



CONCERNED CITIZENS OF DOVER

April 29, 2024

VIA ELECTRONIC MAIL

Karen Gaidasz, Project Manager
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 NYDEC Division of Environmental Permits
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**RE: Iroquois Enhancement by Compression (ExC) Project, DEC
 Application IDs: 3-1326-00211/00001 (Dover Compressor Station); 4-1922-
 00049/00004 (Athens Compressor Station) – Comments of New York
 Lawyers for the Public Interest on behalf of Concerned Citizens of Dover**

Dear Ms. Gaidasz:

In response to the Department of Environmental Conservation’s (“DEC”) February 28, 2024 Notice of Public Comment Period for additional comment upon the Department of Public Service’s letter dated February 26, 2024 (“DPS Letter”), New York Lawyers for the Public Interest respectfully submits this comment on behalf of Concerned Citizens of Dover (“CCD”), a grassroots organization fighting to protect their economically disadvantaged and environmentally overburdened community from further industrial threats to their health and welfare.

Executive Summary

DEC must evaluate the Enhancement by Compression Project (“ExC”) in accordance with the mandates of the Climate Leadership and Community Protection Act (“CLCPA”) and New York’s Environmental Rights Amendment (“ERA”) and should deny the permits pursuant to these laws. We urge DEC to find that: (1) permitting ExC would violate the emissions reduction mandate of Section 7(2) of the CLCPA by drastically increasing emissions; (2) there is no legitimate justification for ExC based on need, and Iroquois has proposed entirely deficient mitigation measures; (3) granting permits for ExC will violate CLCPA Section 7(3) by increasing disproportionate burdens on the disadvantaged communities in Dover and Athens, NY; and (4) in their consideration of ExC, DEC and DPS must also consider New Yorkers’ constitutional right to clean air and water and a healthful environment. We must not continue to sacrifice disadvantaged communities for an unnecessary and dangerous project that would set the state further behind on its greenhouse gas emissions reduction mandates.



Photo by Charlie Quimby, CCD member, taken 1.3 miles from the Dover compressor station

Dover Is an Overburdened, Disadvantaged Community

“Dover is a special place. We have great, working-class people. It’s been targeted since the 1940s as a dumping ground because it has less economic power—the lowest income levels in Dutchess County. It’s important to advocate for the underdog. We’re the canary in the coal mine.”¹

-- Ben Schwartz, CCD member and farmer at White Pine Community Farm in Wingdale

Dover is a naturally beautiful town with a population of about 8,000 residents over 56 square miles that already has a disproportionate share of energy infrastructure, environmental vulnerabilities, and health risks. CCD includes members residing in the Wingdale tract, which is immediately adjacent to the compressor station.² The state has designated Wingdale a disadvantaged community (“DAC”) as defined by the CLCPA based on a set of 45 criteria.³ ExC would burden the DAC with increased air pollutants and accompanying health consequences.⁴ Wingdale has higher rates of poverty than 78% of New York tracts, and higher rates of unemployment than 73%.⁵ It has a larger population of Latino residents than 76% of New York

¹ Phone interview with Ben Schwartz (March 12, 2024), on file with NYLPI.

² Iroquois Response to DEC Request for Additional Information Number 3, Revised Disadvantaged Communities (DAC) Evaluation (Sept. 23, 2022) at 3 [hereinafter Response to RFAI No. 3].

³ See DEC, Disadvantaged Communities Criteria Fact Sheet (Sept. 2023), https://climate.ny.gov/-/media/Project/Climate/Files/Disadvantaged-Communities-Criteria/LMI-daccriteria-fs-1-v2_acc.pdf.

⁴ See *infra* Section III.

⁵ *Final Disadvantaged Communities (DAC) 2023*, NY Open Data (Oct. 10, 2023), https://data.ny.gov/Energy-Environment/Final-Disadvantaged-Communities-DAC-2023/2e6c-s6fp/about_data.

tracts, and a larger population of Black residents than 54%.⁶ Likely not by coincidence,⁷ residents in Wingdale face greater industrial land use than 92% of New York tracts, and more remediation sites than 87%.⁸ Their drive time to healthcare is longer than 96% of New York tracts, and their insurance coverage rate is lower than 83%.⁹ Wingdale residents also face higher than average rates of low birth weight and premature death.¹⁰ Throughout Dover, rates of hospitalization for asthma are of high concern to New York's Department of Health.¹¹ The proposed ExC site would sit right next to the Dover Middle and High School, where the drinking water of its hundreds of students has for years been contaminated by PFOA, PFOs, and PFHxA, exceeding state limits.¹²



Map of existing and proposed facilities in Dover¹³

Dover already hosts several industrial power facilities, and if DEC were to approve ExC, it would add yet another while not having a single grocery store or major medical facility.¹⁴ Over

⁶ *Id.*

⁷ Race, in particular, has consistently proven a primary factor in the siting of industrial facilities. See Mohai and Lantz, et. al., *Racial and Socioeconomic Disparities in Residential Proximity to Polluting Industrial Facilities*, 99 *Am. J. Pub. Health* S649 (Nov. 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2774179/>.

⁸ *Final Disadvantaged Communities (DAC) 2023*, *supra* note 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *New York State Asthma Dashboard*, NYS Dep't of Health, https://apps.health.ny.gov/public/tabvis/PHIG_Public/asthma/ (last accessed Apr. 22, 2024).

¹² NYS Dep't of Health, Do Not Drink Notice (Oct. 18, 2023), https://core-docs.s3.us-east-1.amazonaws.com/documents/asset/uploaded_file/2296/DUFSD/3650584/Do_Not_Drink-10.18.23.pdf.

¹³ Concerned Citizens of Dover, <https://www.savedover.org/> (last accessed Apr. 24, 2024).

¹⁴ *Id.*

staunch local opposition,¹⁵ Dover became host to Cricket Valley, a 1,100-MW combined cycle gas turbine power plant that continues to pollute the air. Also located in this town is the proposed NYTransco electric substation site, an un-remediated former dump directly adjacent to the Great Swamp preserve¹⁶—a National Historical Landmark, Critical Environmental Area,¹⁷ and Class I Wetland. Adjacent to the parcel on which the proposed substation will sit is a state superfund site on which two of the NYTransco transformer towers are proposed to be built. Understandably, citizens of Dover are also extremely concerned about the impacts that blasting a potentially toxic site and subsequent construction will have on the adjacent preserve and wetlands.

CCD's concerns are compounded by the dangerous and aging interstate Iroquois gas pipeline on which the ExC expansion is being proposed. The pipeline runs for nearly seven miles in Dover, forcing its way through the land of fifth generation farming families and marring the landscape with fuming infrastructure that is ominously visible across the valleys in town. When it built the pipeline in the 1990s, Iroquois took shortcuts and committed numerous violations of federal law,¹⁸ leading to historically high fines that at the time were second only to those associated with the notorious Exxon spill.¹⁹ These violations put the pipeline at even greater risk of rupture or explosion, the consequences of which can be extremely dangerous.²⁰ Residents of Dover have lived with this ticking time bomb in their backyards for almost forty years and should not be forced to increase the risk of disaster by doubling the pressure exerted on the pipeline.

ExC Will Also Disproportionately Burden the DAC of Athens

The ExC proposal includes an additional compressor station in another of New York's DACs: Athens, NY. This means that the vast majority of pollutant increases from ExC would fall on DACs. The Athens DAC has an overall burden score higher than 94% of the state.²¹ Athens is burdened with heavy truck traffic, in the 86th percentile, and remediation sites, in the 87th percentile.²² Athens has higher than average amounts of wastewater discharge and scrap metal processing, and it faces high risks of inland flooding.²³ Athens residents also face higher than average rates of disability and premature death.²⁴ As discussed below, *infra* Section III, both proposed compressor stations in New York would harm state-designated DACs, and the

¹⁵ See, e.g., Ryan Santistevan, *4 men chained themselves to tractor in protest of Cricket Valley Energy: police*, Poughkeepsie Journal (Jan. 16, 2019), ; Katrina Koerting, *Police arrest 29 protestors at Cricket Valley power plant on state lane*, Newstimes.com (Nov. 18, 2019), <https://www.newstimes.com/local/article/Police-arrest-29-protesters-at-Cricket-Valley-14844638.php>.

¹⁶ *About the Great Swamp*, Friends of the Great Swamp, <https://frogs-ny.org/about-the-great-swamp/> (last visited Apr. 24, 2024).

¹⁷ DEC, Great Swamp Critical Environmental Area (CEA), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/ceadutc13.pdf.

¹⁸ Stipulation and Consent Agreement, Iroquois Gas Transmission Sys., L.P. (May 23, 1996), at 4.

¹⁹ William Glaberson, *Pipeline Concern Draws \$22 Million Fine*, N.Y. Times (May 24, 1996).

²⁰ Joseph Berger, *Hazard Underground: A special report.: 375 Miles of Suspected Short Cuts Fuel Fears of Northeast Pipeline*, N.Y. Times (Mar. 27, 1995).

²¹ *Final Disadvantaged Communities (DAC) 2023*, *supra* note 5.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

overwhelming majority of ExC’s burdens would fall on DACs in clear violation of CLCPA Section 7(3).

ExC Would Violate New York’s Climate Laws

Fossil fuel projects like ExC are exactly what New York’s laws now forbid. As global temperatures reach record-breaking highs consistent with worst-case climate crisis scenarios, our state must use every policy and legal lever available to rapidly transition away from fossil fuel infrastructure and curtail expansion of existing infrastructure. We must immediately end our history of building and operating unhealthy and polluting facilities in overburdened communities.

The passage of the CLCPA in 2019 was the culmination of a multiyear effort, followed by New Yorkers’ overwhelming approval of a new constitutional right to a healthful environment. Recognizing that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York,” by passing the CLCPA, the state legislature endorsed strong action on climate change.²⁵ Now, four years on, the clean energy transition is markedly underway at state and local levels.²⁶ There is a statewide ban on gas hookups in new construction beginning in 2026.²⁷ In New York City, Local Laws 97 and 154 require decarbonization of tens of thousands of buildings starting this year.²⁸ DPS’s finding that there is a need for ExC—based on inaccurate and outdated assumptions without an application of *any* of these laws and in violation of its duties to comply with the CLCPA—cannot form a basis for DEC to grant the permits.

A close look at the CLCPA leads to the conclusion that this expansion is illegal. The CLCPA establishes ambitious greenhouse gas (“GHG”) emissions reduction goals, including the goal of eliminating GHG emissions from all anthropogenic sources by 2050.²⁹ The primary legal mechanisms propelling these goals are Sections 7(2) and 7(3) of the CLCPA. Section 7(2) requires all state agencies to consider whether their administrative decisions interfere with GHG emissions reduction goals set forth in Article 75 of the Environmental Conservation Law (“ECL”).³⁰ Section 7(3) mandates that DACs, like in Dover and Athens, *not* be disproportionately burdened by DEC permits, and that they instead be prioritized for emissions reduction measures.³¹

²⁵ L 2019, ch 106, § 1 [1]-[6]; NY Senate Debate on Senate Bill S6599, June 18, 2019 at 6371.

²⁶ The transition away from reliance on fossil fuels is similarly evident in federal laws. The Inflation Reduction Act and numerous other additional or supporting initiatives all point to a shift away from fossil fuels and toward renewable energy.

²⁷ SB S4006C, 2023–2024 Legis. Sess., <https://www.nysenate.gov/legislation/bills/2023/S4006/amendment/C>. This law, which has been signed by Governor Hochul, effectively requires all-electric heating and cooking in new buildings shorter than seven stories by 2026, and in taller buildings by 2029.

²⁸ Local Law 97 (2019); Local Law 154 (2022).

²⁹ CLCPA § 7(2); E.C.L. § 75-0107(1)(a).

³⁰ *Id.*

³¹ CLCPA § 7(3).

Permitting ExC would clearly violate both of these sections of the CLCPA. ExC will transport additional natural gas to the New York City area through its “enhancement by compression” method. This involves the creation of four new compressor stations, two of which are in New York, and results in the Iroquois system pumping an additional 125 million cubic feet of natural gas per day.³² The compressor stations now in Dover and Athens already produce significant GHG and co-pollutant emissions, as does the combustion of the delivered gas at its point of arrival in the New York City area. Adding even more compressors in Dover and Athens, both home to DACs, will significantly increase GHG emissions. The expanded Dover station has the potential to emit nearly 120,000 tons of CO₂e, more than 65 tons of nitrogen oxides (“NO_x”), and over 30 tons of fine particulate matter (“PM_{2.5}”). The expanded Athens compressor station has the potential to emit nearly 100,000 tons of CO₂e, 50 tons of carbon monoxide (“CO”), more than 56 tons of NO_x, and 20 tons of PM_{2.5}. There is no doubt that these compressor stations would exacerbate the harmful environmental and health impacts to residents of Dover and Athens and put New York off track to meeting its emissions targets.

I. Permitting ExC Would Greatly Increase Emissions in Clear Violation of CLCPA Section 7(2).

The CLCPA commits New York to reduce GHG emissions, and ExC will greatly increase emissions. Under the plain language of Section 7(2), the reasoning used in past permitting decisions under the CLCPA, and DEC’s own guidance, DEC must reject these permit applications.

A. *ExC Would Greatly Increase Emissions in Clear Violation of CLCPA Section 7(2).*

CLCPA Section 7(2) requires that state agencies assess whether their permitting decisions are consistent with the law’s GHG emissions reduction mandates and imposes strict protections where potential inconsistencies are identified.³³ The CLCPA mandates that New York reduce its emissions to 40% below 1990 levels by 2030 and 85% below 1990 levels by 2050.³⁴ Emissions levels in New York in 2021 were only 9% below 1990 levels.³⁵ To achieve the CLCPA’s mandate of a 40% reduction from 1990 levels by 2030, New York has only six years to reduce emissions, by 31%. DEC’s consideration of Iroquois’ Air State Facility (“ASF”) permits³⁶ clearly falls within the scope of Section 7(2). Approval of the permits is inconsistent with achieving CLCPA-mandated reductions, as the project’s anticipated annual lifecycle GHG

³² *Enhancement by Compression Project*, Iroquois Pipeline Operating Company, <https://www.iroquois.com/operations/projects/exc-project/> (last visited Mar. 26, 2024).

³³ CLCPA § 7(2).

³⁴ *Id.*; E.C.L. § 75-0107(1)(a).

³⁵ DEC, 2023 Statewide GHG Emissions Report: Summary Report (2023), at iv.

³⁶ Iroquois has submitted two applications for ASF permits—one for the Dover Compressor Station and one for the Athens Compressor Station—under the authority of DEC’s permitting program in 6 N.Y.C.R.R. Part 201-5. On March 23, 2021, DEC submitted to EPA a revision to its State Implementation Plan (“SIP”) under the Clean Air Act which included 6 N.Y.C.R.R. Part 201-5. This revision has not yet been approved by EPA for inclusion in New York’s SIP. See DEC, *State Implementation Plans and State Plans*, <https://dec.ny.gov/environmental-protection/air-quality/plans> (last accessed Apr. 26, 2024).

emissions is an astounding 859,057 tons of carbon dioxide equivalents (“CO₂e”) in 2030³⁷—tantamount to adding 186,000 passenger cars on New York roadways.³⁸

FERC’s finding that ExC will lead to an overall reduction in GHG emissions is inaccurate and based on unsound analysis put forward by the Iroquois Company. Iroquois reached this conclusion by comparing ExC’s lifecycle GHG emissions to “the GHG emissions of the fuels that the study *assumes* would otherwise be required to meet demand for space heating, water heating, and other end uses if the project were not developed and sufficient gas was not available to meet projected demand.”³⁹ These incorrect assumptions about the need for ExC are brazen and self-serving. As the Institute for Policy Integrity (“IPI”) pointed out in its comment during the FERC proceeding, Iroquois “has an incentive to make assumptions that would lead to higher potential public benefits of its project and minimize potential adverse impacts.”⁴⁰ FERC failed to scrutinize the assumptions made by Iroquois in its analysis, but, as the steward of our state’s environment and public health, DEC has both the capability and the responsibility to recognize the flaws in this analysis. As IPI argued in its comment, those flaws include treating natural gas demand as “exogenous,” failing to account for emissions from energy substitutes, and failing to “recognize existing state laws and treat them as binding.”⁴¹ DEC should thus reject FERC’s finding and Iroquois’ assertion that the project will lead to an overall reduction in GHG emissions.

B. Precedent Requires that DEC Deny these Permits.

In addition to violating the plain language of the CLCPA, approval of ExC would be inconsistent with DEC’s own record of permitting decisions. DEC has an obligation to deny permits inconsistent with the CLCPA and has already denied Title V⁴² permit applications of the proposed Astoria, Danskammer, and Greenidge facilities because they were “inconsistent with or

³⁷ Iroquois Response to DEC Request for Additional Information Number 2, Questions 1–4 (Apr. 29, 2022) at 4, Tbl. 4 [hereinafter Response to RFAI No. 2].

³⁸ U.S. EPA, *Greenhouse Gas Emissions from a Typical Passenger Vehicle* (Aug. 2023), <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle#>.

³⁹ FERC, Order Issuing Certificate (Mar. 25, 2022) at 21 (emphasis added).

⁴⁰ Comments of the Institute for Policy Integrity at New York University School of Law, Iroquois Gas Transmission System, L.P., Docket No. CP20-48 at 3–4.

⁴¹ *Id.* at 4.

⁴² The fact that the permits at issue here are ASF and not Title V permits should not affect DEC’s analysis under the CLCPA. To the extent that Iroquois may argue that the Astoria and Danskammer precedents are inapposite because of this classification, we respectfully submit that DEC could have exercised its discretion to classify Iroquois’ permit as a Title V. Title V permits are required for “major sources” as defined by DEC’s federally-approved permitting program under 6 NYCRR Part 201, whereas ASF permits are required for non-major sources that meet the criteria of 6 NYCRR Subpart 201-5 and have annual emissions exceeding 50 percent of the level that would make them a major source, but that fall below the major source threshold. The interdependent Dover and Athens compressor station enhancements are part of the same “Enhancement by Compression” Project by Iroquois, and the increased natural gas output of the projects will all be combusted downstate. Were the Dover and Athens compressor station enhancement considered as one project, its potential emissions (as projected by Iroquois in its ASF application) of NO_x would be 121.8 tons per year (tpy), thus exceeding the 100 tons tpy threshold for a major source and warranting a Title V designation.

would interfere with the attainment of the Statewide greenhouse gas (GHG) emission limits established in Article 75 of the [ECL].”⁴³ ExC requires the same result under Section 7(2): denial.

In denying Astoria Gas Turbine Power, LLC’s (“Astoria”) Title V permit, DEC articulated a three-step analysis under Section 7(2) of the CLCPA:

First... the Department must consider whether a Title V permit for the Project would be inconsistent with or interfere with the attainment of the Statewide GHG emission limits established in ECL Article 75. Second, if the issuance of a Title V permit for the Project would be inconsistent with or would interfere with the Statewide GHG emission limits, then the Department must also provide a detailed statement of justification for the Project notwithstanding the inconsistency. Third, if justification is available, the Department would also have to identify alternatives or GHG mitigation measures to be required for the Project.⁴⁴

Applying that analysis to the Astoria facility, DEC denied the Title V application on grounds that it would be inconsistent with the CLCPA’s emission reduction targets. The denial was:

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.⁴⁵

Astoria estimated its total direct project emissions to be 723,872 tons of CO₂e per year. DEC concluded that:

By any metric, this is a substantial amount of potential GHG emissions from a new source in the State. An *increase* of this amount due to this one new fossil fuel-fired power plant project is inconsistent with the achievement of the Statewide GHG emission limits for 2030, or at a minimum would interfere with the attainment of such limit, especially given that achieving the limit requires a substantial overall

⁴³ DEC, *Notice of Denial of Title V Air Permit, Astoria Gas Turbine Power* (Oct. 27, 2021), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/nrgastoriadecision102721.pdf at 1 [hereinafter Astoria Denial]; DEC, *Notice of Denial of Title V Air Permit, Danskammer Energy Center* (Oct. 27, 2021), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/danskammerdecision102721.pdf at 2 [hereinafter Danskammer Denial]; *In the Matter of Greenidge Generation LLC*, Ruling on Issues and Party Status (Sept. 22, 2023) [hereinafter Greenidge Ruling].

Applicants for both these plants sought Title V air permits, whereas Iroquois seeks ASF permits for ExC. This is a factual distinction but not a legally significant one for the purposes of this comparison because the DEC’s program policy for applying CLCPA 7(2)—DAR-21—explicitly states in §V(A) that the policy applies to both Title V and ASF permits. DEC Program Policy DAR-21: The Climate Leadership and Community Protection Act and Air Permit Applications (Dec. 14, 2022), https://extapps.dec.ny.gov/docs/air_pdf/dar21.pdf, at 2.

⁴⁴ Astoria Denial, *supra* note 43, at 7.

⁴⁵ *Id.*

reduction in GHG emissions.⁴⁶

The permit was accordingly denied.

Here, ExC must be denied for the same reasons. The explicit purpose of ExC is to bring *more* natural gas into New York, thus greatly *increasing* GHG emissions—which is clearly inconsistent with the attainment of the statewide GHG emissions limits, to an even greater degree than Astoria. Iroquois calculates the annual lifecycle emissions for ExC to be nearly 860,000 tons of CO₂e⁴⁷—136,000 tons *more* than the Astoria facility—thus creating an even more “significant new source of GHG emissions.”⁴⁸

C. DEC’s Own Policy Requires Denial of these Permits.

Moreover, since it denied the Astoria permit, DEC has clarified its CLCPA Section 7(2) analysis by enacting program policy DAR-21, which affirms that Section 7(2) applies to the permits at issue and provides a detailed framework for the agency’s decision-making.⁴⁹ DAR-21 requires the inclusion of an assessment of “upstream, downstream, and indirect emissions known to be attributable to a project.”⁵⁰ In fact, DAR-21 describes the exact situation here as one instance in which a Section 7(2) analysis is required, explicitly stating that “a compressor station that is increasing its natural gas transmission capacity has downstream emissions associated with the transmission and combustion of that gas.”⁵¹

DAR-21 provides an additional basis for DEC to deny ExC’s permit applications. ExC meets multiple criteria identified in DAR-21 as being inconsistent with the CLCPA. It “creates or enables a significant new source of GHG emissions” and “facilitates the expanded or continued use of fossil fuels through new infrastructure development.”⁵² ExC would expand Iroquois’ existing infrastructure for the express purpose of increasing the amount of fossil fuels ultimately combusted downstream. DAR-21 confirms that approval of this project is even more incompatible with the state’s obligations under the CLCPA than approval of the Astoria facility.

Iroquois’ claims that ExC would lead to net emissions reductions are false. Iroquois bases these claims on a flawed lifecycle emissions analysis that purports to compare the ExC project with the “GHG emissions that would result from viable alternative energy sources that would be required to meet the energy demand satisfied by the Project.”⁵³ However, Iroquois’ claims of a net emission reduction make assumptions that are not credible given the current and ongoing implementation of major federal and state climate laws and economic programs across New York State.

⁴⁶ *Id.* at 8.

⁴⁷ Response to RFAI No. 2, *supra* note 37, at 4, Tbl. 4.

⁴⁸ DEC Program Policy DAR-21 at 2.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 4.

⁵² *Id.* at 5.

⁵³ Response to RFAI No. 2, *supra* note 37, at 15.

Specifically, Iroquois' GHG emissions scenario is calculated under a 20-year term of service that entirely ignores New York's current and ongoing expansive, cross-sector, legally mandated transition away from fossil fuels and toward clean and renewable energy. Iroquois' insistence that a higher-emission "Heat Pumps and Oil" scenario is more likely than the clean energy alternative scenario based on their 20-year model is contrary to the existing major energy trends in New York and is no more than a poor attempt to justify this project. What is not fiction is that the mandates of the CLCPA, New York's statewide ban on gas hookups in new construction beginning in 2026,⁵⁴ and the ongoing implementation of NYC Local Laws 97 and 154 requiring building decarbonization, will reduce the need for natural gas in the coming years.⁵⁵ The likelihood of the "Heat Pumps and Oil" scenario over the next five years is questionable; over the next *twenty* years it is preposterous.

Even if Iroquois' scenario projections were plausible—which they are not—they cannot be the basis for approving this project. Their claims of net emissions reduction are rooted in speculation that a new fossil fuel project may displace older, dirtier energy generation; this cannot satisfy the CLCPA's mandates. As DEC explained in denying Astoria's Title V permit application:

Regardless of the validity of the Applicant's chosen methods and assumptions, in the case of a new fossil-fuel fired electric generation facility, such as the Project, projected displacement of other GHG emission sources across the State is not itself sufficient for the Department to determine consistency with the Statewide GHG emission limits established in ECL Article 75 pursuant to Section 7(2) of the Climate Act. The Project itself would result in substantial direct and upstream GHG emissions due to the production, transmission, and combustion of fossil fuels. The extent to which the Project might displace other [electric generating units] is uncertain and dependent on a number of factors that are not fully controlled by Astoria.⁵⁶

The same reasoning is even more applicable here where a rapidly developing political, legal, environmental, and technological context renders Iroquois' projections highly implausible.

In denying the Astoria permit, DEC stated that "[s]ubdivision 7(2) of the Climate Act requires the Department to make a determination in the context of a permitting action for an individual facility."⁵⁷ Accordingly, DEC must make its decision by examining ExC as "one particular source"⁵⁸ composed of two facilities which create direct and upstream GHG emissions which, regardless of potential emissions at other sources, facilitates the continued use of fossil

⁵⁴ SB S4006C, 2023–2024 Legis. Sess., <https://www.nysenate.gov/legislation/bills/2023/S4006/amendment/C>.

⁵⁵ Local Law 97 (2019); Local Law 154 (2022).

⁵⁶ Astoria Denial, *supra* note 43, at 14.

⁵⁷ *Id.*

⁵⁸ *Id.*

fuels in clear violation of CLCPA Section 7(2).

II. The Exception in CLCPA Section 7(2) Does Not Apply Because There Is No Compelling Need for the Project, and the Proposed Mitigation Measures Are Wholly Inadequate.

Where an agency finds that its decision is inconsistent with emissions mandates, as DEC should find in this case, Section 7(2) mandates that “*each agency... shall provide a detailed statement of justification as to why such limits... may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where the project is located.*”⁵⁹ Accordingly, DEC must also identify GHG mitigation measures that are real, additional, quantifiable, and permanent. Iroquois, DEC, and DPS have failed to identify such measures. In any event, DPS’s statement of justification is insufficient to comply with the mandates of CLCPA Sections 7(2) and 7(3), as further explained below.

DPS’s conclusion that ExC is needed to maintain system safety and reliability is based on a flawed and outdated approach to supply planning that violates DPS’s mandate to comply with the CLCPA.⁶⁰ Successful implementation of the CLCPA requires bold (and challenging) steps to transition away from natural gas. Outdated and shortsighted supply planning will not support this transition. Indeed, a business-as-usual approach taken by industry and state actors is exactly what has propelled us along the path toward climate catastrophe.

In addition to inadequately evaluating supply- and demand-side alternatives to ExC, *infra* II.B-II.E, DPS fails to consider and weigh the competing risks of approving ExC. These include: 1) an unprecedented global climate emergency resulting from a failure to rapidly decarbonize energy systems, which will impose much higher reliability costs than those described by DPS as stemming from the non-approval of ExC; 2) decades-long carbon and economic “lock-in” to expensive and harmful fossil gas systems, with costs borne disproportionately by lower-income consumers; 3) and high potential for stranded assets. Despite the surmountable short-term risks associated with denial of the ExC application, tight gas supply can be managed, and risks can be mitigated. By far the bigger risk is that shortsighted and outdated supply planning—would lock New York into decades of natural gas supply and stranded assets, with undesirable economic, public health, and climate repercussions for all New Yorkers and especially members of DACs.

Ultimately, the many flaws in DPS’s analysis notwithstanding, DEC cannot adopt the deficient DPS Letter as its own. Under Section 7(2) of the CLCPA, DEC must prepare its own justification statement—a statement based on accurate projections and taking into account New

⁵⁹ CLCPA § 7(2) (emphasis added); *see also* Greenidge Ruling, *supra* note 54, at 22 (“[i]f the Department’s decision is inconsistent with or will interfere with the GHG emissions goals set forth in the CLCPA, then the **Department** must provide a detailed statement of justification”) (emphasis added).

⁶⁰ Ian Goodman and Brigid Rowan of the Goodman Group, Ltd. provided expert analysis regarding DPS’s needs assessment (hereinafter “Expert Analysis”). The Goodman Group is an energy consulting firm with expertise in energy supply and transportation, economic development and environmental impact, and energy and regulatory economics. The Expert Comments are attached as Appendix A.

York’s mandated transition from natural gas dependence.⁶¹ As explained by Administrative Law Judge Elizabeth Phillips, “[i]f the Department’s decision is inconsistent with or will interfere with the GHG emissions goals set forth in the CLCPA, then the *Department* must provide a detailed statement of justification.”⁶²

A. ExC Lacks Legally Required Mitigation Measures.

The expansion, even if it were sufficiently justified, cannot be approved because it lacks adequate mitigation measures.⁶³ Pursuant to CLCPA Section 7(2), DEC must “identify alternatives or GHG mitigation measures to be required where such project is located.” *Danskammer Energy, LLC v. New York State Dep’t of Env’t Conservation*, 76 Misc. 3d 196, 252 (N.Y. Sup. Ct. 2022) (holding that “Section 7(2) mandates that the DEC consider not only the consistency of the application with the goals of the CLCPA, but also whether, if inconsistent, the grant of a permit is nonetheless justified, *and its adverse affects [sic] can be mitigated*”) (emphasis added). The DPS Letter contains zero discussion of or reference to mitigation measures. As discussed below, *infra* II.D, DPS only refers to various alternatives to ExC that exist to meet winter-related increases in gas demand, which in fact have historically met their intended purpose. These alternatives further support denial of the permits here.⁶⁴

To the extent DPS may have (tacitly) relied on the mitigation measures proposed by Iroquois, the proposed measures are entirely insufficient. Per DEC policies, mitigation measures “must result in measurable GHG emission reduction or sequestration that is additional to actions already required by law or that the State is already undertaking” and “must be real, additional, quantifiable, permanent, verifiable, and enforceable.”⁶⁵ Accordingly, DEC cannot consider a project’s “displacement of other GHG emission sources”⁶⁶ or “potential displacement of other

⁶¹ Such justification statement, pursuant to DEC’s own policy set forth in Commissioner Policy No. 49 (“CP-49”), must include *at minimum*: the current level of GHG emissions from the action, inclusive of the full scope of GHG emissions defined in the statute, including all the applicable GHGs and the upstream GHG emissions from imported fuels as well as reasonably foreseeable downstream and indirect emissions; projected future GHG emissions in 2030, 2040 (electricity sector), and 2050 from the action with description of the applicant’s anticipated GHG emission reduction strategies; alternatives considered that do not create GHG emissions or result in less GHG emissions; description of the harm associated with the absence of the project (environmental, economic, social); and mitigation options. DEC Program Policy CP-49 at 7; *see also* Greenidge Ruling, *supra* note 43, at 28 (citing CP-49 and holding that these are the minimum elements of a justification statement). Additionally, if the purported justification concerns the impact on “the safety and reliability of the State’s energy systems,” DEC must also determine that “*no feasible alternatives exist*.”

⁶² Greenidge Ruling, *supra* note 43, at 22 (emphasis added); DEC Program Policy CP-49 at 7 (emphasis added). If and/or when DEC issues its own justification statement, the public should be afforded an opportunity to comment on its findings and conclusions.

⁶³ *See In the Matter of the Danskammer Energy Center*, Ruling on Issues and Party Status (Apr. 4, 2023) at 57 [hereinafter *Danskammer Ruling*] (“Danskammer has failed to identify adequate alternatives or GHG mitigation measures, and if DEC had reached the issue, it would have provided an additional basis to deny the permit under CLCPA § 7(2)”).

⁶⁴ Such a suggestion contradicts Iroquois’ assertion that no viable alternatives exist. *See* Response to RFAI No. 2, *supra* note 37, at 15–16.

⁶⁵ DEC Program Policy DAR-21 at 6; DEC Program Policy CP-49 (rev’d Dec. 14, 2022) at 8.

⁶⁶ *Danskammer Ruling*, *supra* note 63, at 29.

GHG sources that are beyond the control of [the applicant].”⁶⁷

None of the six mitigation measures proposed by Iroquois meet this standard.⁶⁸ Three are either speculative or fail to provide additional reductions and therefore cannot be considered mitigation measures in this permitting process. The other three would result in insignificant GHG emissions reductions because, among other things, they fail to address Iroquois’ high-volume emissions of carbon dioxide and nitrous oxide.

The following three proposals are *entirely* deficient and cannot be considered by DEC. First, Iroquois’ proposal concerning actions by third party Project Shippers (*i.e.*, ConEd and National Grid) to potentially incorporate renewable natural gas and green hydrogen into their natural gas mix⁶⁹ is entirely speculative and, therefore, *not real*. As explained above, DEC cannot consider “potential displacement of other GHG sources that are beyond the control of [the applicant].”⁷⁰ Second, the proposal concerning the possible installation of Vent Recovery Systems (“VRS”) at other compressor stations located at Wright, Boonville, and Croghan, if “determined to be feasible” pursuant to a feasibility study to be completed “within one year following the Project’s in-service date,”⁷¹ is similarly speculative. The proposal is *not real or permanent* because it is subject to conditions (*i.e.*, a feasibility study to be conducted by the applicant). Additionally, existing precedent mandates that DEC cannot consider mitigation measures that are not implemented “at the time of permit issuance.”⁷²

Third, the proposal concerning the procurement of 100% renewable electricity at its facilities “[p]rovided the market price for renewable electricity remains at or below 125% of that of the electric distribution company’s standard offer rate for electricity”⁷³ is not acceptable. The proposal is *not additional* because it is a measure that Iroquois admittedly adopts at all its facilities⁷⁴ and, accordingly, does not result in the reduction or sequestration of any of its GHG emissions. Moreover, the proposed measure is *not enforceable or permanent* as it is subject to pricing conditions over which the applicant and DEC have no control.⁷⁵

Iroquois’ three remaining proposals, which concern reductions of three types of

⁶⁷ *Id.*

⁶⁸ See Response to RFAI No. 2, *supra* note 37, at 4–5, 16–21. In addition to the six measures discussed herein, Iroquois has indicated that it will take steps to reduce contamination associated with its construction process, such as traffic impacts, noise, visual impacts, and reducing dust. See Response to RFAI No. 3, *supra* note 2, at 4. It is unclear if such proposals are *additional* measures that are not customary and/or imposed by applicable laws and/or regulations. It is also unclear what the total contamination reduction would be for each contaminant. In any case, as these are non-GHG emissions, it seems that these additional contaminants should be evaluated under the CLCPA § 7(3) assessment.

⁶⁹ See Response to RFAI No. 2, *supra* note 37, at 16.

⁷⁰ Danskammer Ruling, *supra* note 63, at 29.

⁷¹ Response to RFAI No. 2, *supra* note 37, at 21.

⁷² Danskammer Ruling, *supra* note 63, at 57; *see also* Greenidge Ruling, *supra* note 43, at 43 (holding same).

⁷³ Response to RFAI No. 2, *supra* note 37, at 17–18.

⁷⁴ *Id.* at 17 (stating that “in January 2022, Iroquois was certified by the Center for Resource Solutions as utilizing one hundred percent (100%) renewable electricity *at all of its facilities*”) (emphasis added).

⁷⁵ Danskammer Ruling, *supra* note 63, at 29 (explaining that DEC cannot consider mitigation measures that are beyond the control of the applicant or DEC).

emissions—methane, NO_x, and GHG potential to emit (“PTE”)—are inadequate and should likewise be rejected. Specifically, Iroquois proposes to: (1) incorporate VRS at each ExC compressor station to “capture and reinject into the pipeline *methane emissions* from planned blowdowns and dry compressor seal gas leakage,” which “is expected to reduce compressor station *methane emissions* by approximately seventy percent (70%) below historic levels;”⁷⁶ (2) adopt a fuel use limit of 91.5% of total fuel allocated to the turbines at Brookfield, Dover, and Athens, which are aimed at reducing NO_x emissions and GHG PTE at undisclosed levels;⁷⁷ and (3) “[p]urchas[e] and install[] more expensive ‘advanced’ SoLoNO_x turbines for ExC instead of conventional SoLoNO_x, which reduce potential NO_x emissions from 25 parts per million by volume (“PPM”) to only nine PPM (a 64% reduction).”⁷⁸

The most glaring and problematic issue with these three mitigation proposals is that *none* of them are directed at reducing massive CO₂ and N₂O emissions. Iroquois has disclosed that two of the main GHG emissions from ExC are, in fact, CO₂ and N₂O.⁷⁹ ExC’s admitted levels of emissions are shown in the below reproductions of Iroquois’ Tables 1 and 4 of its April 2022 submission to DEC.⁸⁰

Moreover, these three mitigation proposals are insufficiently disclosed, seemingly overstated, and subject to numerous caveats. For example, Iroquois makes no disclosures as to the potential, projected, and lifecycle anticipated emissions of NO_x.

Table 1				
ExC Project GHG Emissions (20-Year Global Warming Potentials)				
Potential to Emit (PTE) Metric Tons/Year				
	CO₂	CH₄	N₂O	GHG (CO₂e)
Athens CS	39,589	1,133	19.7	40,742
Dover CS	39,234	1,314	19.5	40,568
Brookfield CS	74,367	2,788	37	77,192
Milford CS	-3.39	-29,115	0.00	-29,118
Combined Project Emissions	153,187	23,880	76.2	129,384
Projected Actual Emissions Metric Tons/Year				
	CO₂	CH₄	N₂O	GHG (CO₂e)
Athens CS	9,525	496	4.7	10,025

⁷⁶ *Id.* at 17.

⁷⁷ *Id.* at 20.

⁷⁸ Response to RFAI No. 3, *supra* note 2, at 5.

⁷⁹ It is also unclear if Iroquois’ admitted methane (CH₄) emissions at Tables 1 and 4 reproduced herein already incorporate its projected mitigation reductions.

⁸⁰ For the original tables, *see* Response to RFAI No. 2, *supra* note 37, at 3–4. Our only edits are the added highlighting and the removal of the notes, other than the first note, listed at Table 1.

Dover CS	9,460	473	4.7	9,938
Brookfield CS	19,405	1,269	9.7	20,684
Milford CS	-1.21	-10,429	0.00	-10,430
Combined Project Emissions	38,389	-8,191	19.1	30,217
Notes	<ul style="list-style-type: none"> CO2 = carbon monoxide,⁸¹ CH4 = methane and N2O = nitrous oxide. 			

Total Lifecycle Anticipated Actual ExC Project GHG Emission (CO2e with 20-Year Global Warming Potentials)				
Annual Emissions	CO2	CH4	N2O	Total CO2e
2030	715,217	142,225	1,615	859,057
2050	0	0	0	0

As shown here, DPS entirely failed to address mitigation, and Iroquois' proposed mitigation measures are inadequate. Even if DEC were to entertain those of Iroquois' proposals that are not entirely speculative, none of them would reduce or sequester the expansion's largest emissions.⁸² Accordingly, if DEC were to reach the issue of mitigation, it must deny Iroquois' permit applications on grounds that its mitigation proposals are entirely inadequate and insufficient.

B. DPS's Needs Assessment Fails to Adequately Consider the Anticipated Reduction in Future Gas Demand in New York State and New York City.

As discussed in Section I, there are significant ongoing, legally mandated efforts in New York State and New York City to reduce the need for gas. DPS failed to adequately consider these developments in its assessment. For example, NYC's Local Laws 97 and 154 require a 40% reduction GHG emissions from buildings by 2030.⁸³ The first phase of Local Law 97 ("LL 97") starts this year and requires existing buildings larger than 25,000 gross square feet to meet strict emissions limits, with even stricter limits in 2030.⁸⁴ Additionally, Local Law 154 ("LL 154") effectively bans gas- and oil-fired appliances, such as stoves and boilers, in new buildings

⁸¹ Note that Iroquois' key erroneously defines CO2 as carbon monoxide—it is carbon dioxide.

⁸² It seems that Iroquois attempted to disguise the absence of mitigation measures relating to CO2 and N2O emissions by referencing only the generic category of GHG ("CO2e") emissions in its tables included in the sections discussing mitigation. The substance of its discussions makes clear, however, that none of its proposed measures address these two types of emissions.

⁸³ Local Law No. 97 (2019); Local Law No. 154 (2022).

⁸⁴ Local Law No. 154 (2022); *see also* NYC Accelerator, NYC Building Energy Laws, <https://accelerator.nyc/building-laws> (last accessed Mar. 26, 2024).

and major renovations. New buildings with up to seven stories need to comply within three years, before 2027.⁸⁵

These are current and ongoing legal mandates that reduce and will continue to reduce the need for gas *before* ExC will even be built. According to Iroquois’ own estimate, the ExC project will not be completed until at least 2027.⁸⁶ Yet, DPS dismisses the impact of LL 97 and LL 154 by saying that “both laws have phase in periods during [which] some buildings may choose to convert to natural gas in the near term.”⁸⁷ This claim is wholly speculative—DPS points to no building owners that have done so or expressed an intent to convert to natural gas in the short term. Given the policies and mandates already in place and continuing trends in local, national, and international energy markets, it is speculative at best to assume that owners would make major investments in conversions to natural gas now only to convert to electric heating systems later. To the contrary, buildings are legally required to convert to proven, economically viable electric heating and cooking systems starting this year.⁸⁸ Any assessment of the need for ExC must recognize the current and ongoing implementation of these local laws, rather than defer to convenient and counter-factual assumptions about these laws’ impact on gas demand.

Furthermore, DPS fails to evaluate the substantial decreases in gas demand expected from implementation of the CLCPA, including through major renewable energy and building efficiency measures like the New York Cap-and-Invest (“NYCI”) program currently in development. The implementation of DEC’s economy-wide NYCI program will embed the cost of GHG emissions into the gas consumption of buildings, which will make electricity cheaper relative to gas.⁸⁹ The implementation of NYCI alone could increase heat pump adoption by more than 10 percentage points.⁹⁰ Ignoring or underestimating these and other state and federal initiatives⁹¹ has led DPS to overestimate demand for gas.

C. DPS Relies on Flawed, Disputed, and Outdated Design Day Demand and Design Day Supply Projections.

Furthermore, the DPS Letter is based on a flawed, disputed, and outdated analysis of gas system Demand and Design Day Supply (for the two downstate gas utilities, Consolidated Edison (“ConEd”) and National Grid, that have contracted for supply from ExC).⁹²

⁸⁵ Local Law No. 154 (2022).

⁸⁶ *Enhancement by Compression Project*, *supra* note 32 (“Upon receiving all necessary permits, including state air permits, construction activities for this project are expected to begin by fall 2025/spring 2026. These activities will include mobilization of personnel and equipment, site preparation, and installation and testing of new compressor and gas cooling facilities. Construction should be completed by January 1, 2027”).

⁸⁷ Letter from DPS to DEC (Feb. 26, 2024) at 4.

⁸⁸ Local Law No. 154 (2022).

⁸⁹ Alan Krupnick et al., *Prioritizing Justice in New York State Cap-Trade-and-Invest: Report 24-05, Resources for the Future* (Mar. 2024) at 11.

⁹⁰ *Id.*

⁹¹ One such major initiative is the NY HEAT Act (, which was passed by the New York State Senate and contains measures that would further reduce peak demand by decreasing the attractiveness of new gas connections and facilitate the implementation of non-pipe alternatives.

⁹² Expert Analysis at 6–7.

First, the DPS Letter emphasizes historical growth in gas demand, which is in no way representative of future trends.⁹³ Both utilities project that gas demand will continue to grow for only a few more years and then decline in the long term; as peak demand declines, the utilities will have opportunities to downsize supply by allowing the expiration of capacity contracts. The utilities' need for delivered services (a costly and potentially risky supply source) will disappear by the early 2030s, *even without ExC*. By itself, this projection calls into question the appropriateness of the utilities entering new 20-year contracts for supply from ExC.

Second, while the utilities project that peak demand will continue to increase for several more years, these forecasts are based on multiple questionable assumptions.⁹⁴ For example, ConEd's Temperature Variable, which the company uses to estimate its peak demand forecasts, has been called into serious doubt because of the diminishing chances of reaching assumed cold temperatures due to climate change. More recently, ConEd itself acknowledged that demand was expected to peak in 2027 and then begin a steady decline. Peak gas demand is likely to be lower than forecasted by DPS (both short- and longer-term), further lessening (and shortening) any need for new gas supply resources.

Third, Design Day Demand forecasts for both utilities are based on extremely cold temperature conditions⁹⁵ that last occurred 90 years ago and have occurred just twice in 120 years. Moreover, these temperatures are increasingly unlikely to recur in a rapidly warming New York area.⁹⁶ With a Design Day modified to assume even slightly higher temperatures, forecasted gas demand would be considerably lower. By itself, this updating of Design Day Demand forecasts would offset much or all the claimed need for ExC.

Put simply, ExC is a long-term (20-year) commitment, while any potential need for increased gas supply is, at most, short-term. Each of the three key factors discussed above demonstrates that any need for ExC is highly questionable. And in combination, these three key factors show that the DPS Letter should not and cannot be relied on by DEC to justify ExC.

D. The DPS Letter Ignores Existing Supply-Side Alternatives to Meet Peak Demand.

Furthermore, DPS's analysis fails to address viable alternatives. Most notably, DPS ignores the role that peaking assets (delivered services, on-system storage such as liquefied natural gas ("LNG"), and trucked gas in the form of compressed natural gas ("CNG")) and

⁹³ *Id.* at 6–7, 9–11; ConEd and Orange & Rockland Utilities ("ORU"), Gas System Long-Term Plan (Nov. 29, 2023) at 57–67 [hereinafter Gas System Long-Term Plan]; Direct Testimony of Mark D. Kleinginna on Behalf of Alliance for a Green Economy, Cases 23-G-0225 & 23-G-0226 (Sept. 1, 2023), at 11–13, 24 [hereinafter Kleinginna Testimony]. The Sierra Club Comments extensively cite and rely on both (a) the ConEd and ORU Gas System Long-Term Plan, which was prepared for DPS and filed with PSC (Case 23-G-0147), and (b) the Kleinginna Testimony.

⁹⁴ Gas System Long-Term Plan, *supra* note 93, at 57–67.

⁹⁵ Both utilities use an average temperature over a 24-hour period of 0°F, or an HDD (heating degree days) of 65. Letter from DPS to DEC, *supra* note 87, at 3 n.10.

⁹⁶ Gas System Long-Term Plan, *supra* note 93, at 65–67.

service contracts can play in obviating any need for this expansion. As to service contracts, which relate to pipeline capacity held by marketers and electric generators, DPS acknowledges that they are “typically” purchased in increments of 45 days or less during a winter season but that some “last multiple years.” DPS further acknowledges that there are electricity generators that enter into agreements with utilities to release pipeline capacity in times of need, yet it claims that these short-term contracts “cannot be relied on to always be available” because these agreements “can” be ended on short notice and these terminations are “more likely” when a generator has a new owner.

DPS fails to explain why it believes that these “typical” contract terms and scenarios of plausible unavailability cannot or should not be modified or overcome in times of extraordinary need. Contract terms are what the contracting parties agree to, and DPS clearly acknowledges that there is flexibility in the length and terms of these contracts. Yet DPS makes conclusory statements that these typical contracts “cannot be relied on,” rather than seriously considering how contracting practices could be used to fill any identified needs. DPS’s acceptance of business-as-usual contracting practices in this area instead of proposing alternatives to meet the decreasing risks of extreme cold should not lead to the approval of an expensive and harmful stranded asset like ExC.

It further bears mention that even if DPS were correct, despite the nature of contract law, its description and usage of service contracts exposes the fragility and unreliability of the current gas delivery system. According to DPS (and the utilities whose analysis upon which it relies), this system is unsupported by back-up mechanisms and, upon failure, would require cumbersome and lengthy recovery time or otherwise risk severe harm to gas users. This begs the question of why we would allow such a system to continue, and in fact be expanded, when we have legislation in place already reducing our reliance on fossil fuels. We especially should not do so at the expense of long-harmed communities like Dover and Athens and based on faulty analysis of need.

Similarly, DPS downplays the availability of LNG as a peaking asset. LNG storage facilities, which are maintained and directly controlled by utilities, are intended to provide energy reserves that can be deployed in instances of peak demand. Practice has shown that LNG storage can meet peak demand without burdening already disadvantaged communities with permanent natural gas infrastructure; DPS itself points out that in the case of Winter Storm Elliott, these reserves met energy needs by operating exactly as intended.⁹⁷ Moreover, this approach is flexible enough to decrease supply to match New York’s projected decreased demand for gas over the next decade. Despite these advantages, DPS dismisses LNG as an alternative, seemingly on the ground that utilities simply prefer not to use it. The failure to fully consider an available alternative makes DPS’s analysis inadequate. DEC cannot approve ExC and allow increased harm to residents of Dover and Athens on such a flimsy basis.

DPS insufficiently explored these alternatives and available peaking assets before

⁹⁷ Letter from DPS to DEC, *supra* note 87, at 10.

declaring a need for more compressor stations. It may be easier for Iroquois to throw more compressor stations at the problem, particularly if the stations can be placed in communities that have historically been powerless to stop them. But “easier for the company” is not the legal test. CLCPA Section 7(2) requires a clear justification before DEC can approve any infrastructure incompatible with the CLCPA’s emissions goals. DPS’s preference for continuing “the way things work now” is not a justification under the CLCPA, particularly when it adds burdens to the very communities that are supposed to receive enhanced protection under the CLCPA. As DPS concedes, alternatives to building more polluting infrastructure in DACs are available and possible.

E. DPS Ignores the Role that ExC’s Would-Be Customers’ Existing Demand Management Programs Can Play in Maintaining Reliability during Peak Gas Demand.

In concluding that there is a need for ExC, DPS inadequately considers the potential of robust demand response and other demand-side programs to meet the reliability needs of the New York gas distribution system during peak demand events. Existing demand-side systems for meeting peak electricity demand are a model for how these systems can contribute to system reliability and reduce energy costs without adding more polluting infrastructure. There are already promising, albeit limited, demand response programs in development for natural gas delivery.

i. National Grid’s demand response pilot program can be enhanced to decrease gas demand.

National Grid, one of two customers for ExC’s proposed 125,000 dekatherms per day of increased gas supply, bases its alleged need for the project on an assessment of its downstate New York supply portfolio, referred to as the Distributed Infrastructure Solution (“DIS”).⁹⁸ Yet National Grid has committed to a strategy under DIS which assumes “an aggressive acceleration of demand-side management efforts including electrification, energy efficiency, weatherization, and demand response.”⁹⁹ In fact, National Grid has been recognized as an innovator for introducing a demand response program for natural gas in 2017.¹⁰⁰ The DPS Letter makes heavy mention of Winter Storm Elliot and the significant gas supply disruption event that it caused. However, DPS fails to mention that National Grid, in partnership with Copper Labs, successfully implemented a demand response pilot program just one month later as a “bomb cyclone winter storm” approached New York in January of 2022.¹⁰¹ During this event, National Grid was able to use automatic meter reading gas meters to send targeted messages to customers during periods of peak demand, requesting that customers take simple actions such as “turning their heat down a

⁹⁸ National Grid, Comments on Iroquois ExC (Feb. 22, 2023) at 1.

⁹⁹ *Id.* at 2.

¹⁰⁰ Robert Walton, *National Grid finds an electronic approach to natural gas demand response*, Utility Dive (Dec. 13, 2017) <https://www.utilitydive.com/news/national-grid-finds-an-electric-approach-to-natural-gas-demand-response/512644/>.

¹⁰¹ Press Release from Copper Labs, *Natural Gas Demand Response Program Demonstrates 18% Savings Potential During a Blizzard*, Utility Dive (Oct. 27, 2022) <https://www.utilitydive.com/press-release/20221027-natural-gas-demand-response-program-demonstrates-18-savings-potential-duri/>.

few degrees or postponing a hot shower for a couple of hours.”¹⁰² This program, which required no extensive infrastructure upgrades, resulted in an 18% reduction in natural gas usage from customers who received the targeted messages during the peak demand window.¹⁰³ Notably, there were no system disruptions.¹⁰⁴

National Grid’s initiative demonstrates that demand reduction programs are a viable tool for managing peak demand and ensuring system reliability. This kind of demand management program can and should be aggressively expanded and strategically implemented across the downstate region to obviate the need for further gas supply, reduce emissions, and save ratepayers money. At a minimum, DPS’s failure to adequately consider how demand management might provide an alternative to adding polluting infrastructure is contrary to the CLCPA and cannot form the basis for DEC’s approval of this project.

Moreover, the National Grid 2022 demand management program achieved success without offering any compensation or incentives to boost participation by customers.¹⁰⁵ A program that offers financial incentives to customers—such as a bill credit or a direct payment—can spur even greater customer involvement and reductions of peak demand, and of course such incentives can be adjusted to achieve necessary response levels.¹⁰⁶ It is a major failure of vision and common sense to ignore the proven results of National Grid’s own demand response program for gas, instead choosing to focus solely on the issues presented in a business-as-usual peak demand scenario.

While demand response programs for natural gas are relatively new, demand response “wasn’t always an easy sell in the electricity sector either,”¹⁰⁷ and such programs are now becoming “commonplace features in retail electricity markets.”¹⁰⁸ National Grid predicts gas shortages during peak demand days by the winter of 2025-2026, during which it “may potentially need over 200 tanker trucks per day to inject CNG into its distribution system.”¹⁰⁹ In making this claim, National Grid ignores its own success in managing demand. If the company could achieve an 18% reduction in targeted customers in a pilot program with no infrastructure upgrades, then surely further demand reductions could be achieved with investment in infrastructure, technology, stronger incentives for customer participation, and effective deployment by winter of 2025-2026. Ignoring this possibility fails the forward-looking commitments embedded in the CLCPA.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Virtual Peaker, *Why Utility Incentive Programs Matter* (Mar. 16, 2022) <https://virtual-peaker.com/blog/utility-incentive-programs/>.

¹⁰⁷ WaltonWalton, *supra* note 100.

¹⁰⁸ Duke University, *Research Funding; Natural Gas Demand Response Pilot Program*, <https://researchfunding.duke.edu/natural-gas-demand-response-pilot-program#:~:text=While%20the%20overarching%20goal%20of,certain%20hours%20of%20the%20day> (last visited Mar. 26, 2024).

¹⁰⁹ Letter from DPS to DEC, *supra* note 87, at 8–9.

- ii. ConEd’s hugely successful Brooklyn-Queens Demand Management Program (“BQDM”) can be expanded and replicated in other areas.

Like National Grid, the other customer of the ExC Project, ConEd, claims to already be using demand-side solutions to meet peak gas demand. ConEd states that “[t]he Company has developed natural gas demand-side management programs, including energy efficiency and heat pump programs and non-pipe alternative efforts.”¹¹⁰ ConEd makes no specific mention of demand response programs for natural gas distribution, although it has already implemented a program to creatively manage load growth with electricity distribution through multiple strategies, including demand response.¹¹¹ That program, the Brooklyn-Queens Demand Management Program (“BQDM”), has been called a success “[b]y almost any measure” and continues to be expanded by ConEd.¹¹²

The BQDM program was born out of a 2013 rate case, in which the Public Service Commission (“PSC”) “ordered Con Edison to look at non-traditional investments as ways to manage demand growth, and offered incentives to adopt these alternatives.”¹¹³ At the time, “rising electricity demand in Brooklyn and Queens” was expected to “lead to reliability concerns as early as 2018.”¹¹⁴ As of the summer of 2022, the program has achieved more than 41.8 MW in customer-side load reduction in the areas of Brownsville, Ridgewood, Richmond Hill, and Crown Heights,¹¹⁵ with around 310,000 customers.¹¹⁶ The project’s net benefits were over \$94.9 million as of 2017.¹¹⁷

The BQDM has been hailed as an achievement and is a demonstration both of what utilities are capable of and the pivotal role that PSC can play in pushing utilities toward innovative, energy-saving solutions, instead of giving them ratepayer money for more traditional, polluting infrastructure. Before the 2013 rate case decision, ConEd had sought a new substation and the expansion of traditional “poles and wires” as the solution to reliability concerns. Yet, when pressed by PSC, ConEd was able to meet those concerns with a cleaner solution that used

¹¹⁰ ConEd, Comments on Iroquois ExC (Feb. 22, 2023) at 2.

¹¹¹ Robert Walton, *Despite failures, ConEd targets more energy savings from non-wires pioneer BQDM*, Utility Dive (Feb. 6, 2019) <https://www.utilitydive.com/news/despite-failures-coned-targets-more-energy-savings-from-non-wires-pioneer/547725/>.

¹¹² *Id.*

¹¹³ Coley Girouard, *BQDM program demonstrates benefits of non-traditional utility investments*, Utility Dive (Mar. 11, 2019) <https://www.utilitydive.com/news/bqdm-program-demonstrates-benefits-of-non-traditional-utility-investments/550110/>.

¹¹⁴ *Id.*

¹¹⁵ Brooklyn Queens Demand Management Program, Implementation and Outreach Plan (Jan. 31, 2023), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5B4091D0-ED09-44DF-8C56-D0A40459298D}>, at 6.

¹¹⁶ Jan Ellen Spiegel, *Another \$1.2 Billion Substation? No Thanks, Says Utility, We’ll Find a Better Way*, Inside Climate News (Apr. 4, 2016), <https://insideclimatenews.org/news/04042016/coned-brooklyn-queens-energy-demand-management-project-solar-fuel-cells-climate-change/>.

¹¹⁷ The net benefits of \$94.9 million include “\$65.5 million of benefits from delaying load transfers from 2017 to 2026, \$649 million of benefits from delayed substation/transmission investments and \$133.3 million in benefits from avoided capacity, energy, distribution, environmental and line loss, for a total of \$747.8 million of benefits against \$652.9 million in costs.” Girouard, *supra* note 113.

distributed energy resources and demand management.¹¹⁸ New York has already called on ConEd to act innovatively to meet peak electricity demand in the summer, and it could do so again, this time to meet peak gas demand in the winter. Implementation of demand-side solutions for natural gas may require different strategies and technologies than the programs in place for the electric grid, but it bears remembering that the BQDM was once called “the utility of the future” and is now just another part of ConEd’s portfolio.¹¹⁹

III. Approving ExC Will Disproportionately Burden Already Overburdened Communities in Violation of CLCPA Section 7(3).

CLCPA Section 7(3) strictly mandates that agency decisions “*shall not* disproportionately burden disadvantaged communities” and “*shall* also prioritize reductions of GHG emissions and co-pollutants in disadvantaged communities.”¹²⁰

Where Section 7(2) states that inconsistent decisions require a “detailed statement of justification as to why such limits/criteria may not be met,” Section 7(3) does not provide such a carveout. Thus, even if there were an adequate statement of justification under Section 7(2)—and there should not be, for all the reasons articulated above—such cannot override a finding of disproportionate burdens on the DACs in Dover and Athens that would be caused by ExC.

In prior decisions rejecting proposed fossil fuel infrastructure projects under the CLCPA, DEC has underscored the importance and binding nature of the Section 7(3) legal mandate. For instance, in its denial of the Astoria Title V permit, DEC stated, “the Project may have a disproportionate burden on DACs pursuant to Section 7(3)... Thus, even if Astoria were able to satisfy the requirements of Section 7(2) for the Project, the Department would not be able to issue a Title V permit unless Astoria also satisfied this separate requirement of the Climate Act.”¹²¹ Similarly, in its denial of the Danskammer permit, DEC stated that “[i]n addition to the requirements of CLCPA Section 7(2)... the Department would also need to ensure compliance with the requirements of Section 7(3) of the Climate Act with respect to potential disproportionate impacts on disadvantaged communities.”¹²² Indeed, in its 2022 denial of Greenidge Generation’s Title V permit renewal, DEC specifically pointed to the failure to conduct a Section 7(3) analysis as a fatal deficiency in the application.¹²³ Approving ExC’s permits here would similarly violate Section 7(3)’s mandate.

Increased emissions from compressor stations cause higher mortality rates, cancer,

¹¹⁸ *Id.*

¹¹⁹ Spiegel, *supra* note 116.

¹²⁰ CLCPA § 7(3) (emphases added).

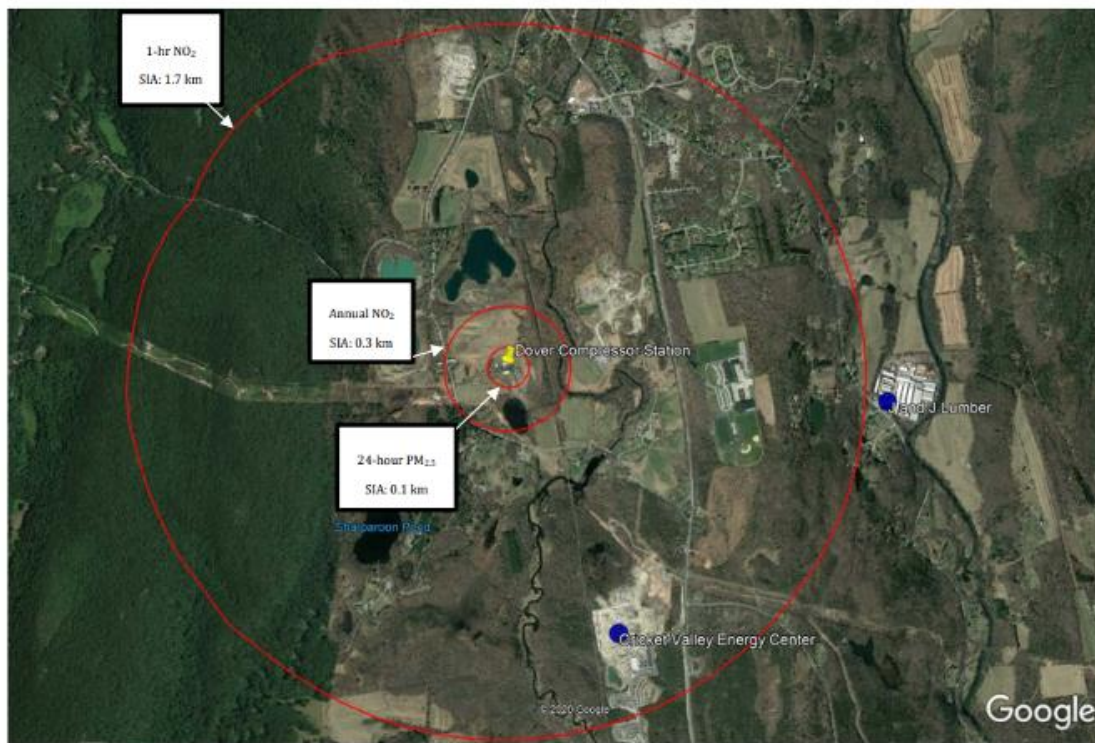
¹²¹ Astoria Denial, *supra* note 43, at 17.

¹²² Danskammer Denial, *supra* note 43, at 6.

¹²³ Greenidge Ruling, *supra* note 43, at 19 (“Nevertheless, as part of the Application, Greenidge did not provide the Department with any submissions to specifically address Section 7(3)”).

cardiovascular issues, and asthma, particularly for children and the elderly.¹²⁴ These ill effects cannot be ignored and must not be borne by the residents of Dover and Athens.

Figure 3-5. Significant Impact Area



*NYSDEC Air Dispersion Modeling Report by Trinity Consultants*¹²⁵

A. ExC Disproportionately Burdens Two DACs with Harmful Pollutants and Pipeline-Associated Risks.

Recognizing that “[c]limate change especially heightens the vulnerability of disadvantaged communities,” Section 7(3) prohibits state agencies from disproportionately burdening DACs in issuing permits and requires them to “prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.”¹²⁶ This is an additional, independent legal mandate that the CLCPA imposes on DEC, violation of which is a separate basis for denying the permits.

¹²⁴ D.O. Carpenter & P.N. Russo, *Health Effects Associated with Stack Chemical Emissions from NYS Natural Gas Compressor Stations: 2008-2014*, Institute for Health and the Environment (2017), at 3; Michael Hendryx & Juhua Luo, *Natural Gas Pipeline Compressor Stations: VOC Emissions and Mortality Rates*, 7 *Extractive Industries & Soc.* 864–69 (2020); Gregg P. Macey et al., *Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study*, *Env't. Health*, 2014.

¹²⁵ Trinity Consultants, NYSDEC Air Dispersion Modeling Report (Feb. 2020), https://www.iroquois.com/site/assets/files/1200/2020_02_28_dover_nydec_state_facility_permit_application_air_dispersion_modeling_report.pdf, at 3-0.

¹²⁶ CLCPA § 7(3).

Approving ExC would force DACs in Dover and Athens to bear a disproportionate share of poor air quality and serious health problems resulting from the project. Natural gas compressor stations generally operate 24 hours per day, 365 days per year, and pollute continuously.¹²⁷ Because compressor stations have shorter emissions stacks than other polluting facilities, their emissions are more concentrated at ground level.¹²⁸ These emissions contain GHGs and dozens of known human carcinogens,¹²⁹ posing devastating, well-documented risks to the environment and the health of nearby residents.¹³⁰

According to Iroquois' own submission, the Dover Compressor station has the potential to emit up to 65 tons of NO_x, 30 tons of particulate matter ("PM10"), 30 tons of PM2.5, 6.6 tons of sulfur dioxide ("SO₂"), 2.8 tons of volatile organic compounds ("VOC"), and a total of 119,829 CO₂e each year of its operation.¹³¹ The proposed Athens Compressor Station, during each year of its operation, has the potential to emit up to 56 tons of NO_x, 49 tons of CO, 20 tons of PM10, 20 tons of PM2.5, 2.5 tons of VOC, and a total of 93,000 tons of CO₂e.¹³² NO_x, SO₂, and particulate matter are all known to "exacerbate asthma and to cause eye and respiratory tract irritation, cough, shortness of breath, and reduced lung function."¹³³ The town of Dover is already burdened with the Cricket Valley Energy Center—a 1,100-MW natural gas-fired power plant¹³⁴ that subjects Dover residents to harmful pollutants including NO_x, PM10, PM2.5, VOC, and CO.¹³⁵ Section 7(3) requires that we reject proposed fossil fuel infrastructure that will add to that existing, harmful pollution.

The NO_x, PM2.5 and PM10, SO₂, CO, and VOC emissions that will be released by ExC¹³⁶ all pose serious threats to human health. Hospitalization rates for asthma in the Dover and Athens zip codes are higher than the non-New York City statewide average and have been labeled issues of high concern by the Department of Health.¹³⁷ The incidence of lung cancer in Dutchess and Greene counties is also higher than the statewide average.¹³⁸ Exposure to NO_x,

¹²⁷ Concerned Health Professionals of NY and Science and Environmental Health Network, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure*, 9th ed. (Oct. 2023) at 71.

¹²⁸ *Id.*

¹²⁹ Carpenter & Russo, *supra* note 124, at 5–6.

¹³⁰ See Concerned Health Professionals of NY, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure, Ninth Edition*, (Oct. 19, 2023) at pp. 478-512, <https://concernedhealthny.org/wp-content/uploads/2023/10/CHPNY-Fracking-Science-Compendium-9.pdf>.

¹³¹ ASF Permit Application for Dover Compressor Station (Feb. 28, 2020) at 5.

¹³² ASF Permit Application for Athens Compressor Station (Feb. 28, 2020) at 5.

¹³³ NYS Climate Action Council, *Climate Action Scoping Plan*, (Dec. 2022), 96-97; U.S. Environmental Protection Agency, *Integrated Science Assessment (ISA) for Particulate Matter* (Final Report, Dec 2019). Washington, DC. EPA/600/R-19/188, 2019; Guarneri, M., J.R. Balmes. *Outdoor air pollution and asthma*, *Lancet*. 2014;383(9928):1581-1592. doi:10.1016/S0140- 6736(14)60617-6.

¹³⁴ Cricket Valley Energy Center, *About Us*, <https://www.cricketvalley.com/about-us/> (last accessed April 25, 2024).

¹³⁵ NYSDEC, Cricket Valley Energy Center Permit Review Report, (Dec. 10, 2018) at 3, https://extapps.dec.ny.gov/data/dar/afs/permits/pr_313260027500009_r0_2.pdf.

¹³⁶ ASF Permit Application for Athens Compressor Station (Feb. 28, 2020) at 5; ASF Permit Application for Dover Compressor Station (Feb. 28, 2020) at 5.

¹³⁷ *New York State Asthma Dashboard*, *supra* note 11.

¹³⁸ New York State Cancer Registry, 2016-2020.

CO, VOCs, and PM has been linked to higher rates of cancer and cardiovascular, neurological, and developmental disorders.¹³⁹ VOC emissions from compressor stations are related to higher mortality rates,¹⁴⁰ and formaldehyde—a VOC that is both emitted as a byproduct of gas-fired engines and created when fugitive methane from compressor stations interacts with sunlight—is a known human carcinogen.¹⁴¹ Nitrous oxide exposure can lead to a host of respiratory issues and is a precursor to ozone and PM, which are also respiratory irritants.¹⁴² Exposure to ozone is linked to higher rates of asthma and chronic respiratory disease, especially in children,¹⁴³ and daily exposure to PM is linked to increased rates of respiratory and cardiovascular hospitalization, emergency room visits, and death.¹⁴⁴ Emissions from compressor stations also make their way into and accumulate in nearby homes, with indoor levels often exceeding levels just outside the homes.¹⁴⁵ As a result, current modeling of outdoor pollutants likely underestimates the negative health impacts of compressor stations on nearby residents.¹⁴⁶

Furthermore, pollutants emitted by ExC will have deleterious effects on vegetation and ecosystem health. NO_x damages plant cells, impeding plant growth and lowering crop yields.¹⁴⁷ It also indirectly impedes growth as a precursor to both ozone, which itself destroys plant cells and reduces plant productivity,¹⁴⁸ and particulate matter aerosols, which scatter sunlight away from plants.¹⁴⁹ Additionally, ozone interrupts plant-soil-microbe interactions, which can negatively impact nutrient cycling, species diversity, and proper functioning of soil ecosystems.¹⁵⁰ All of these effects will negatively impact the farms in Dover and Athens and the people who depend on them.

The proposed expansion is even more concerning for residents of Dover given Iroquois' history of noncompliance with safety provisions when the gas pipeline system was built. Gas

¹³⁹ D.O. Carpenter & P.N. Russo, *supra* note 124.

¹⁴⁰ Michael Hendryx & Juhua Luo, *Natural Gas Pipeline Compressor Stations: VOC Emissions and Mortality Rates*, 7 *Extractive Industries & Soc.* 864–69 (2020).

¹⁴¹ Gregg P. Macey et al., *Air Concentrations of Volatile Compounds Near Oil and Gas Production: A Community-Based Exploratory Study*, *Env't Health*, 2014. Iroquois' own air dispersion modeling, performed by Trinity Consultants, also showed release of formaldehyde. NYSDEC Air Dispersion Modeling Report, prepared by Trinity Consultants (rev'd Apr. 2020).

¹⁴² EPA, *Basic Information About NO₂*, EPA.gov, <https://www.epa.gov/no2-pollution/basic-information-about-no2>.

¹⁴³ *Id.*

¹⁴⁴ N.Y.S. Dep't of Health, *Particle Pollution and Health*, https://www.health.ny.gov/environmental/indoors/air/pmq_a.htm.

¹⁴⁵ Kaitlin A. Vollet Martin et al., *Survey of Airborne Organic Compounds in Residential Communities Near a Natural Gas Compressor Station: Response to Community Concern*, *Env't Advances* 5 (2021).

¹⁴⁶ Curtis D. Davis et al., *Community Health Impacts from Natural Gas Pipeline Compressor Stations*, *GeoHealth* (2023) at 6.

¹⁴⁷ Wim de Vries, *Impacts of nitrogen emissions on ecosystems and human health: A mini review*, *Current Op. in Env't. Sci. & Health* (2021) at 2.

¹⁴⁸ *Id.*

¹⁴⁹ David B. Lobell et al., *Globally ubiquitous negative effects of nitrogen dioxide on crop growth*, *Sci. Adv.* (Jun. 2022) at 1.

¹⁵⁰ Agathokleous et al., *Ozone affects plant, insect, and soil microbial communities: A threat to terrestrial ecosystems and biodiversity*, *Sci. Adv.* (Aug. 2020) at 11.

pipeline ruptures and explosions can be catastrophic.¹⁵¹ Almost 40 years ago, the company committed numerous violations of federal law and of its certificate under the Natural Gas Act. In particular, Iroquois failed to install the required number of trench breakers,¹⁵² barriers that are typically placed at designated intervals along a pipeline to prevent soil erosion.¹⁵³ The Pipeline and Hazardous Materials Safety Administration recently reaffirmed the importance of trench breakers in mitigating erosion risks, warning that these risks are only growing as climate change causes heavier rainfall and higher temperatures.¹⁵⁴ Alarming, Iroquois reportedly skipped as many as 30–40% of the trench breakers required by Iroquois’ certificate, exposing the pipeline to a heightened risk of damage by rocks, water, and other sources of corrosion.¹⁵⁵ There are also concerns relating to Iroquois’ use of boulders as large as several feet in diameter to backfill the pipeline trench, a breach of Iroquois’ certificate and an ongoing risk to the integrity of the pipeline walls.¹⁵⁶ In a settlement agreement with FERC in 1996, Iroquois admitted to these trench breaker violations and agreed to a ten-year monitoring program to inspect for erosion and other resulting safety issues.¹⁵⁷ As these monitoring obligations ended in 2008,¹⁵⁸ there is legitimate cause for concern about the danger posed by the pipeline’s faulty infrastructure, which is now almost 40 years old. DEC should not approve ExC without thoroughly considering these existing safety risks and how doubling pressure from new compressor stations may compound them.

There is ample evidence that ExC would disproportionately burden not one, but two of New York State’s DACs in violation of Section 7(3). Iroquois has failed to show that the expansion will not increase pollution and its related harm to the already disproportionately burdened communities in Dover/Wingdale and Athens. The ExC permit applications, therefore, must be denied.

- i. The fact that one ExC site is adjacent to rather than inside a DAC does not alter this conclusion.

The suggestion that environmental and health harm would not disproportionately burden a disadvantaged community merely because the source of the project’s burdens is not exclusively inside a DAC boundary defies logic. Air, water, and other environmental consequences from fossil fuel infrastructure do not disappear at geographic boundaries drawn on a map.

¹⁵¹ See Sarah Fowler, ‘Foaming at the mouth’: First responders describe scene after pipeline rupture, gas leak, Clarion-Ledger (Feb. 27, 2020), <https://www.clarionledger.com/story/news/local/2020/02/27/yazoo-county-pipe-rupture-co-2-gas-leak-first-responders-rescues/4871726002/> (In February 2020, 300 people were evacuated and 45 hospitalized after a gas pipe rupture. First responders found victims foaming at the mouth); Kevin Haynes, Kherkher Garcia, *Natural Gas Pipeline Explosions are a Serious Threat*, (May 4, 2023),

<https://www.kherkhergarcia.com/natural-gas-pipeline-explosions-serious-threat/> (In August 2021, a gas pipe explosion killed a father and daughter, and totally destroyed the family’s home, 400 feet from the pipeline).

¹⁵² Stipulation and Consent Agreement, Iroquois Gas Transmission Sys., L.P. (May 23, 1996) at 4.

¹⁵³ Ohio Dep’t of Nat. Res., *Pipeline Standard and Construction Specifications* (Dec. 28, 2015) at 2.

¹⁵⁴ Pipeline Hazardous Materials Safety Administration, *Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Earth Movement and Other Geological Hazards*, 87 Fed. Reg. 33576 (Jun. 2, 2022).

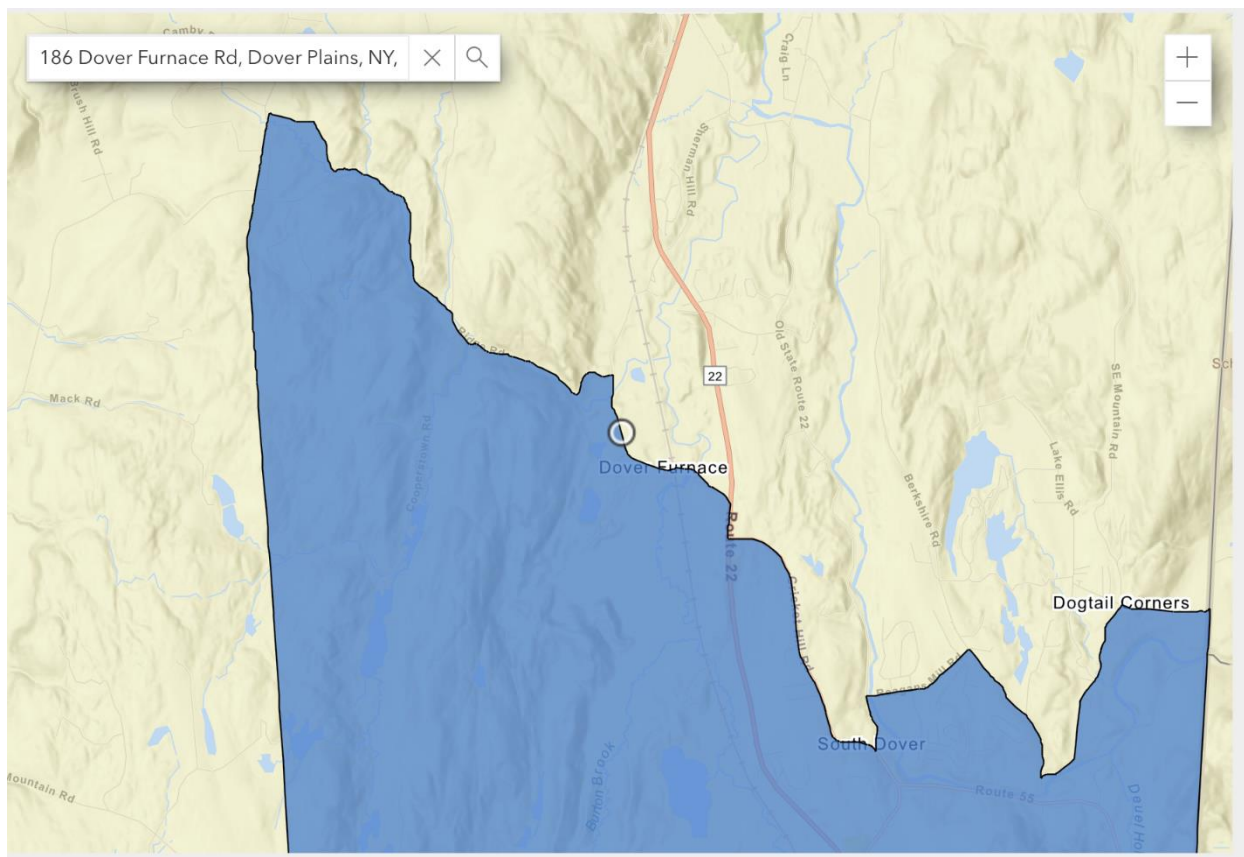
¹⁵⁵ Joseph Berger, *Hazard Underground: A special report.; 375 Miles of Suspected Short Cuts Fuel Fears of Northeast Pipeline*, N.Y. Times (Mar. 27, 1995).

¹⁵⁶ *Id.*

¹⁵⁷ Stipulation and Consent Agreement, Attachment B: Backfill Stability Monitoring and Maintenance Plan, at 2.

¹⁵⁸ *Id.*

Furthermore, DEP 23-1 correctly and unambiguously states that the analysis of whether a project disproportionately burdens a DAC applies to permit applications for projects that are “in or likely to affect a disadvantaged community.”¹⁵⁹ The incredible claim that the Dover Compressor Station’s emissions will not disproportionately impact the DAC immediately adjacent to it (as shown in the map below) cannot satisfy DEC’s legal burden under Section 7(3).



Map of Wingdale DAC in Dover and address of compressor station (in center)¹⁶⁰

- ii. The fact that ExC will be located within existing Iroquois facilities is irrelevant to the Section 7(3) assessment.

Similarly, the fact that ExC’s proposed structural footprint is within the property boundaries of existing Iroquois facilities has nothing to do with whether the project disproportionately impacts the Dover/Wingdale DAC. ExC requires ASF permits because of its significant *emissions* increases, regardless of any *physical* increase in the size of the facility. A net increase in impact is the relevant question under the law. Recognizing that these dispersed pollutants will not stop at the project’s fence line, Iroquois’ own air dispersion analysis relies on data collected by receptors placed between 1 and 5 kilometers beyond the property boundary

¹⁵⁹ Dep’t of Env’t Conservation, Draft DEP 23-1 (Sept. 2023) at 5 (emphasis added).

¹⁶⁰ N.Y. Energy Rsch. and Dev. Auth., Disadvantaged Communities (Mar. 27, 2023) <https://www.nyserda.ny.gov/ny/disadvantaged-communities>.

line.¹⁶¹ Iroquois' conclusion that the DAC immediately abutting the Dover Compressor Station will not be negatively affected by a substantial increase in on-site emissions is contradicted by the information provided in its own modeling.

B. Iroquois Failed to Properly Analyze Disproportionate Burdens as Required by CLCPA Section 7(3).

Because DEC correctly screened ExC as a project impacting DACs, DEC should require that Iroquois prepare a Disproportionate Burden Report in accordance with its draft permitting policy, DEP 23-1, to meaningfully comply with CLCPA Section 7(3). Because Section 7(3) prohibits disproportionate burdens on DACs, Iroquois and DEC must identify, evaluate, and address the existing burdens faced by the DACs.¹⁶² DEP 23-1 appropriately calls such a report a “Disproportionate Burden Report” and sets out specific requirements of such a report to meet the mandates of 7(3).¹⁶³ In the absence of alternative guidance, draft policies should inform an agency's decision-making process.¹⁶⁴ DEC has previously requested this report from Iroquois and instead received Iroquois' Disadvantaged Communities Evaluation (“DAC Evaluation”)¹⁶⁵ and Human Health Risk Assessment (“HHRA”).¹⁶⁶ However, neither of these documents meets the criteria and substantive requirements of the Disproportionate Burden Report in line with CLCPA Section 7(3), and therefore Iroquois prematurely and improperly concludes that “the ExC Project will not disproportionately burden DACs.”¹⁶⁷

First, Iroquois' DAC Evaluation and HHRA improperly rely on FERC's environmental review, which cannot substitute for a CLCPA Section 7(3) analysis. In authorizing ExC, FERC prepared an Environmental Assessment (“EA”) and an Environmental Impact Statement (“EIS”) under the National Environmental Policy Act of 1969 (“NEPA”).¹⁶⁸ However, NEPA requires an entirely different analysis than what is required by the CLCPA. DEC pointed out to FERC the divergence between requirements under the CLCPA and requirements under federal law in a letter, highlighting multiple discrepancies including, for example, that the EA stated a goal of 50% renewable energy by 2030, while the CLCPA requires that “70% of the State's electricity comes from renewable sources by 2030.”¹⁶⁹ Furthermore, neither the EA nor the EIS contains an analysis of disproportionate burdens on DACs or reduction of co-pollutants in DACs, both of

¹⁶¹ Trinity Consultants, *supra* note 125, at 3–5.

¹⁶² CLCPA § 7(3) (stating that agencies' permitting decisions “shall not disproportionately burden disadvantaged communities”).

¹⁶³ Dep't of Env't Conservation, Draft DEP 23-1 (Sept. 2023), at 4.

¹⁶⁴ See *In the Matter of the Bass Plating Co., Respondent*, 1983 WL 31577, at *8 (“[T]he draft policy sets down more precise guidelines for determining the seriousness of the violation and a respondent's good faith efforts, and in the absence of any better guidance will be followed here”).

¹⁶⁵ Iroquois Gas Transmission System, L.P., *Disadvantaged Community Evaluation*, (Nov. 7, 2022), https://www.iroquois.com/site/assets/files/1200/2022_11_07_iroquois_response_to_nydec_rfai_no3_revised_dac_evaluation.pdf [hereinafter DAC Evaluation].

¹⁶⁶ Response to RFAI 2, *supra* note 37.

¹⁶⁷ DAC Evaluation, *supra* note 165, at 4.

¹⁶⁸ FERC, *Order Issuing Certificate*, (March 25, 2022) at 19-20, https://www.iroquois.com/site/assets/files/1196/ferc_order_issuing_certificate_20220325.pdf.

¹⁶⁹ NYSDEC, *Comment in response to ExC Environmental Assessment*, (Oct. 30, 2020), at 2.

which are required under CLCPA Section 7(3). In issuing its certificate to Iroquois, FERC brushed aside such differences without analysis. How much weight should be given to FERC’s environmental reviews should be assessed with the knowledge that over the past twenty years, FERC has approved 423 of the 425 pipeline applications before it.¹⁷⁰

Second, Iroquois relies on irrelevant technicalities as the grounds for its conclusion that ExC will not disproportionately burden DACs. Specifically, Iroquois argues that there is no disproportionate impact on DACs since ExC would also pollute non-DAC designated areas. Under a Section 7(3) analysis, the focus must be on the impact that the project has on DACs, and it does not matter that some of the negative impacts will fall on non-DAC areas.¹⁷¹ Here, roughly three quarters of the increased pollutants at the compressor stations would fall on DACs—half of the increased emissions at the Dover site and all of the emissions at the Athens site. It is clear that ExC *will* disproportionately burden DACs.

Third, neither of Iroquois’ submissions adequately analyzes existing burdens on DACs. To meaningfully comply with Section 7(3), the Disproportionate Burden Report must include relevant baseline data on existing burdens, as well as an identification of any environmental or public health stressors already borne by the DAC because of existing GHG or co-pollutant burdens in the community.¹⁷² Iroquois’ DAC Evaluation includes *no* analysis of the existing environmental or socioeconomic burdens in Wingdale, the DAC-designated portion of Dover, or Athens.

Iroquois’ HHRA similarly fails to analyze existing burdens as required by the Disproportionate Burden Report. With regard to existing pollution burdens on the DACs, the HHRA exclusively analyzes the impact of Iroquois’ existing pipeline infrastructure in the area.¹⁷³ Yet the DAC analysis that Section 7(3) requires cannot limit “existing burdens” to burdens imposed by the applicant alone.¹⁷⁴ Iroquois must analyze all relevant burdens currently borne by the DACs, such as the Cricket Valley Energy Center in Dover.

The Disproportionate Burden Report must also identify the potential contribution of the proposed action to existing pollution burdens in the DACs.¹⁷⁵ However, the HHRA analyzes only the health impacts of hazardous air pollutants (“HAPs”), forgoing analysis of the impacts of other pollutants which are classified as GHGs or criteria pollutants under the Clean Air Act.¹⁷⁶ Furthermore, the HHRA limits its analysis to HAPs emitted *during combustion*, dismissing the impact of fugitive emissions as “insignificant compared to combustion emissions” without

¹⁷⁰ Alison Gocke, *Pipelines and Politics*, 47 Harv. Envtl. L. Rev. 207, 211 (2023).

¹⁷¹ See DAC Evaluation, *supra* note 165, at 4 (downplaying ExC’s impacts on DACs by noting that “a majority of the ExC Project construction and operational activities will occur outside of DACs”).

¹⁷² *Id.* at 5.

¹⁷³ Enhancement by Compression (ExC) Project Human Health Risk Assessment (Apr. 2020), at 5 [hereinafter HHRA].

¹⁷⁴ Dep’t of Env’t Conservation, Draft DEP 23-1 (Sept. 2023), at 5.

¹⁷⁵ *Id.* at 5.

¹⁷⁶ HHRA, *supra* note 173, at 5.

supporting evidence.¹⁷⁷ The HHRA similarly dismisses the impact of soil contamination on the DACs' food supply as "insignificant as compared to other sources," again without supporting evidence.¹⁷⁸ Neither CLCPA Section 7(3) nor DEP 23-1 contains language limiting the required analysis to the most significant burdens; instead, Iroquois must analyze the *full* potential contribution of the proposed action to existing burdens in the DACs.

Finally, the HHRA relies on at least two U.S. EPA guidance documents that are outdated. These include Risk Assessment Guidelines from 1986 that EPA replaced with Guidelines for Carcinogen Risk Assessment in 2005,¹⁷⁹ as well as an inhalation risk paradigm from 1989 that EPA no longer recommends.¹⁸⁰ Iroquois must update its HHRA to ensure that it conforms to current risk assessment standards and to ensure that the HHRA, alone or in conjunction with other submissions, meets the requirements of the Disproportionate Burden Report.

Because both the DAC Evaluation and the HHRA submitted by Iroquois fail to meaningfully comply with Section 7(3), DEC should require that Iroquois complete a proper Disproportionate Burden Report that addresses each of the elements identified in DEP 23-1.

C. ExC Must Create a Public Participation Plan in Accordance with DEP 23-1 and CP-29.

Projects which impact a disadvantaged community are subject to enhanced public participation requirements under DEP 23-1 and, in most cases, under Commissioner Policy 29 ("CP-29"). On or about January 13, 2022, DEC requested information from Iroquois regarding ExC's compliance with CP-29 and CLCPA Section 7(3). In response, Iroquois pointed to some examples of public engagement, including "informal community open houses" held in Dover and Athens, notice for community open houses in local papers, and FERC's public comment period on the DEIS.¹⁸¹

These and other actions meet some, but not all, of the requirements of CP-29 and DEP 23-1. In addition to requiring opportunities for public engagement, CP-29 requires that the applicant "submit a written public participation plan as part of its complete application,"¹⁸² which Iroquois failed to do. CP-29 further requires that the applicant include a report summarizing "all progress to-date in implementing the required public participation plan; all substantive concerns raised to-date; all resolved and outstanding issues; the components of the plan yet to be implemented and

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 39.

¹⁷⁹ EPA, *Guidelines for Carcinogen Risk Assessment* (2005) at 1-1 ("These guidelines revise and replace the U.S. Environmental Protection Agency's (EPA's, or the Agency's) Guidelines for Carcinogen Risk Assessment, published in 51 FR 33992, September 24, 1986 (U.S. EPA, 1986a)").

¹⁸⁰ EPA, *Risk Assessment Guidance for Superfund, Vol. 1*, Health Evaluation Manual, Part A (1989), annotated Apr. 2010, at 6-43 ("The Superfund Program has updated its inhalation risk paradigm and no longer recommends the approach described in this section").

¹⁸¹ Response to RFAI No. 2, *supra* note 37, at 26.

¹⁸² Commissioner Policy 29, Environmental Justice and Permitting, (March 2003) at Section V (D) [hereinafter CP-29].

an expected timeline for completion of the plan.”¹⁸³ Again, Iroquois has not provided such a report. Lastly, an applicant must submit a written certification of compliance with the plan after its completion.¹⁸⁴ Iroquois likewise failed to provide this certification.

This oversight should not be chalked up to a mere paperwork failure. The purpose behind enhanced public participation is to “ensure meaningful and effective public participation,” and to do so requires an applicant to plan, track, and incorporate public comments.¹⁸⁵ CP-29 was developed in response to concerns raised by environmental justice advocates, who pointed to a lack of accessible and meaningful public participation in permitting processes as a key environmental justice concern.¹⁸⁶ While Iroquois has requested and received some public input, it has failed to be transparent about how or whether it responded to or incorporated that input, as required by DEP 23-1 and CP-29. DEC should further reject ExC’s permits on grounds that Iroquois failed to comply with DEP 23-1 and CP-29.¹⁸⁷

IV. DEC and DPS Must Respect New Yorkers’ Environmental Rights in Their Consideration of Permits and Application of New York’s Climate Law.

The CLCPA is not the only law that DEC and DPS must abide by when considering or issuing permits. In November 2021, New Yorkers overwhelmingly voted in favor of the Environmental Rights Amendment,¹⁸⁸ which states that “[e]ach person shall have a right to clean air and water, and a healthful environment.”¹⁸⁹ This constitutional provision created a substantive, self-executing right that expands upon existing laws.¹⁹⁰ This fundamental right also “serves as a guide to agencies in interpreting their duties,”¹⁹¹ including the application of statutes like the CLCPA.

¹⁸³ *Id.* at V (D)(2).

¹⁸⁴ *Id.* at V (D)(3).

¹⁸⁵ *Id.* at V (D).

¹⁸⁶ *Id.* at II.

¹⁸⁷ CP-29 is undergoing revision that will, upon information and belief, further enhance the public participation process in particular from DACs and environmental justice communities. We urge DEC to consider enforcing CP-29’s heightened procedural requirements as it becomes finalized on this permitting decision.

¹⁸⁸ 70% of the electorate voted yes and approved the ERA. Ballotpedia, *New York Proposal 2*,

Environmental Rights Amendment (2021),

[https://ballotpedia.org/New_York_Proposal_2_Environmental_Rights_Amendment_\(2021\)](https://ballotpedia.org/New_York_Proposal_2_Environmental_Rights_Amendment_(2021)) (last

visited Apr. 26, 2024).

¹⁸⁹ N.Y. Const. Art. 1, § 19.

¹⁹⁰ See *Fresh Air for the Eastside, Inc. v. Town of Perinton*, E2021008617 at 8 (demonstrating that an application of preexisting laws does not necessarily abide by the Environmental Right, the Court suggests a two prong test: “First, did the government action comply with the applicable statute? Second, did the government action violate a person’s constitutional ‘right to clean air and water, and a healthful environment’?”

¹⁹¹ See *Fresh Air for the Eastside, Inc. v. State*, WL 18141022 at &12 n.18 (Sup. Ct. 2022) (“[i]nterpretation of statutes and regulations will now apply these environmental norms. The fundamental rights serve as a guide to agencies in interpreting their duties.”) (quoting *The Impact of the Green Amendment – A New Era of Environmental Jurisprudence* by Nicholas A. Robinson.)

Thus, in addition to ensuring compliance with the state’s climate laws, DEC must also ensure that “a person’s environmental rights will be respected”¹⁹² when considering whether to grant ASF permits for ExC. And while agencies possess discretion in their decision-making, “the State lacks discretion to not comply with the Constitution.”¹⁹³ As thoroughly discussed above, ExC poses many threats to the air quality and surrounding environment, both at the locations of the compression stations and downstream where the natural gas is combusted.¹⁹⁴ Here, where DEC has already concluded that ExC is incompatible with the CLCPA’s emissions limits and is now weighing whether the project is otherwise justified, DEC must also respect the right of *each person* to a healthful environment and determine whether ExC’s harmful impacts violate that right. When balancing competing interests in a decision-making process, the ERA demands that DEC tilt the balance on the side of protecting the environment and the people within it.¹⁹⁵

In addition to extending substantive legal protections, the ERA also guides agencies in applying existing laws, such as the CLCPA. Section 7(2) of the CLCPA requires that “in considering and issuing permits... all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or shall interfere with the attainment of the statewide greenhouse gas emissions limits.”¹⁹⁶ By issuing an interagency advisory opinion to DEC regarding Iroquois’ ASF permits, DPS partook in “considering” the ExC permits and therefore became subject to the mandates of Section 7(2) and 7(3). However, despite acknowledging that its letter is “pursuant to the review required under Section 7(2) of the [CLCPA],”¹⁹⁷ DPS failed to consider whether ExC is consistent with the CLCPA’s emission limits. DPS likewise failed to consider whether ExC disproportionately burdens DACs pursuant to Section 7(3), which also applies to agencies which are “considering” and issuing permits. As a state agency involved in the consideration of these ASF permits, DPS had a duty to apply the CLCPA; a duty which it breached. If there were any doubt as to DPS’s need to apply the state’s climate law, the constitutional right to a healthful environment should override such doubt.

Here, DPS’s determination is based on flawed and outdated models, fails to truly consider alternatives, and is devoid of mitigation analysis. Especially under these circumstances, the ERA requires no less than that DPS make a new determination with heightened attention to the constitutional right to a healthful environment. Neither the CLCPA nor the ERA exists in a vacuum; both legal mandates must be internalized by state agencies as necessary legal components when considering permits which may be inconsistent with GHG emissions limits, or

¹⁹² *Id.* at 12, n. 18.

¹⁹³ *Id.* at 15.

¹⁹⁴ See Concerned Health Professionals of NY, *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure, Ninth Edition*, (Oct. 19, 2023) at pp. 478-512 (detailing the harms of pipelines and compressor stations) and 550-564 (detailing the harms of gas-fired power plants and residential appliances), <https://concernedhealthny.org/wp-content/uploads/2023/10/CHPNY-Fracking-Science-Compendium-9.pdf>.

¹⁹⁵ See Rebecca Bratspies, *This Changes Everything: New York’s Environmental Amendment, The Nature of Cities* (Feb. 25, 2022), <https://www.thenatureofcities.com/2022/02/25/this-changes-everything-new-yorks-environmental-amendment/> (“this amendment now puts a thumb on the scale for protecting the environment”).

¹⁹⁶ CLCPA § 7(2).

¹⁹⁷ Letter from DPS to DEC, *supra* note 87, at 1.

which may deprive New Yorkers of clean air, clean water, or a healthful environment. DPS states in its letter that it “has reviewed the ExC Project from the perspective of its core statutory obligation to ensure the provision of utility service in a manner that is ‘safe and adequate and in all respects just and reasonable.’”¹⁹⁸ DPS failed to recognize that in considering a permit, its core statutory obligation is not its *only* statutory obligation, nor is it a substitute for its constitutional obligations.¹⁹⁹ We respectfully submit that DPS’s needs analysis be disregarded where the agency failed to consider its constitutional obligation and enumerated obligations under the CLCPA, and that at very least, DPS be required to make a new determination based on these standards.

Conclusion

The residents of Dover, already overburdened by fossil fuel facilities, do not deserve to have their health further sacrificed for an unnecessary and illegal project. New Yorkers’ clearly articulated desire for and rights to a clean and healthy environment must not be ignored. Furthermore, New York State cannot ignore the massive additional GHG emissions that ExC would cause if our state is to meet its critically important and legally binding pollution reduction targets.

Without compelling justification, the expansion would violate Section 7(2) of the CLCPA. Furthermore, Iroquois has not provided even remotely adequate emissions mitigations measures to counteract this violation. The permits should be denied for those reasons alone. DEC must likewise deny the permits, however, because ExC would disproportionately burden disadvantaged communities and fails to prioritize them for emissions reductions as Section 7(3) requires. DEC and DPS must act in accordance with the CLCPA and the right to clean air, clean water, and a healthful environment now enshrined in New York State’s constitution. We respectfully demand that DEC follow the mandates of the CLCPA and the ERA and deny these permits.

Respectfully submitted,

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¹⁹⁸ *Id.*

¹⁹⁹ *See Fresh Air for the Eastside, Inc. v. State*, WL 18141022 at &12 n.18 (Sup. Ct. 2022).

APPENDIX A

Expert Comments on

NYS DPS Letter Concerning NYS DEC Review of the Iroquois Enhancement by Compression Project (ExC Project)

**DEC Application IDs: 3-1326-00211/00001 (Dover Compressor Station);
4-1922-00049/00004 (Athens Compressor Station)**

by Ian Goodman and Brigid Rowan



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March 26, 2024

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1 Introduction

Ian Goodman and Brigid Rowan of The Goodman Group, Ltd. (TGG) are providing expert comments to assist New York Lawyers for the Public Interest (NYPLI) in their comments to NYS Department Environmental Conservation (DEC) regarding the NYS Department of Public Service (DPS) Letter concerning the DEC Review of the Iroquois Enhancement by Compression Project (ExC Project).

According to the DEC's Environmental Notice Bulletin of 02/28/24:

On [February 26, 2024](#), NYS DPS provided its assessment that the ExC Project is necessary to ensure Con Edison's and National Grid's continued provision of safe, adequate, and reliable gas service to customers in the downstate region of New York State.¹

Following the DPS assessment, DEC has allowed a period for public comments:

...to provide feedback on NYS DPS' finding that the ExC Project is necessary, and, therefore, justified under Section 7(2) of the Climate Act, should the NYS DEC find that the ExC Project is inconsistent with the attainment of the statewide greenhouse gas emission limits.

This document provides TGG's Expert Comments regarding DPS' finding that ExC is necessary, and, therefore justified under the Climate Leadership and Community Protection Act (the Climate Act).

2 Key Findings

1. DEC must ensure the successful implementation of the Climate Act. Approval and implementation of ExC are inconsistent with the attainment of statewide greenhouse gas emissions limits set out by the Climate Act.
2. The DPS Letter does not justify that ExC is necessary in NYS' current context, which requires a rapid reduction in greenhouse gas emissions.
3. DPS fails to justify that ExC is necessary for the following reasons:

¹ Department of Environmental Conservation, Environmental Notice Bulletin, Town of Dover and Town of Athens - Iroquois Enhancement by Compression (ExC) Project, February 28, 2024. https://dec.ny.gov/news/environmental-notice-bulletin/2024-02-28/public-notice/town-of-dover-and-town-of-athens-iroquois-enhancement-by-compression-exc-project?auHash=E9x8mdCwl1pKtUEIGtHpraYx_7sNktPtyPz8Y2BU4js



- a. DPS’s business-as-usual approach to supply planning is no longer fit for purpose and will not support a transition from natural gas (Section 3.1)
- b. DPS relies on flawed, disputed and outdated Design Day Demand and Design Day Supply projections (Section 3.2)
- c. DPS does not adequately consider alternative approaches to gas supply planning (including management of tight gas supply²) in a manner consistent with the Climate Act (Section 3.3)
- d. DPS fails to consider the competing risks and benefits for ExC (Section 3.4).

3 DPS Assessment Fails to Justify that ExC is Necessary

DEC must ensure the successful implementation of the Climate Act. Approval and implementation of ExC are inconsistent with the attainment of statewide greenhouse gas emissions limits set out by the Climate Act. In fact, ExC will take NYS in the opposite direction of where it needs to go to rapidly reduce emissions and support an energy transition. The Project locks the state into decades of increased gas dependence with economic repercussions for all New Yorkers, particularly more vulnerable lower-income ratepayers. Especially now, DEC must be very cautious about granting approval to long-term projects that cannot be undone and making it more difficult to effectively implement the Climate Act.

We conclude that the DPS assessment does not justify that ExC is necessary for the four reasons enumerated in Key Finding 3 described above. Each reason will be further developed in Sections 3.1 to 3.4.

3.1 DPS’ Business-as-Usual Approach to Supply Planning No Longer Fit for Purpose

DPS’ assessment is based on a business-as-usual (BAU) approach to supply planning that is outmoded, no longer fit for purpose nor consistent with the Climate Act. Successful implementation of the Climate Act requires bold (and challenging) steps to transition away from natural gas. Business-as-usual and supply planning as usual will not support this transition. Indeed, BAU is largely responsible for our current climate crisis.

As per the DPS Letter (p. 1), DPS’ core statutory obligation is to:

ensure the provision of utility service in a manner that is “safe and adequate and in all respects just and reasonable” (Public Service Law § 65(1)).

² “Tight supply” as used in these comments means “tight gas supply,” that is when demand is high, and supply is low.

Based on this statutory obligation, DPS' assessment is by definition reliability-oriented. In its letter, DPS raises some important real-world concerns regarding the potential risks of tight supply for New York State, which will be further discussed in Section 3.3.

DPS provides projections of Design Day Demand and Design Day Supply and concludes that more supply is needed to meet the demand. As such "The ExC Project is Needed to Maintain System Safety and Reliability." On a more technical level, as Section 3.2 will demonstrate, DPS' conclusion is based on a flawed and outdated BAU analysis of gas system Design Day Demand and Supply that should not and cannot be relied on to justify ExC.

From a high-level NYS energy policy perspective, the DPS assessment is siloed and inconsistent the implementation of the Climate Act, which sets out targets to reduce greenhouse gas emissions. In fact, despite the DPS Letter's claim that it reviewed the ExC project "under the statutory obligation under Section 7(2) of the Climate Act" (p. 1), the letter makes no further mention of the Climate Act.

As will be further discussed in the following sections, ExC is not a project with short-term impacts that would fill a potential supply need for a few years. On the contrary, ExC is a long-term commitment (locking the state into decades of increased gas dependence with economic repercussions for all New Yorkers). These long-term impacts that are inconsistent with the Climate Act should inform the weight that DEC gives to DPS' assessment.

The appropriate response to these supply planning challenges is not to approve ExC based on DPS' BAU supply planning, but rather to modify the supply planning itself so it is less siloed, takes a more comprehensive approach to energy planning, and produces outcomes that are consistent with the Climate Act. This response is consistent with the recommendations of the New York Scoping Plan, issued in compliance with the Climate Act (and discussed in the next section).

3.1.1 Implications of Next Steps in Implementation of Climate Act: NYS Scoping Plan and NYS Energy Plan

In compliance with the Climate Act, NYS had to issue a Scoping Plan by 2023.

The 2019 Climate Leadership and Community Protection Act (Climate Act), one of the most ambitious climate laws in the nation, called for the issuance of a Scoping Plan

under the direction of a 22-member Climate Action Council (Council), to be completed by January 1, 2023.³

The Scoping Plan was issued on Dec 19, 2022. According to “Our Next Steps” on the Scoping Plan’s website, <https://climate.ny.gov/resources/scoping-plan/>:

DEC will have until January 1, 2024, to draft & circulate enforceable regulations to ensure the State meets the Climate Act's statewide GHG emission limits

At a later point in the timeline (with no specific date):

The State Energy Plan will be updated to incorporate the recommendations of the Scoping Plan

At the time of writing, the updated State Energy Plan has not been posted to the NYS government website, which continues to feature the 2015 Energy Plan.⁴

The Scoping Plan provides important guidance regarding the Gas System Transition needed to achieve the Climate Act’s emission limits (emphasis added):

Gas System Transition

The Scoping Plan notes that, along with the full complement of sector-specific strategies, **achieving the Climate Act’s emission limits will require a substantial reduction of fossil natural gas use and a strategic downsizing of the gas system.** A well-planned and strategic transition of the gas system will require coordination across numerous sectors to integrate planning with the decarbonization of the power generation sector and the build-out of local electric transmission and distribution systems to meet anticipated increases in electric demand throughout the State. **Integrated planning will ensure the transition is equitable and cost-effective for consumers without compromising reliability, safety, energy affordability, and resiliency.**

This Scoping Plan discusses the key principles in the transition away from gas and the importance of reducing fugitive emissions from gas infrastructure during this transition. **Specifically, the Scoping Plan includes a detailed framework through which agencies can develop a coordinated gas system transition plan.** The framework provides strategies and guidance to ensure the transition plan sets a clear timeline for the

³ Scoping Plan, New York State Climate Action Council, December 2022, p. 2.

<https://climate.ny.gov/resources/scoping-plan/-/media/project/climate/files/Chapter1ExecutiveSummary.pdf>

⁴ New York State, New York Energy Plan website. <https://energyplan.ny.gov/>

transition while satisfying key principles such as GHG and co-pollutant emission reductions, equity considerations, workforce protections, affordability, safety and reliability, decision-making informed by independent analysis, coordination with electric system expansion, and consumer engagement.⁵

Our review of the Scoping Plan and the related timeline for the implementation of the Climate Act and NYS Energy Plan demonstrate that there are important aspects of the next steps to implement the Climate Act that are still not in place. To achieve the Climate Act objectives, the Scoping Plan requires the implementation of significant changes with respect to institutional approaches and coordination, as well as changes in laws and regulations.⁶

From an energy policy perspective, DPS' siloed BAU approach to supply planning is inconsistent with the Scoping Plan. DPS' assessment of ExC is based on an approach that will likely not be in place for much longer. Given the changes required by the Scoping Plan to achieve the Climate Act objectives, it is highly unlikely that the BAU supply planning approach will continue once the NYS Energy Plan is approved (later in 2024).⁷

As indicated above, the Scoping Plan "includes a detailed framework through which agencies can develop a coordinated gas system transition plan." With these changes at play (and soon to be translated into the NYS Energy Plan), now is not the time to approve ExC. The Project is

⁵ Scoping Plan, op. cit., p. 21. For details of the Gas Transition Plan and the detailed framework for the coordinated gas transition plan, see Scoping Plan, Chapter 18, pp 350-363. <https://climate.ny.gov/resources/scoping-plan/-/media/project/climate/files/Chapter18GasSystemTransition.pdf>

⁶ See Building Decarbonization Coalition, The Future of Gas in New York State, March 2023. <https://buildingdecarb.org/wp-content/uploads/BDC-The-Future-of-Gas-in-NYS.pdf>

The Report offers an excellent discussion of the future of New York's gas system and recommendations for policy makers for an effective, managed, phased transition with coordinated engagement of state actors. The document is informed by the Climate Act and the Scoping Plan. In particular the Report:

- Recommends that the PSC should "adopt and overarching gas planning framework to govern filings in both the Gas Planning docket and Climate Law Compliance Docket." The framework should "avoid unnecessary carbon and cost lock-ins by requiring that near-term LDC investments be consistent with longer-term plans for deep decarbonization to meet Climate Law emissions mandates." (p. 6)
- Finds that "a decline in the number of gas ratepayers will significantly increase gas rates" and "lower-income gas customers are particularly at risk." (p. 5)

⁷ Two (and possibly three) key decision-makers on the powerful NYS Public Service Commission (PSC) are also expected to be replaced with Commissioners appointed by Governor Hochul in the coming weeks. The new Commissioners are supportive of the effective implementation of the Climate Act. At the time the DPS letter was written (February 26, 2024), six of the six PSC Commissioners were Cuomo appointees. The new appointments are expected to change the PSC's (and DPS') BAU orientation and support the energy transition.

See French, Marie J., "Hochul nominates former DEC commissioner, environmental advocate to utility regulator," ENERGYWIRE, E&E News, February 28, 2024.

<https://www.eenews.net/articles/hochul-nominates-former-dec-commissioner-environmental-advocate-to-utility-regulator/>



based on an outdated BAU supply planning approach, resulting in long-term, expensive and “unnecessary carbon and cost lock-ins.”

3.2 DPS Letter Relies on Flawed and Disputed and Outdated Design Day Demand and Design Day Supply Projections

From a more technical perspective, the DPS Letter is based on a flawed, disputed and outdated BAU analysis of gas system Design Day Demand and Design Day Supply (for the two downstate gas utilities (Con Edison and National Grid) that have contracted for supply from ExC). As demonstrated in this section, the DPS analysis should not and cannot be relied on by DEC to justify ExC.

The DPS analysis of gas system Design Day Demand and Design Day Supply has been extensively discussed and critiqued in the Comments of Sierra Club. We have reviewed those comments⁸ and concur with their findings and conclusions, including the following three key factors.

First, the DPS Letter emphasizes historical growth in gas demand, which is in no way representative of future trends.⁹ Both utilities project that gas demand will continue to grow for only a few more years and then decline long term; as peak demand declines, the utilities will have opportunities to downsize supply by allowing the expiration of capacity contracts. The utilities’ need for delivered services (a costly and potentially risky supply source) disappears by the early 2030’s, even without ExC. By itself, this projection calls into question the appropriateness of the utilities entering into new 20-year contracts for supply from ExC.

Second, while the utilities project that peak demand will continue to increase for several more years, these forecasts are based on multiple questionable assumptions.¹⁰ Hence, gas peak demand is likely to be lower than forecast by the utilities (both short and longer-term), further lessening (and shortening) any need for new gas supply resources.

⁸ Sierra Club Comments, specifically §IB (pp. 5-10) and §IC (pp. 10-11).

⁹ Sierra Club Comments, p. 6-7, 9-11; PA Consulting Final Report, pp. 57-67

<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={C0165E8C-0000-C31B-8811-18CAD381F45F}>; Direct Testimony of Mark D. Kleinginna on Behalf of Alliance for a Green Economy, Cases 23-G-0225 & 23-G-0226 (Sept. 1, 2023), pp. 11-13, 24.

<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5010528A-0000-C336-B6B5-732CCFEC70F}>

The Sierra Club Comments extensively cite and rely on both (a) the PA Consulting Final Report, which was prepared for DPS and filed with PSC (Case 23-G-0147); and (b) the Kleinginna Testimony.

¹⁰ Sierra Club Comments, pp. 7, 10-11; PA Consulting Final Report, pp. 57-67; Kleinginna Testimony, pp. 10, 12-13, 24.

Third, Design Day Demand forecasts for both utilities are based on extremely cold temperature conditions¹¹ that last occurred 90 years ago and have occurred just twice in 120 years. Moreover, these temperatures are increasingly unlikely to recur in a rapidly warming New York area.¹² With a Design Day modified to assume even slightly higher temperatures, forecasted gas demand would be considerably lower. By itself, this updating of Design Day Demand forecasts would offset much or all the claimed need for ExC.

Put simply, ExC is a long-term (20-year) commitment, while any potential need for new supply is, at most, short-term. Each of the three key factors discussed above demonstrates that any need for ExC is highly questionable. And in combination, these three key factors demonstrate that DPS Letter should not and cannot be relied on by DEC to justify ExC.

3.3 DPS Letter Does Not Adequately Consider Alternative Approaches to Gas Supply Planning/Management of Tight Supply

The DPS Letter raises important points regarding potential risks of inadequate Design Day Supply for New York State (and especially the New York City area). However, as discussed in Section 3.2, DPS relies on flawed Design Day Demand and Design Day Supply projections. Nonetheless, we acknowledge that NYS may have to manage tight gas supply for the next few years if it is to meet the objectives of the Climate Act by transitioning from natural gas.

While DPS concerns regarding tight supply are likely overstated (as discussed in the previous section), a natural gas transition may require the management of tight supply in the short term. ExC is a high-cost, carbon-intensive, long-term commitment to fill a potential short-term supply gap, which could be managed using alternative approaches to gas supply planning.

The DPS Letter fails to:

- suggest how gas supply planning could be modified to achieve outcomes consistent with the Climate Act; or
- provide adequate consideration of alternative approaches to gas supply planning, including consideration of how tight supply could be managed in the short term.

Massachusetts, a neighbouring jurisdiction (with similar climate and supply sources) provides lessons in best practices/approaches to a natural gas transition involving the management of tight supply. Notably, on December 6, 2023, the Massachusetts Department of Public Utilities (DPU) passed a ground-breaking gas utility transition order.

¹¹ Average temperature over 24-hour period of 0°F, or HDD (heating degree days) of 65. DPS Assessment, p. 3, fn. 10.

¹² Sierra Club Comments, pp. 5, 8-9; PA Consulting Final Report, pp. 65-67; Kleinginna Testimony, pp. 8-9.

Order 20-80 sets forth a new strategy to guide the evolution of the natural gas distribution industry to clean energy. This new strategy reflects DPU’s focus on helping the Commonwealth achieve its greenhouse gas (GHG) emissions reduction requirements through decarbonization, electrification, and the adoption of pilot programs for new technologies while minimizing additional investment and costs to protect ratepayers. Notably, Order 20-80 will require gas distribution companies (LDCs) to consider non-gas alternatives to gas expansion projects. Additionally, the LDCs will no longer be able to recover costs for the promotion of natural gas use. The LDCs also will be required to file Climate Compliance Plans every 5 years to ensure compliance with the state’s emissions limits. In a future proceeding, the DPU will investigate solutions to the energy burden, experienced particularly by low- and moderate-income ratepayers and environmental justice populations.¹³

The Order repeatedly emphasizes the need for “gas LDCs to move beyond “business as usual” in their gas system planning whether involving proposed expansion of service to new areas or investments necessary to maintain the safety of existing natural gas infrastructure.”¹⁴ The Order also:

- states that MA’s climate laws and GHG reduction targets require both LDCs and the DPU to move beyond the BAU approach to system planning and expansion.
- directs gas utilities to consider “non-gas pipeline alternatives” to minimize investments in the gas system and stranded assets
- calls for coordinated planning between gas utilities and electric distribution companies.¹⁵

The language of the Order clearly and powerfully sets out the shifts required in gas supply planning to support a gas transition. It also provides strong and specific validation for our Expert Comments; and therefore, important support as to why the DPS Letter does not provide justification for ExC and should not be relied on by DEC.

Massachusetts DPU Order 20-80 is historic and should be reviewed by NYS DEC and DPS for lessons in best practices/approaches to a natural gas transition. It is important to note that for a number of years, Massachusetts has been resistant to expanding its gas infrastructure. As a result, the Commonwealth has been managing tight supply during this time, including handling occasional price spikes and potential supply shortages: some of the risks that the DPS Letter has

¹³ Department of Public Utilities, Mass.gov, “Department of Public Utilities Issues Order 20-80,” December 6, 2023. <https://www.mass.gov/news/department-of-public-utilities-issues-order-20-80>

¹⁴ The Commonwealth of Massachusetts, Department of Public Utilities, D.P.U. 20-80-B, Investigation by the Department of Public Utilities on its own Motion into the role of gas local distribution companies as the Commonwealth achieves its target 2050 climate goals. December 6, 2023, p. 14. <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/18297602>

¹⁵ DPU Order 20-80, op. cit., pp. 98, 2-3.

warned about. As indicated above, NYS may have to manage tight supply for the next few years if it is to meet the objectives of the Climate Act by transitioning from natural gas. If DEC is serious about a successful implementation of the Climate Act, it is essential for DEC and DPS, as well as other state agencies and utilities, to review best approaches and consider alternatives to manage tight supply in a coordinated and thoughtful manner.

3.4 DPS Fails to Consider Competing Risks and Benefits for ExC

The DPS Letter mainly focusses on the potential reliability and safety risks if the ExC Project is not approved. Using a BAU approach to gas supply planning, DPS emphasizes the potential for dangerous and lengthy gas supply disruption using the example of 2022 Winter Storm Elliott.

DPS however fails to consider and weigh the competing risks of approving ExC. These would include:

- Inconsistency with Climate Act objectives: if rapid decarbonization does not take place, a climate emergency would have much higher reliability costs than those described by the DPS from the non-approval of ExC
- Decades-long carbon and economic lock-in, with costs borne disproportionately by lower-income consumers
- High potential for stranded assets: Most gas pipelines have a useful life of at least 40-50 years (and even longer for gas distribution system pipes and other facilities). Therefore, it is highly likely that new gas pipelines (and new gas distribution facilities) will become stranded assets (no longer able to generate an economic return prior to the end of their life), with ratepayers bearing the risk for these assets.¹⁶ This is a problem that energy regulators across North America are currently considering.
- NYC-area-specific problems for locking into more gas supply and usage: Effective implementation of the Climate Law requires a well-planned and managed shrinkage of existing gas usage and associated gas infrastructure, especially in the NYC area. The ExC Project will result in the addition of compression and associated gas cooling at existing compressor station sites. Moreover, it will also facilitate a higher level of gas

¹⁶ ExC is a gas pipeline enhancement project. However, as further explained in next bullet, ExC also enables growth and continuation in gas usage, and this will require ongoing high costs to modernize and operate the gas distribution system (especially in the NYC area). As proactive regulators (e.g., MA, CA and Ontario) have recognized, BAU of investing vast sums into the gas distribution system needs to immediately sunset, since this will intensify stranded costs and eventually lead to a death spiral as gas usage and systems shrink and gas prices soar (with a disproportionate share of the burden falling on lower-income captive customers).

consumption, specifically by enabling conversion of existing buildings from oil to gas heating at a time when they should instead be electrified.¹⁷

We acknowledge that there are some short-term risks associated with not approving ExC, notably with regard to gas system supply reliability. However, tight supply can be managed, and risk mitigated, as has been done elsewhere (in Massachusetts for instance). The bigger risk is BAU supply planning which is inconsistent with Climate Act objectives and locks NYC into decades of natural gas supply and stranded assets. As emphasized above, DEC must be very cautious about granting approval to long-term projects that cannot be undone, and making it more difficult to effectively implement the Climate Act.

4 Conclusion

Approval and implementation of ExC:

- are inconsistent with the attainment of statewide greenhouse gas emissions limits set out by the Climate Act, and more generally with the successful implementation of the Climate Act
- take NYS in the opposite direction of where it needs to go to rapidly reduce emissions and support an energy transition
- represent a high-cost, carbon-intensive, long-term commitment to fill a potential short-term supply gap
- lock the state into decades of increased gas dependence with economic repercussions for all New Yorkers, particularly more vulnerable lower-income ratepayers.

The DPS Letter does not justify that ExC is necessary for the following reasons:

- DPS' business-as-usual approach to supply planning as usual is no longer fit for purpose and will not support a transition from natural gas

¹⁷ The further expansion of gas usage and infrastructure is particularly problematic in the NYC area given the composition of the building stock and the need to transition off oil (and gas). The gas system in the area is especially old and leaky. (See PA Consulting Final Report (cited in footnote 9), pp. 45-51, regarding Leak-Prone Pipe on the New York area gas distribution system, and associated safety and economic risks.) Ongoing reliance on gas requires the maintenance and expansion of the associated gas infrastructure. This, in turn, leads to:

- safety risks: maintenance and expansion of the gas system is potentially dangerous in a dense urban environment
- economic risks: ongoing operation of the gas distribution system is costly and will inevitably require very large and ongoing expenditures and disruptions; old leaky pipes will need replacement with new infrastructure with a useful life extending far beyond the required phase-out of gas usage (leading to more stranded assets and higher rates, to which captive lower-income consumers particularly vulnerable).

- DPS relies on flawed, disputed and outdated Design Day Demand and Design Day Supply projections
- DPS does not adequately consider alternative approaches to gas supply planning (including management of tight supply) in a manner consistent with the Climate Act
- DPS fails to consider the competing risks and benefits for ExC.

From a NYS energy policy perspective, DPS' siloed BAU approach to supply planning is inconsistent with the implementation of the Climate Act, and specifically the recommendations of the New York Scoping Plan, soon to be translated into the NYS Energy Plan. From a more technical perspective, the DPS analysis of the Design Day Demand and Supply is also based on flawed BAU gas supply planning and cannot be relied on to justify ExC. To meet NYS' energy needs in a highly uncertain future, DPS' BAU approach must be updated because the current and future projections/scenarios differ so dramatically from the historical ones. Specifically, an updated approach would:

- be less siloed and more comprehensive across various agencies and stakeholders
- produce outcomes that are consistent with the Climate Act
- update Design Day Demand and Supply projections to better reflect the changing climate (characterized by overall warmer weather, together with more extreme weather events and temperature fluctuations)
- incorporate best practices/approaches in other jurisdictions (such as Massachusetts) to gas system planning, including management of tight supply to support a gas transition.

In summary, DPS' flawed and outdated BAU approach should not and cannot be relied on to justify the ExC Project, which will result in long-term, expensive and "unnecessary carbon and cost lock-ins," inconsistent with the Climate Act.

Appendix 1: Qualifications of Ian Goodman and Brigid Rowan

These Expert Comments has been co-authored by Ian Goodman and Brigid Rowan of The Goodman Group, Ltd.

Ian Goodman¹⁸

Ian Goodman is President and founder of The Goodman Group, Ltd. For over 40 years, he has conducted research and consulted in energy regulation and economics (related to conventional, unconventional and renewable energy, and energy efficiency). His practice has addressed a broad range of issues, including economic development and environmental impacts of large energy supply, infrastructure and transportation projects (including pipelines), North American and global oil, gas, coal and electricity markets, as well as regulation of natural gas and electricity. He also has expertise in the planning and operations of energy systems, as well as interjurisdictional energy trade in North America. Of direct relevance to the Highlands Applicability Determination, Mr. Goodman has extensive experience pertaining to natural gas regulation by federal and state agencies, including issues related to environmental assessment and project permitting, and review of agency decisions in federal and state legal proceedings.

Since 2011, his practice has focused on fossil fuel supply (notably shale oil and gas, Canadian tar sands and coal) and transportation logistics (including pipelines, rail and transloading facilities). Mr. Goodman has authored (or co-authored with Ms. Rowan) 15 expert reports on the most controversial oil, gas and coal projects in North America. These include crude oil pipelines (Keystone XL, Enbridge Line 9B, Trans Mountain Expansion Project), natural gas pipelines (Williams Northeast Supply Enhancement (NESE) Project and PennEast in New Jersey)¹⁹ and energy logistics facilities (Millennium Bulk Terminals (coal), Vancouver Energy Distribution Terminal (crude) and Kalama Manufacturing & Marine Export Facility (shale gas/methanol)).

These expert reports evaluate the economic and environmental impacts of fossil fuel production and transportation (particularly shale oil and gas and tar sands crude production and interjurisdictional pipelines, transloading facilities and crude-by-rail projects). They include analysis of related markets for energy supply produced and/or transported.

¹⁸ For Ian Goodman's full CV, please see:

<https://thegoodman.com/wp-content/uploads/2021/09/TGG2020821IanGoodman.pdf>

¹⁹ For a full description of relevant pipeline projects for which Ian Goodman and Brigid Rowan have submitted expert reports and/or testimony, please see

<https://thegoodman.com/project/?filter=pipeline>. For more information on: TGG's extensive range of work, please see <https://thegoodman.com/project/>; or a description of projects specific to natural gas, please see <https://thegoodman.com/project/?filter=natural-gas>.



Mr. Goodman has provided expert evidence in over 50 regulatory, environmental assessment, and legal proceedings in various North American jurisdictions including California, Washington, Colorado, North Dakota, South Dakota, New York, New Jersey, three New England states, Florida, British Columbia, Manitoba, Ontario, Quebec and before the US Federal Energy Regulatory Commission (FERC) and the Canadian Energy Regulator (CER), and United States District Courts. He has also assisted counsel in those and other proceedings. His clients comprise governments (including Indigenous and tribal authorities) and regulators, environmental, public interest and customer groups, start-ups and energy sector companies. Mr. Goodman is the author or co-author of over 60 publications and major reports relating to the energy industry.

Brigid Rowan²⁰

Brigid Rowan, Senior Economist at TGG, is an energy economist with over 25 years of experience in the areas of energy and regulatory economics (related to conventional, unconventional and renewable energy, and energy efficiency). Ms. Rowan's practice is informed by evidence that an energy transition, characterized by structural transformation of our energy systems, is required to address the climate emergency. She has examined economic development and environmental impacts of large energy supply, infrastructure and transportation projects (including pipelines), North American and global oil, gas, coal and electricity markets, as well as regulation of natural gas, electricity and renewables.

Ms. Rowan's work has challenged the economic rationale for large fossil-fuel-based energy projects (notably Canadian tar sands, shale oil and gas, coal, pipelines and rail) and supported the transition to renewables and energy efficiency. With Mr. Goodman, she has co-authored 13 expert reports on the most controversial oil, gas and coal projects in North America. These include crude oil pipelines (Keystone XL, Enbridge Line 9B, Trans Mountain), natural gas pipelines (Williams Northeast Supply Enhancement (NESE) Project and PennEast in New Jersey) and energy logistics facilities (Millennium Bulk Terminal (coal)). She has extensive experience collaborating with Mr. Goodman on cases pertaining to natural gas regulation by federal and state agencies, including issues related to environmental assessment and project permitting. Brigid has also filed evidence and provided support to counsel in over 25 regulatory proceedings before the *Régie de l'énergie du Québec* (Quebec Energy Board) and the Ontario Energy Board (OEB), including 15 in natural gas regulation.

Ms. Rowan has provided consulting services in energy economics and regulation and expert evidence in Quebec, Ontario, Manitoba, British Columbia, Washington, California, Colorado,

²⁰ For Brigid Rowan's full CV, please see:

<https://thegoodman.com/wp-content/uploads/2021/09/TGG20210409BrigidRowan.pdf>

North and South Dakota, New York, New Jersey and New England, as well as at the Canadian Energy Regulator (CER) and the US Federal Energy Regulatory Commission (FERC).

Brigid's clients include environmental, Indigenous and public interest groups, energy companies, start-ups and governments. She has held leadership positions in start-ups and environmental non-profits, and worked in energy marketing and communications in private sector companies.