

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 ZIBLEMAN 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, ENTERGY NUCLEAR FITZPATRICK, LLC,  
ENTERGY NUCLEAR INDIAN POINT 2, LLC, and  
ENTERGY NUCLEAR INDIAN POINT 3, LLC,

Nominal Respondents-Defendants.

**[PROPOSED]  
STIPULATED  
PROTECTIVE ORDER**

Index No. 07242-16

2018 SEP 21 11:21 AM

For good cause shown, the parties jointly request and the Court enters the following Protective

Order:

1. DEFINITIONS

- a. **"Petitioners"** shall mean all named parties who brought this proceeding and remained Petitioners-Plaintiffs following this Court's January 22, 2018 Order granting Respondents' motions to dismiss, specifically (1) Hudson River Sloop Clearwater, Inc.; (2) Goshen Green Farms LLC; (3) Nuclear Information and Resource Service ("NIRS"); (4) Indian Point Safe Energy Coalition ("IPSEC"); (5) Promoting Health and Sustainable Energy, Inc. ("PHASE").
- b. **"Constellation Respondents"** shall mean (1) Constellation Energy Nuclear Group, LLC, with Subsidiaries and affiliates (2) Exelon Generation Company, LLC; (3) R.E. Ginna Nuclear Power Plant, LLC; and (4) Nine Mile Point Nuclear Station, LLC.
- c. **"PSC"** shall mean the New York State Public Service Commission.
- d. **"Constellation Confidential Information"** shall mean all documents filed by the Constellation Respondents with the PSC in docket numbers 15-E-0302 and 16-E-0270 for which the Constellation Respondents sought "confidential" and/or "trade secrets" treatment pursuant to New York Public Officers Law (POL) § 89(5), POL § 87(2), and 16 N.Y.C.R.R. § 6-1.3, and which the PSC has provided to the Court on a designated CD-ROM for *in camera* review by the Court only.  
  
Constellation Confidential Information shall include not only the documents themselves, but any copies thereof, notes made from such documents, and the specific information contained in the documents.

2. **Access to Constellation Confidential Information**

- a. Prior to any disclosure of Constellation Confidential Information to any individual or representative, the individual to whom disclosure is to be made shall

acknowledge receipt of a copy of this Protective Order and execute an Agreement to be Bound by the Protective Order, in the form attached hereto as Exhibit A.

- b. Six outside counsel for Petitioners – specifically, Susan Shapiro, John Parker and Melanie Golden of Rockland Environmental Group, LLC, Seth Davis of Elias Group LLP, Rosanne Felicello of CKR Law LLP, and Saul Rigberg – shall be granted access to the Constellation Confidential Information following transmission of an executed copy of Exhibit A to outside counsel for the Constellation Respondents and counsel for the PSC at the addresses provided below. As detailed in Exhibit A, outside counsel for Petitioners must agree to limit disclosure of the Constellation Confidential Information to (a) Court personnel; (b) the PSC; (c) the Constellation Respondents; (d) employees of outside counsel providing logistical support to outside counsel; (e) Tim Judson, Executive Director of Petitioner NIRS, upon transmission of an executed Exhibit A to the Constellation Respondents and the PSC; (f) Petitioners’ potential expert or consultant Mark Cooper, of the Institute for Energy and the Environment, upon transmission of an executed Exhibit A to the Constellation Respondents and the PSC; and (g) any other person or party upon written consent by both the Constellation Respondents and the PSC.
- c. Nothing in this Protective Order shall bar or otherwise restrict any attorney from rendering advice to his or her client with respect to this proceeding or from relying upon his or her examination of documents. In rendering such advice or in otherwise communicating with this or her client, the attorney shall not, except as

otherwise permitted by this Protective Order, disclose the content of any Constellation Confidential Information.

- d. The Petitioners may request from the Constellation Respondents permission to disclose Constellation Confidential Information to two experts or subject matter consultants in addition to Mark Cooper. Constellation Respondents and the PSC shall not unreasonably withhold consent to such a request if, once such material has been reviewed by outside counsel, Petitioners' counsel can show that it is necessary to disclose such material to any such person in order to enable that Petitioners fully to advance their case, each designated individual is deemed necessary to aid counsel in the prosecution of this case, and each designated individual is not associated with a competitor of the Constellation Respondents or an industry participant. If any of Constellation Respondents or the PSC denies a Petitioner's request or fails to answer such request within 10 days of receipt of such request, Petitioners may then seek permission from the Court to disclose the Constellation Confidential Information to the expert or subject matter consultant. The Constellation Respondents and the PSC shall have an opportunity to object to and be heard on any such application. In all events, no designated expert or subject matter consultant shall have access to the Constellation Confidential Information prior to that person's execution of Exhibit A, and the transmission of an executed copy of Exhibit A to the Constellation Respondents and the PSC.
- e. When filing any Constellation Confidential Information with the Court, Petitioners shall prepare and file versions that include and omit the Constellation Confidential Information (the "Unredacted Version" and the "Redacted Version,"

respectively). Unredacted Versions must bear a conspicuous notation on each page that they contain Constellation Confidential Information and must be filed with the Court only under seal. The Redacted Version should be filed publicly at the same time.

3. Authorized Use

The Constellation Confidential Information may be used only in connection with the above-captioned litigation and not for any other purpose whatsoever, including without limitation any other litigation, political activities, media campaigns or any business or competitive purpose or function.

4. Storage of Constellation Confidential Information

- a. No duplication or reproduction of Constellation Confidential Information may be made beyond that which is necessary to give access to the persons authorized by the provisions of this Protective Order. Persons who are provided with access to the Constellation Confidential Information pursuant to this Protective Order may take notes regarding such information to the extent necessary in connection with these proceedings. The protections afforded to Constellation Confidential Information apply not only to the original provided document or file in which it was contained, and any copies thereof, but also to any subsequent documents, notes, recordings, electronic files, or other media in which it may be recorded, including copies generated by automated back-up systems for computer workstation and network data storage devices.
- b. Persons having custody of any Constellation Confidential Information pursuant to this Protective Order must keep all copies and notes of Constellation Confidential

Information segregated physically under lock, electronically under password protection or encryption, and otherwise properly secured when such Constellation Confidential Information is not being reviewed.

5. Unauthorized Disclosure

- a. If a person subject to this Protective Order believes that the Constellation Confidential Information may have been disclosed to a person or persons not authorized to receive it under the terms of this Protective Order, the person subject to this Protective Order must immediately notify the Constellation Respondents and the PSC in writing of the unauthorized disclosure; identify which Constellation Confidential Information was disclosed, the date of disclosure, and the person or persons to whom the unauthorized disclosure was made; give detailed information concerning all steps taken or being taken to reverse or minimize the impacts of unauthorized release; and make reasonable efforts to recover any such Constellation Confidential Information released to such unauthorized person or persons.
- b. The Petitioner responsible for the unauthorized disclosure must also file with the Court a sworn statement detailing the circumstances regarding the unauthorized disclosure and the steps being taken to prevent any further unauthorized disclosures.
- c. Petitioners acknowledge that the Constellation Respondents have stated that Constellation Confidential Information is extremely commercially sensitive and that its disclosure will cause “substantial injury to Constellation’s commercial position,” as described in the Affidavit of Jeanne Jones dated April 18, 2018, and

the Affirmation of Victoria Graffeo dated April 26, 2018, each filed with the Court on April 26, 2018. In the event of an unauthorized disclosure, Petitioners agree to submit to the jurisdiction of this Court for purposes of enforcement of this Protective Order, including through (but not limited to) sanction, contempt proceedings, and/or injunctive relief. Persons responsible for unauthorized disclosure may also be liable criminally or civilly under relevant federal and State statutes and regulations.

6. Miscellaneous

- a. This agreement is governed by New York law, and any dispute arising out of this agreement shall be brought in New York Supreme Court, Albany County.
- b. If any Petitioner receives a subpoena or other legal process purporting to require the production of Constellation Confidential Information, that Petitioner shall provide notice to the Constellation Respondents' outside counsel within five business days of receipt.
- c. Within 30 days of the termination of this litigation, including any appeals, any person who received Constellation Confidential Information pursuant to this Protective Order must certify in writing to counsel for the Constellation Respondents and counsel for the PSC that the Petitioner has destroyed all documents and materials and the portions of all other material containing Constellation Confidential Information, and that any electronic copies of the Constellation Confidential Information or electronic files (including electronic communications) that include the Constellation Confidential Information have been deleted. Notwithstanding these provisions, outside counsel shall be

permitted to retain copies of court filings, papers served in connection with this Litigation, transcripts, and exhibits, provided that outside counsel continues to limit disclosure as provided in this Protective Order.

- d. This Scheduling Stipulation may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same agreement. An electronic signature shall be deemed an original.
- e. This Protective Order may be amended by the agreement of counsel for the parties in the form of a stipulation and order that shall be filed in this case. Any party may apply to the Court for a modification of this Protective Order. This Protective Order shall remain in full force and effect after the termination of this litigation, or until canceled or otherwise modified by Order of this Court.

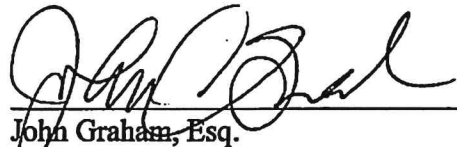
IT IS SO STIPULATED.

Dated:

\_\_\_\_\_  
Susan H. Shapiro, Esq.  
75 N. Middletown Rd.  
Nanuet, NY 10954  
Tel: (845) 371-2100

Dated: September \_\_, 2018

*Attorney for Petitioners*



\_\_\_\_\_  
John Graham, Esq.  
NEW YORK STATE PUBLIC SERVICE  
COMMISSION  
3 Empire State Plaza, 17th floor  
Albany, New York  
Tel: (518) 474-7687

Dated: September 24, 2018

*Attorneys for State Respondents*



Litigation, transcripts, and exhibits, provided that outside counsel continues to limit disclosure as provided in this Protective Order.

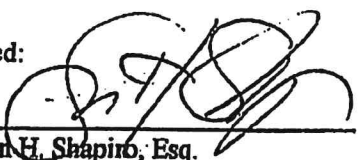
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Susan H. Shapiro, Esq.  
75 N. Middletown Rd.  
Nanuet, NY 10954  
Tel: (845) 371-2100


Dated: September \_\_\_\_\_, 2018

*Attorneys for State Respondents*

Dated: September 24, 2018

*Attorney for Petitioners*

\_\_\_\_\_  
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NEW YORK STATE PUBLIC SERVICE  
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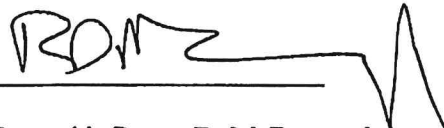
Elizabeth A. Edmondson, Esq.  
JENNER & BLOCK, LLP  
919 Third Avenue  
New York, NY 10022  
Tel: (212) 891-1600

Matthew E. Price, Esq.  
JENNER & BLOCK LLP  
1099 New York Avenue, NW Suite 900  
Washington, DC 20001-4412  
Tel: (202) 639-6873

Dated: September 24, 2018

*Attorneys for Constellation Nominal Respondents*

So ordered:



Honorable Roger D. McDonough

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

In the Matter of  
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Respondents-Defendants,

-and-

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With Subsidiaries and affiliates EXELON GENERATION  
COMPANY, LLC, R.E. GINNA NUCLEAR POWER  
PLANT, LLC, NINE MILE POINT NUCLEAR STATION,  
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ENTERGY NUCLEAR INDIAN POINT 2, LLC, and  
ENTERGY NUCLEAR INDIAN POINT 3, LLC,

Nominal Respondents-Defendants.

Index No. 07242-16

**EXHIBIT A**

**AGREEMENT TO BE BOUND BY THE [DATE] PROTECTIVE ORDER**

I hereby certify that: (1) I have read the Protective Order that has been entered by the Court in the above-captioned litigation, and I understand its terms; (2) I understand that the Constellation

Respondents have stated that Constellation Confidential Information is extremely commercially sensitive and that its disclosure will cause "substantial injury to Constellation's commercial position," as described in the Affidavit of Jeanne Jones dated April 18, 2018, and the Affirmation of Victoria Graffeo dated April 26, 2018, each filed with the Court on April 26, 2018; (3) I agree to be fully bound by the provisions of the Protective Order, including the provisions restricting the disclosure, dissemination, and use of material designated as Constellation Confidential Information, the requirements following an unauthorized disclosure, and the destruction of the Constellation Confidential Information following the termination of this litigation; and (5) I hereby submit to the jurisdiction of the New York Supreme Court, Albany County, for purposes of enforcement of this Protective Order, including but not limited to any action for sanctions, contempt, and/or injunctive relief.

Dated: 11/9/18

Signature: *Saul A. Rigberg*

Printed Name: *Saul A. Rigberg*

Title, Affiliation, and Address:

*Of Counsel  
 Rockland Environmental Group  
 93 Ferubank Avenue  
 Delmar, NY 12054*

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Dated: 10/25/2018

Signature: 


Printed Name: Timothy L. Judson

Title, Affiliation, and Address:

Executive Director  
Nuclear Information and  
Resource Service  
6930 Carroll Ave., Ste. 340  
Takoma Park, MD 20912

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Dated: 10/25/18

Signature:   
Printed Name: SETH A. DAVIS

Title, Affiliation, and Address:

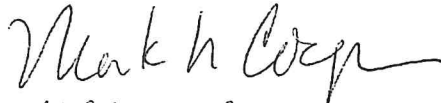
BOARD MEMBER - HUDSON RIVER SLOOP  
CLEARWATER, INC.  
411 THEODORE FRONT MONUMENT  
SUITE 102  
RYE, NEW YORK  
10580

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Dated:

10/29/18

Signature:



Printed Name:

MARK H. COOPER

Title, Affiliation, and Address:

Senior Fellow for Economic Analysis  
Institute for Energy & the Environment  
Vt. Law School

624 Highgate Terrace  
Silver Spring, M.D. 20904

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Dated: 10/25/2018

Signature:



Printed Name: Frank Keat

Title, Affiliation, and Address:

Consultant I  
Bates White, LLC  
2001 K Street, NW  
North Building, Suite 500  
Washington, DC 20006  
on behalf of Petitioners-Plaintiffs



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Dated: 10/25/18

Signature:



Printed Name:

Collin Cain

Title, Affiliation, and Address:

Principal  
Bates White, LLC  
2001 K Street, NW  
North Building, Suite 500  
Washington, DC 20006  
on behalf of Petitioners-Plaintiffs

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Dated: 10/25/2018

Signature: 

Printed Name: Rosanne E. Felicello

Title, Affiliation, and Address:

Partner

CKR Law LLP

1330 Avenue of the Americas

14th Floor

New York, NY 10019

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Dated: 10/25/18

Signature: *Melanie Lieberman-Golden, Esq.*

Printed Name: *Melanie Lieberman-Golden, Esq.*

Title, Affiliation, and Address:

*Rockland Environmental Group, LLC  
75 N. Middletown Road  
Nanuet, NY 10954*

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Dated: 10/25/18

Signature:



Printed Name: SUSAN H. SHAPIRO, ESQ.

Title, Affiliation, and Address:

Rockland Environmental Group, LLC  
75 N. MIDDLETOWN ROAD  
NANUET, NY 10954

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Dated: 10/25/18

Signature:

*John Parker*

Printed Name:

John Parker, ESO

Title, Affiliation, and Address:

ROCKLAND ENVIRONMENTAL GROUP  
75 MIDDLETOWN ROAD  
NAANUET, NY 10954