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BARBARA LIFTON
125th District
Tompkins & Cortland Counties

Legislative Commission on Rural Resources

December 4, 2013

Attn: dSCEIS Comments
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6510

Dear Commissioner Martens:

Please consider the following comments on Proposed 6 NYCRR Part 570, Liquefied Natural Gas Regulations. I am submitting these comments on behalf of concerned constituents of my district in Tompkins and Cortland counties.

On February 10, 1973, a liquefied natural gas (LNG) plant exploded in Staten Island, NY, killing 40 people. Responding to this extreme public safety risk, the state Legislature enacted a statewide ban on LNG facilities in 1978. The ban was extended bi-annually until April 1st, 1999, although a prohibition on LNG facilities still exists in New York City. With a glut of natural gas in the United States due to High-Volume Hydrofracking, the pressure has increased to allow for LNG facilities in New York. Given New York's deadly history with LNG, the recognition of public safety concerns with LNG facility siting, and as directed by the LNG enabling statute, it would be reasonable to expect that the proposed regulations would be comprehensive in their protection of the health, welfare and safety of New York State residents. However, the regulations have numerous and serious shortcomings, including: 1) ambiguous scope, 2) lack of environmental protections, 3) inadequate fee structures, 4) failure to regulate greenhouse gas emissions in conflict with existing state policy, 5) lack of adequate siting criteria, 6) inadequate insurance and bonding requirements and, 7) vague accident reporting.

Additionally, the nature of the regulations and the study relied upon by the DEC could raise conflict of interest questions, and a minimum, creates the public appearance of impropriety with respect to this rulemaking. The 2011 study by Expansion Energy, hired by the New York State Energy Research and Development Authority (NYSERDA), is the only recent study cited by the DEC as part of the critical regulatory record underpinning the state's LNG rulemaking.¹ Expansion Energy has developed mobile storage facilities for LNG and stands to benefit if the

¹ See N.Y. DEP'T ENVTL. CONSERV., *NYS Liquefied Natural Gas (LNG) 6 NYCRR 570 Promulgation Support Study* at 1 (September 20, 2011), available at <http://www.dec.ny.gov/regulations/93069.html>

state allows these refueling stations along the Thruway.² There seems to be a chronic problem of contracting out to the very industries which would be the subject of the regulations. I would hope the DEC would solicit research from independent or university-based researchers (that is, those researchers who do not receive funding from the same regulated corporate interests). The DEC recognizes this potential in its Regulatory Impact Statement, stating that “[w]ith renewed interest in locating LNG facilities (particularly heavy-duty truck fueling facilities) in the State, this rulemaking will establish a program that will address the siting, construction, and operation of such facilities.”³ Despite the link between Expansion Energy, and the goals of the regulatory program, DEC downplayed the import of the study, stating that it “was used to provide factual information to support the rulemaking, not to fashion it... [t]he draft regulation was substantially complete before DEC asked for the study.”⁴ If, indeed, the regulations were created before there was adequate factual information to verify the safety of LNG expansion in New York, then this rulemaking subverts the intent of the State Administrative Procedure Act (SAPA), which establishes uniformity in state agency rulemaking procedure to “insure[] that equitable practices will be provided to meet the public interest” and to replace a disjointed approach to rulemaking which would “create misunderstanding by the public.”⁵ I urge that the precautionary principle guide all decision-making about LNG siting in New York State. While it is fine to solicit information from the regulated industry, other clearly independent research should be the bulk of outside research relied upon by the DEC or any state agency.

Thus, I submit these comments on the Proposed Liquefied Natural Gas Regulations.

I. 6 NYCRR §570.1(c)(9) – Definitions

A. The proposed regulations have ambiguous scope, which must be clarified.

Much of the supporting documentation for the proposed LNG regulations discuss the increased interest in establishing LNG refueling stations in New York for the trucking industry. The Regulatory Impact Statement lauds “the lower price of LNG compared with other fuels has increased its demand in the transportation sector,”⁶ and even goes so far as to quote the Chairman and CEO of General Motors stating that LNG presents an opportunity, due to low price.

² Scott Waldman, *For Advice on Gas Regulations, the Cuomo Administration Turns to a Gas Company*, CAPITAL NEW YORK, Nov. 12, 2013, available at <http://www.capitalnewyork.com/article/politics/2013/11/8535829/advice-gas-regulations-cuomo-administration-turns-gas-company>

³ N.Y. DEP’T ENVTL. CONSERV., *Regulatory Impact Statement(Full Text) – 6 NYCRR Part 570 at 1* (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93219.html>

⁴ Scott Waldman, *For Advice on Gas Regulations, the Cuomo Administration Turns to a Gas Company*, CAPITAL NEW YORK, Nov. 12, 2013, available at <http://www.capitalnewyork.com/article/politics/2013/11/8535829/advice-gas-regulations-cuomo-administration-turns-gas-company>

⁵ STATE ADMIN. PROCEDURE ACT, § 100.

⁶ *Regulatory Impact Statement(Full Text) – 6 NYCRR Part 570 at 6.*

Yet, the term “liquefied natural gas facility” in the regulations is defined as “any structure or facility used to store liquefied natural gas in a tank system, or other storage device or to convert liquefied natural gas into natural gas.”⁷ There is no limitation on size of a LNG facility in these regulations. Further, the documentation highlights the 2011 study completed by Expansion Energy, listing the following types of facilities that could be built in New York with promulgation of these regulations: “(1) LNG import/export terminals (these would require federal approval); (2) peak shaving plants that produce/store/vaporize LNG; (3) regional LNG production facilities (relatively large quantities); (4) LNG production at natural gas wells; (5) LNG production at facilities with access to a natural gas pipeline; and (6) LNG fueling facilities without on-site production of LNG.”⁸

Clearly, these regulations would allow much more widespread use and establishment of LNG facilities, above and beyond the cited interests for transportation uses. Emphasis on the creation of an LNG transportation network is misleading, perhaps unintentionally so, but it is crucial that the public know the intended scope of these regulations.

II. 6 NYCRR §570.2 – Permit Requirements and Application Procedures

A. The DEC has a duty to first and foremost protect the state’s environmental resources as required by the Environmental Conservation Law (ECL), which these proposed LNG permit application contents do not adequately address.

Under ECL Article 1 § 1-1010(1), the DEC is obligated to “conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state.”⁹ In fact, the Regulatory Impact Statement recognizes this fact, noting on page 1 that the Department’s broad authority mandates both protection of the citizenry and the state’s natural resources and environment.¹⁰

Yet the LNG regulations in section 570.2(b)(7), simply state that a permit application must include “a description of the possible environmental impacts of the proposed facility and the facility features or procedures to mitigate those impacts.”¹¹ With no enforceable criteria, or list of environmental concerns that must be monitored and addressed, the permit applicant has complete deference to decide what impacts are of concern, and what measures, if any, are needed to mitigate them. This provision lacks “teeth,” and undercuts the DEC’s statutory duty of environmental protection.

⁷ N.Y. DEP’T ENVTL. CONSERV., *Proposed 6 NYCRR Part 570 Liquefied Natural Gas* §570.1(c)(9) (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93166.html>

⁸ *Regulatory Impact Statement (Full Text) – 6 NYCRR Part 570* at 6.

⁹ N.Y. ENVTL. CONSERV. LAW § 1-1010(1) (1970)

¹⁰ *Regulatory Impact Statement (Full Text) – 6 NYCRR Part 570* at 1.

¹¹ N.Y. DEP’T ENVTL. CONSERV., *Proposed 6 NYCRR Part 570 Liquefied Natural Gas* §570.2(b)(7) (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93166.html>

Coupled with the DEC's issuance of a Negative Declaration – Notice of Determination of Non-Significance – under their State Environmental Quality Review Act (SEQRA) environmental review, which heavily cited the study contracted out to Expansion Energy without mentioning the company nor its conflict of interest, it is reasonable to conclude that environmental protection may not be receiving sufficient consideration under the law, or that at least an appearance of impropriety undercuts the findings.¹²

B. Inadequate program fees are insufficient to pay for review, permitting, monitoring, and inspection of LNG facilities.

Application fees for a five-year permit under the proposed regulations require as little as \$100 for a capacity of less than 1,100 gallons, to a maximum of \$2,500 for any facility over 75,000 gallons.¹³ The DEC expects “the State to recoup its personal services and non-personal services costs through permit application fees.”¹⁴ Yet, these rather limited fees indicate a troubling reality. The DEC will be unable to expand its monitoring and inspection staff based on the collected permitting fees, especially as export facilities may be handling millions of gallons of LNG are permitted, but still will only require a payment of \$2,500. While the DEC may hope for a number of small scale transportation facilities, it is problematic to propose a regulatory program that fails to address the enforcement needs for all types of facilities. Many of these facilities would have to be permitted under this fee structure to hire even one new inspector.

As the state seeks to bring the “creation of what is essentially a new industry with this rulemaking,”¹⁵ it must do so with the recognition that the public demands close scrutiny and monitoring over LNG facility operations, especially with the Staten Island explosion a part of the LNG legacy in New York. Instead, we see that the permit fees are inadequate to establish a robust monitoring system for the administration of this new regulatory program.

Additionally, the Permit Application Contents have no objective criteria for the DEC to evaluate the required “report... that evaluates the capability and preparedness, or lack thereof, of fire departments in the vicinity of the proposed facility.”¹⁶ Again, the lack of objective criteria and minimum standards for compliance create a weakness in enforceability of critical safety measures, imposing an unnecessary and unacceptable risk to New Yorkers.

C. The proposed regulations fail to account for methane leakage from a LNG facility, ignoring the latest scientific information about methane's greenhouse gas effects in contravention of state policy.

¹² N.Y. DEP'T ENVTL. CONSERV., *Negative Declaration – Notice of Determination of Non-Significance* (June 8, 2013), available at

http://www.dec.ny.gov/docs/remediation_hudson_pdf/part570seqrdocs.pdf

¹³ *Proposed 6 NYCRR Part 570 Liquefied Natural Gas* §570.2(k).

¹⁴ N.Y. DEP'T ENVTL. CONSERV., *Regulatory Impact Statement(Full Text) – 6 NYCRR Part 570 at 7* (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93219.html>

¹⁵ N.Y. DEP'T ENVTL. CONSERV., *Job Impact Exemption Statement – 6 NYCRR Part 570 at 1* (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93234.html>

¹⁶ *Proposed 6 NYCRR Part 570 Liquefied Natural Gas* §570.2(b)(9).

A report issued by the New York State Energy Research and Development Authority (NYSERDA) on November 18, 2011, called *Response to Climate Change in New York State* (part of the ClimAID project), discusses the costs of Climate Change to our state. The section titled “Economics” warns that “[o]verall costs of impacts within the energy, transportation, and coastal zone sectors will be most significant, likely by many-fold, but impacts within each sector will be significant.”... “This is well illustrated in the agriculture and ecosystem sectors, where particular components such as specific crops and modes of production or rare and endangered ecosystems and species could be significantly affected ...”¹⁷ In issuing “[k]ey policy recommendations, targeted for New York State decision-makers” the ClimAID report advocates the wisdom of promulgating “regulations based on up-to-date climate projections.”¹⁸ Another major element of New York’s efforts to curb global warming is based in Governor Paterson’s Executive Order #24, also continued by Governor Cuomo, which calls for NYS to reduce greenhouse gas emissions 80 percent by the year 2050.¹⁹ Order #24 also established the New York Climate Action Council which released their Interim Report on November 9, 2010, agreeing with leading climate scientists that the effects of Climate Change are already upon us and immediate action is required to mitigate emissions, including methane.²⁰

A 2010 study by Robert Howarth, Renee Santoro and Anthony Ingraffea, comes to the conclusion that “[a] complete consideration of all emissions from using natural gas seems likely to make natural gas far less attractive than other fossil fuels in terms of the consequences for global warming.”²¹ Howarth et al revisited the topic in a background paper for the National Climate Assessment, and reiterate that “methane is the second largest contributor to human-caused global warming”.²² Methane is an extremely potent greenhouse gas, up to 105 times more powerful per molecule than CO₂ over a twenty year timeframe – a timeframe in which our climate scientists tell us we must quickly cut greenhouse gases in order to try to avoid irreversible climate catastrophe.

The impact of methane emissions on climate change has been verified by fifteen of the world’s top scientists, from Harvard, the National Oceanic and Atmospheric Administration

¹⁷ NYSERDA, *Response to Climate Change in NY*, 457 (Nov. 18, 2011). available at <http://www.nysERDA.ny.gov/en/Publications/Research-and-Development/Environmental/EMEP-Publications/Response-to-Climate-Change-in-New-York.aspx>

¹⁸ *Id.*

¹⁹ Exec. Order No. 24 (Aug. 6, 2009), available at <http://www.nyclimatechange.us/ewebeditpro/items/O109F22395.PDF>

²⁰ NYSERDA, *NY State Climate Action Plan Interim Report*, 457 (Nov. 9, 2010), available at <http://nyclimatechange.us/InterimReport.cfm>

²¹ Robert Howarth, PRELIMINARY ASSESSMENT OF THE GREENHOUSE GAS EMISSIONS FROM NATURAL GAS OBTAINED BY HYDRAULIC FRACTURING at 1, available at <http://www.technologyreview.com/blog/energy/files/39646/GHG.emissions.from.Marcellus.Shale.April2010%20draft.pdf>

²² See Robert Howarth, METHANE EMISSIONS FROM NATURAL GAS SYSTEMS, Feb. 25, 2012 available at <http://www.eeb.cornell.edu/howarth/Howarth%20et%20al.%20--%20National%20Climate%20Assessment.pdf>

(NOAA) and the Lawrence Berkeley National Lab, among others, in a new study: *Anthropogenic Emissions of Methane in the United States*. They call for immediate action to curb methane as many states are poised to fail their 2020 emission reduction thresholds due to high methane emissions that have historically been estimated as much as 50% lower than actuality.²³ These studies come at a time when climate talks in Warsaw, Poland struggle to come to a clear path forward for tackling climate change, despite [Christiana Figueres](#), executive director of the UN Framework Convention on Climate Change highlighting the [Intergovernmental Panel on Climate Change \(IPCC\)](#) findings “which set out starkly that climate change is unequivocal, (and) should be ‘a huge wake-up call’ to the world.”²⁴

The state’s rulemaking must assess the effects of the DEC’s action to permit LNG facilities in New York, with the venting of unburned methane a routine operation, upon other established state climate change policy. We, as a state, may even need to consider whether Executive Order #24 is outdated, given the increasingly urgent warnings that global warming is advancing more rapidly than earlier estimates. Governor Cuomo has recognized the necessity for New York to lead in the area of climate change following the massive devastation of Superstorm Sandy, stating that “we will not allow the national paralysis over climate change to stop us from pursuing the necessary path for the future.”

III. 6 NYCRR §570.2(d) – Criteria for Siting and Operation of Facilities

A. The DEC must promulgate regulations that meet both the regulatory intent and statutory requirements of the LNG enabling statute.

Under ECL § 23-1703, the legislature found a great need “to regulate and control the siting of liquefied natural and petroleum gas facilities in this state because of the hazards posed by liquefied natural and petroleum gas storage and transportation, particularly in populated areas.”²⁵ This enabling statute, empowering the Department of Environmental Conservation to issue regulations for LNG siting, further clarified that “[i]t is the purpose of the legislature . . . that liquefied natural or petroleum gas facilities not be sited in residential areas, or in dangerous proximity to contiguous populations, and that transportation of liquefied natural or petroleum gas be effected under maximum safeguards to protect such areas and populations against possible catastrophic danger in the mishandling or possible escape thereof.”²⁶

In its rulemaking, the DEC recognizes that ECL § 23-1703 “provides the backdrop for the LNG statute, and the legislative findings that served as a basis for it,” and specifically notes that “[t]he statute emphasizes the need to . . . minimize the siting of these facilities in residential

²³ See Scot M. Miller, ANTHROPOGENIC EMISSIONS OF METHANE IN THE UNITED STATES, Oct. 18, 2013 available at <http://www.pnas.org/content/early/2013/11/20/1314392110.abstract>

²⁴ Fiona Harvey, IPCC's 'carbon budget' will not drive Warsaw talks, says Christiana Figueres, *THE GUARDIAN*, Oct. 24, 2013, available at <http://www.theguardian.com/environment/2013/oct/24/ipcc-carbon-budget-warsaw-climate-change-christiana-figueres>

²⁵ N.Y. ENVTL. CONSERV. LAW § 23-1703 (1976).

²⁶ *Id.*

areas or in proximity to contiguous populations and to protect such areas from the potential hazards associated with transportation of LNG.”²⁷ Similarly, the DEC addresses the LNG facility siting statute ECL § 23-1709 which mandates that “siting criteria shall be designed to insure the maximum safety of the public from hazards associated with liquefied natural or petroleum gas storage, transportation and conversion.”²⁸

Yet, despite the strong language of legislative intent and authorization to regulate, the DEC’s implementation fails to ensure adequate safeguards for the public and the environment, as required by statute. Proposed section 6 NYCRR §570.2(d) – Criteria for Siting and Operation of Facilities – offers no spacing criteria, nor absolute distances, for siting a LNG facility based on density of population in the facility area and the delivery route, nor the risk of transportation accidents, despite the requirements for such consideration in ECL § 23-1709. The proposed rules fail to satisfy the legislative intent of the LNG statute, and need a thorough assessment of risk, based on population, as well as minimum setback from residences and other structures that may be in the vicinity of a LNG facility, in order to be responsive to the enabling statute. It is worth nothing that page seven of the NYSERDA (Expansion Energy) report discusses the need for buffer zones surrounding residential communities, yet no similar requirements make an appearance in these rules. Furthermore, the National Fire Protection Association (NFPA) codes are incorporated by reference into the proposed rules, but are not available within the regulations for public review and comment, appearing only on an alternate enrollment-only trade association website. This lack of access is in contravention of the spirit of the State Administrative Procedure Act.

IV. 6 NYCRR §570.7 – Financial Assurance

A. Inadequate and discretionary financial assurance provisions do not guarantee the financial wherewithal to protect the public.

Section 570.7 states that “acceptable financial assurance, may be required by the Department to ensure proper closure of facilities ... [t]he form and amount of such financial assurance, if any, will be established by the Department.”²⁹ This provision, on its face, fails to actually require the financial assurance necessary for facility closure. To have any practical, enforceable effect, the regulations need to clearly state what is required by facility operators with regard to financial assurance. Proof of liability insurance aside, the requirement should also be sufficient to cover the possibility of accidents, environmental degradation, remediation, and impacts to individuals and communities. The public should never be in the situation of bearing the costs for an underinsured industry in case of accident, as has often happened in the past.

V. 6 NYCRR §570.8 – Reporting of Spills

²⁷ N.Y. DEP’T ENVTL. CONSERV., *Regulatory Impact Statement(Full Text) – 6 NYCRR Part 570* at 2 (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93219.html>

²⁸ N.Y. ENVTL. CONSERV. LAW § 23-1709 (1976)

²⁹ N.Y. DEP’T ENVTL. CONSERV., *Proposed 6 NYCRR Part 570 Liquefied Natural Gas §570.7* (proposed Sept. 2013), available at <http://www.dec.ny.gov/regulations/93166.html>

A. The spill reporting requirements allow for an unreasonable amount of time between an accident and reporting to the DEC, and improperly apply to only an “escape of LNG in liquid form.”

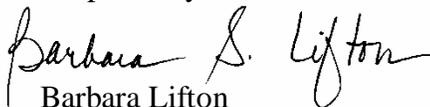
The proposed regulations define a “spill” as “any escape of LNG in liquid form from the containers employed in the normal course of storage, transfer, processing or use of LNG.”³⁰ This narrow definition fails to account for the unique nature of LNG which can escape in gaseous form with risk of explosion, or the possibility of other chemical accidents or public safety risks from a LNG facility.

Additionally, spills must only be reported that “result in, or may reasonably be expected to result in, a fire with potential off-site impacts or that cause, or may reasonably be expected to cause, an explosion.”³¹ Combined with a two hour window to report such a spill, the oversight of accidents is largely left to the facility operator who will be self-interested to minimize reporting of a dangerous spill, at potential risk to communities and employees. The DEC needs to establish clear volumes of LNG and chemical releases that pose risk of explosions, and tie a specific, enforceable, volume of release to a type of facility and its location. Inadvertent releases, or indeed routine venting of gas, can also lead to environmental impacts and possible contamination, which needs to also be recorded and reported under these proposed regulations. Accordingly, there need to be specific levels of record keeping and monitoring of equipment, including mandatory replacement of components that degrade over time, to reduce the risk of accident. The DEC should take a proactive approach to prevent accidents and environmental degradation.

VI. Conclusion

By developing comprehensive LNG siting regulations that respond to the legislative intent of the enabling statute, address the vague, unenforceable standards, and ensure a properly staffed DEC to oversee this new industry, while accounting for climate change implications, the state will address many concerns of the public, who see increasing risk of reliance on fossil fuels. So far, these proposed regulations leave too many important environmental and safety decisions to the operators, without monitoring. The people and wildlife of New York State must not be asked to bear the impacts of LNG facilities, especially for exportation, threatening the sanctity of our environment and communities, as seen previously on Staten Island, and seriously putting at risk the climate change goals of the state.

Respectfully submitted,



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Member of Assembly
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BSL/jal

³⁰ *Proposed 6 NYCRR Part 570 Liquefied Natural Gas §570.1(c)(20).*

³¹ *Proposed 6 NYCRR Part 570 Liquefied Natural Gas §570.8.*