

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

SANE ENERGY PROJECT and COOPER PARK
RESIDENT COUNCIL, INC.

Petitioners/Plaintiffs,

-versus-

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

Respondents/Defendants.

**VERIFIED
PETITION AND
COMPLAINT**

Index No. _____

RJI No. _____

Petitioners/Plaintiffs, Sane Energy Project and Cooper Park Resident Council, Inc. (collectively, “Petitioners”) by and through their attorneys, PACE ENVIRONMENTAL LITIGATION CLINIC, INC. and UNIVERSITY NETWORK FOR HUMAN RIGHTS and their Verified Petition and Complaint, respectfully state as follows:

PRELIMINARY STATEMENT

1. This hybrid complaint for declaratory judgment under N.Y.C.P.L.R section 3001 and Article 78 special proceeding seeks: (a) a declaratory judgment that ongoing construction of the Liquefied Natural Gas (“LNG”) Truck Load/Unload Station (“LNG Trucking Station”) and all associated construction activities at Respondent-Defendant National Grid’s Greenpoint Energy Center violate the State Environmental Quality Review Act (“SEQRA”) and an injunction halting this construction until and unless the required processes for SEQRA compliance—as laid out in City Environmental Quality Review (“CEQR”)—are fully complete,

or in the alternative; (b) a mandamus to compel Respondent-Defendants City of New York (“City of New York”) and Fire Department of New York (“FDNY”) to halt this illegal construction of the LNG Trucking Station and all associated construction activities at the Greenpoint Energy Center and to fully complete the CEQR process for National Grid’s pending LNG Variance Petition prior to allowing these construction activities to resume. This petition will refer to SEQRA when discussing statutory requirements and will refer to CEQR when discussing the SEQRA implementation procedures adopted by the City of New York.

2. In 2016, National Grid submitted an LNG Variance Petition, including a CEQR Full Environmental Assessment Statement (“EAS”), to FDNY, seeking variances to fill and truck LNG within New York City and proceed with associated construction activities, including an LNG Trucking Station, at the Greenpoint Energy Center. Although FDNY has not completed the CEQR process for the LNG Variance Petition, which is still pending with the City of New York, National Grid is currently proceeding with construction of the LNG Trucking Station and other associated construction activities at the Greenpoint facility.

3. The City of New York and FDNY have failed to halt these illegal construction activities, even after Petitioners provided notice of the illegal construction and demanded that the City and FDNY carry out their legal obligations. (Exhibit A, De Blasio Letter and Exhibit B, Nigro Letter). SEQRA is clear that “[a] project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with” and that “[n]o agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR.” (*See*, 6 NYCRR § 617.3(a)).

4. Ongoing construction of LNG infrastructure without completion of the legally required SEQRA and CEQR processes jeopardizes the health, safety, and environment of those who live in close proximity to the Greenpoint facility, where the LNG trucking-related construction activities are currently underway. Indeed, in its pending LNG Variance Petition, National Grid itself acknowledges the adverse environmental impacts and potential adverse environmental impacts of the LNG Trucking Station and other LNG trucking-related construction activities, including disturbance of soil, an increase in stormwater, and hazards of the loading/unloading process.

5. Moreover, National Grid states repeatedly in the LNG Variance Petition that, pursuant to an Administrative Order on Consent (“AOC”) between the New York State Department of Environmental Conservation (“DEC”) and National Grid, DEC would also need to approve LNG trucking-related activities at the Greenpoint facility prior to the start of any construction “to ensure there is no significant adverse impacts from construction.” No such approval from DEC has been obtained.

PARTIES

6. Petitioner Sane Energy Project (“Sane Energy”) has its principal place of business at 140 2nd Avenue, Suite 405, New York, NY 10003 and operates as part of a larger nonprofit organization called Multiplier.

7. Petitioner Cooper Park Resident Council, Inc. (“Cooper Park Resident Council”) is a nonprofit organization with principal place of business at 295 Jackson Street, Brooklyn, NY 11211.

8. Respondent-Defendant City of New York has its headquarters at City Hall Park, New York, NY 10007. City of New York is the controlling entity for Fire Department of New York.

9. Respondent-Defendant FDNY is an agency of the City of New York, with its headquarters at 9 MetroTech Center, Brooklyn, NY 11201. FDNY is the Lead Agency for National Grid's pending LNG Variance Petition and is therefore responsible for complying with SEQRA by completing the CEQR process. The City of New York and FDNY's failure to perform their duty under SEQRA by neither halting National Grid's illegal construction activities nor completing the CEQR process for National Grid's LNG Variance Petition gives rise to this hybrid complaint for declaratory judgment and Article 78 special proceeding.

10. Respondent-Defendant Brooklyn Union Gas Company d/b/a National Grid ("National Grid" or "the Company") is a multinational public utility company that maintains its office at 1 MetroTech Center, Brooklyn, NY 11201. National Grid owns and operates the Greenpoint Energy Center, an LNG facility, at 287 Maspeth Avenue, Brooklyn, NY 11211. National Grid's ongoing and illegal construction activities give rise to this hybrid complaint for declaratory judgment and Article 78 special proceeding.

STANDING

11. Sane Energy is a decade-old nonprofit organization dedicated to hastening a just transition to 100% publicly-owned, renewable, and sustainable energy in the state of New York. As set forth in the affidavit of Kim Fraczek, Director of Sane Energy, annexed here as Exhibit C, Sane Energy works with impacted communities statewide to stop the development of shale gas and other fossil fuel and nuclear infrastructure projects, end fossil fuel consumption, and reimagine New York's energy system. Challenging new gas infrastructure is central to Sane

Energy's mission. Sane Energy builds every campaign through a lens of racial, social, and economic justice.

12. Since the activities at issue are construction of additional gas infrastructure, challenging these activities lies at the core of Sane Energy's mission. In addition, the construction activities are located in and near DEC-designated "Potential Environmental Justice Areas" so challenging the activities aligns with Sane Energy's focus on racial, social, and economic justice. Potential Environmental Justice Area PEJA Communities, ArcGIS, https://www.arcgis.com/home/webmap/viewer.html?url=https://services6.arcgis.com/DZHaqZm9cxOD4CWM/ArcGIS/rest/services/Potential_Environmental_Justice_Area_PEJA_Communities/FeatureServer&source=sd.

13. Kevin LaCherra is a member of Sane Energy and resides at 183 Meserole Avenue, Brooklyn, NY 11222. Mr. LaCherra's residence is approximately one mile from the Greenpoint facility. As fully set forth in his affidavit, annexed here as Exhibit D, he is concerned that he will face adverse health, safety, and environmental impacts of the construction activities, including flooding from an increase in stormwater and severe health and safety hazards from spillage, leaks, or an emergency situation or fire at the LNG Trucking Station.

14. Sane Energy members, including Mr. LaCherra, who reside in close proximity to the Greenpoint facility will suffer injury from the adverse health, safety, and environmental impacts of the LNG Trucking Station and other LNG trucking-related construction activities taking place at the facility. Mr. LaCherra and other Sane Energy members who reside in close proximity to the Greenpoint facility have standing in their own right to challenge the actions of the City of New York and FDNY in this complaint for declaratory judgment and Article 78

action, thereby giving organizational standing to Sane Energy (“in-fact injury within the zone of interest of environmental statutes has been established by proof that agency action will directly harm association members in their use and enjoyment of the affected natural resources”). *Soc’y. of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 776 (N.Y. 1991).

15. Cooper Park Resident Council, Inc. (“Cooper Park Resident Council” or “Council”) is a nonprofit organization that represents 701 families who live in Cooper Park Houses, a housing complex owned by the New York City Housing Authority (NYCHA). As set forth in the affidavit of Elisha Fye, Vice President of Cooper Park Resident Council, annexed here as Exhibit E, the Council’s mission is to represent the interests—including health, safety, and environmental interests—of its constituents, who are Cooper Park Houses residents. Challenging construction of the LNG Trucking Station and other LNG trucking-related activities at the Greenpoint facility is germane to the Council’s mission because these construction activities will harm the health, safety, and environment of Council members and their constituents.

16. The Cooper Park Housing complex, where all members of the Cooper Park Resident Council reside, is located in the evacuation zone of the Greenpoint Energy Center, approximately one-half of a mile from the facility. Council members and their constituents will face adverse health, safety, and environmental impacts of the construction activities, including flooding from an increase in stormwater and severe health and safety hazards from spillage, leaks, or an emergency situation or fire at the LNG Trucking Station.

17. Elisha Fye is a member and the Vice President of Cooper Park Resident Council. Like all other Council members, Mr. Fye resides in the evacuation zone of the Greenpoint

facility, approximately one-half of a mile from the facility. As described in his affidavit, annexed here as Exhibit E, he is concerned about adverse health, safety, and environmental impacts of the construction activities, including flooding from an increase in stormwater and severe health and safety hazards from spillage, leaks, or an emergency situation or fire at the LNG Trucking Station.

18. All Cooper Park Resident Council members, including Mr. Fye, will suffer injury from the adverse health, safety, and environmental impacts of the construction activities because they live in close proximity to the Greenpoint Energy Center, where the construction activities are taking place. All Cooper Park Resident Council members, including Mr. Fye, have standing in their own right to challenge the actions of the City of New York and FDNY in this complaint for declaratory judgment and Article 78 action, thereby giving organizational standing to Cooper Park Resident Council.

JURISDICTION AND VENUE

19. This court has jurisdiction pursuant to N.Y.C.P.L.R. section 3001 to render relief declaring that all ongoing construction activities contained in the LNG Variance Petition violate SEQRA and to issue an injunction enjoining these construction activities until and unless the CEQR process is fully complete.

20. Once the Court has assumed jurisdiction, it has the power to grant declaratory relief and supplement it with proper injunctive relief. *New York Cent. R.R. v. Lefkowitz*, 12 N.Y.2d 305, 310 (N.Y. 1963).

21. Petitioners do not request an advisory opinion, but rather request that the Court declare that the ongoing construction activities complained of herein violate SEQRA and issue an injunction enjoining these activities.

22. This Court also has jurisdiction pursuant to N.Y.C.P.L.R. sections 504(3), 506(b), and 7804(b) *et seq.* to review administrative action or the failure of public officials or bodies to perform a duty enjoined by law.

23. Article 78 actions can be brought when a public official or body fails to perform a mandated action or performs an unlawful action. N.Y.C.P.L.R. §§ 7803(1) & (3).

24. As the New York Court of Appeals has recognized, a nondiscretionary duty may “derive from the Federal or State Constitutions, statutes, or regulations.” *Klostermann v. Cuomo*, 61 N.Y.2d 525, 541 (N.Y. 1984).

25. Respondent City of New York and Respondent FDNY have failed to perform their duty under SEQRA by neither halting the illegal construction activities contained in National Grid’s still-pending LNG Variance Petition—even after Petitioners provided notice of the illegal construction and demanded that the City and FDNY carry out their legal obligations—nor conducting legally required SEQRA review by completing the CEQR process for the LNG Variance Petition.

26. Petitioners allege real and actual failure by the City of New York and FDNY to complete a statutory duty. This failure has injured Petitioners and their members, and there is no other remedy at law for the injury. The City of New York and FDNY are therefore properly the subject of an Article 78 proceeding.

27. Venue in Kings County is proper pursuant to N.Y.C.P.L.R. § 506(b) as claims are asserted against the City of New York and FDNY, the causes of action arise, *inter alia*, in Kings County, and Respondent FDNY is headquartered in Kings County.

FACTUAL BACKGROUND

28. On November 1, 2016, National Grid submitted an LNG Variance Petition, including Parts I and II of a Full EAS as required by CEQR, to FDNY, seeking variances from New York City Fire Code § 2701.10.1 (“Prohibited compressed gases”) and § 3205.4.4 (“Prohibited filling of flammable cryogenic fluid”) to fill and truck LNG within New York City and proceed with associated construction activities (“Variance Activities”) at the Greenpoint facility. (Exhibit F, LNG Variance Petition). These Variance Activities include the following:

the installation of new security gates; the installation of a new loading/unloading area; installation of pipe supports for the new cryogenic piping to be extended to the unloading/loading area; new roadway (including internal looping road) paving; an LNG Station Attendant building; a new high foam expansion building; an LNG spill trench and spill pit; curbing, signage and lighting as necessary; electrical work as well as the installation of fire suppression equipment, and gas and fire detection systems in accordance with FDNY requirements. (Exhibit F at 17).

29. According to National Grid, the Variance Activities (which are referred to as “improvements” in the LNG Variance Petition) “will be required at the Greenpoint facility to accommodate cargo tanks, with construction taking 6 to 7 months to complete.” (Exhibit F at 17). As a “required” component of National Grid’s overall LNG trucking proposal, the Variance Activities are a core part of the LNG Variance Petition/EAS. The LNG Variance Petition/EAS clearly assumes that FDNY variances would be required not only for the filling and trucking of LNG but also for the LNG Truck Load/Unload Station and all other Variance Activities. National Grid states, for example: “*Upon issuance of the variances*, National Grid would complete its engineering design work and construct certain improvements at the Greenpoint LNG facility” (emphasis added). (Exhibit F at 16).

30. Accordingly, National Grid includes the area around the Greenpoint facility as part of the study area for its CEQR assessment of the LNG trucking proposal, stating: “In order

to examine potential environmental impacts due to proposed changes to be made to National Grid's Greenpoint facility to facilitate this transport, a study area of 400 feet around the Greenpoint LNG facility site as well as a 400 foot radius of the proposed LNG cargo tank route on New York City streets...was used in this assessment.” (Exhibit F at 20). National Grid goes on to provide its assessment of the proposal's environmental and safety impacts in 18 different CEQR Technical Analysis Areas. For each Technical Analysis Area, the Company separately assesses the impacts of “LNG Transport” and “Changes to the Greenpoint Facility.” (Exhibit F at 20-30).

31. In its LNG Variance Petition/EAS, National Grid discusses at length the adverse environmental impacts and potential adverse environmental impacts of the LNG Trucking Station and other Variance Activities. The Company states, for example:

Construction of the improvements at the Greenpoint LNG facility will also result in the disturbance of soil (estimated area of disturbance is to be determined in final engineering design) and an increase in stormwater due to an increase in impervious coverage. During final engineering design, a stormwater management plan will be prepared and reviewed by the National Grid team to confirm the adequacy/ability of the site's current stormwater management system to accommodate the additional stormwater. (Exhibit F at 26).

32. National Grid also acknowledges that there are residential areas within its 400-foot study area around the Greenpoint facility. (Exhibit F at 20). Of the Variance Activities, the LNG Trucking Station is a particular point of focus in the Company's CEQR assessment, with lengthy discussion of the loading/unloading process, the potential for spillage or leaks, the “safety features” of the trucking station, and emergency procedures that govern “actions to be taken in the event of an emergency situation or fire at the LNG vehicle loading – unloading station when it is being operated.” (Exhibit F at 18-19, 25). National Grid also states that it would flood proof the area of the LNG Trucking Station up to the 500-year floodplain “to

enhance the resiliency and safety of the proposed trucking operations.” (Exhibit F at 28).

Petitioners have seen no evidence that the area of the LNG Trucking Station has been flood proofed up to the 500-year floodplain, even though construction of the LNG Trucking Station is underway.

33. In its LNG Variance Petition/EAS, National Grid repeatedly notes that, in addition to FDNY variances, DEC approval for the Variance Activities is required pursuant to an Order on Consent and Administrative Settlement (AOC) between DEC and National Grid:

The Greenpoint site is currently in the third phase of a Remedial Investigation (RI), pursuant to the AOC. Upon completion of the RI, a Feasibility Study will be prepared. The NYSDEC will then determine what, if any, remedial action may be necessary. *Any improvements to be constructed for the new loading/unloading at the Greenpoint LNG facility will need to be reviewed and approved consistent with this AOC* (emphasis added). (Exhibit F at 25).

National Grid reiterates that “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.” (Exhibit F at 30). The Company also notes that its forthcoming stormwater management plan will require DEC approval: “The 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.” (Exhibit F at 26). No such DEC approval—for either the stormwater management plan or the Variance Activities that are currently underway—has been obtained. Petitioners have seen no evidence that the stormwater management plan has even been developed. To the best of Petitioners’ knowledge, the Remedial Investigation is not yet complete and therefore DEC

approval for LNG trucking-related activities at the Greenpoint facility will likely not be forthcoming in the near future.

34. Neither the City of New York nor any of its agencies has conducted SEQRA review by completing the CEQR process for the LNG Variance Petition, and the Variance Petition is still pending, nearly five years after it was submitted to FDNY.

35. National Grid is seeking to compel ratepayers to pay for, *inter alia*, the construction activities at issue here. In the pending Public Service Commission (“PSC”) rate case seeking that reimbursement, National Grid has stated that the Variance Activities are currently under construction. A number of the Variance Activities are being constructed on-site at the Greenpoint facility: pipe supports for the new cryogenic piping to be extended to the loading/unloading area are “in the fabrication and installation phases;” an LNG spill trench is “in place and was installed prior to the start of construction of the truck station project;” “on-site pipe fabrication has started;” electrical conduits are “being installed on site by the contractor;” and “two fire suppression equipment skids have been delivered” to the site after fabrication at the manufacturer. Other Variance Activities—the LNG Trucking Station, an LNG Attendant Station, and additional piping and fire suppression equipment—are “being fabricated at the manufacturer” and will be delivered and installed/fabricated on-site once fabrication at the manufacturer is complete. Still other Variance Activities—roadway (including internal looping road) paving, lighting, curbing, signage, and gas and fire detection systems—are “yet to be installed.” Thus, National Grid has commenced on-site construction and other physical alterations, and additional on-site physical alterations are imminent. National Grid is not only proceeding with construction of the Variance Activities without SEQRA approval and FDNY

variances, but is also seeking to recover the costs of these illegal construction activities from ratepayers in the PSC rate proceeding.

36. On June 16, 2021, Petitioners sent letters to Mayor Bill de Blasio and Fire Commissioner Daniel A. Nigro, informing them about National Grid’s illegal construction activities at the Greenpoint Energy Center and the SEQRA obligations of the City of New York and FDNY, respectively. (Exhibit A and Exhibit B). Petitioners demanded that the City of New York and FDNY carry out their legal obligations. As of the date of this filing, Petitioners have received no response from either the City of New York or FDNY.

37. In or around fall 2020, National Grid began seeking permits from city agencies for one component of its LNG Variance Petition—the LNG Truck Load/Unload Station. National Grid has obtained some of these permits and continues to seek others. The Company has claimed that these permits are ministerial and therefore exempt from SEQRA. Assuming for the sake of argument that the LNG Trucking Station permits sought by National Grid since fall 2020 are indeed ministerial, the construction described herein is still not permissible. The CEQR process for the LNG Trucking Station—which was initiated by the Company itself—has been pending since November 1, 2016, and therefore the LNG Trucking Station is undisputedly subject to SEQRA. Indeed, many projects require both ministerial permits that are exempt from SEQRA and discretionary approvals that are subject to SEQRA. DEC has made clear that “[a] ministerial permit can be issued while SEQR review is ongoing if the permit can otherwise be issued. However, the activity allowed in the permit may not be undertaken because the SEQR regulations (617.3(a)) state that no physical alteration related to an action shall be commenced by a project sponsor until the provisions of SEQR have been complied with.” NYS Department of

Environmental Conservation, *SEQRA Handbook* 174 (4th ed. 2020):

https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.

38. Thus, although National Grid may obtain any ministerial permits required for the LNG Trucking Station while the SEQRA process for the LNG Variance Petition is pending, construction of the LNG Trucking Station—or any of the other Variance Activities—cannot lawfully begin until and unless SEQRA review of the LNG Variance Petition is complete.

STATUTORY BACKGROUND

39. In adopting the State Environmental Quality Review Act, the New York State Legislature intended that all agencies in the state “conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.” (*See*, 6 NYCRR § 617.1(b)).

40. The statute’s purpose is “to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of State, regional and local government agencies at the earliest possible time.” (*See*, 6 NYCRR § 617.1(c)). “To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.” *Id.*

41. SEQRA requires that project sponsors complete a portion of a form assessing the potential environmental impacts of the proposed project. The agency must then prepare the remainder of the form and use the form to determine the significance of the action. If the agency

determines that the project will have no significant adverse impact on the environment, then an environmental impact statement need not be prepared. If the agency determines that the project may have significant adverse environmental impact, then preparation of an environmental impact statement is required. (*See*, 6 NYCRR §§ 617.6 and 617.7).

42. SEQRA authorizes individual agencies to adopt their own environmental review procedures to implement the statute. (*See*, 6 NYCRR § 617.14). These local implementing provisions must incorporate the procedures prescribed in the SEQRA regulations “[t]o the greatest extent possible.” Moreover, “[i]ndividual agency procedures to implement SEQR must be no less protective of environmental values, public participation and agency and judicial review than the procedures contained in this Part. [The SEQRA statute] supersedes any SEQR provisions promulgated or enacted by an agency that are less protective of the environment.” (*See*, 6 NYCRR § 617.14(b)).

43. The City of New York implements SEQRA through a procedure known as City Environmental Quality Review. Under CEQR, project applicants whose projects meet certain criteria must complete Parts I and II of a Full Environmental Assessment Statement, which is longer and more robust than the Short Environmental Assessment Statement that suffices for other types of projects. The reviewing agency must then complete Part III of the EAS and issue a determination of significance.

44. National Grid submitted Parts I and II of the Full EAS for its LNG trucking proposal to FDNY on November 1, 2016. FDNY is the “Lead Agency” responsible for completing Part III of National Grid’s Full EAS and issuing a SEQRA determination of significance. Although FDNY has yet to complete Part III and issue a determination of

significance, National Grid is nevertheless proceeding with construction activities that are the subject of the pending EAS. The City of New York and FDNY have failed to perform their duty under SEQRA by neither halting these illegal construction activities nor completing the CEQR process for the LNG Variance Petition.

45. As detailed above, the LNG Truck Load/Unload Station and other LNG trucking-related construction activities are explicitly included within the scope of the LNG Variance Petition/EAS. National Grid assesses the adverse environmental impacts and potential adverse environmental impacts of these Variance Activities in its LNG Variance Petition/EAS.

46. As detailed above, construction of the LNG Trucking Station and other Variance Activities is currently underway. SEQRA states clearly that “[a] project sponsor may not commence any physical alteration related to an action until the provisions of SEQRA have been complied with.” (*See*, 6 NYCRR § 617.3(a)). Since SEQRA review and the CEQR process for the LNG Variance Petition are not complete, SEQRA has not been complied with and the Variance Activities—which include construction activities and other “physical alterations”—cannot lawfully proceed.

47. As detailed above, the LNG Trucking Station is part of National Grid’s LNG Variance Petition, for which the CEQR process is currently pending. Although National Grid may obtain ministerial permits for the LNG Trucking Station while the CEQR process is pending, the Company may not lawfully begin construction of the LNG Trucking Station (or any of the other Variance Activities) until and unless the CEQR process is complete. NYS Department of Environmental Conservation, *SEQRA Handbook* 174 (4th ed. 2020): https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.

48. The City of New York and FDNY’s failure to perform their duty under SEQRA by neither halting illegal construction of the Variance Activities—even after Petitioners provided notice of the illegal construction and demanded that the City and FDNY carry out their legal obligations—nor completing the CEQR process for National Grid’s LNG Variance Petition constitutes an instance where a body or officer has not performed a duty imposed on it by law. N.Y.C.P.L.R. § 7803(1).

49. Petitioners seek a declaration that ongoing construction of the LNG Trucking Station and other Variance Activities at the Greenpoint Energy Center violates SEQRA and an injunction enjoining all construction of the Variance Activities until and unless the full SEQRA and CEQR processes mandated by law are complete.

50. In the alternative, Petitioners seek a mandamus to compel the City of New York and FDNY to halt construction of the LNG Trucking Station and other Variance Activities at the Greenpoint Energy Center and to complete the full SEQRA and CEQR processes mandated by law prior to allowing construction of the Variance Activities to resume.

FIRST CAUSE OF ACTION:

DECLARATORY JUDGMENT THAT ONGOING CONSTRUCTION OF THE LNG TRUCKING STATION AND ALL OTHER VARIANCE ACTIVITIES IS ILLEGAL AND INJUNCTION ENJOINING ALL CONSTRUCTION OF THE VARIANCE ACTIVITIES UNTIL AND UNLESS THE FULL CEQR PROCESS MANDATED BY LAW IS COMPLETE

51. Petitioners repeat and reallege the information contained in the preceding paragraphs.

52. N.Y.C.P.L.R. section 3001 authorizes the Court to render a judgment declaring the rights and obligations of the parties to a justiciable controversy, in addition to any other relief that may be available. The Court may render a declaratory judgment when there is “an actual controversy, a controversy that is *justiciable*, and a controversy where a legally protectible interest is determined to be present and where such interest is directly in issue.” *Orange City Legislature v. Diana*, 968 N.Y.S.2d 319, 332 (N.Y. Sup. Ct. 2013) (emphasis in original).

53. The instant controversy between Petitioners and Respondents is “*real and actual*, not feigned” or hypothetical. *Parry v. City of Onondaga*, 906 N.Y.S.2d 774 (N.Y. Sup. Ct. 2009) (emphasis in original). Petitioners do not seek “a request for an advisory opinion,” and the issues to be resolved are “not based on some potential or conjectural events that may occur in the future.” *Id.* Rather, the instant dispute is live and based on current and ongoing events—specifically, illegal construction activities that will irreparably harm Petitioners and their members. In the absence of a judicial determination of Petitioners’ rights and the legal relations of the parties, Petitioners and their members will suffer irreparable injury in the immediate future.

54. As detailed above, National Grid’s ongoing construction of the LNG Truck Load/Unload Station and other Variance Activities violates SEQRA because the CEQR process for the Company’s LNG Variance Petition has not been completed.

55. Petitioners and their members, as well as other residents who live in close proximity to the Greenpoint facility, will be harmed by the adverse environmental, health, and safety impacts of National Grid’s illegal construction activities. These impacts include

disturbance of soil, an increase in stormwater, flooding, LNG spillage or leaks at the LNG Truck Load/Unload Station, and an emergency situation or fire at the LNG Truck Load/Unload Station.

56. Therefore, the Court should declare that ongoing construction of the LNG Trucking Station and all other Variance Activities is illegal and issue an injunction enjoining all construction of the Variance Activities until and unless the full CEQR process mandated by law is complete.

SECOND CAUSE OF ACTION (IN THE ALTERNATIVE):

MANDAMUS TO COMPEL THE CITY OF NEW YORK AND FDNY TO HALT CONSTRUCTION OF THE LNG TRUCKING STATION AND ALL OTHER VARIANCE ACTIVITIES AND COMPLETE THE FULL CEQR PROCESS PRIOR TO ALLOWING CONSTRUCTION OF THE VARIANCE ACTIVITIES TO RESUME

57. Petitioners repeat and reallege the information contained in the preceding paragraphs.

58. As detailed above, National Grid’s ongoing construction of the LNG Truck Load/Unload Station and other Variance Activities is illegal because the CEQR process for the Company’s LNG Variance Petition has not been completed. The City of New York and FDNY’s failure to perform their duty under SEQRA by neither halting National Grid’s illegal construction activities—even after Petitioners provided notice of the illegal construction and demanded that the City and FDNY carry out their legal obligations—nor completing the CEQR process for the Company’s still-pending LNG Variance Petition constitutes an instance where the City of New York and FDNY have not performed a duty imposed on them by law. N.Y.C.P.L.R. § 7803(1).

59. The LNG Variance Petition discusses the adverse environmental impacts and potential adverse environmental impacts of the Variance Activities that National Grid is

currently undertaking unlawfully. Petitioners and their members, as well as other residents who live in close proximity to the Greenpoint facility, will be harmed by the adverse environmental, health, and safety impacts of National Grid's illegal construction activities. These impacts—which include disturbance of soil, an increase in stormwater, flooding, LNG spillage or leaks at the LNG Truck Load/Unload Station, and an emergency situation or fire at the LNG Truck Load/Unload Station—are precisely the types of adverse impacts that SEQRA is intended to address. By neither assessing the impacts of the Variance Activities nor halting their illegal construction, the City of New York and FDNY have failed to execute their legal obligations under SEQRA.

60. Therefore, in the alternative to the first cause of action, the Court should order a mandamus to compel the City of New York and FDNY to halt construction of the LNG Trucking Station and all other Variance Activities at the Greenpoint Energy Center and complete the full SEQRA and CEQR processes mandated by law before allowing construction activities to resume.

PRAYER FOR RELIEF

Wherefore, the Petitioners respectfully demand an appropriate judgment from this Court as follows:

- a) A declaration that ongoing construction of the LNG Truck Load/Unload Station and all other construction activities contained in National Grid's LNG Variance Petition are illegal until and unless the CEQR process for the LNG Variance Petition is completed;

and

- b) An injunction enjoining construction of the LNG Truck Load/Unload Station and all other construction activities contained in National Grid's LNG Variance Petition until and unless the full CEQR process mandated by law is complete;

or, in the alternative,

- c) Mandamus compelling the City of New York and FDNY to halt construction of the LNG Truck Load/Unload Station and all other construction activities contained in National Grid's LNG Variance Petition and complete the full SEQRA and CEQR processes mandated by law prior to allowing these construction activities to resume;
- d) Any further relief that the Court may deem just and proper.

Dated: July 23, 2021

White Plains, New York

Respectfully submitted,



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