

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

SANE ENERGY PROJECT and COOPER PARK
RESIDENT COUNCIL, INC.

Petitioners/Plaintiffs

Index No.: 518354/2021

- against -

Hon. Leon Ruchelsman

CITY OF NEW YORK, FIRE DEPARTMENT OF
NEW YORK and BROOKLYN UNION GAS
COMPANY D/B/A NATIONAL GRID,

Mot. Seq. No. 004 and
Mot. Seq. No. 006

Respondents/Defendants

**NATIONAL GRID’S RESPONSE AND COUNTER-STATEMENT OF
MATERIAL FACTS AS TO WHICH
THERE EXIST NO GENUINE ISSUES TO BE TRIED**

Pursuant to 22 N.Y.C.R.R. 202.8-g, Respondent/Defendant The Brooklyn Union Gas Company d/b/a National Grid (“National Grid”), by its attorneys, Nixon Peabody LLP, respectfully submits this response and counter-statement in response/opposition to Petitioners’/Plaintiffs’ Statement of Material Facts as to Which There Exist no Genuine Issues to be Tried (“Petitioners’ SMF”).

By responding herein to each of the separately-numbered paragraphs in Petitioners’ SMF, National Grid does not concede that any of the facts averred in Petitioners’ SMF are “material” within the meaning of 22 N.Y.C.R.R. 202.8-g or that any of Petitioners’ averments are appropriate factual material, as opposed to conclusions of law, legal arguments, and/or unsupported assertions lacking substantiation in the evidentiary record on this motion, and National Grid explicitly reserves the right to argue any and all averments in Petitioners’ SMF are either not material or are not appropriate factual averments.

Subject to the foregoing, National Grid responds as follows:

1. Disputed in part. On January 28, 2013, National Grid initially submitted to the Fire Department of the City of New York (“FDNY”) its application for a variance to permit the trucking of liquefied natural gas (“LNG”) to the Greenpoint Facility (the “Variance Application”). National Grid’s Statement of Material Fact as to Which There Exist no Genuine Issue to be Tried (the “SMF”) ¶ 7; Affidavit of Christopher Connolly dated October 28, 2021 (“Connolly Aff.”) ¶ 4 and Ex. A thereto. In addition, the EAS that was submitted to the FDNY in November 2016 was a draft EAS and it was the last draft EAS submitted by National Grid in connection with the Variance Application. *See* SMF ¶¶ 11, 14, 18; Connolly Aff. ¶¶ 6, 9. The Variance Application and EAS have been withdrawn and are no longer pending. SMF ¶¶ 22-23; Connolly Aff. ¶¶ 12-13 and Ex. C thereto.

2. Disputed in part. Petitioners’ selective and incomplete quotation of the EAS Full Form is misleading. The “Project Description’s” first sentence reads “National Grid is seeking variances from the New York City Fire Department (FDNY) to fill and transport liquefied natural gas (LNG) trailers within New York City,” making it clear that the purported “action” for SEQRA purposes was the variance to transport LNG and that the “improvements” referenced in the portion of the EAS quoted by Petitioners was merely an adjunct and in support of the “proposed LNG truck transport.” *See* Affirmation of Christopher J. Porzio dated October 29, 2021 (“Porzio Moving Aff.”), Ex. A, Ex. F thereto (EAS at p. 4). Given that the EAS has been withdrawn, Petitioners’ statement discussing the content of the EAS should be in the past tense, *i.e.*, National Grid’s description of the project “began” with the Company’s proposal “to fill and transport liquefied natural gas (LNG) trailers within New York City” and then “continued” with the quoted text. Connolly Aff. Ex. C.

3. Disputed in part. The “Project Description” section of the written/narrative portion of the EAS that is entitled “National Grid Liquefied Natural Gas Variances Petition” does contain a subsection entitled “Changes to the Greenpoint Facility,” but this subsection does not reference trucking of LNG. This subsection details the “improvements” to the Greenpoint Facility that were contemplated as part of that project as it was proposed in that EAS. Porzio Moving Aff., Ex. A, Ex. F thereto at p. 17. Given that the EAS has been withdrawn, Petitioners’ statement discussing the content of the EAS should be in the past tense, i.e., the EAS “detailed” the referenced activities. Connolly Aff. Ex. C.

4. Disputed in part, to the extent that by including the referenced quotation from the EAS out of context, Petitioners are contending that this excerpt means or suggests that the FDNY variances were required as a precondition of or as a necessary or related part of construction of the improvements, or that National Grid was stating or conceding the foregoing, which it was not, nor did National Grid convey that in this portion of the EAS. National Grid was not and is not required by law to obtain any FDNY variances before commencing construction of improvements at the Greenpoint Facility, including the current Truck Unloading Station Project. The statement from the EAS quoted by Petitioners simply refers to a sequence of events contemplated at the time this draft EAS was submitted in 2016, under which the original plan was to obtain the FDNY variances before construction of improvements and did not mean or suggest that National Grid was *required* to obtain the variances before proceeding with the construction, as Petitioners seem to be suggesting. Given that the EAS has been withdrawn, Petitioners’ statement discussing the content of the EAS should be in the past tense, *i.e.*, in 2016 National Grid “stated” the excerpted language. Connolly Aff. Ex. C.

5. Disputed in part. Given that the EAS has been withdrawn, Petitioners' statement discussing the content of the EAS should be in the past tense, *i.e.*, National Grid "stated" the quoted text in the EAS. Connolly Aff. Ex. C.

6. Disputed in part. In the written portion of the EAS, before the discussion of the 18 Technical Analysis Categories, it states under the heading "Environmental Assessment" that the EAS has been prepared to provide a comprehensive description of the "environmental effects" and "environmental impacts" and makes no specific mention of assessing "safety impacts." Porzio Moving Aff., Ex. A, Ex. F thereto (EAS at pp. 19-20). Given that the EAS has been withdrawn, Petitioners' statement discussing the content of the EAS should be in the past tense, *i.e.*, in 2016 National Grid "assessed" certain environmental and safety impacts in the EAS. Connolly Aff. Ex. C.

7. Disputed in part. While this excerpt does appear in the 2016 draft EAS, to the extent Petitioners are using this innocuous statement/observation to suggest that this constitutes some type of an admission by National Grid of an adverse environmental impact that could arise from the Truck Unloading Station Project currently being constructed, that is incorrect. National Grid's references to potential environmental impacts in what was only a draft EAS in 2016 served merely to explain that such impacts could potentially occur; it does not establish that they are either likely to occur or threaten anything approaching irreparable harm now, in 2022. Moreover, this paragraph relied on by Petitioners plainly does not state that the identified issues were in any manner significant, that they may cause any related, additional harms, including increased flood risk, or that any environmental problems are anticipated to come from that "soil disturbance." Additionally, soil disturbance occurs in virtually every construction project – and there is nothing unique about the level of soil disturbance with respect to the Truck Unloading

Station Project as compared to any other construction project. Furthermore, a stormwater management plan is not required for the Truck Unloading Station Project, and to the extent Petitioners rely on this excerpt for the assertion that one was and is required, that is incorrect. SMF ¶¶ 103-05; Affidavit of Saed Abdul Hamid dated October 27, 2021 (“Hamid Moving Aff.”) ¶¶ 38-42. With regard to the reference to “an increase in stormwater” in the excerpt quoted by Petitioners, that merely signifies that there would be new, additional areas of pavement and concrete that did not previously exist and, as a result, there would be more “impervious coverage” preventing some measure of water from being absorbed into the ground. That does not equate to an increased risk of flood, as Petitioners seem to be contending, nor did National Grid suggest that it would lead to increased risk of flooding, as Petitioners also seem to be suggesting, incorrectly. SMF ¶ 13; Porzio Moving Aff., Ex. A, Ex. F thereto (EAS at p. 26). Given that the EAS has been withdrawn, Petitioners’ statement discussing the content of the EAS should be in the past tense, *i.e.*, in 2016 National Grid “stated” the excerpted language. Connolly Aff. Ex. C.

8. Disputed in part. Given that the EAS has been withdrawn, Petitioners’ statement above should be in the past tense, *i.e.*, National Grid “stated” the quoted text in the EAS. Connolly Aff. Ex. C. The location of the current Truck Unloading Station Project is outside the 100-year floodplain (Hamid Moving Aff. ¶ 45), and outside the 500-year floodplain mapped by the US Federal Emergency Management Agency (FEMA) (Affidavit of Saed Abdul Hamid dated January 20, 2022 (“Hamid Opp. Aff.”) ¶ 6) and Exhibit A thereto. The statement in the 2016 EAS referenced by Petitioners, related to a need to “flood proof” the area, is inaccurate. Hamid Opp. Aff. ¶ 6 and Exhibit A thereto.

9. Disputed in part. While the quote recited by Petitioners does appear in the EAS, which National Grid does not dispute, Petitioners appear to be citing and relying on this quotation to suggest that it constitutes an admission by National Grid that NYSDEC has to review and approve the construction of the current Truck Unloading Station Project and/or evidence that NYSDEC in fact has to review and approve construction of the Truck Unloading Station Project before it could commence, both of which are not correct. Since the Greenpoint Facility was a former manufactured gas plant (“MGP”) facility and is currently under the Order on Consent and Administrative Settlement (“AOC”) with NYSDEC, in compliance with the site-specific Interim Site Management Plan (“ISMP”), National Grid did submit a notice of intrusive activities (“NOIA”) form and work plan advising NYSDEC's Division of Environmental Remediation of the intrusive activities, sampling, and soil management. The role of NYSDEC in connection with the Truck Unloading Station Project is to review the NOIA and any work plans for compliance with the AOC and ISMP, but NYSDEC does not approve the project itself. Upon review of the submitted documents, NYSDEC did not note any objections to the activities and NYSDEC issued approvals for sampling and soil management associated with the Truck Unloading Station Project. SMF ¶¶ 61-64; Hamid Moving Aff. ¶¶ 47-48. Given that the EAS has been withdrawn, Petitioners’ statement discussing the content of the EAS should be in the past tense, *i.e.*, National Grid “stated” the quoted text in the EAS. Connolly Aff. Ex. C.

10. Disputed in part. The two separate passages quoted by Petitioners and pasted together by them completely out of context do appear separately in the EAS. However, the statement “construction activities at the site would be undertaken upon completion of final engineering design and receipt of appropriate approval from NYSDEC to ensure there is no significant adverse impacts from construction,” does not, as Petitioners seem to suggest,

evidence that NYSDEC approval was required before construction of the Truck Unloading Station Project could proceed or that National Grid's position set forth in its moving papers, that NYSDEC approval of the project is not required, is somehow inconsistent with what National Grid stated in the EAS. Petitioners distort the meaning of the EAS. National Grid's reference in the EAS to "appropriate approval from NYSDEC" does not mean that NYSDEC had approval authority with respect to all aspects of the construction of the LNG Truck Unloading Station Project. The role of the NYSDEC is to review the NOIA and work plan that National Grid provided to it for compliance with the AOC and ISMP for the Greenpoint Facility – which it has done – but NYSDEC does not approve the construction. SMF ¶¶ 61-64; Hamid Moving Aff. ¶¶ 47-48. That is what National Grid was referring to with respect to "appropriate approvals from NYSDEC" in the EAS. *See* Hamid Moving Aff. ¶¶ 17, 37.

With respect to the statement "[t]he stormwater management plan that is to be developed would also need to undergo review and approval by the New York State Department of Environmental Conservation (NYSDEC) and other parties consistent with the previously referenced AOC agreement," there is a project-specific erosion control and sedimentation plan for the Truck Unloading Station Project that addresses storm water management and is part of the design package. There is no project-specific storm water permit required since there is no "discharge" as defined by New York State regulations; that is, since there is no discharge to surface waters from the project, no such plan is required by the NYSDEC. This was confirmed in an email dated August 31, 2020 to National Grid's engineering consultant Nick Verruto, of BL Companies, from Selvin Southwell, DEC Region 2 Acting Regional Water Engineer, stating that no storm water permit coverage would be required if there is no discharge to surface waters. Hamid Moving Aff. ¶¶ 38-39 and Exhibit N thereto. Finally, given that the EAS has been

withdrawn, Petitioners' statement discussing the content of the EAS should be in the past tense, *i.e.*, National Grid "stated" the quoted text in the EAS.

11. Disputed in part. National Grid was not "extremely resistant" to providing the EAS to SANE; instead it objected twice, appropriately and in good faith to SANE requests seeking, *inter alia*, "copies of all communications pertaining to the [LNG Variance Petition] project" before providing the EAS in May of 2021 (Affidavit of Philip A. DeCicco dated October 28, 2021 ("DeCicco Moving Aff."), Ex. D (SANE-30 Supplemental2)), because the information sought by SANE with respect to the draft EAS, as National Grid stated in its objections in response to SANE's information requests, was and "is not relevant to the Companies' distribution rates at issue in these proceedings [*i.e.*, the PSC Rate Case]." Fraczek Aff., Ex. E (SANE-30, Question 6 and Response 6); DeCicco Moving Aff., Ex. C (SANE-30 Supplemental, Question 6 and Response 6). In addition, none of the information requests to National Grid, cited by SANE, explicitly requested a copy of the EAS. Fraczek Aff., Ex. E (SANE-30, Question 6 and Response 6); DeCicco Moving Aff., Ex. C (SANE-30 Supplemental, Question 6 and Response 6); DeCicco Moving Aff., Ex. D (SANE-30 Supplemental2).

12. Disputed in part. The April 4, 2017 letter from the City referenced by Petitioners relates to the Variance Application and EAS that have been withdrawn and are no longer pending, and the City's letter is irrelevant. Connolly Aff. Ex. C.

13. Disputed in part. The April 4, 2017 letter referenced by Petitioners relates to the Variance Application and EAS that have been withdrawn and are no longer pending, and the City's letter is irrelevant. Connolly Aff. Ex. C.

14. Disputed in part. The April 4, 2017 letter referenced by Petitioners relates to the Variance Application and EAS that have been withdrawn and are no longer pending, and the City's letter is irrelevant. Connolly Aff. Ex. C.

15. Disputed and objectionable. First, contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment "must be followed by citation to evidence submitted in support of or in opposition to the motion," Petitioners cite no evidence to support this contention, such that it is improper and unsupported. This contention is also incorrect, as the Truck Unloading Station Project did not require direct approval from the Mayor's office prior to commencement of construction in December of 2020; instead, the project required and is authorized entirely by and subject only to non-discretionary ministerial fire and building related permits issued by the FDNY, the DOB and the DEP, which permits have been obtained for the work completed to date and which remaining, outstanding permits will be obtained for the work that remains to be completed. SMF ¶¶ 41-59; Hamid Moving Aff. ¶¶ 10-37; Porzio Moving Aff. ¶ 28 and Ex. N thereto (City Mem.) at 5-6; Affidavit of Philip A. DeCicco dated January 20, 2022 ("DeCicco Opp. Aff.") ¶¶ 11-12.

16. Disputed to the extent that the portions of the 4th and 7th reports of the Independent Monitor, who was tasked with overseeing National Grid's compliance with its settlement agreement with the New York State Department of Public Service, are being quoted by Petitioners to suggest or imply that Mayoral approval is needed for the construction of the Truck Unloading Station Project at issue in this action, which is not correct or accurate. *See* SMF ¶¶ 41-59; Hamid Moving Aff. ¶¶ 10-37; Porzio Moving Aff. ¶ 28 and Ex. N thereto (City Mem.) at 5-6; DeCicco Opp. Aff. ¶¶ 11-12. The Monitor's function and expertise is not to opine on environmental compliance issues, including SEQRA and CEQR, nor does the Monitor have

the knowledge and expertise to do so reliably; instead, as stated by Petitioners, the purpose and function is to monitor compliance with a settlement agreement relating to rate-setting and any statements in the Monitor reports are not evidence of any environmental approvals that are required for the construction of the Truck Unloading Station and merely reflect the Monitor's subjective, incomplete, partially informed impression or understanding of what he understood or believed was required. *See* DeCicco Opp. Aff. ¶ 9.

17. Disputed in part. The Fifth Quarterly Monitor report does not state or suggest that the *construction* of the Truck Unloading Station Project was subject to a Memorandum of Understanding with New York City. The page cited by Petitioners in that report actually states: "Given existing legal limitations restricting the operations of that facility, National Grid has pursued a memorandum of understanding with the City (the "LNG MOU") which would allow National Grid to *truck LNG into the City and to unload it at* a new trucking station to be built at Greenpoint." Nagra Aff., Ex. C (Monitor's 5th Report) at p. 3 (emphasis added). It is therefore clear that this report discusses the pursuit of the MOU by National Grid not for the actual construction of the trucking station itself, but instead with respect to the application for variances that would permit the transport of LNG to the Greenpoint Facility by truck. Thus, to the extent that Petitioners suggest or imply that Monitor's Fifth Report is somehow evidence that the City has or had discretionary approval authority with respect to the mere construction of the Truck Unloading Station because an MOU was being negotiated for the actual transport of LNG, that suggestion or implication is evidently incorrect. *See* DeCicco Opp. Aff. ¶ 9.

In addition, the Monitor's function and expertise is not to opine on environmental compliance issues, including SEQRA and CEQR, nor does the Monitor have the knowledge and expertise to do so reliably; instead, as stated by Petitioners, the purpose and function is to

monitor compliance with a settlement agreement relating to rate-setting and any statements in the Monitor reports are not evidence of any environmental approvals that are required for the construction of the Truck Unloading Station and merely reflect his subjective, incomplete, partially informed impression or understanding of what he understood or believed was required. *See DeCicco Opp. Aff.* ¶¶ 7-9.

18. Disputed in part. While no MOU for or relating to the transporting of LNG to the Greenpoint Facility has ever been reached between National Grid and the Mayor's office, no MOU or any other form of direct Mayoral approval is necessary for the mere construction of the Truck Unloading Station, which is at issue here. *SMF* ¶¶ 41-59; *Hamid Moving Aff.* ¶¶ 10-37; *Porzio Moving Aff.* ¶ 28 and *Ex. N* thereto (*City Mem.*) at 5-6. *DeCicco Opp. Aff.* ¶¶ 11-12 and *Ex. A* thereto.

19. Disputed in part. No MOU or any other form of direct Mayoral approval is required for the mere construction of the Truck Unloading Station, which is at issue here in this action. *SMF* ¶¶ 41-59; *Hamid Moving Aff.* ¶¶ 10-37; *Porzio Moving Aff.* ¶ 28 and *Ex. N* thereto (*City Mem.*) at 5-6. *DeCicco Opp. Aff.* ¶¶ 11-12 and *Ex. A* thereto. Nothing in the Fifth Quarterly Report suggests that National Grid's construction of the Truck Unloading Station was dependent on the issuance of the MOU related to the variance for the transport of LNG to the Greenpoint Facility. *Nagra Aff., Ex. C* (*Monitor's 5th Report*).

20. Disputed. National Grid has made no representation or indication about applying for "emergency variances," whatever that term intends to refer to, but has stated, instead, that "[b]ased on its discussions with the City, National Grid understood that the Variance Application would not result in receiving approval of a general variance from the Fire Code, but that National

Grid would instead have to apply for an event-specific variance that would be limited in scope based on the nature and duration of a defined emergency event.” SMF ¶ 16; Connolly Aff. ¶ 10.

21. Disputed in part. National Grid has maintained throughout this action that the granting of any variance that would permit it to truck and transport LNG within the City limits of New York City, including to the Greenpoint Facility, would be subject to the discretion of the FDNY. Hamid Moving Aff. ¶ 6.

22. Disputed and objectionable, as this contention is legal argument, not a factual recitation, and is therefore improper and, in addition, contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment “must be followed by citation to evidence submitted in support of or in opposition to the motion,” Petitioners cite no evidence to support this contention, such that it is improper and unsupported. The contentions made here about what may occur in the future are not assertions of fact but constitute speculation and guesses by Petitioners as to what they believe may occur and National Grid is unable to refute Petitioners’ speculation about the future with existing facts and on this basis, National Grid denies this contention by Petitioners.

23. Disputed and objectionable, as this contention is legal argument, not a factual recitation, and is therefore improper and, in addition, contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment “must be followed by citation to evidence submitted in support of or in opposition to the motion,” Petitioners cite no evidence to support this contention, such that it is improper and unsupported. The contentions made here about what may occur in the future are not assertions of fact but constitute speculation and guesses by Petitioners as to what they believe may occur and National Grid is unable to actually refute Petitioners’ speculation about the future

with existing facts and on this basis, National Grid denies this contention by Petitioners. That said, National Grid disputes the contention that Petitioners would not have the opportunity or ability to pursue injunctive or other judicial relief in the event that National Grid in the future applies for and/or obtains an event-specific variance to transport LNG to the Greenpoint Facility that would be limited in scope based on the nature and duration of a defined emergency event.

24. Disputed and objectionable, as this contention is legal argument, not a factual recitation, and is therefore improper and, in addition, contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment “must be followed by citation to evidence submitted in support of or in opposition to the motion,” Petitioners cite no evidence to support this contention, such that it is improper and unsupported. The contentions made here about what may occur in the future are not assertions of fact but constitute speculation and guesses by Petitioners as to what they believe may occur and National Grid is unable to refute Petitioners’ speculation about the future with existing facts and on this basis, National Grid denies this contention by Petitioners. In addition, National Grid notes that issues relating to actual “LNG trucking, loading, and unloading,” as opposed to the construction of the Truck Unloading Station, are not at issue in this action and therefore disputes this contention on this additional basis.

25. Disputed. National Grid lacks knowledge or information to respond to this contention, as it has no information about where Plaintiffs’ members reside and National Grid does not know what Petitioners mean by “close proximity,” which is vague and subjective, and on these bases denies and disputes this contention. Contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment “must be followed by citation to evidence submitted in support of or in opposition to

the motion,” Petitioners cite no evidence to support this contention, such that it is improper and unsupported.

26. National Grid objects to this contention on the ground that it is neither material nor relevant to Petitioners’ motion and/or this action, which does not involve any issue relating to the actual trucking and transport of LNG but instead relates exclusively to the issue of whether National Grid’s ongoing construction of a replacement in kind LNG trucking station violates SEQRA. In addition, these contentions are entirely speculative and neither Ms. Fraczek’s affidavit, nor the hearsay articles attached thereto to which Petitioners cite, are competent, admissible evidence of what could or is likely to happen “were an LNG truck to explode” and on this basis, National Grid denies and disputes Petitioners’ contentions.

27. National Grid objects to this contention on the ground that the issue of whether “the public safety threat of a terrorist attack on LNG has been designated medium to very large” is neither material nor relevant to Petitioners’ motion and/or this action, which is entirely about whether National Grid’s construction of the Truck Unloading Station Project violates SEQRA, as Petitioners have alleged. Notwithstanding this objection, National Grid disputes this contention on the following grounds: The United States Government Accountability Office report cited by Petitioners relates to “Maritime Security” and discusses the “public safety consequences of a terrorist attack on a *tanker* carrying liquefied natural gas,” which has no pertinence at all to this action, as no LNG would be brought into the Greenpoint Facility by tanker by virtue of the completion of the Truck Unloading Station Project; in addition, National Grid does not see anywhere in that report where the “public safety threat of a terrorist attack on LNG has been designated medium to very large,” nor have Petitioners cited a specific page in the article that states such a proposition; that report is dated February 2007, making it approximately 15 years

old, such that information contained therein is neither current nor reliable; with respect to the article, “Some Recent Advances in Liquefied Natural Gas (LNG) Production, Spill, Dispersion, and Safety,” cited by Petitioners, National Grid does not see anywhere in that report where the “public safety threat of a terrorist attack on LNG has been designated medium to very large,” nor have Petitioners cited a specific page in the article that states such a proposition; that report is dated April 23, 2014, making it more than seven years old, such that information contained therein is neither current nor reliable.

28. National Grid objects to this contention on the ground that it is vague, as Petitioners do not identify by virtue of what, specifically, they would “also face increased truck traffic in an area with already-high volumes of truck traffic, as well as adverse impacts of this increased truck traffic on local air quality and, by extension, Plaintiffs’ health,” and on the ground that this contention is neither material nor relevant to Petitioners’ motion and/or this action, which is entirely about whether National Grid’s construction of the Truck Unloading Station Project violates SEQRA, as Petitioners have alleged, as this contention appears to refer to alleged impacts of the actual trucking of LNG into the Greenpoint Facility through the surrounding area. Notwithstanding this objection, National Grid disputes this contention on the ground that affiant Fraczek, to whose affidavit Petitioners cite for this proposition, is not competent to opine or, more appropriately speculate, on the alleged environmental impacts of trucking LNG and the Letter from the City to National Grid dated April 4, 2017 states on page 5, the page cited by Petitioners in support, merely that the Greenhouse Gas Emissions analysis “does not take into account GHG emission from the increased truck traffic and operational activity” which relates to the actual trucking of LNG and related operational activity and does not relate to the construction at issue in this action, and that Letter does not refer at all to any

impacts on “Plaintiffs’ health” as Petitioners allege. Connolly Aff. Ex. B (City Response to EAS) at p. 5.

29. National Grid objects to this contention on the ground that this contention is neither material nor relevant to Petitioners’ motion and/or this action, which relates entirely to Petitioners’ allegation that National Grid’s construction of the Truck Unloading Station Project violates SEQRA, because the above contention refers only to “the Company’s proposal to truck LNG through New York City streets,” which is not at issue in this action. National Grid disputes this contention in part, as nothing in the City’s April 2017 Letter to National Grid regarding the EAS, “expressed serious concerns about the health and safety implications of the Company’s proposal to truck LNG through New York City streets.” National Grid admits only that “in response to National Grid’s statement in the EAS that the truck route was designed in part to ‘avoid[] back-ups of cargo tanks onto public roads,’” the City wrote: “There should never be back-ups into the neighborhood. This would be an unacceptable condition.” Connolly Aff. Ex. B (City Response to EAS) at p. 4.

30. National Grid objects to this contention on the ground that this contention is neither material nor relevant to Petitioners’ motion and/or this action, which relates entirely to Petitioners’ allegation that National Grid’s construction of the Truck Unloading Station Project violates SEQRA, because this contention, on its face, refers to the “grant of a variance” which is not at issue in this case. Notwithstanding these objections, it is undisputed that the quotes set forth by Petitioners appear in the Letter from New York City to National Grid dated April 4, 2017. Connolly Aff. Ex. B (City Response to EAS).

31. National Grid objects to and disputes this contention on the ground that this contention is neither material nor relevant to Petitioners’ motion and/or this action, which relates

entirely to Petitioners' allegation that National Grid's construction of the Truck Unloading Station Project violates SEQRA, because this contention, on its face, refers to "cargo tank rollover" and "the transport of LNG," which clearly refer to the actual transport and trucking of LNG pursuant to a variance, which is not at issue in this case. Notwithstanding these objections, it is undisputed that the quotes set forth by Petitioners appear in the Letter from New York City to National Grid dated April 4, 2017. Connolly Aff. Ex. B (City Response to EAS).

32. National Grid objects to and disputes this contention on the ground that this contention is neither material nor relevant to Petitioners' motion and/or this action, which relates entirely to Petitioners' allegation that National Grid's construction of the Truck Unloading Station Project violates SEQRA, because this contention refers to alleged impacts of the actual trucking of LNG to the Greenpoint Facility since the quote at issue from the April 4, 2017 letter from the City of New York refers to "GHS emission *from the increased truck traffic and operational activity.*" Connolly Aff. Ex. B (NYC Response to EAS) at p. 5 (emphasis added). Notwithstanding this objection, National Grid does not dispute that the April 4, 2017 Letter from the City states that National Grid's Greenhouse Gas Emissions analysis in relation to the EAS "does not take into account GHG emission from the increased truck traffic and operational activity." *Id.*

33. National Grid objects to and disputes this contention on the ground that this contention is neither material nor relevant to Petitioners' motion and/or this action, which relate entirely to Petitioners' allegation that National Grid's construction of the Truck Unloading Station Project violates SEQRA, as this contention appears to refer to alleged impacts of the actual trucking of LNG to the Greenpoint Facility since the quote at issue from the April 4, 2017 letter from the City refers to the "LNG Variance" and "variance approval," and the "LNG

Trucking Emergency Response Plan,” referenced by Petitioners, is a plan pertaining to responses to emergencies occasioned by incidents relating to the actual trucking and transport of LNG, and has nothing to do with the construction of LNG-related infrastructure like the Truck Unloading Station Project at issue in this action. The portion of contention No. 33 stating “[t]he City’s serious concerns about the health and safety impacts of LNG trucking bolster Plaintiffs’ claims of irreparable harm from this hazardous activity” is disputed and objected to on the ground that it is legal argument, not a statement of fact and, contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment “must be followed by citation to evidence submitted in support of or in opposition to the motion;” Petitioners cite no evidence to support this contention, such that it is improper and unsupported and requires no response. Finally, given that the EAS has been withdrawn, Petitioners’ characterization of National Grid’s statement in the EAS should be in the past tense, *i.e.*, National Grid claimed in the EAS in 2016 that it planned to update its LNG Trucking Emergency Response Plan at some later point in time. Connolly Aff. Ex. C.

34. National Grid disputes the portion of this contention that “National Grid concealed key information about the status of LNG trucking-related construction from Plaintiffs for six months prior to this litigation” as National Grid made no effort to purposely conceal any information about the status of construction on the Truck Unloading Station Project at any point prior to this litigation, including but not limited to the February 5, 2021 document from FDNY to which Petitioners refer. *See* Hamid Opp. Aff. ¶¶ 3-5.

35. Disputed and objectionable. National Grid objects to this contention because the statement “[o]f all the permits National Grid has so far obtained for the project, this Letter of Acceptance (“February 5 LOA”) would have provided the clearest indication to laypeople, such

as Plaintiffs, that construction of the LNG Trucking Station might be imminent or underway” is legal argument, not a factual recitation, and is therefore improper and, in addition, contrary to 22 N.Y.C.R.R. 202.8-g(d), which requires that each statement of material fact by a movant in support of a motion for summary judgment “must be followed by citation to evidence submitted in support of or in opposition to the motion,” Petitioners cite no evidence to support this contention, such that it is improper and unsupported.

National Grid disputes this contention on the ground that the Petitioners misstate and misunderstand the import and significance of the February 5, 2021 letter they claim was “concealed.” For every project, the FDNY issues one Letter of Approval, preceded by various letters of acceptance for sub-components of a project. The February 5, 2021 letter referenced by Petitioners is but one specific letter of acceptance concerning National Grid’s mechanical filing relating to the Truck Unloading Station Project. Thus, to the extent Petitioners are contending that the February 5, 2021 FDNY letter of acceptance was “the clearest indication to laypeople, such as Plaintiffs, that construction of the LNG Trucking Station might be imminent or underway,” they are mistaken – and that letter is certainly not better evidence of construction being imminent or underway than the building and construction permits that were disclosed and produced to SANE in December 2020, which Petitioners evidently ignored at that time and moving forward. Hamid Opp. Aff. ¶¶ 3-5.

36. Disputed in part and objected to. National Grid lacks knowledge or information to accept or dispute what Petitioners would have “understood” or what they would have “sought” had they been aware of the February 5, 2021 Letter of Acceptance earlier. Petitioners’ contentions in these respects are speculative and not statements of existing fact in any event, are legal argument, and are therefore improper. That Letter provides and approves specifications

and conditions for the “installation” of the Truck Unloading Station, but it does not authorize any actual construction in relation to same, as Petitioners seem to contend and, in addition, Petitioners mischaracterize that letter to the extent they contend that it “states that National Grid can *operate* the station after providing ‘advanced notification’ to FDNY” where, in fact, that letter states instead merely that “Fire Department Bulk Fuel Safety Unit and Brooklyn Borough Command shall be notified prior to any truck station unloading/loading operations.” Hamid Moving Aff., Ex. J (Feb. 5 LOA) at p. 5, item 34.

37. Disputed. National Grid did not “consistently conceal[]” the February 5, 2021 Letter of Acceptance from FDNY during the PSC rate recovery proceeding, but instead inadvertently and innocently omitted it from the long, detailed lists of permits and approvals that National Grid did disclose to SANE in the course of the PSC rate recovery proceeding, which permits and approvals were more than sufficient to make Petitioners herein aware and/or put Petitioners on notice that the Truck Unloading Station Project was moving forward, including its actual construction. Hamid Opp. Aff. ¶ 5; SMF ¶¶ 41-60; Hamid Moving Aff. ¶¶ 16-37 and Exs. B-M thereto.

38. Disputed to the extent that Petitioners contend or suggest that National Grid’s alleged failure to reference the February 5, 2021 Letter of Acceptance in National Grid’s responses to any of SANE’s information requests in the PSC rate recovery proceeding, including in response to IR SANE-26, in response to IR SANE-28 and in response to IR SANE-36, was in any respect purposeful or intended by National Grid to conceal the existence of that letter from SANE, as that omission was entirely inadvertent. Hamid Opp. Aff. ¶ 5. National Grid further denies knowledge or information to determine whether SANE did or did not subjectively know about the existence of the February 5, 2021 Letter of Acceptance at the time it

interposed the above-referenced IRs and on this basis, denies and disputes that contention as well.

39. Undisputed.

40. Disputed in part to the extent that Petitioners contend or suggest that National Grid's failure to reference the February 5, 2021 Letter of Acceptance in National Grid's response to IR SANE-26 dated February 8, 2021, was in any respect purposeful or intended by National Grid to conceal the existence of that Letter from SANE, as that omission was entirely inadvertent. Hamid Opp. Aff. ¶ 5.

41. Disputed in part to the extent that Petitioners are suggesting by this contention that National Grid's failure to reference the February 5, 2021 Letter of Acceptance in National Grid's response to IR SANE-28 dated March 15, 2021, was in any respect purposeful or intended by National Grid to conceal the existence of that Letter from SANE, as that omission was entirely inadvertent. *Id.*

42. Disputed in part to the extent that Petitioners are suggesting by this contention that National Grid's failure to reference the February 5, 2021 Letter of Acceptance in National Grid's response to IR SANE-36 dated July 9, 2021, was in any respect purposeful or intended by National Grid to conceal the existence of that Letter from SANE, as that omission was entirely inadvertent. *Id.*


43. Disputed and objected to. This contention is not a statement of fact but rather legal argument or conclusion and is therefore improper such that no response is required.

Notwithstanding the foregoing, National Grid did not "withhold" the information relating to the February 5, 2021 Letter of Acceptance, as the failure to include it in National Grid's response to IR SANE-26, in its response to IR SANE-28 and in its response to IR SANE-36, was not in any

respect purposeful or intended by National Grid to conceal the existence of that Letter of Acceptance from SANE, and that omission was entirely inadvertent. *Id.* National Grid further disputes the assertion that said Letter of Acceptance was “key information regarding the status of approvals for the LNG Trucking Station,” since, as noted previously: For every project, the FDNY issues one Letter of Approval, preceded by various letters of acceptance for sub-components of a project. The February 5, 2021 Letter of Acceptance referenced by Petitioners is but one specific letter of acceptance concerning National Grid’s mechanical filing relating to the Truck Unloading Station Project; and the February 5, 2021 Letter of Acceptance is certainly not better evidence of construction being imminent or underway than the DOB building and construction permits Petitioners ignored back in December 2020 and moving forward. Hamid Opp. Aff. ¶ 4.

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NIXON PEABODY LLP

By: 

Christopher J. Porzio, Esq.
Marissa A. Muscarella, Esq.

50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Telephone: (516) 832-7500
Facsimile: (516) 832-7555
cporzio@nixonpeabody.com
mmuscarella@nixonpeabody.com

*Attorneys for Respondent/Defendant
The Brooklyn Union Gas Company
d/b/a National Grid*