

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,

Index No. 07242-16

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 DUTCHESS)

**AFFIDAVIT OF
MARILYN ELIE,
INDIAN POINT SAFE
ENERGY COALITION,
IN FURTHER SUPPORT
OF THE VERIFIED
ARTICLE 78 PETITION**

MARILYN ELIE, being duly sworn, hereby deposes and, under penalties of perjury,
states as follows:

1. I am a Leadership Council Member of Indian Point Safe Energy Coalition (“IPSEC”), a New York State based, not-for-profit, nonpartisan coalition of public interest, health advocate, environmental and citizen groups, with offices located at 7 John Dorsey Drive, Cortlandt Manor, New York 10566.

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 August, 1 2016 Order (the “Order”), and in specific response to the PSC’s attempt to challenge IPSEC’s standing in this action. This affidavit supplements my previous affidavit sworn to on January 11, 2017 submitted jointly with Michel Lee of Promoting Health and Sustainable Energy, Inc. (“PHASE”).

3. The PSC attempts to challenge IPSEC’s standing by arguing its “organizational mission is specific to Indian Point.” (PSC MOL at 26). The PSC is wrong. While named for its initial focus on Indian Point, IPSEC has expanded its focus to national and international nuclear and sustainable energy issues.

4. Since 2013, partly in response to the Fukushima disaster, IPSEC has transitioned to focus on nuclear issues including nuclear waste, as well as public policy advocacy promoting the creation of clean energy jobs and the modernization of transmission and energy infrastructure.

5. IPSEC’s activities and submissions to government agencies reflect this broader purpose. For example:

- i. IPSEC was a cosponsor of the “Medical and Ecological Consequences of the Fukushima Nuclear Accident” conference (New York Academy of Medicine, New York City, March 11-12, 2013) and the “Fukushima and Nuclear Waste Management” forum (Goddard Riverside Community Center, New York City, Mar 10, 2017).
- ii. IPSEC submitted December 19, 2013 comments to the US Nuclear Regulatory Commission (Docket ID No. NRC-2012-0246) objecting to the methodology, assumptions and core conclusions advanced by the NRC in its September 2013 Waste Confidence Generic Environmental Impact Statement Draft Report.
- iii. IPSEC submitted May 27, 2014 comments to NYSERDA regarding the 2014 Draft State Energy Plan advocating state support for rapid development of renewables, elimination of energy waste and deployment of efficiency technologies, and opposing use of state “money and power to promote nuclear power” (p.5) and including comments on the financial, environmental and health risks not only of Indian Point but “NY’s other nuclear plants.”
- iv. IPSEC submitted October 13, 2015 comments to FEMA that relate to FEMA emergency planning criteria generally with respect to nuclear reactors.
- v. IPSEC submitted October 5, 2016 comments 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.

vi. IPSEC and the Council on Intelligent Energy & Environmental Policy (“CIECP”) submitted November 3, 2015 comments to the Science Advisory Board Radiation Advisory Committee for the USEPA noting that “at numerous uranium mining and milling, nuclear waste, and reactor sites, accidental releases have occurred repeatedly and continue to seep into the environment” and urging regulatory consideration of “the *total* burden and the impact upon vulnerable persons that are the factors relevant to public health.”

6. This broader purpose is also reflected in IPSEC’s mission statement in funding proposals and related annual reports, which include, “a positive reframing around increased energy capacity and renewable energy.”

7. This is not a case where IPSEC is participating in a lawsuit out of the blue. Consistent with its mission, IPSEC participated in the underlying proceedings and filed comments, including joint comments with CIECP, a “party” to the proceedings below. (See 6/16/2016 comments and 7/25/2016 joint comments at R 15-E-0302-7155 and R 15-E-0302-348-A, respectively).

8. In its July 22 comments in the underlying proceedings, IPSEC did not even mention Indian Point but rather opposed the distribution of public funds to prop up nuclear generation in the state; argued that “nuclear power is extremely ill-suited to combating climate change”; pointed out the false choice of nuclear vs. fossil fuel; emphasized the negative health and safety impacts of nuclear; and provided appendix of materials pointing out the risks associated with nuclear energy.

9. In comments below, Gary Shaw, Member of IPSEC's Leadership Council, argued that "[a]ny subsidies that go to upstate failing nuclear plants simply perpetuate environmentally damaging, archaic energy sources that are being rejected by the competitive energy free market, and are lost opportunities to send more subsidies to the inevitable future of truly renewable power sources and the efficiency policies that accelerate real progress." He also argued and submitted evidence that "nuclear power is neither emissions free nor carbon free, since it emits radioactivity and thermal pollution into the environment daily and the fission process creates radioactive Carbon 14." (R 15-E-0302-7153 at 1).

10. IPSEC has commented on upstate nuclear reactors in prior PSC proceedings as well. (See 11/23/2015 Comments to PSC on New York Reforming then Energy Vision (REV) Plan, discussing radioactive carbon emissions from Fitzpatrick and how closing Fitzpatrick would actually reduce greenhouse gas emissions, reduce radiation pollution, enable green energy to grow in the market and save taxpayer money).

11. The PSC also misrepresents the record when it claims that IPSEC's prior affidavit in this action "features no substantive discussion of the Upstate nuclear facilities." (PSC MOL at 26). IPSEC's prior affidavit 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), and issues relating to nuclear power generally, not just limited to Indian Point. (See e.g., Elie/Lee Aff. ¶¶ 27, 32)

12. Finally, I would like to note that IPSEC has alleged that, "Most of the individual New York members of IPSEC...are electricity ratepayers" (Petition ¶ 24), which I am advised the

PSC does not contest. These IPSEC members are forced to pay the Tier 3 nuclear subsidies promulgated by the PSC over IPSEC's objections.

Marilyn Elie

MARILYN ELIE

Sworn to before me this
13th day of December, 2018

[Signature]

Notary Public

LAUREN SHANTEL MANN
Notary Public - State of New York
NO. 01MA6240925
Qualified in Westchester County
My Commission Expires 8/15/19

