

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

HUDSON RIVER SLOOP CLEARWATER, INC.,
GOSHEN GREEN FARMS, LLC, NUCLEAR
INFORMATION AND RESOURCE SERVICE,
INDIAN POINT SAFE ENERGY COALITION, and
PROMOTING HEALTH AND SUSTAINABLE
ENERGY, INC.

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the CPLR,

-against-

NEW YORK STATE PUBLIC SERVICE
COMMISSION, along with KATHLEEN BURGESS in
her official capacity as Secretary, AUDREY
ZIBELMAN, in her official capacity as Chair,
PATRICIA L. ACAMPORA, GREGG C. SAYRE, and
DIANE X. BURMAN, in their official capacities as
Commissioners,

Respondents-Defendants,

and

CONSTELLATION ENERGY NUCLEAR GROUP,
LLC, With subsidiaries and affiliates EXELON
GENERATION COMPANY, LLC, R.E. GINNA
NUCLEAR POWER PLANT, LLC, NINE MILE
POINT NUCLEAR STATION, LLC,

Nominal Respondents-Defendants.

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

Index No. 07242-16

**REPLY AFFIDAVIT OF
MICHEL LEE-
PROMOTING HEALTH
AND SUSTAINABLE
ENERGY IN FURTHER
SUPPORT OF VERIFIED
ARTICLE 78 PETITION**

MICHEL LEE, being duly sworn, hereby deposes and, under penalties of perjury, states
as follows:

1. I am a member of the Board of Directors and a Senior Analyst at Promoting Health and Sustainable Energy (“PHASE”), a New York State based nonprofit interest group that promotes and advocates for public health and sustainable energy, with offices at 75 North Middletown Road, Nanuet, New York 10954.
2. I submit this Affidavit in further support of Petitioners’ effort, pursuant to Article 78 of the New York State Civil Practice Law and Rules to annul, vacate, and set aside Tier 3 of the Public Service Commission’s (“PSC”) August 1, 2016 Order (the “Order”), and in specific response to certain allegations made by the PSC challenging PHASE’s standing in this action. This affidavit supplements my prior affidavits of January 11, 2017 and March 27, 2107 submitted in this matter.
3. The PSC mischaracterizes the organizational purpose of Petitioner PHASE as being limited to Indian Point (PSC MOL at 26-27). This is simply untrue.
4. PHASE’s Certificate of Incorporation states that its purpose is “to advocate for the development and use of sustainable energy, in an effort to promote health and safety” and the “organization’s public objective will be to advocate for the enforcement of rules, laws and regulations to promote health and safety for the benefit of the public.”
5. The underlying Clean Energy Standard proceeding purportedly advances the State Energy Plan and sustainable/renewable sources of energy. This lawsuit challenges Tier 3 of the Order, which provides significant ratepayer subsidies for non-sustainable nuclear reactors that divert substantial financial resources away from support of sustainable energy/renewable sources. This legal action also challenges the PSC’s utter disregard —both substantive and procedural—of New York’s laws and regulations. This action is clearly germane to PHASE’s

stated purpose of “advocating” for “sustainable energy” in “an effort to promote health and safety,” as well advocating for the proper enforcement of “rules, laws and regulations” relating thereto.

6. PHASE’s participation in the proceedings below and in this lawsuit is part of its past and present local and national efforts with regard to nuclear power, public health, and sustainable energy. A half-dozen examples are:

- I. PHASE’s October 5, 2015 submission to the National Environmental Justice Advisory Council regarding the urgent need to incorporate environmental justice principles into nuclear regulatory schemes, given its impact to EJ communities, as well as other vulnerable groups like women and children.
- II. PHASE’s July 25, 2016 submission to the United States Environmental Protection Agency (“USEPA”) (Docket No. EPA-HQ-OAR-2007-0268; FRL-9947-55-OW) opposing “drastic relaxation” of Radioactive Protective Action Guides, particularly as they relate to nuclear site releases.
- III. PHASE’s July 31, 2016 comments to the United States Department of Energy concerning “consent-based siting” of radioactive nuclear waste and spent fuel.
- IV. PHASE’s May 15, 2018 submission to the Nuclear Regulatory Commission (Docket ID NRC-2018-0026) concerning its “Very Low Level Waste Scoping Study”, and opposing action that would facilitate entry of any radioactive waste into landfills or other waste streams in a manner which would fail to properly safeguard the environment and maintain this hazardous material

under secure regulatory control for the full duration of the longevity of its radioactivity.

V. PHASE's August 13, 2018 submission to the USEPA (Docket No. EPA-HQ-OA-2018-0107-0001) regarding the proposed change to its cost-benefit consideration model, and averring that the rule change would circumscribe agency consideration of benefit to human health and the environment, impose an overly rigid formulaic methodology, and "inure to the detriment of U.S. industry" as "many industrial actors in modern economies do not narrowly focus on one specific product, and substances used and developed span an array of applications."

VI. PHASE's August 16, 2018 submission to the USEPA (Docket No. EPA-HQ-OA-2018-0259-0001) regarding its proposed "Strengthening Transparency in Regulatory Science" rule, and arguing the rule would "sow chaos in government and research domains" and "open a portal into troves of personal confidential information," including the records of individuals associated with military activity and critical infrastructure.

7. The PSC also misrepresents the record when it claims that PHASE did not refer to the upstate nuclear reactors in its submissions in this case (PSC MOL at 27). To the contrary, PHASE specifically argued against the PSC's total lack of transparency when it included the upstate reactors, FitzPatrick, Ginna, and Nine Mile Point, in the Tier 3 program, as well as the irrationality of Tier 3's "public necessity" standard used for inclusion of these reactors. (See 1/11/17 Elie/Lee Aff. ¶ 26). PHASE also referred to "FitzPatrick" and "the upstate nuclear power

plants” in connection with arguments relating to improper subsidization of upstate reactors (See 3/27/17 Lee Aff, ¶¶ 12-13), as well as to issues relating to nuclear power generally, not just limited to Indian Point. (See e.g., 1/11/17 Elie/Lee Aff. ¶¶ 27, 32)

8. This is not a case where PHASE is participating in this lawsuit out of the blue. PHASE actively participated in the underlying challenged proceedings and filed joint comments with the Council on Intelligent Energy & Environmental Policy (CIECP), a “party” in the proceedings below. (See e.g., 4/22/2016, 5/13/2016 and 7/22/2106 joint comments at R 15-E-0302-165; R 15-E-0302-220, R 15-E-0302-348-A, respectively).

9. In fact, PHASE’s July 22, 2016 comments do not even mention Indian Point, but rather they: advocate vigorous support for sustainable resources; oppose the distribution of public funds to prop up nuclear generation in the state; argue that “nuclear power is extremely ill-suited to combating climate change”; point out the false choice of nuclear vs. fossil fuel; emphasize the negative health and safety impacts of nuclear; and provide voluminous annotated appendices (of over 250 pages) highlighting the substantial negative impacts of and risks associated with nuclear energy, as well as its unsuitability for addressing the urgent problem of climate change.

10. PHASE’s April 22, 2016 comments discuss the upstate FitzPatrick, Nine Mile Point and Ginna nuclear power plants and their tons of spent fuel, as well as the releases of radioactive carbon from FitzPatrick in volatile form such as CO-14, CO2-14. PHASE argues that nuclear power is not “clean” or “renewable” or “sustainable” or “zero carbon” or “carbon free, and that for “pure economic reasons alone, nuclear should not continue to be supported by the taxpayers and ratepayers.”

11. Accordingly, any suggestion that PHASE's purpose or participation herein is limited to Indian Point is simply false. PHASE's participation herein is fully consistent with its mission and purpose.

12. For all of these reasons, this lawsuit is germane to the core purpose and interest of PHASE, a New York-based nonprofit whose members are also New York electrical retail consumers forced to pay the Tier 3 subsidies promulgated by the PSC.



MICHEL LEE

Sworn to before me this
12th day of December, 2018

Notary Public

ANGELA G. BELVEDERE
Notary Public, State of New York
No. 01BE5075112
Qualified in Westchester County
Commission Expires March 24, 2019