect, and cumulative impacts” of the action. 6 CRR-NY 617.7 (c)(2). Greenpoint-Williamsburg, where the Project would be located, has one of New York City’s highest levels of fine particulate matter (PM2.5), nitrogen dioxide (NO₂), nitric oxide (NO), and Black Carbon (BC). National Grid now seeks to build additional sources of pollutants in an area with already-poor air quality, and contrary to law, DEC has failed to consider the cumulative impacts of this pollution on local residents and the environment. (Exhibit D at ¶7).
55. Making DEC’s determination of non-significance even worse, the figures and assumptions in National Grid’s revised permit application are flawed in several key respects, resulting in underestimations of the Company’s current and projected Potential to Emit (PTE) data. When these figures and assumptions are corrected, the Project’s likelihood of significant adverse environmental impact increases even further. (Exhibit D at ¶12).

56. National Grid calculated PTE emissions for the two proposed LNG vaporizers by assuming that the vaporizers will operate for only 14 days of the year despite the draft permit containing no limit on annual operating hours and despite evidence that National Grid plans to operate the vaporizers more frequently than 14 days per year in future years. (Exhibit D at ¶12 and ¶13). If NO_x PTE figures were calculated based on year-round operation, the NO_x PTE for the two LNG vaporizers alone would have been 36.7 tpy, which far exceeds the Title V major source threshold of 25 tpy and is therefore inconsistent with a downgrade of National Grid's permit. (Exhibit D at ¶14).
57. Additionally, National Grid's use of a low, unsubstantiated NO_x emission factor combined with a bhp that is lower than the bhp at which the facility's CNG engines are capable of operating has yielded a reported PTE that is over 20 times lower than the actual PTE for the existing CNG engines. (Exhibit D at ¶15). National Grid's PTE figures also assume only 75 rather than 500 annual operating hours for the Facility's Gas-Fired Portable Generator and a 5-month rather than 8-month heating season for other equipment operation. (Exhibit D at ¶16 and ¶17).
58. Since operating additional LNG equipment may require increased operation of other equipment at the facility, National Grid's assumption that recent fuel usage and number of operating hours for existing equipment are indicative of future fuel usage and number of operating hours may not be accurate. (Exhibit D at ¶18).
59. Emissions from neither flaring nor venting appear to be accounted for in National Grid's revised permit application. No flares are mentioned in the draft permit. (Exhibit D at ¶19).
60. After correction of flawed figured and assumptions, the Greenpoint Facility's current NO_x PTE is 270.5 tpy and projected NO_x PTE (with the addition of Vaporizers

13 and 14) is 307.2 tpy—over 12 times the Title V major source threshold of 25 tpy. The addition of Vaporizers 13 and 14 would increase carbon dioxide (CO₂) emissions by 27%, methane (CH₄) emissions by 27%, nitrous oxide (N₂O) emissions by 29%, and carbon dioxide equivalent (CO₂e) emissions by 27% (Exhibit D at ¶21).

61. Based on these numbers, DEC’s determination that the Project could have *no* potential significant environmental impacts was arbitrary and capricious.
62. According to Petitioners’ expert, consideration of the “whole action” of which this Project is a part—including LNG trucking and the North Brooklyn Pipeline—further increases the likelihood of significant adverse environmental impact. (Exhibit D at ¶10 and ¶11).
63. In sum, the revised air permit application and Short Environmental Assessment Form relied upon by DEC for its determination of significance do not give DEC any basis to rule out significant adverse impact on air quality or human health and safety. (Exhibit D at ¶23).

DEC Conducted a Segmented Review of the Project

64. But it is not just the environmental impacts of the vaporizers that DEC ignored. DEC conducted a segmented review of this Project by failing to consider the “whole action” as required by SEQRA. (6 NYCRR §§ 617.7(b)(1) and 617.3(g)).
65. In addition to the DEC Article 19 ASF permit for this proposal to add two new LNG vaporizers at the Greenpoint Facility (the “Project”), National Grid is currently seeking or has sought permit approvals for other gas infrastructure projects that are part of the same “whole action” as this Project. These additional, connected projects include: (1) the Greenpoint LNG Truck Load/Unload Station (or “trucking station”); (2) transport of LNG by truck to the Greenpoint Facility; and (3) the Metropolitan Reliability

Infrastructure (MRI) project, or North Brooklyn Pipeline.

66. As part of the same rate case, National Grid is currently seeking rate recovery approval from the Public Service Commission for (1) this Project, that is, two new LNG vaporizers at the Greenpoint Facility; (2) the Greenpoint LNG Truck Load/Unload Station; and (3) part of Phase 1, most of Phase 4, and all of Phase 5 of the North Brooklyn Pipeline. (2020 NY PSC Op No. 19-G-0309 and 19-G-0310, available at: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-G-0309> [last accessed March 18, 2021]).
67. For its Greenpoint LNG trucking station, National Grid is currently seeking permits from the Fire Department of the City of New York (FDNY) and the New York City Department of Buildings (DOB). (*See*, Exhibit F at Response 3(a-b)). Direct approval by the Mayor's office would also be required for the LNG trucking station. (*See*, Exhibit Q at 5). To transport LNG to the Greenpoint Facility by truck, National Grid would need to enter into a memorandum of understanding with New York City (*Id.*).
68. For Phase 5 of the North Brooklyn Pipeline, which National Grid has stated is "on hold," National Grid has obtained permits from the New York City Department of Transportation, New York City Department of Environmental Protection, and New York City Parks Department. (*See*, Exhibit R, Response 3(a-b)).
69. DEC was required to consider the entirety of this action, rather than segmenting the vaporizers and dismissing their environmental impacts in a vacuum.
70. Furthermore, if DEC had considered the Project's related components, the environmental impacts would have been even more obvious. Due to the catastrophic dangers of a potential explosion, transport of LNG within New York State is currently

banned unless the route has been certified by the New York State Department of Transportation (6 NYCRR § 570.4(a)). Were an LNG truck to explode, people within a 1-mile radius of the explosion would likely suffer second-degree burns. (*See*, Government Accountability Office, *Maritime Security: Public Safety Consequences of a Terrorist Attack on a Tanker Carrying LNG Need Clarification*, [Feb. 2007], available at: <https://www.gao.gov/assets/260/256821.pdf> [last accessed March 16, 2021]). If the explosion were to produce a vapor cloud, the gas could ignite and people in the vicinity of the fire could suffer freeze-burn and asphyxiation due to the super-cooled nature of the gas. (*Id.*). As a result of these properties of LNG, the public safety threat of a terrorist attack on LNG has been designated medium to very large. (*Id.*); (*see also*, Exhibit S at ¶ 10).

71. Similarly, massive gas transmission pipelines—especially those, like the North Brooklyn Pipeline, that contain gas extracted from shale formations through the process of hydraulic fracturing (“fracking”)—pose health and safety hazards to residents who live along the pipeline route. Radioactive materials naturally occur in shale and build up in pipelines. Evidence suggests, moreover, that fracked gas from the Marcellus shale—the source of a significant portion of National Grid’s gas supply—may contain much higher concentrations of radioactive materials than previously estimated. In addition to leaking, venting, and spilling methane, oil and gas pipelines can freeze, corrode, break, catch fire, and explode, putting local residents’ health and safety at serious risk. According to the Pipeline and Hazardous Materials Safety Administration, about 300 significant pipeline incidents are reported each year in the United States, killing 299 people and injuring 1,190 others between 1998 and 2017. (*See*, Exhibit S at ¶ 11).

72. The connections of these related components to the Project are patent. National

Grid has asserted that this Project necessitates LNG trucking. When presenting the Project as one of the Company's long-term gas supply options, National Grid stated that "LNG truck station permits and an LNG Trucking Memorandum of Understanding (MoU) with the City of New York are required to enable a refill process" for the proposed LNG vaporizers. (*See*, Exhibit O at 52). The necessity of the LNG trucking station and trucking operations for utilization of the vaporizers is reinforced in multiple reports of the Monitor tasked with assessing National Grid's compliance with its settlement agreement with the New York State Department of Public Service. The Monitor indicates that National Grid *must* transport LNG by truck to the Greenpoint Facility to utilize the vaporizers because legal limitations prevent National Grid from storing any additional LNG on-site. (*See*, Exhibit U at 3; Exhibit Q at 5); (*see also*, Exhibit T at 7).

73. National Grid has also asserted that this Project necessitates construction of Phase 5 of the North Brooklyn Pipeline, stating, "under the LNG Vaporization opportunity...MRI Phase 5 is an important requirement to enable this incremental capacity, as it completes the reliability looping to our Greenpoint LNG facility." (*See*, Exhibit O at 48). Similarly, in response to a rate case Interrogatory Request regarding the need for MRI Phase 5, National Grid stated that "Greenpoint LNG and CNG expansion is limited by the existing takeaway capability of the 16-inch steel Greenpoint spur and Brooklyn Backbone...". (*See*, Exhibit V at Response 10).

74. Under SEQRA, "Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it (6 NYCRR § 617.3(g)). Considering only a part or segment of an action is contrary to the intent of

SEQRA. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible”. (6 NYCRR § 617.3(g)(1)).

75. In its review of the Project application, DEC failed to consider the North Brooklyn Pipeline as well as the Greenpoint LNG trucking station and trucking operations. Further, DEC’s negative declaration fails to state why circumstances warrant a segmented review of the Project. Both of these shortcomings in DEC’s review are contrary to SEQRA.

DEC’s Determination of Significance Lacked a Thorough and Complete Analysis of SEQRA Criteria

76. In addition to ignoring the potential significant adverse environmental impacts of this Project—including cumulative impacts—and segmenting this Project from its associated components, DEC failed to comply with other SEQRA requirements. DEC’s determination of significance and negative declaration for the Project lacked consideration of any information beyond the Short Environmental Assessment Form, failed to engage in thorough analysis of SEQRA criteria, and provided no “reasoned elaboration,” contrary to SEQRA requirements. (6 NYCRR § 617.7(b)).
77. DEC’s review of the Project appears limited to the Short Environmental Assessment Form submitted by National Grid, annexed here as Exhibit A. In Part 3 of the form, DEC is asked to provide the reasons supporting its determination of non-significance; however, rather than taking a “hard look” and providing a “reasoned elaboration” of its determination, DEC offers conclusory sentences that contain no

analysis of the SEQRA criteria and reference no supporting documentation.

78. DEC should have required a full Environmental Assessment Form (EAF) and coordinated review for several reasons. First, the Project should be subject to CP-29, DEC's Environmental Justice and Permitting policy (as elaborated below), which requires use of a full EAF and coordinated review among all involved agencies.
79. Further, the short EAF does not provide DEC with sufficient information on which to base its determination of significance; for example, the short EAF did not require National Grid to provide information about potential impacts of the Project on local air quality, even though the Greenpoint Facility is located in an area with already-poor air quality and in a non-attainment area for ozone. Use of a full EAF would have required National Grid to provide this information, which is critical to assessing the Project's potential for adverse environmental impact. (*See*, Exhibit D at ¶8). Use of a short EAF is especially insufficient when the Project is assessed as part of National Grid's larger "whole action."
80. Finally, DEC has effectively issued a Conditioned Negative Declaration (CND), which would require use of a full EAF and coordinated review. DEC invokes compliance with regulations to be promulgated pursuant to the Climate Leadership and Community Protection Act (CLCPA) as a "condition" of National Grid's permit. As noted below, this condition does not make sense because there is no pathway for the proposed Project to comply with CLCPA requirements. (*See* Verified Petition at ¶ 104). That aside, DEC's invocation of the CLCPA as a "condition" of the permit effectively amounts to a CND. Nevertheless, DEC has technically issued a negative declaration and thereby evaded the procedural requirements of a CND, including use of a full EAF and coordinated review.

DEC Failed to Apply Commissioner Policy 29 Despite its Applicability to this Project

81. DEC also failed to apply its Environmental Justice and Permitting Policy (Commissioner Policy 29, or CP-29) to the Project. DEC established CP-29 in 2002 to “provid[e] guidance for incorporating environmental justice concerns into the [DEC] environmental permit review process and the DEC application of [SEQRA].” (NY Dept of Env'tl Conservation Commissioner Policy 29 at Section I [2003]).
82. CP-29 is applicable to the Project, which is classified as “major” under the Uniform Procedures Act and would be authorized under Article 19 (air pollution control) (*Id.* at Section V(A)(ii)).
83. Projects classified as Unlisted in 6 NYCRR Part 617 and subject to CP-29 require completion of a full Environmental Assessment Form (EAF) and coordinated review with all involved agencies. (*Id.* at Sections E and G). DEC neither required a full EAF for this Project nor conducted a coordinated review with FDNY, DOB, and the Mayor’s office, the other involved agencies.
84. In addition, CP-29 requires an enhanced public participation plan to ensure meaningful and effective public participation as well as enhanced accessibility to public permit information. DEC does not appear to have contacted the Community Board, NYCHA’s Cooper Park Houses and other local residents, elected officials, community-based organizations like the Newtown Creek Alliance, or any other stakeholders in Potential Environmental Justice Areas (PEJAs) that would be impacted by this Project. Moreover, DEC did not post application documents, draft permits, or other relevant materials on its website; instead, the Environmental Notice Bulletin stated that “application documents...are available for inspection during normal business hours” at the address of the contact person. (DEC, *ENB Region 2 Completed Applications*

11/10/2020, https://www.dec.ny.gov/enb/20201110_reg2.html [last accessed March 1, 2021]).

85. Requiring on-site inspection of documents rather than making documents available online reflects a lack of transparency that is especially alarming during a pandemic, when health and safety guidelines preclude people from traveling to DEC headquarters (located, in this case, nearly an hour away from the Greenpoint Facility via public transportation) and inspecting documents indoors.
86. National Grid first publicly proposed Vaporizers 13 and 14 in a December 2019 submission to the Public Service Commission (PSC) as part of the ongoing rate case (Case Nos. 19-G-0309 & 19-G-0310). In its February 2020 *Natural Gas Long-Term Capacity Report* (“LT Report”) issued as part of a settlement agreement with the Department of Public Service (Case 19-G-0678), National Grid provided three categories of options to address the supposed gap between design day demand and gas supply: large-scale infrastructure options, distributed infrastructure options, and no-infrastructure options. Vaporizers 13 and 14 were not mentioned in the report. Pursuant to the settlement agreement, National Grid conducted 6 public meetings in March 2020 to solicit input and feedback from the public regarding the options outlined in the LT Report.
87. In its May 2020 *Natural Gas Long-Term Capacity Supplemental Report* (“Supplemental LT Report”), National Grid added the installation of Vaporizers 13 and 14 as “an additional potential distributed infrastructure supply option to close the demand gap.” (See, Exhibit O at 50). As the Monitor overseeing National Grid’s compliance with the settlement agreement noted, National Grid had initially proposed the vaporizer Project in December 2019 and had commenced planning for the Project’s

construction at least as early as December 2019. The Monitor reported, “Although the project has been moving forward, National Grid does not explain in the Supplemental LT Report why LNG Vaporization had not been included as an option or otherwise incorporated in the LT Report issued on February 24, 2020 (and, if included, available for public feedback during the comment period and at the public meetings).” (See, Exhibit E at 7). Far from ensuring enhanced public participation as required by CP-29, National Grid *evaded* public scrutiny of this Project by omitting it from the February 2020 LT Report, which was to be followed by public meetings.

88. Given that the Greenpoint Facility is located in and near DEC-designated PEJAs, potential adverse environmental impacts of the Project are highly likely to affect one or more PEJAs. None of these potential adverse impacts on PEJAs was considered in DEC’s review of the Project. (DEC, *Potential Environmental Justice Areas in Kings County, New York*, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/kingsejdetail.pdf [last accessed Feb. 22, 2021]; see also, New York State Department of Public Service, *Corrected Evidentiary Hearing Transcript Volume 9. February 25, 2020*, at 406, lines 13-17, available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B0E809CD9-3633-4326-A9CA-1F2AD BB2E87B%7D> [last accessed Feb. 22, 2021]).

DEC Failed to Complete a Coastal Assessment Form

89. DEC failed to complete a Coastal Assessment Form (CAF) despite its acknowledgment that the Project is located in a Coastal Management area and therefore subject to the Waterfront Revitalization and Coastal Resources Act (WRCRA). (DEC, *ENB Region 2 Completed Application 11/10/2020*,

https://www.dec.ny.gov/enb/20201110_reg2.html#261010007100024, [last accessed Feb. 28, 2021]).

90. The WRCRA requires the reviewing agency to complete a Coastal Assessment Form (CAF) “prior to the agency’s determination of significance pursuant to 6 NYCRR Part 617 so that it can then supplement other information used by State agencies in making determinations of significance pursuant to such Part 617.” (19 NYCRR § 600.4; *see also*, Uniform Procedures Act, 6 NYCRR § 621.3(a)(9) (which states: “If a project is a Type I or unlisted action pursuant to SEQRA and is located in a coastal area designated according to article 42 of the Executive Law and 19 NYCRR Part 600, the application is not complete until sufficient information has been provided to enable the department to complete a coastal assessment form as prescribed by the Secretary of State.”)).
91. Neither the Project’s categorization as an Unlisted action nor DEC’s decision to use a short, rather than full, Environmental Assessment Form eliminates the requirement to “coordinate [the agency’s] SEQRA review with the review required by the Waterways Act Regulations” since completion of a CAF by a reviewing agency using a short Environmental Assessment form for an Unlisted action has been considered in determining whether the agency’s review fulfilled SEQRA requirements. (*Entergy Nuclear Indian Point 2, LLC v. New York State Dep’t of State*, 41 Misc 3d 1237(A) (Sup. Ct. of Albany County 2013, Lynch, J.) (*Citing* 6 NYCRR § 617.6(a)[5] and 19 NYCRR § 600.1[d])).
92. Although the nature of the Project necessitated a full Environmental Assessment Form to be completed as part of DEC’s review, a CAF should have been completed in the course of DEC’s review regardless of DEC’s decision to use a short Environmental Assessment Form.

93. To the best of Petitioners' knowledge, DEC did not complete a CAF prior to issuing its negative declaration despite the Project's location in a Coastal Management area and requirements under the Waterfront Revitalization and Coastal Resources Act.

The Project's Application and Public Notice are Procedurally Deficient

94. Compounding the above errors, National Grid's project application and public notice are both missing information about other permits required, status of approval, and status of SEQRA reviews. National Grid did not include a list of related permits from other involved agencies at the time of filing the permit application, in violation of the Uniform Procedures Act (UPA). (6 NYCRR § 621.3(a)(6)).

95. In a response to an Interrogatory Request from Sane Energy in the ongoing rate case proceeding, dated December 1, 2020 and annexed here as Exhibit F, National Grid stated that it has applied for eight other permits for the proposed new LNG vaporizers and that six of these permits (five FDNY permits and one DOB permit) are currently pending approval. (*See*, Exhibit F at Response 1(a-b)); (*see* also, Exhibit H at Response 2(b)). The Project also requires direct approval by the Mayor's office. (*See* Exhibit Q at 5).

96. National Grid listed "Fire Dept of City of New York" as an agency requiring a permit, approval, or funding in relation to the Project, but failed to list the FDNY permits required or indicate the status of their approvals and City Environmental Quality (CEQR) reviews. (Exhibit A at 1). National Grid did not list the other involved agencies (DOB or the Mayor's office) or indicate the status of their approvals or CEQR reviews.

97. DEC's published notice of complete application did not mention the other involved agencies (FDNY, DOB, and the Mayor's office) or contain information about the status of their CEQR reviews, as required by the UPA (6 NYCRR § 621.7(b)(5)).

There is No Mechanism to Downgrade an Active Title V Permit to an Air State Facility Permit

98. National Grid seeks to “convert” its active Title V air permit to an Air State Facility (ASF) permit through this Project application to DEC. DEC’s approval of this process was contrary to the agency’s own regulations. Under Title V permit renewal and modification regulations, there is no mechanism for relinquishing an active Title V permit in exchange for an ASF permit. Under existing regulations, National Grid can (1) apply for an ASF permit that, if granted, would become effective when the Company’s existing Title V permit expires on 12/10/2022; (2) apply for a significant permit modification, which would require Nonattainment New Source Review since the Greenpoint Facility is located in a nonattainment area for ozone; or (3) surrender its Title V permit and close down operations (6 NYCRR § 201-6.6).

The Project Conflicts with the Mandates of the Climate Leadership and Community Protection Act

99. This Project conflicts with the mandates of the Climate Leadership and Community Protection Act (CLCPA), as it is fundamentally incompatible with achieving the greenhouse gas (GHG) emissions reductions required by the CLCPA and would adversely impact environmental justice communities. The CLCPA mandates a 40% reduction in GHG emissions (from 1990 levels) by 2030 and an 85% reduction by 2050.
100. Robert Howarth, Ph.D., David R. Atkinson Professor of Ecology and Environmental Biology at Cornell University and member of the New York State Climate Action Council created under the CLCPA, attested to the Project’s incompatibility with the CLCPA in his affidavit, annexed here as Exhibit G.
101. The CLCPA requires an end to additional gas infrastructure and an immediate

reduction in gas usage. Any proposal to build additional gas infrastructure or increase gas usage is fundamentally incompatible with achieving the greenhouse gas emissions reductions required by the CLCPA. (Exhibit G at ¶11). National Grid has confirmed that it did not conduct a greenhouse gas emissions assessment of the proposed Project, the North Brooklyn Pipeline, or the Greenpoint LNG trucking station. (NYDPS, *Corrected Evidentiary Hearing Transcript Volume 9, February 25, 2020*, at 405, lines 19-24, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B0E809CD9-3633-4326-A9CA-1F2ADBB2E87B%7D>; *See also, supra* at 393, lines 9-13, and at 405, line 25, and at 406, lines 2-4).

102. Because National Grid cannot meet its portion of the CLCPA's legally mandated greenhouse gas emissions reduction by building new gas infrastructure that will increase emissions as well as expand and facilitate the continued use of natural gas as an energy source, the CLCPA requires that DEC deny National Grid's Article 19 Air State Facility application. (Exhibit G at ¶13).
103. Although DEC's determination of significance for the Project was a negative declaration, National Grid's draft ASF permit was conditioned on compliance with "regulations to be promulgated by the Department to ensure" that CLCPA emissions reduction mandates are met. (Exhibit A at 7).
104. Because there is no pathway by which the proposed Project could be consistent with the CLCPA, this permit condition does not make sense. (Exhibit G at ¶15).
105. National Grid's May 2020 *Long-Term Capacity Supplemental Report*, in which Vaporizers 13 and 14 are presented as a "supply option to close the demand gap," contains a section on compliance with the CLCPA asserting National Grid's belief

that “continued growth in gas use is consistent with a regional 40% reduction by 2030, provided that it is coupled with energy efficiency and dramatic reductions in fuel oil utilization.” This claim has been unequivocally debunked by the scientific literature. (Exhibit G at ¶12).

106. In its denial of Transco’s application for a Water Quality Certification for the proposed Williams NESE pipeline in May 2020, DEC noted that the Williams NESE pipeline “would facilitate the use of natural gas for an extended period of time” and therefore “is inconsistent with the energy and climate policies, laws, and goals of the State.” National Grid’s Project is inconsistent with the CLCPA for this same reason. (Exhibit G at ¶14).

107. National Grid’s Project is even more clearly out of compliance with the CLCPA when the “whole action,” which includes LNG trucking and the North Brooklyn Pipeline, is considered. (Exhibit G at ¶16).

108. According to Petitioners’ expert, given the nature of this Project, there is a strong likelihood of significant adverse environmental impact and an Environmental Impact Statement should be a bare minimum requirement. (Exhibit G at ¶17).

109. Further, this Project would adversely impact environmental justice communities, contrary to the CLCPA’s requirement that DEC “[p]rioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.” (ECL § 75-0109(3)(d)). Given the Project’s location in, and proximity to, multiple DEC-designated Potential Environmental Justice Areas (“PEJAs”), adverse environmental impacts of the Project are highly likely to harm these communities. (Exhibit B at 3).

110. By issuing a negative declaration for the Project, DEC failed to prioritize

measures to maximize net reductions of greenhouse gas emissions and co-pollutants in the DEC-designated PEJAs near the Project site. Additionally, National Grid has confirmed that it did not conduct any assessment of potential adverse impacts of the proposed LNG vaporizers, the Greenpoint LNG trucking station, or the North Brooklyn Pipeline on disadvantaged communities. (NYSDPS, *Corrected Evidentiary Hearing Transcript Volume 9 February 25, 2020* at 406, lines 13-17, <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B0E809CD9-3633-4326-A9CA-1F2ADBB2E87B%7D>; *See also, supra* at 394, lines 17-21).

The Project is Inconsistent with New York City Executive Order No. 52

111. This Project conflicts with New York City's Executive Order No. 52 (EO 52), which reads, "to ensure that [the City's] ambitious emissions goals are achieved, the City will not support the addition of infrastructure within its energy shed that expands the supply of fossil fuels via pipelines or terminals for the transfer of fossil fuels." National Grid's proposal to add two new LNG vaporizers would "expand the supply of fossil fuels" via an LNG trucking station where LNG would be transferred to the vaporizers to enable a refill process. (*See*, Exhibit O at 52).
112. On May 1, 2020, the City submitted public comments in the Public Service Commission proceeding to investigate National Grid's denial of service requests (Case 19-G-0678). Regarding the options presented by National Grid in its February 2020 *Natural Gas Long-Term Capacity Report* to address the supposed gap between design day demand and available supply of gas, the City wrote, "only the no-infrastructure options set forth in the Report offer a viable planning tool...Specifically, all of the infrastructure options identified in the Report increase the supply of fossil fuels into the City, and therefore are inconsistent with EO 52."

(See, Exhibit W at 2). The LNG vaporizer Project is also an infrastructure option (presented in National Grid's May 2020 *Natural Gas Long-Term Capacity Supplemental Report*) that would increase the supply of fossil fuels into New York City and is therefore inconsistent with EO 52.

113. Petitioner brings this action to annul DEC's negative declaration based on the adoption of insufficient, inaccurate, and incomplete SEQRA findings as arbitrary, capricious, and an abuse of discretion due to procedural defects in the application and review process, DEC's reliance on insufficient and inaccurate information, including underestimated emissions figures, and DEC's failure to adequately consider the Project's significant environmental impacts, including cumulative impacts, and assess reasonable alternatives as set forth in the following causes of action.

AS AND FOR A FIRST CAUSE OF ACTION (ARTICLE 78)

114. Petitioners repeat and reallege each and every allegation contained above as if set forth fully herein.
115. Article 78 of New York's Civil Practice Law and Rules provides a device for challenging the actions of New York State in adopting findings pursuant to the State Environmental Quality Review Act (SEQRA), N.Y. Env'tl. Conserv. Law art. 8.
116. As detailed above, DEC relied on National Grid's misrepresentation of information, which was unsupported and factually incorrect in all the ways detailed in this Petition and in the accompanying affidavits. As fully discussed above, the determination of non-significance was based on insufficient information, underestimated emissions, lack of consideration of cumulative impacts, a segmented review of the Project, and a fundamental misunderstanding of the requirements of New York State's climate law, among other flaws. These conclusions are unsupported,

could not have reasonably been reached, and are contrary to fact.

117. DEC failed to take a “hard look” at the environmental impacts of the proposed Project in violation of SEQRA, and its action as a result was arbitrary and capricious, contrary to law, and an abuse of discretion.
118. For each of these independent reasons, the finding of the negative declaration was arbitrary, capricious, contrary to law, and an abuse of discretion:
- a. The Project plainly may have significant adverse environmental impacts under SEQRA, both assuming the application were accurate and based on a correct calculation of increased emissions.
 - b. DEC conducted a segmented review of the Project.
 - c. DEC’s determination of significance lacked a through and complete analysis of SEQRA criteria.
 - d. DEC failed to apply Commissioner Policy 29 despite the policy’s applicability to the Project.
 - e. DEC failed to complete a Coastal Assessment Form.
 - f. The Project’s application and public notice are procedurally deficient.
 - g. The Project conflicts with the mandates of the Climate Leadership and Community Protection Act.
 - h. The Project is inconsistent with the New York City’s Executive Order No. 52.
 - i. There is no regulatory mechanism to downgrade an active Title V permit to an Air State Facility permit.

WHEREFORE, Petitioners demand judgment and injunctive relief as follows:

- A) A judgment that DEC's negative declaration was arbitrary and capricious.
- B) A judgment that enjoins National Grid from proceeding with the Project until DEC fully complies with SEQRA, CLCPA, CP-29, UPA, WRCRA, EO-52, and all relevant DEC regulations.
- C) A judgment that orders DEC to use a full Environmental Assessment Form and conduct a coordinated review of National Grid's Article 19 Air State Facility Application.
- D) A judgment that orders agencies to revoke all outstanding permits and deny all pending and future permit applications for the Greenpoint LNG trucking station, LNG trucking operations, and Phase 5 of the North Brooklyn Pipeline until DEC reviews the "whole action" as required by SEQRA.
- E) Granting Petitioners such further relief as the Court may deem proper.

Dated: White Plains, NY
March 18, 2021

Respectfully submitted,



Todd D. Ommen
Pace Environmental Litigation Clinic, Inc.
78 North Broadway
White Plains, NY 10603
(914) 422-4343
tommen@law.pace.edu

Ruhan Nagra
University Network for Human Rights
15 Ellsworth Road
West Hartford, CT 06107
(314) 435-2377
ruhan@humanrightsnetwork.org

*Attorneys for the Petitioners, The Sane Energy
Project et al.*

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF QUEENS

SANE ENERGY PROJECT, COOPER PARK RESIDENT
COUNCIL, INC., CHRISTINE FACELLA, ERIC KUN, and
WILLIAM VEGA

Petitioner(s),

-versus-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and BROOKLYN
UNION GAS COMPANY D/B/A NATIONAL GRID

Respondents.

VERIFICATION

Index No. _____

STATE OF NEW YORK) ss:
QUEENS COUNTY

Kim Fraczek, being duly sworn, deposes and says that she is a citizen of the State of New York, and Director of Petitioner, Sane Energy Project, whose domicile is in the State of New York, and hereby states that she has read the annexed Petition, knows the contents thereof and the same is true to her knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters she believes them to be true. Her belief to those matters therein not stated upon knowledge and belief is based upon the files she maintains.



KIM FRACZEK

Sworn to me before this
14 day of March, 2021



NOTARY PUBLIC

My Commission expires: 4/06/2024

DENNIS FITZGERALD DONNELLY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DO6406069
Qualified in New York County
My Commission Expires 04-06-2024

Virtually notarized pursuant to EO 202-7,
with affidavit in Kings County