

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

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In the Matter of

HUDSON RIVER SLOOP CLEARWATER, INC., GOSHEN GREEN FARMS LLC, TOWN OF NORTH SALEM, NEW YORK PUBLIC INTEREST RESEARCH GROUP FUND, INC., NUCLEAR INFORMATION AND RESOURCE SERVICE, BEYOND NUCLEAR, INDIAN POINT SAFE ENERGY COALITION, PROMOTING HEALTH AND SUSTAINABLE ENERGY, INC., SAFE ENERGY RIGHTS GROUP, SCOTT CHASE, RICHARD HAMMER, JOYCE HARTSFIELD, JOSEPH J. HEATH, WILLIAM MCKNIGHT, SR., BRUCE ROSEN, GEORGE STADNIK, LYNNE TEPLIN, ELLEN C. BANKS, CARYL BARON, LINDA BELISLE, DANIEL BIRN, MIRIAM BLUESTONE, J. ALLISON CROCKETT, LAURA DEL GAUDIO, ALLEGRA DENGLER, MICHELLE FRIEDMAN, DEAN GALLEA, VALERIE GILBERT, ALLAN GOLDHAMMER, CARLTON GORDON, JENNIFER GORMAN, STEVEN L. GOULDEN, CATHY A. HAFT, RICHARD HAMMER<sup>1</sup>, BRIAN OBERMAN, OBIE HUNT, ROBERT V. JACOBSON, VICKEY KAISER, ALVIN KONIGSBERG, JUDITH A LASKO, SUSAN D. LEIFER, MIKHAELA A. MARICICH, FREDERICK MARTIN, III, PATRICIA MATTESON, JANE MAYER, JANET MCBRIDE, VALERIE MIEDERHOFFER, TERESA OLANDER, VICTOR PALIA, CAROLINE PAULSON, GAIL PAYNE, THOMAS RIPPOLON, ROSEMARIE SANTIESTEBAN, CHERYL SCHNEIDER, CAROL SKYRM, MELVYN T. STEVENS, STEVEN STUART, MONICA WEISS, ERIC WESSMAN, TODD D. WOLGAMUTH, and JUDITH M. ZINGHER,

Petitioners-Plaintiffs,

For a Judgment Pursuant to Article 78  
of the CPLR,

-against-

NEW YORK STATE PUBLIC SERVICE COMMISSION along with  
AUDREY ZIBELMAN in her official capacity as Chair; PARTICIA L.  
ACAMPORA, GREGG C. SAYRE, and DIANE X. BURMAN, in

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<sup>1</sup> Based on the submissions, it appears that petitioners inadvertently listed Richard Hammer twice.

their official capacities as Commissioners,

Respondents-Defendants,

-and-

CONSTELLATION ENERGY NUCLEAR GROUP, LLC with subsidiaries and affiliates EXELON GENERATION COMPANY, LLC, R.E. GINNA NUCLEAR POWER PLANT, LLC and NINE MILE POINT NUCLEAR STATION, LLCL and ENTERGY POWER GENERATION CORP. with subsidiaries and affiliates ENTERGY NUCLEAR FITZPATRICK, LLC, INDIAN POINT 2, LLC, and INDIAN POINT 3, LLC,

Nominal Respondents-Defendants.

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Supreme Court Albany County Article 78 Term  
Hon. Roger D. McDonough, Acting Supreme Court Justice Presiding  
RJ# 01-16-ST8331 Index # 7242-16

Appearances:

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PUBLIC SERVICE COMMISSION  
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### **DECISION/ORDER/JUDGMENT**

Roger D. McDonough, Justice

Respondents-Defendants (hereinafter ("PSC")) seek dismissal of this proceeding pursuant to CPLR §§ 7804, 3211(a)(2), 3211(a)(3) and 3211(a)(7). The Nominal Respondents-Defendants (hereinafter ("Nominal Respondents")) also seek dismissal pursuant to CPLR §§ 7804(f) and 3211.

#### **Proposed Amici and Pro Hac Vice Applicant**

Over several objections, the Court will consider all of the submissions provided by the *amici* to the extent they are relevant to the pending motions for dismissal and the motion for leave to amend the amended verified petition. The Court reserves decision as to whether the submissions will be considered as to future rulings on causes of action that survive the dismissal motions. Additionally, the Court granted *pro hac vice* status to Attorney Matthew E. Price prior to the oral argument of this matter.

#### **Background**

In August of 2016, the PSC approved a program named the Clean Energy Standard ("CES"). The CES includes a recognition as to the environmental value of the absence of carbon

dioxide air emissions from certain nuclear power reactors. This is known as the zero emission credit program (“ZEC”). The ZEC calls for payment to eligible nuclear generators in accordance with the “social cost of carbon”. In other words, the payments would reflect the environmental and social value provided by the zero emission producers in supplanting carbon-emitting production. The nominal-respondents are the nuclear generating entities impacted by the CES and the ZEC.<sup>2</sup> Ultimately, after transactions including the sale of zero emission credits to electric utilities, PSC estimates that the average residential electric consumer will see a rise in their utility bills of less than two dollars per month.

In response to numerous requests to reconsider or rehear certain aspects of the CES, the PSC issued a December 2016 Rehearing Order. The instant litigation ensued.

### **Procedural Background**

Petitioners’ original pleading was a combined article 78 and declaratory judgment petition. The sole petitioners were Hudson River Sloop Clearwater, Inc., (“Clearwater”) and Goshen Green Farms, LLC (“Goshen Green”). In addition to the PSC and its commissioners, the Attorney General of the State of New York was named as a respondent. The pleading set forth five causes of action. Subsequently, petitioners served an Amended Verified Petition and Complaint. Said amended pleading dropped the Attorney General as a respondent and added numerous petitioners-plaintiffs as parties. The amended pleading also added a sixth cause of action. Shortly before the PSC and the nominal respondents moved to dismiss the amended pleading, petitioners attempted to correct the amended pleading by substituting a new page 49. The nominal respondents and PSC objected to the “correction” and requested: (1) that petitioners’ request be denied; or (2) that petitioners’ be required to properly move for leave to amend. Petitioners responded with an appropriate motion for leave to amend and said issue is fully submitted.

The Court heard oral argument in the matter. The proposed *amici* were allowed to be heard at said oral argument, to the extent that they had relevant statements to make about the pending motions to dismiss. Post oral argument submissions were not discussed or contemplated by the Court. Nevertheless, nominal respondents and petitioners both made such submissions.

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<sup>2</sup> Nomina-Respondents Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC own and operate the Indian Point Energy Center (“Indian Point”).

No objections were raised regarding the submissions. Additionally, the submissions referenced potentially relevant, new federal case law. Accordingly, the Court has considered said submissions to the extent they are relevant to the pending motions to dismiss.

**Motion for Leave to Amend the Amended Petition**

The motion for leave to amend was solely opposed by the nominal-respondents. On a motion for leave to amend, the burden is on the movant to establish that the proffered amendment is not palpably insufficient or clearly devoid of merit (MBIA Ins. Corp. v Greystone & Co., Inc., 74 AD3d 499, 500 [1<sup>st</sup> Dept. 2010]). Leave should be freely granted in the absence of prejudice or unfair surprise to the nonmoving party or parties (*see*, Adirondack Combustion Technologies, Inc. v Unicontrol Inc., 17 AD3d 825, 826 [3<sup>rd</sup> Dept. 2005]).

The Court finds that petitioners have adequately established the merit of their proposed amendment to the amended pleading. Additionally, the nominal-respondents did not adequately address or establish how the amendment would cause them any prejudice or result in unfair surprise. Accordingly, the motion for leave to amend must be granted.

**Motions to Dismiss**

The final Amended Petition sets forth six causes of action. The first alleges that the PSC failed to follow the requirements of the State Administrative Procedure Act (“SAPA”). The second alleges that the PSC’s actions were arbitrary and capricious and an abuse of discretion when it: (1) misapplied the social cost of carbon metric as the legal basis for tier 3 of the nuclear reactors; and (2) when it declared the reactors “publicly necessary”. The third alleges that the PSC’s Order contains a mistake of fact and violates SAPA § 201 which requires the use of words with common everyday meanings. The fourth alleges that the adoption of tier 3 violates the State Environmental Quality Review Act (“SEQRA”). The fifth alleges that PSC has violated Public Service Law § 66-c by setting rates which are unjust, unreasonable, unjustly discriminatory and unduly preferential. The final cause of action alleges that the PSC’s adoption of tier 3 is an abuse of discretion, arbitrary and capricious, lacking in rational basis and not otherwise in accordance with law. Petitioners request the following relief: (1) an Order vacating, annulling and rescinding the tier 3 portion of the PSC’s Order; (2) an Order declaring tier 3 to be arbitrary and capricious and in violation of SAPA; (3) an Order striking all references to nuclear energy production as “zero-emissions”; (4) an Order declaring tier 3 to be *ultra vires*, contrary to law

and in violation of PSL § 66; (5) an Order declaring tier 3 to be null and void as violative of the due process rights of petitioners under the New York States and United States Constitutions. Alternatively, petitioners ask the Court to remand tier 3 to the PSC in order for PSC to follow lawful procedures and correct mistakes of fact. All respondents-defendants (“respondents”) move to dismiss the petition/complaint on the grounds of: (1) timeliness; (2) standing; (3) ripeness; and (4) failure to state a cause of action.

### **Timeliness**

Respondents take the position that 56 of the 61 petitioners must be dismissed from this proceeding because their claims are untimely. Respondents maintain that said petitioners failed to bring their claims within four months after the PSC’s CES determination became final and binding. Additionally, respondents preemptively argue that the “relation back” doctrine is inapplicable to petitioners’ claims. Similarly, respondents preemptively argue that a request for a rehearing does not toll the statute of limitations. Finally, respondents also preemptively noted that the four month statute of limitations period applies to any declaratory relief that could have been sought in an Article 78 proceeding.

In sum, respondents maintain that the four month statute of limitations began to run on August 1, 2016. However, respondents concede that the PSC did agree to toll the statute of limitations for those petitioners who sought a rehearing. As such, respondents maintain that the only petitioners who have brought timely claims are the original two petitioners Clearwater and Goshen Green, along with petitioners Nuclear Information and Resource Service (“NIRS”), Indian Point Safe Energy Coalition (“IPSEC”) and Promoting Health and Sustainable Energy, Inc. (“PHASE”). NIRS, IPSEC and PHASE all moved for a rehearing of the August 1, 2016 CES determination. The rehearing determination was issued in December of 2016. As the amended petition was filed in March of 2017, any petitioners whose claims accrued on August 1, 2016 and were not tolled, must be dismissed from this proceeding.

In opposition, petitioners maintain that the denial of the requests for rehearing constitutes the date for commencement of the statute of limitations. Petitioners did not challenge the applicability of the four month period, nor did they attempt to rely on the “relation back doctrine”. In support of their argument, petitioners rely on generic case law as to the issue of when an administrative determination becomes final and binding. Petitioners also acknowledged

the existence of potentially controlling, contradictory case law.

The Court finds that the causes of action herein, with the exception of those being challenged on ripeness grounds, are challenging administrative determinations that became final and binding on August 1, 2016. The Court further concludes that PSC's determination as to the rehearing did not act to toll the statute of limitations (*see, MCI Telecommunications Corp. v Public Service Com'n of the State of N.Y.*, 231 AD2d 284, 289-290 [3<sup>rd</sup> Dept. 1997]).

Accordingly, the Court finds that respondents have established that 56 of the 61 petitioners must be dismissed from this proceeding because their claims are time-barred. Accordingly, the motion to dismiss must be granted as to all petitioners **with the exception of** Clearwater, Goshen Green, NIRS, IPSEC and PHASE.

### **Standing**

Respondents argue that petitioners lack sufficient standing to pursue the SEQRA claims set forth in the fourth cause of action. Specifically, respondents maintain that petitioners' alleged environmental injuries are speculative and not at all distinct from the public at large.

Additionally, respondents note that petitioners cannot rely upon alleged harms from Indian Point because any claims involving Indian Point are unripe at this time. Finally, petitioners note that alleged economic injuries are not within SEQRA's zone of interests and therefore cannot provide a basis for standing.

In opposition, petitioners primarily rely upon the standing of individual and organizational petitioners whose claims were dismissed above as untimely. As to NIRS and Clearwater, petitioners stress that members of said groups allege direct harm in terms of: (1) their use and enjoyment of Lake Ontario; and (2) their location within the 50-mile ingestion pathway emergency preparedness zone. Petitioners did not address their alleged improper reliance on economic injuries and therefore appear to concede the issue.

The Court finds that petitioners properly conceded that economic harm cannot serve as a basis for standing (*see, Matter of Widewaters Rte. 11 Potsdam CO, LLC v Town of Potsdam*, 51 AD3d 1292, 1294 [3<sup>rd</sup> Dept. 2008]). Additionally, for the reasons set forth above, the Court cannot consider the standing qualifications of 56 of the 61 petitioners. Additionally, for the reasons set forth below as to ripeness, the Court cannot consider claims pertaining to Indian Point. Turning to the remaining claims, the Court has reviewed the amended amended pleading

and the numerous affidavits submitted as to the issue of standing. The Court finds that petitioners have failed to adequately allege the existence of an injury distinct from the general public (*see, Matter of Clean Water Advocates of N.Y., Inc. v New York State Dept. of Env'tl. Conservation*, 103 AD3d 1006, 1008-1009 [3<sup>rd</sup> Dept. 2013]). Similarly, petitioners' submissions reveal potential injuries that are far too speculative to afford standing (*see, Id.* at 1008). In light of the Court's findings, the Court need not reach respondents' alternative challenges to petitioners' standing including the potential of federal preemption.

### **Ripeness**

Respondents maintain that the arguments as to Indian Point are not ripe because: (1) PSC's administrative determination is not final as to Indian Point; and (2) the anticipated harm to petitioners is therefore contingent upon events which might not come to pass. In opposition, petitioners argue that a final determination has been rendered as to Indian Point's qualification for the ZEC program. Petitioners accordingly maintain that they will be beyond the statute of limitations to challenge this final determination if their claims are not considered now.

The Court finds that the remaining petitioners' claims as to Indian Point are unripe because they are wholly dependent upon Indian Point applying and being approved for ZEC payments. As there has been no showing that such contingencies will ever come to pass, the Court finds that the claims are not ripe for judicial review (*see, Matter of Jamaica Water Supply Co. v Public Serv. Commn. of State of N.Y.*, 152 AD2d 17, 20 [3<sup>rd</sup> Dept. 1989]).

### **Failure to State a Cause of Action**

It is axiomatic that the Court must deem all of the allegations in petitioners' pleading as true and afford the petitioners the benefit of every favorable inference (*MVM Const., LLC v Westchester County Solid Waste Com'n*, 112 AD3d 637, 638 [2<sup>nd</sup> Dept. 2013]). More specifically, the Court must only consider the face of the pleading, deem the allegations to be true and ignore respondents' submissions (*see, Matter of Lally v Johnson City Cent. Sch. Dist.*, 105 AD3d 1129, 1131 [3<sup>rd</sup> Dept. 2013])<sup>3</sup>.

As to declaratory relief, the only issue for the Court to consider is whether a cause of

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<sup>3</sup> Of course, the Court may consider the respondents' submissions as to other grounds for dismissal including timeliness (*see, Bronx-Lebanon Hosp. Center v Daines*, 101 AD3d 1431, 1432 [3<sup>rd</sup> Dept. 2012]).



action is set forth, not whether petitioners are ultimately entitled to favorable declarations (*see*, MVM Const., LLC v Westchester County Solid Waste Com'n, *supra* at 639). Where a cause of action sufficiently invokes the Court's power to issue a declaratory judgment as to rights and legal relations of the parties to a justiciable controversy, a motion to dismiss should be denied (State Farm Mut. Auto Ins. Co. v Anikeyeva, 89 AD3d 1009, 1011[2<sup>nd</sup> Dept. 2011]).

**1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Causes of Action**

The Court finds that petitioners have adequately set forth cognizable Article 78 causes of action sufficient to survive a CPLR § 3211(a)(7) motion to dismiss as to causes of action 1-3, 5 and 6. Respondents submissions as to said causes of action, beyond what was previously discussed, overwhelmingly focused upon the ultimate merits of the causes of action. In the absence of a proper motion for summary judgment or even a request for CPLR § 3211(a)(8), the Court declines to entertain such discussions without the benefit of answers and the full administrative record (*see*, MVM Const., LLC v Westchester County Solid Waste Com'n, *supra* at 639). Accordingly, the Court denies respondents' motions to dismiss as to causes of action 1-3, 5 and 6 of the remaining petitioners.

**4<sup>th</sup> Cause of Action**

For the reasons stated above, the Court finds that the fourth cause of action must be dismissed based on petitioners' lack of standing.

**Requests for Declaratory Relief**

The Court finds, as to the remaining petitioners, that the requests for declaratory relief have sufficiently set forth causes of action for declaratory relief.

Respondents' remaining arguments in support of dismissal have been considered and found to be lacking in merit. Petitioners' remaining arguments in support of their opposition have been considered and found to be lacking in merit.

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that petitioners' motion for leave to amend is hereby granted; and it is further

ORDERED AND ADJUDGED that respondents' motions to dismiss are hereby granted on the basis of untimeliness as to all petitioners with the exception of Clearwater, Goshen Green, NIRS, IPSEC and PHASE; and it is further

ORDERED AND ADJUDGED that respondents' motions to dismiss the fourth cause of action are hereby granted on the basis of the lack of standing of the remaining petitioners Clearwater, Goshen Green, NIRS, IPSEC and PHASE; and it is further

ORDERED AND ADJUDGED that respondents' motions to dismiss all claims pertaining to Indian Point are hereby granted on the basis of the lack of ripeness of the claims of the remaining petitioners Clearwater, Goshen Green, NIRS, IPSEC and PHASE; and it is further

ORDERED AND ADJUDGE that respondents' motions to dismiss are otherwise denied; and it is further

ORDERED AND ADJUDGED that, except as otherwise set forth above, the Court reserves decision as to the issue of consideration of the proposed *amici's* submissions; and it is further

ORDERED AND ADJUDGED that the respondents are granted thirty-five (35) days from notice of entry of this Decision, Order and Judgment to serve and file their answers; and it is further

ORDERED AND ADJUDGED that petitioners' counsel and counsel for all respondents are directed to confer and propose a final briefing schedule to the Court within twenty (20) days of notice of entry of this Decision, Order and Judgment.

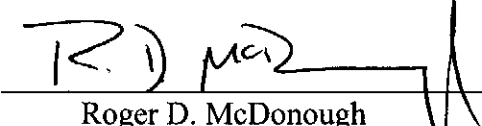
SO ORDERED AND ADJUDGED.

This shall constitute the Decision, Order and Judgment of the Court. The original

Decision, Order and Judgment is being returned to the counsel for petitioners who is directed to enter this Decision, Order and Judgment without notice and to serve all counsel of record with a copy of this Decision, Order and Judgment with notice of entry. The Court will transmit a copy of the Decision, Order and Judgment to the County Clerk. The Court will retain the papers considered at this time based on the continued proceedings. The signing of the Decision, Order and Judgment and delivery of a copy of the Decision, Order and Judgment shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

**ENTER**

Dated: Albany, New York  
January 22, 2018



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Roger D. McDonough  
Acting Supreme Court Justice

Papers Considered:

**Motions to Dismiss and Petitioners' Motion for Leave to Amend**

Petitioners' Notice of Verified Article 78 and Declaratory Judgment Petition, dated November 30, 2016;  
Verified Article 78 and Declaratory Judgment Petition, verified on November 30, 2016, with annexed exhibits;  
Petitioners' Notice of Amended Verified Petition Pursuant to Article 78 and Complaint, dated January 13, 2017;  
Petitioners' Summons, dated January 13, 2017;  
Petitioner's Amended Verified Petition Pursuant to CPLR Article 78 and Complaint, dated January 13, 2017;  
Affirmation of Susan H. Shapiro, Esq., dated January 12, 2017, with annexed exhibits;  
Petitioners' Memorandum of Law in Support of Amended Verified Petition and Complaint, dated January 13, 2017, with annexed exhibits;  
Correspondence from Petitioners' Counsel, dated February 2, 2017, seeking to correct the Petitioners' Amended Verified Petition, with annexed exhibits;  
Correspondence from Counsel for Constellation Respondents-Defendants, dated February 6, 2017 objecting to proposed correction of Petitioners' Amended Verified Petition;  
PSC's Notice of Motion to Dismiss, dated February 15, 2017;  
Affirmation of John C. Graham, Esq., dated February 15, 2017, with annexed exhibits;  
PSC's Memorandum of Law, dated February 15, 2017;  
Correspondence from PSC's Assistant Counsel, dated February 16, 2017, with annexed compact disc containing PSC's motion to dismiss submissions;  
Nominal Respondents' Notice of Motion to Dismiss, dated February 15, 2017;  
Nominal Respondents' Memorandum of Law, received on February 15, 2017;  
Affirmation of Victoria A. Graffeo, Esq., dated February 15, 2017, with annexed exhibits;  
Petitioners' Notice of Motion for Leave to Amend the Amended Verified Petition, dated February 16, 2017;  
Affirmation of John Parker, Esq., dated February 16, 2017, with annexed exhibits;  
Petitioners' Memorandum of Law in Support of Leave to Amend Pleadings, dated February 16, 2017;  
Affirmation of Victoria A. Graffeo, Esq., dated March 10, 2017;  
Affirmation of Sanford I. Weisburst, Esq., dated March 17, 2017;  
Affirmation of Susan H. Shapiro, Esq., dated March 24, 2017, with annexed exhibits;  
Petitioners' Memorandum of Law, dated March 24, 2017;  
Reply Affirmation of John C. Graham, Esq., dated April 28, 2017, with annexed exhibit;  
Reply Affirmation of Victoria A. Graffeo, Esq., dated April 28, 2017;  
Nominal Respondents' Reply Memorandum of Law, received on April 28, 2017;  
Post-Oral Argument Submission from Counsel for Nominal Respondents, dated July 28, 2017, with annexed caselaw;  
Post-Oral Argument Submission from Petitioners' Counsel, dated August 7, 2017;  
Post-Oral Argument Reply Submission from Counsel for Nominal Respondents, dated August 9, 2017, with annexed exhibits.

**Proposed Amici Submissions and Pro Hac Vice Application**

Notice of Motion to Admit Matthew E. Price, Esq., Pro Hac Vice, dated December 30, 2016;  
Affirmation of Matthew E. Price, Esq., dated December 21, 2016, with annexed exhibits;  
Affirmation of Daniel H. Wolf, Esq., dated December 21, 2016;  
Notice of Motion of Coalition for Competitive Energy, et al., for Leave to File Amicus Brief, dated April 3, 2017;  
Motion of Coalition for Competitive Energy, et al., for Leave to File Amicus Brief, dated April 3, 2017, with annexed exhibits;  
Correspondence from PSC's Deputy General Counsel, dated April 27, 2017;  
Notice of Motion for Leave for Alliance for a Green Economy to file an Amicus Curiae Brief, dated March 31, 2017;  
Affirmation of James Bacon, Esq., dated March 31, 2017, with annexed exhibits;  
Memorandum of Law in Support of Motion for Leave for Alliance for a Green Economy to File an Amicus Curiae Brief, dated March 31, 2017;  
Affirmation of John C. Graham, Esq., in Opposition to Motion for Leave for Alliance for a Green Economy to File an Amicus Curiae Brief, dated April 10, 2017, with annexed exhibit;  
Notice of Motion Seeking Leave for the Town of Bedford and Town of Lewisboro to File Amici Curiae Brief;  
Affirmation of Eric L. Gordon, Esq., dated March 30, 2017, with annexed exhibits;  
Proposed Brief of Amici Curiae Town of Bedford and Town of Lewisboro, dated March 30, 2017;  
Affirmation of John C. Graham, Esq., in Opposition to Motion of the Town of Bedford and the Town of Lewisboro for Leave to File an Amici Curiae Brief, dated April 10, 2017;  
Affidavit of Daniel Welsh in Reply to Opposition and in Further Support of Motion Seeking Leave for the Town of Bedford and the Town of Lewisboro to File an Amici Curiae Brief, sworn to April 18, 2017;  
EDF's Motion for Leave to File an Amicus Brief, dated March 31, 2017;  
Affirmation of James T.B. Tripp, Esq., dated March 31, 2017;  
EDF's Proposed Amicus Brief, dated March 31, 2017;  
Notice of Petitioner's Reply to Proposed Amici Submitted by EDF and PECC, dated April 10, 2017;  
Petitioner's Reply to Proposed Amici Submitted by EDF and PECC, dated April 10, 2017, with annexed exhibit;  
Reply of EDF to Petitioner's Reply, dated April 19, 2017, with annexed exhibit;  
PECC's Motion for Leave to File Amicus Brief, dated March 30, 2017;  
Affirmation of Radina Valova, Esq., dated March 30, 2017, with annexed exhibit;  
PECC's Proposed Amicus Brief, dated March 30, 2017;  
PECC's Reply to Petitioner's Reply, dated April 18, 2017.