



Since 1946

# JASPAN SCHLESINGER HOFFMAN LLP

ATTORNEYS AT LAW

1946 - 2006

60

YEARS OF  
EXCELLENCE

**MICHAEL E. WHITE**  
Partner  
516-393-8250  
[mwhite@jshllp.com](mailto:mwhite@jshllp.com)

300 GARDEN CITY PLAZA • GARDEN CITY, NEW YORK 11530  
TELEPHONE 516.746.8000 • FAX 516.393.8282  
[www.jshllp.com](http://www.jshllp.com)

**DELAWARE OFFICE**  
913 North Market Street  
Wilmington, DE 19801  
Telephone 302.351.8000  
Fax 302.351.8010

August 23, 2006

**BY FEDERAL EXPRESS and ELECTRONIC MAIL**

Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E., Room 1A  
Washington, D.C. 20426

**Re: *Iroquois Gas Transmission System, L.P.***  
***Iroquois Pipeline Operating Company***  
***Brookhaven Lateral Project***  
***Docket No. PF05-16-000***  
***OEP/DG2E/Gas Branch 3, PJ-11.3***

Dear Secretary Salas:

I have previously written on behalf of our client, East End Property Company #1, LLC (East End Property) regarding the above. My August 3, 2006 letter, which included exhibits, also requested, among other things, that the Scoping comment period be extended unless and until the purpose and need for the project is publicly presented. The exhibits annexed to my August 3<sup>rd</sup> letter show that the Long Island Power Authority ("LIPA"), Caithness Long Island, LLC ("Caithness") and even Iroquois Gas Transmission System, L.P. ("Iroquois") have provided sworn statements to the court that they have not decided to fuel the proposed Caithness plant in Yaphank by the Iroquois Brookhaven Lateral Pipeline Project, subject of the above-referenced proceeding. To date I have received no response to the request for the Scoping to be adjourned or for the comment period to be extended.

I also provided comments on the record at the August 10, 2006 Scoping Session in Islandia, New York, reiterating the failure of the process to disclose the actual purpose and need for the project. Furthermore, as the Caithness project sponsors do not acknowledge the need for the Brookhaven Lateral Project to fuel the proposed Caithness plant, I have raised the question of whether the purpose of the project is really to be a conduit for natural gas from the proposed Broadwater LNG facility, as Broadwater intends to connect to the existing Iroquois pipeline in the middle of Long Island Sound. The Broadwater LNG facility is presently under review as Broadwater Energy LLC FERC Docket No. CP06-54-000 and Broadwater Pipeline LLC Docket Nos. CP06-55-000 and CP06-56-000. Simultaneous with this filing, I am also filing a copy of this correspondence to the Broadwater Docket Nos. referenced herein.

BW007087

August 23, 2006

Notably, the United States Environmental Protection Agency (“USEPA”) has also raised the issue of the purpose and need of the proposed project, as well as requesting an evaluation of the alternatives to the project. Moreover, the USEPA requests a comprehensive evaluation of cumulative, indirect and secondary impact analysis of the environmental impacts of the proposed pipeline and the Caithness Project which USEPA states are “inextricably linked”. Annexed hereto as Exhibit “A” is a copy of the USEPA letter of August 10, to FERC respecting Scoping. We concur with the USEPA comments and request the issues raised be incorporated into the FERC environmental review.

Also, annexed as Exhibit “B” is a copy of a letter from the New York State Department of Transportation (“NYSDOT”) dated December 20, 2005 to Iroquois and LIPA, and a letter from the NYSDOT of January 9, 2006 to FERC. It is apparent that these letters, which advised that the NYSDOT rights of way would not be foreseeably available, also raised issues relevant to the Scoping process. Specifically in the December 20<sup>th</sup> letter from the NYSDOT to Iroquois and LIPA, Regional Traffic Engineer Frank Pearson, P.E. states that in order to advance any review proceeding:

“LIPA and Iroquois will be required to describe the strategic need for the project and how the Brookhaven Lateral and Caithness projects were chosen. LIPA’s selection process for Iroquois should also be described.”

Furthermore, in the January 9, 2006 letter to FERC from Senior NYSDOT attorney, Donna K. Hintz, Esq., Ms. Hintz states:

“A detailed description and evaluation that is in full compliance with the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA) requirements is needed for all feasible alternatives before an exception to NYSDOT’s policy can be considered. An in-depth analysis of the proposed alternatives, including a cost analysis, must be completed to justify the findings that all but the preferred alternative would be a hardship.”

Ms. Hintz goes on to state:

“It is NYSDOT’s understanding that LIPA’s selection process for choosing Iroquois will comply with state competitive bid requirements.”

Indeed, rather than address the NYSDOT, it appears Iroquois has attempted to avoid the process and perhaps the difficult questions for LIPA, Caithness and Iroquois to answer. Rather the present rerouting of the pipeline attempts to avoid the scrutiny of the NYSDOT and the FHWA, but offends the environment and community. The record from the Scoping already shows intense opposition from town and county local governments, school districts and property owners who simply

Page 3

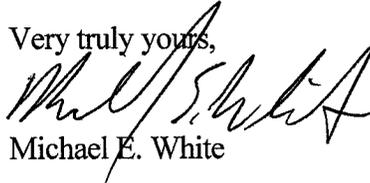
August 23, 2006

do not want a gas pipeline through environmentally sensitive areas, on their property or around their homes.

In any case, by annexing the referenced NYSDOT letters hereto, we are incorporating them into the Scoping record and as such we request all of the issues raised therein be addressed by FERC respecting the Iroquois application.

Finally, as it is clear from the information presented by the applicant that the record is incomplete and insufficient to provide adequate notice of all the issues raised respecting Scoping, we expressly reserve the right to submit further comments and questions relative to the environmental quality review of the proposed project.

Very truly yours,



Michael E. White

MEW:kp  
Enclosures

D#506716F#046435

Exhibit A

BW007090



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

ORIGINAL

**AUG 10 2006**

Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First St., N.E.  
Room 1A  
Washington, DC 20426

**RE:** Docket Nos. PF05-16-000

Dear Ms. Salas:

The Environmental Protection Agency (EPA) has reviewed the information presented in the Federal Energy Regulatory Commission's (FERC) Notice of Intent (NOI) to prepare an environmental assessment (EA) for Iroquois Pipeline Operating Company's planned Brookhaven Lateral, located on Long Island in Suffolk County, New York. The project entails the construction of approximately 21.1 miles of 24-inch-diameter underground steel natural gas pipeline, extending from the current terminus of Iroquois' existing system at the South Commack Meter Station in Smithtown to the site of the proposed Caithness Project near the hamlet of Yaphank, New York; and six mainline block valves, a pig launcher at the South Commack Meter Station, and a pig receiver and new custody transfer meter station at the eastern end of the pipeline, at the Caithness Project Site.

*The EPA would like to offer the following issues during the scoping process for consideration in the EA:*

1. A full discussion of the purpose and need of the proposed project, quantifying energy demand and the need for such facilities in the region.
2. An evaluation of the alternatives to the proposed project, including reasonable alternatives not within the jurisdiction of the lead agency.
3. Descriptions of the terrestrial and aquatic environments to be impacted by each alternative during construction and operation. These descriptions should include appropriate air quality data, water quality data (ground and surface), the identification and delineation of all wetlands, the identification of flood plains and cultural resources, the identification and delineation of any area of contamination that may be disturbed by the pipeline construction, and the identification of other significant environmental resources adjacent to the project.
4. A comprehensive evaluation of cumulative, indirect, and secondary impacts. The cumulative impacts analysis should consider the environmental impacts of the pipeline

FILED IN THE  
OFFICE OF THE  
SECRETARY  
2006 AUG 16 A 11:06  
FEDERAL ENERGY REGULATORY COMMISSION

and the Caithness Project which are inextricably linked. Other reasonably foreseeable energy projects on or near Long Island should be included, as well.

5. In 1993, Council of Environmental Quality guidance, Pollution Prevention and the National Environmental Policy Act, encouraged federal agencies to include the concepts of pollution prevention in EAs during the scoping alternatives analysis, mitigation measure development, and decision-making processes. We would suggest that all pollution prevention practices for pipeline construction and operations be discussed within the EA.
6. Suffolk County has been designated as moderate nonattainment for the 8 hour ozone standard and non-attainment for PM 2.5, therefore a general conformity determination must be prepared for this project. EPA also recommends that emission reduction strategies for construction equipment be evaluated. EPA's Clean Construction website at <http://www.epa.gov/cleandiesel/construction/strategies.htm> has information on several emissions reduction strategies and technologies.
7. An environmental justice analysis should be prepared to determine whether any racial, ethnic, or socioeconomic group is bearing a disproportionate share of the negative environmental consequences resulting from the construction or operation of the pipeline. The EPA's Interim Environmental Justice Policy is available at <http://www.epa.gov/region02/community/ej/politoc.htm> for informational purposes.

Please note that EPA has received a letter dated July 11, 2006 from Mr. John Zimmer of ENSR requesting that EPA review its records to identify whether the Brookhaven Lateral revised alignment, e.g., the LIPA ROW Alternative 1, LIPA ROW preferred route and LI Ave. preferred route as diagrammed in the NOI, will directly cross a designated sole source aquifer. EPA will respond to that request in a separate letter, and provide you a copy.

Thank you for the opportunity to comment. If you have any questions concerning this letter, please contact Lingard Knutson of my staff at (212) 637-3747.

Sincerely yours,



Grace Musumeci, Chief  
Environmental Review Section  
Strategic Planning and Multi-Media Programs Branch

cc: J. Zimmer, ENSR Senior Project Manager

Exhibit B

---



FILED  
OFFICE OF THE SECRETARY

06 JAN -5 PM 3: 03

STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
REGION TEN  
250 VETERANS MEMORIAL HIGHWAY  
HAUPPAUGE, NEW YORK 11788  
www.dot.state.ny.us

REGULATORY  
COMMISSION

SUBIMAL CHAKRABORTI, P.E.  
REGIONAL DIRECTOR  
December 20, 2005

THOMAS J. MADISON, JR.  
COMMISSIONER

Mr. William Hansen  
Iroquois Gas Transmission System L.P.  
One Corporate Drive, Suite 600  
Shelton, CT 06484

Mr. Walter Hoefler  
Long Island Power Authority  
Executive Office  
333 Earle Ovington Boulevard, Suite 403  
Uniondale, NY 11553

June 24 and August 10, 2005 Submissions  
for the Proposed LIPA/Iroquois 24" Gas Pipeline  
Route I-495, Sunken Meadow Parkway  
and Northern Parkway  
NYSDOT Case No. 05-244P

Dear Mr. Hansen and Mr. Hoefler:

Thank you for taking the time to meet with NYSDOT on July 29, 2005, September 30, 2005 and October 26, 2005 to discuss the proposed LIPA/Iroquois gas pipeline project on Long Island. The project calls for a 24" gas pipeline to the Caithness Island Power Facility using NYSDOT rights-of-way along the Long Island Expressway Service Road, a Suffolk County-maintained, NYSDOT-owned highway, and the west side of the Sunken Meadow Parkway, which is a NYSDOT-maintained and NYS Office of Parks, Recreation & Historic Preservation-owned National Highway System Route. As discussed during our July 29 and September 30, 2005 meetings, after reviewing the plans, NYSDOT's preferred route for the gas main is Route A, which primarily utilizes Long Island Power Authority rights-of-way. NYSDOT cannot support the LIPA/Iroquois preferred Route B alignment along the sunken Meadow Parkway and the Long Island Expressway presented during the September 30 meeting or the Route C alignment.

The Long Island Expressway (LIE) right-of-way was purchased with Federal money and the Service Road was constructed within the right-of-way designated for the LIE. The Long Island Expressway is a controlled access highway. NYSDOT has obligations and responsibilities in light of this Federal funding. NYSDOT's Utility Accommodation Policy prohibits utilities,

BW007094

Mr. William Hansen  
Mr. Walter Hoefer  
Page 2  
December 20, 2005

except telecommunications, within the rights-of-ways of controlled access highways. The proposed Route B alignment includes installations outside of the current utility accommodation areas, with several segments being installed within westbound travel lanes. Iroquois Gas also explained that a small utility building is proposed, with a utility access road, within the control of access area between the Long Island Expressway North Service Road and I-495 westbound lanes. FHWA approval is required for an exception to NYSDOT's Utility Accommodation Policy. An exception can only be granted after all alternates have been examined thoroughly. NYSDOT will face sanctions from the FHWA for non-compliance with Federal policies and procedures.

The proposed Route B would require FHWA approval for the I-495 Service Road where the gas main is outside of the utility accommodation areas and the Sunken Meadow Parkway, which has no utility accommodation plan. FHWA's involvement increases the time required for review and approval of the installation. The lengthy Federal approval process would require Iroquois to fully explore and exhaust all alternative proposals for routing before an exception could be granted. By re-engineering the project away from the LIE Service Road option, LIPA and Iroquois may avoid the issues of nighttime construction and limited daytime construction hours as well. LIPA and Iroquois will be required to describe the strategic need for the project and how the Brookhaven Lateral and Caithness projects were chosen. LIPA's selection process for Iroquois should also be described. Compensation for use of any rights-of-way will be determined by the value of the adjoining property. In addition, NYSDOT and NYS OPR&HP rental agreements/easements would also be required.

As appropriate, please submit 10 sets of revised plans indicating your proposed route for our review.

Thank you for your continued cooperation for this project. Mr. Gene Smith is coordinating review of the subject material. He can be contacted at (631) 952-6028, if you have any questions regarding this matter. Please send all correspondence to his attention.

Very truly yours,



FRANK PEARSON, P.E.  
Regional Traffic Engineer

FP:ES:BAM

cc: Bianca Dresch, SCDPW  
Ralph F. Wiebelt, Town of Brookhaven  
Anita M. Flanagan, Iroquois Gas Transmission System, L.P.  
Michelle Somma, NYSOPRHP  
Dan Kane, NYSOPRHP  
Paul Friedman, FERC  
Tom Herritt, FHWA

BW007095



State of New York  
Department of Transportation  
Albany, N.Y. 12232  
<http://www.dot.state.ny.us>

FILED  
OFFICE OF THE SECRETARY

06 JAN 19 AM 9:29

REGULATORY  
COMMISSION

Thomas J. Madison, Jr.  
Commissioner

George E. Pataki  
Governor

January 9, 2006

Paul Friedman  
Federal Energy Regulatory Commission  
Office of Energy Products  
888 First Street E  
Washington, DC 20426

Re: Iroquois Brookhaven  
Lateral Project  
Docket No. PF05-16-000

ORIGINAL

Dear Mr. Friedman:

During our telephone conversation of October 29, 2005, we discussed the role of the Federal Highway Administration (FHWA) in the above project. New York State Department of Transportation (NYSDOT) officials met with Long Island Power Authority (LIPA) and Iroquois Gas Transmission System LP on October 26, 2005 to discuss the project as it relates to occupation of the NYSDOT right-of-way. Currently, the preferred route includes an alignment along the Long Island Expressway North Service Road. Our initial analysis of this route indicates that the proposed line will likely encroach upon portions of NYS controlled access highways. These highways include the Long Island Expressway in the vicinity of interchange ramps and the Sunken Meadow Parkway.

The mission of the New York State Department of Transportation is to ensure our customers -- those who live, work and travel in New York State -- have a safe, efficient, balanced and environmentally sound transportation system. Underground gas transmission lines such as the one being proposed -- located longitudinally and in proximity to the highway -- have the potential to severely limit future transportation

options and pose a significant risk to the operation and integrity of the highway. Even routine operational and maintenance activities such as intelligent transportation systems (ITS), sign installation and maintenance, drainage modifications, guide rail installation and maintenance, sound walls and ditch grading can be severely affected. Accordingly, the use of our controlled access right-of-way (ROW) to accommodate Iroquois' proposed gas transmission facility is in conflict with NYSDOT's policy.

Controlled access freeways such as these are our most important and highest volume roadways. The State plans and maintains the right-of-way along these roadways to accommodate future changes to the highway and future service demands. The flexibility to improve the Long Island Expressway (LIE) is critical to meet the ever changing and complex transportation needs of Long Island. Right-of-way was obtained for portions of the service roads located along the LIE and these service roads were constructed with the mainline. Although the service road is not a controlled access facility, it was constructed within the right-of-way designated as part of the control of access line established for the LIE. Access ramps linking the LIE to the service roads are included in the controlled access classification.

At the October 26th meeting, NYSDOT explained FHWA's role and approval process required for this type of installation. Pursuant to Section 23 CFR 1.6, when a state acquires property for a highway project, the state must devote use of said property exclusively to highway purposes. The FHWA will review requests for exceptions to this policy. A state may also submit what is known as an accommodation policy to the FHWA for review and acceptance. An accommodation policy represents FHWA pre-approval of a specific non-transportation use of highway property. If a proposed project meets an accommodation policy, no additional FHWA review is required. If a project falls outside a policy, it must be reviewed as an exception. For example, NYSDOT has an accommodation policy allowing for the installation of telecommunication facilities along controlled access highway rights-of-way which FHWA approved after determining that the proposed plan could co-exist with FHWA's goals. This policy eliminates the need for NYSDOT to request FHWA's approval each time a telecommunication company wishes to use affected rights-of-way.

There is no such accommodation policy for utilities other than telecommunication facilities in New York State. Therefore, each request must be presented to the FHWA for consideration prior to any construction or occupancy. The FHWA review focuses on the preferred routes and the alternatives. An exception can only be granted after all alternatives have been examined thoroughly. A detailed description and evaluation that is in full compliance with the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA) requirements is needed for all feasible alternatives before an exception to NYSDOT's policy can be considered. An in-depth analysis of the proposed alternatives, including a cost analysis, must be completed to justify the findings that all but the preferred alternative would be a hardship. This should include analysis of multiple alternatives that do not require longitudinal occupation of this or any other freeway, recognizing that the state and/or the FHWA require a use and occupancy fee. By following this procedure, NYSDOT does not jeopardize its funding

and risk sanctions that may be imposed by the FHWA for non-compliance. If construction and/or occupancy commences before NYSDOT and FHWA approvals are obtained, NYSDOT will face sanctions from the FHWA for non-compliance with Federal policies and procedures.

In the event an exception is to be requested, the following items must be addressed in the submission to the FHWA:

- Prepare appropriate environmental documentation in compliance with NEPA.
- Describe the manner and frequency of access to NYSDOT ROW both during and after construction. Iroquois should strive for an approach that allows the facility to be constructed, serviced, maintained and operated without being accessed from the through-traffic roadways or ramps of the Long Island Expressway.
- What, if any, are the industry standards for separation distances from other utility facilities (i.e. lighting, IT fiber optics)?
- Provide details regarding maintenance and protection of traffic, both during and after construction of the proposed facility.
- Will there be any security measures in place to protect the facility? Who will be responsible for ensuring security of the gas facility?
- Would the proposed facility impact the general maintenance of the freeway right-of-way (e.g. mowing operations)?
- Provide information with regard to scheduling and length of construction time.
- Provide information on the impact to the vegetation screening along the right-of-way.
- Provide construction plans, profiles, typical sections and details.

Any recommendation or request by NYSDOT would subsequently require the consent of the FHWA and the appropriate NYSDOT highway work permit applications to be completed resulting in a highway work permit issued by NYSDOT. Also, a Use and Occupancy agreement allowing Iroquois to occupy State Highway ROW would need to be reviewed and approved by the New York Office of the State Comptroller, New York State Attorney General and the FHWA.

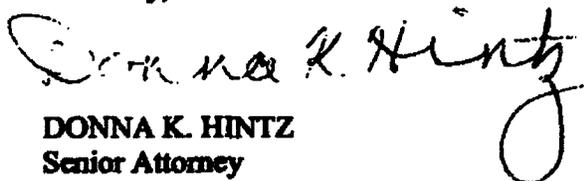
It is NYSDOT's understanding that LIPA's selection process for choosing Iroquois will comply with State competitive bid requirements. This, along with a number of other applicable requirements, is contained in the NYSDOT "Highway Design Manual," Chapter 13- Utilities- Appendices A, B and C. A copy of this document can be found at the following web site: <http://www.dot.state.ny.us/cmb/>

consult/hdmfiles.chapt13.pdf. Any modifications that go beyond its existing parameters, such as the inclusion of non-telecommunication utilities, will require FHWA approval.

NYS DOT has determined that it prefers to retain its option of intervening and therefore, will not become a cooperating agency in this case.

If you have additional questions, please contact me at (518) 457-2411.

Sincerely,



DONNA K. HINTZ  
Senior Attorney  
Legal Services Division

DKH0222

cc: Walter Hofer  
Long Island Power Authority  
333 Earle Overton Boulevard  
Suite 403  
Uniondale, NY 11553

William Hansen, Project Manager  
Business Development  
Iroquois Transmission System  
One Corporate Drive  
Suite 600  
Shelton, CT 06484-6211

Daniel Kane  
Office of Parks, Recreation and Historic Preservation  
Empire State Plaza  
Agency Bldg. 1  
Albany, NY 12238

Tom Herritt  
Federal Highway Administration  
Leo W. O'Brien Building  
Albany, NY 12207

Mr. Paul Campagnola, Permit Engineer  
Suffolk County Department of Public Works  
333 Yaphank Avenue  
Yaphank, NY 11980

Submission Contents

Letter on Behalf of East End Property #1	
MEWAugust23Ltr.pdf.....	1-13