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September 21, 2022

**Sent via Electronic Mail**

Dear Ms. Goodwill and Ms. Dorka:

On August 12, 2021, the New York State Department of Public Service Public Service Commission (hereinafter “PSC” or “DPS”) entered an order approving the joint settlement and rate hike for National Grid. This order authorized a rate increase to recover expenditures for the North Brooklyn Pipeline, which runs through predominantly Black and Brown neighborhoods of Brownsville, Ocean Hill, Bushwick, and East Williamsburg, Brooklyn. The order also compelled National Grid to stop construction on Phase 5 of the North Brooklyn Pipeline and Greenpoint LNG facility for the purpose of further evaluation by an independent expert, the only phase of the project located in a predominantly white area.

In approving the pipeline and only subjecting Phase 5 for environmental review, DPS engaged in multiple legal and regulatory violations that had a disproportionate impact on communities of color along the pipeline route. First, DPS failed to ensure that National Grid complied with critical environmental regulations as well as pipeline safety laws, which DPS is charged with regulating. Further, DPS failed to analyze the environmental impact of the pipeline phases 1-4, in violation of the Climate Leadership Community Protection Act (“CLCPA”) and Title VI of the Civil Rights Act of 1964. Instead, it only directed an analysis of the environmental impact of the project on predominantly white communities. By failing to ensure and undertake a comprehensive environmental analysis of the entire North Brooklyn Pipeline, and to consider the health and safety impacts of the pipeline before approving the rate hike, DPS disproportionately put the health and safety of Black and Brown communities in serious danger in violation of state and federal law.

DPS doubled down on its violations of Title VI by limiting the CLCPA and environmental evaluation to Phase 5, while failing to include an evaluation of the pipeline that is essential to the LNG facility upgrade project. DPS’ order directing a singular focus of the only part of the Pipeline project that runs through a white community contravenes both Title VI and fundamental principles of state law that require an environmental review of interconnected infrastructure. Although National Grid now illegally

segments and misrepresents the LNG vaporizers as a “non-pipeline solution,” National Grid has made clear that the entire 7 mile, 30 foot pipeline is essential to the LNG expansion because it allows National Grid to transport substantially higher volumes of LNG both into and out of the Greenpoint LNG facility. To comply with Title VI, DPS must ensure and undertake an environmental review of the full pipeline as part of its decision whether to approve Phase 5. This review has not happened, and phases 1-4 of the pipeline must be subject to an environmental review and turned off.

## **I. DPS Violated the Legal Requirements in Approving the Rate Hike**

Pursuant to an agreement with the Department of Transportation (“DOT”), DPS, and by extension, the Public Service Commission, enforces and oversees federal pipeline safety, integrity and public education standards for pipelines within New York State under the National Gas Pipeline Safety Act (“PSA”), as well as applicable state standards.<sup>1</sup> As part of this duty, the DPS Public Service Commission oversees gas company requests to increase consumer rates to build gas infrastructure.<sup>2</sup> When considering a settlement for a rate hike, the PSC is required to utilize the Settlement Guidelines outlined in Case 92-M-0138.<sup>3</sup> Under the guidelines, the PSC must ensure that the proposed Settlement is in the public interest, defined to mean that a settlement should strive for balance among protection of ratepayers, fairness to investors and long-term viability of the utility.<sup>4</sup> Further, and critically, the PSC must ensure that the settlement is not in violation of any law or regulation, and consistent with economic, social, and environmental policies of the Commission.<sup>5</sup> Additionally, any proposed settlement on any issue should be supported by data which would allow participants and the PSC to evaluate whether the standard is in the public interest.

Despite these clear legal requirements, PSC engaged in multiple legal violations that disproportionately harmed the health and safety of communities of color in violation of state and federal laws, including Title VI. Specifically, PSC failed to ensure that 1) the pipeline had been subjected to an environmental review as required by state law; 2) residents who lived along the pipeline route had notice of the health and safety risks of the pipeline; and 3) National Grid had submitted mapping and testing information to federal oversight authorities. Furthermore, PSC failed to properly apply the CLCPA to evaluate the environmental impact of the pipeline components that it approved. Instead, DPS blatantly disregarded and directly violated state and federal laws, causing immense harm to communities of color.

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<sup>1</sup> The Department of Transportation promulgates minimum federal safety standards for natural gas pipelines, and allows states to assume regulatory authority if it certifies it has adopted federal safety standards and damage prevention. 49 U.S.C. § 1674; 49 U.S.C. § 60105(b)(2). New York State law imposes similar mandates, and requires all pipeline operators to submit a letter of intent with precise specifications prior to beginning the construction of these pipelines. 16 NYCCR §§ 255.301, 255.302. While New York State normally subjects all pipelines over 125 psig to an extensive siting approval process, the statute exempts pipelines that are fully underground and located wholly within a City. The MRI pipeline is 300 psig and 34,000 feet and 7 miles. Case 16-00252, Dkt. No. 2, KEDNY-KEDLI Book 4-NY, <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-g-0059&submit=Search>. N.Y. Pub. Serv. Law §§ 121(2)(b) However, under federal and state law, all testing, education, and integrity requirements apply to pipeline construction and operation.

<sup>2</sup> N.Y. Pub. Serv. Law §§ 4; 5; 64 *et. seq.* The Public Service Commission consist of five members who are appointed by the Governor, with the advice and consent of the Senate.

<sup>3</sup> Public Service Commission, Case No. 92-M-0138, Dkt. No 1, *Opinion, Order, and Resolution Adopting Settlement Procedures and Guidelines* (March 24, 1992) [hereinafter *Opinion, Order, and Resolution Adopting Settlement Procedures and Guidelines*]; Public Service Commission, Case No. 19-G-0309, Dkt. No 197, Staff Statement in Support of Joint Proposal (June 3, 2021) [hereinafter Staff Statement in Support of Joint Proposal].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* The PSC must also give weight to the fact that the settlement reflects an agreement between normally adversarial parties.

## A. Failure to Ensure Compliance with SEQRA

National Grid applied for multiple permits that should have triggered environmental review under the State Environmental Quality Review Act (“SEQRA”), but failed to submit the pipeline for review. Specifically, National Grid applied for: 1) air permits to allow the expansion of LNG facility at the Greenpoint Energy Center (Phase 5), which required review of the interconnected pipeline; 2) New York City Department of Environmental Protection permits to dump billions of gallons of wastewater into a Brownsville sewer and conducted work pursuant to a DEP order to purportedly strengthen the sewer through which the pipeline passed, directly funded by the rate hike. Each of these actions should have been subjected to SEQRA, or the New York City Environmental Quality Review process, yet National Grid failed to comply with any SEQRA requirements and evaded environmental review.

The environmental review of Phases 1-4 is inextricably linked to Phase 5, which is also the subject of NYS DPS’ September 21 and September 22, 2022 hearings: National Grid violated state law by failing to submit the pipeline for review in its application for the Air Permit, and DEC similarly violated state law by conducting an analysis of the Greenpoint LNG expansion without the pipeline before issuing its negative declaration.

The North Brooklyn Pipeline is a 7 mile, 30-inch gas transmission pipeline built in secret under the predominantly Black and Latinx neighborhoods of Brownsville, Ocean Hill, Bushwick, and East Williamsburg, “ending at the National Grid depot facility near Newtown Creek,” or the Greenpoint Energy Center.<sup>6</sup> National Grid intended the North Brooklyn Pipeline to bring millions of gallons of fracked gas each day to the Greenpoint facility. The North Brooklyn Pipeline was designed to augment or replace a smaller pipeline currently attached to the Greenpoint facility.<sup>7</sup> **Increasing potential gas flow by more than 1.8 million cubic feet per hour to be brought directly to the Greenpoint LNG facility, National Grid made clear that the North Brooklyn Pipeline was designed to deliver gas to more than 18, 979 new customers –making the Phase 5 LNG upgrade a necessity in order to process the additional gas and sell it to customers.**<sup>8</sup> Thus, the North Brooklyn Pipeline is integrally linked to the expansion of LNG vaporizers in Greenpoint, and under state law one “unitary project” that must be subjected to full environmental review.

It is a fundamental principle of SEQRA that interconnected projects must be reviewed together. SEQRA expressly prohibits segmenting connected actions into discrete parts and requires review of “whole actions.”<sup>9</sup> Article 617.3(g)(1) of SEQRA provides that “considering only a part or segment of an action is contrary to the intent of SEQR[A],” and “[r]elated actions should be identified and discussed to the fullest extent possible.”<sup>10</sup> By failing to identify related actions for review, National Grid and DEC

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<sup>6</sup>NYS DPS, Matter Master: 19-01092/19-G-0309, Dkt. No. [238](#). Public Service Commission Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements, at 43 n 76 (Aug. 12, 2021).

<sup>7</sup> See, e.g., NYS DPS, Matter Master: 19-01092/19-G-0309, Dkt. No 131, Exhibit 735, National Grid Response to Request No. DPS-1091 (April 17, 2020), <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-G-0309&submit=Search>. (“Once MRI is in service, the new flow path will allow gas to flow south from Greenpoint into the heart of KEDNY’s system without reducing the flow from Con Edison, thereby enhancing the effectiveness of the additional LNG vaporization output or CNG injections in supporting KEDNY customer additions.”).

<sup>8</sup> *Id.* at 12.

<sup>9</sup> 6 NYCRR §§ 617.3(g); 617.2(ah).

<sup>10</sup> 6 NYCRR 617.3 (g)(1). *Matter of Farrington Close Condominium Bd. of Mgrs. v Incorporated Vil. of Southampton*, 205 A.D.2d 623, 626 (1994) (quoting SEQRA 6 NYCRR 617.3 (g)(1)). The agency must also consider the cumulative effects of related actions to “insure[] against stratagems to avoid the required environmental review by breaking up a proposed development into component parts which, individually, do not have sufficient

violated SEQRA, and DEC violated Title VI by disregarding the rights and disproportionately impacting the health and safety of the Black and Latinx residents that live along the pipeline route. By approving the rate hike without ensuring the pipeline had undergone environmental review, DPS abdicated its obligation to ensure that the pipeline met legal requirements. As it reviews Phase 5, it must now ensure these reviews are undertaken. This review has not taken place, and without such an environmental review, phases 1-4 of the pipeline must be shut down.

## B. Failure to Ensure Compliance with Federal Notice Requirements

The federal Pipeline Safety Act and New York’s implementing regulations require pipeline operators to educate the general public in the “blast zone” about safety risks associated with a pipeline, including possible leaks and what to do in case of accident.<sup>11</sup> The public education materials must be in English and other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator’s area.<sup>12</sup> National Grid must submit its public education program to its state regulator, DPS, for periodic review. Under the regulatory structure imposed by the PSA, DPS has primary responsibility for ensuring that National Grid meets its public awareness obligations.

Despite this obligation, National Grid did not inform community members and local institutions who lived within the blast zone about the pipeline, its risks, or precautions they should take in case of an accident prior to the rate hike. Since the rate hike was issued, and conveniently after we filed our August 2021 Title VI complaint with the EPA and DOT, some community members reported receiving notice, but many community members still have not and remain in the dark about the risks imposed by the pipeline. In fact, National Grid not only failed to comply with the notifications law, it also knowingly deceived and mislead community members inquiring about infrastructure construction, lulling them into a false sense of security by telling them the ongoing construction was nothing more than improvements to existing infrastructure and not a massive, fracked gas transmission pipeline located a block away from their homes, schools, and businesses. DPS is directly responsible for the fact that Black and Brown communities were intentionally deceived about the pipeline until it was too late to oppose it.

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environmental significance.” *City of Buffalo v. New York State Dep’t of Env’t Conservation*, 184 Misc. 2d 243, 254–55, 707 N.Y.S.2d 606, 615 (Sup. Ct. 2000) (internal citation omitted). *See also* SEQR Handbook, 53 (To determine whether there has been illegal segmentation, an agency and courts consider: (1) the purpose or goal for each segment; (2) if there is a common reason for the timing of goals/are they occurring at the same time; (3) if there is a common geographic location involved; (4) if any of the activities share a common impact; and (5) whether the segments under the same or common ownership or control). *See also Vill. of Westbury v. Dep’t of Transp.*, 75 N.Y.2d 62, 70-71 (1989) (In determining whether an action may have a significant effect on the environment, “the agency must ... consider reasonably related effects ‘including other simultaneous or subsequent actions which are: (1) included in any long-range plan of which the action under consideration is a part; (2) likely to be undertaken as a result thereof; or (3) dependent thereon’ ”); 6 NYCRR § 617.7(c)(2).

<sup>11</sup> 49 U.S.C. § 60116(a) (“Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.”); 9 C.F.R. § 192.616(a), (d) (“...each pipeline operator must develop and implement a written continuing education program that follows the guidance provided in the American Petroleum Institute’s (API) Recommended Practice (RP) 1162....”); 16 N.Y.C.R.R. § 255.616(a), (d) (same).

<sup>12</sup> 49 C.F.R. § 192.616(g) (“The program must be conducted in English in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operation’s area.”).

Despite these federal and state mandates, DPS failed to ensure full proper notice for any part of the pipeline except in Phase 5, which is in a predominantly white community.

### C. Failure to Ensure Submissions of Maps to the DOT

DPS similarly failed to ensure that National Grid complied with federal and state reporting obligations. On March 12, 2021, National Grid reported to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and DOT that it had not added any new transmission pipeline in its New York City system in 2020. This is false because National Grid informed DPS that it placed Phases 1-3 in service in April 2020 and Phases 1-4 began operating as a transmission pipeline in November 2020. Additionally, National Grid reported that it did not conduct any pressure or baseline testing of any pipe in 2018, 2019 or 2020. DPS’s failure to ensure National Grid complied with reporting requirements flouts state and federal law and imposes a disproportionate impact on the safety of the surrounding Black and Latinx communities.

Similarly, the PSA requires pipeline operators to submit mapping and geospatial data to the PHMSA for inclusion in the National Pipeline Mapping System.<sup>13</sup> National Grid did not do this and has not done so to this day, and as a result the North Brooklyn Pipeline does not appear in the National Pipeline Mapping System.<sup>14</sup> The PHMSA uses geospatial data, in part, to identify high consequence areas in which pipeline operators must take additional safety precautions and to notify other operators of active pipeline systems to prevent serious damage from other construction projects. **To this day, National Grid has failed to report the pipeline to DOT.** By failing to ensure that National Grid complied with the PSA, DPS approved a settlement that not only deviates from strict federal mandates but directly endangers the community because other operators may feel free to engage in construction or install pipes that could cause damage and harm to the surrounding communities.

DPS’s approval of the rate hike for the North Brooklyn Pipeline was in violation of established settlement guidelines which mandate that settlements must be “consistent with the law and regulatory economic, social and environmental State and Commission policies.”<sup>15</sup> DPS’s failure to comply with these critical regulatory responsibilities has an unjustified disproportionate impact on the health and safety of communities of color.

## II. CLCPA

DPS also failed to ensure that the North Brooklyn Pipeline complied with the CLCPA,<sup>16</sup> which requires agencies to “[p]rioritize measures to maximize net reductions of greenhouse gas emissions and

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<sup>13</sup> 49 U.S.C. § 60132(a)(1), (a)(4) (“[t]he operator of a pipeline facility (except distribution lines and gathering lines) shall provide to the Secretary of Transportation the following information with respect to the facility: (1) Geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data. / (4) Any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to this section.”).

<sup>14</sup>U.S. Department of Transportation, U.S. DEP’T TRANSP. NATIONAL PIPELINE MAPPING SYSTEM, <https://www.npms.phmsa.dot.gov/> (click on use public map viewer, choose “New York” as the “State” and “Kings” as the “County”).

<sup>15</sup> *Opinion, Order, and Resolution Adopting Settlement Procedures and Guidelines*, *supra* note 3.

<sup>16</sup> Jackson Morris & Miles Farmer, *Unpacking New York’s Big New Climate Bill: A Primer*, NATIONAL RESOURCE DEFENSE COUNSEL (June 20, 2019), <https://www.nrdc.org/experts/miles-farmer/unpacking-new-yorks-big-new-climate-bill-primer-0>.

co-pollutants in disadvantaged communities.”<sup>17</sup> Although DPS’s Public Service Commission found the CLCPA applied, DPS staff and the PSC made no effort to analyze the impact of the pipeline on disadvantaged communities.<sup>18</sup> In their brief supporting the rate hike, DPS staff even argued, counterfactually, that “there is no evidence in these cases that the location of MRI project Phase 1 through Phase 4 or the proposed projects at the Greenpoint LNG facility ‘disproportionately burden disadvantaged communities.’”<sup>19</sup>

In approving the rate hike, PSC recognized that the CLCPA applied and analyzed the environmental impact of the Greenpoint expansion, located in a primarily white community. However, it declined to review the environmental impacts of the pipeline. DPS never analyzed whether its actions in approving the pipeline construction and associated rate hikes disproportionately harm Black and Latinx individuals. In its most recent order approving the joint settlement and rate hikes, DPS found that the pipeline and rate hike did not disproportionately burden disadvantaged communities because “the Joint Proposal will allow the Companies to continue providing safe and reliable service” and because ensuring service through the winter “must be a priority for all communities impacted by the Joint Proposal, particularly low-income New Yorkers that may not be able to afford the energy efficiency products and heat pumps incentivized by the Joint Proposal.”<sup>20</sup> But this is beside the point. There have been numerous serious criticisms about whether the demand and need is there—in its original plans, National Grid made clear that it wanted to install Phases 1-5 of the North Brooklyn pipeline and LNG facility to service more than 18,000 new customers. Further, the critical question is whether the low-income communities of color along the pipeline route shoulder a *disproportionate* amount of the burden associated with providing safe and adequate service. DPS failed even to consider this question. DPS did not, for example, weigh the environmental burdens imposed on the pipeline communities and compare those to burdens imposed on other communities or the burdens of not building the pipeline at all and instead undertaking other prudent action to address any supposed system reliability concerns. Nor did DPS consider the specific economic burden of raising rates in communities along the pipeline route and whether these disproportionately low-income ratepayers should have to shoulder the expense of a pipeline built without their knowledge and against their wishes that poses significant public health risks to them. DPS failed to assess the impact of the pipeline on disadvantaged communities even though it approved Phase 4, which significantly increased the amount of gas running through the pipeline, and thus increased the environmental risks to communities of color.

By applying the mandated environmental impact analysis only to the predominantly white area surrounding the Greenpoint facility, and failing to examine the impact on communities of color, DPS violated the CLCPA by using criteria and methods that had a disproportionate impact on the safety of Black and Latinx individuals.

### **III. DPS Violated Title VI**

DPS’s failure to comply with SEQRA, PSA’s notice requirements, and federal and state reporting requirements violated Title VI because it had an adverse, disparate impact on the Brownsville, Ocean Hill, Bushwick, and East Williamsburg communities based on the race, color, or national origin of the residents of these communities.

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<sup>17</sup> ECL § 75-0109(3)(d). Section 7 of the CLCPA requires agencies issuing relevant approvals to ensure that they (1) do not interfere with the attainment of required greenhouse gas emissions limits; and (2) do not disproportionately burden disadvantaged communities. *Id.*

<sup>18</sup> Case No. 19-G-0309 et al, Dkt. No 238, *Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements*, 69-70 (August 12, 2021) [hereinafter *Order Approving Joint Proposal*].

<sup>19</sup> Case No. 19-G-0309 et al, Dkt. No 205, DPS Staff Reply Statement, at 9 (June 14, 2021).

<sup>20</sup> *Order Approving Joint Proposal*, *supra* note 18, at 81.

Title VI prohibits agencies that receive federal funds from engaging in practices that have an unjustified disparate impact on the basis of race and national origin.<sup>67</sup> Even when a recipient has a substantial legitimate justification, employing a neutral policy that leads to adverse disparate impacts may still constitute a violation of Title VI if there are less discriminatory alternatives that would achieve the same purpose.<sup>68</sup> A showing of potential health effects, depending on their nature and severity (e.g., cancer risk), provides an adequate basis for a finding of adversity under EPA's disparate impact regulation.<sup>71</sup> Causation may be established through scientific proof, prediction of potentially significant exposures and risks resulting from stressors created by the permitted activities or other sources, and other methodologies.<sup>72</sup>

First, DPS's approval of the rate hike had an unjustified adverse economic impact and disparate impact on the basis of race because it did not consider the potential adverse environmental impact on air quality and health of the part of the project that is located underneath a community that is disproportionately (70%) Black and Latinx. As described in detail in the complaint, like the LNG vaporizers, pipelines are constantly emitting hazardous air pollutants and greenhouse gases into the air, soil, and water.<sup>74</sup> Multiple studies and even the EPA have found that methane emissions are highly toxic and can have serious health consequences for the surrounding community.<sup>75</sup> Methane, a greenhouse gas that contributes to ground level ozone, decreases the lungs' working ability and cause coughing and chest pain, eye and throat irritation and breathing difficulties even for healthy individuals,<sup>76</sup> and exacerbate cardiovascular disease.<sup>77</sup> According to EPA's 2013 Integrated Science Assessment for Ozone, ozone exposures have been linked to increase risks of hospitalization for acute myocardial infarction, coronary atherosclerosis, stroke, and heart disease, even at ambient ozone levels well-below current air quality standards.<sup>78</sup> These issues are especially acute for children and individuals with respiratory problems such as allergies, asthma, bronchitis and emphysema.<sup>79</sup> The impact of air emissions is particularly severe for the Brownsville, Ocean Hill, and Bushwick residents, because the air quality impacts from fugitive methane could especially impact those with asthma. All three areas have twice the child and adult asthma rate compared to the rest of the city; Brownsville and Ocean Hill have the highest rate for adult asthma in New York City (14%), with almost twice the amount of hospitalizations for both child and adult asthma.<sup>80</sup>

Scientific studies have also found that gas pipelines increase methane levels in the surrounding soil and water, negatively impact plant health, groundwater quality, and human health. Although methane is not directly toxic to plant matter, methane-rich soil can induce anaerobic soil conditions that are harmful for tree root systems.<sup>81</sup> Brooklyn residents also face potential adverse impacts to their water from the pipeline,<sup>82</sup> as the North Brooklyn Pipeline runs in close proximity to the Brooklyn-Queens Sole Source Aquifer, which is the sole or principal drinking water source for 650,000 people,<sup>83</sup> and crosses three Department of Environmental Protection water pipelines.<sup>84</sup> Contamination of this aquifer could create a significant hazard to public health.

By failing to consider the full environmental impact to the air and community surrounding the pipeline as required by SEQRA before approving the rate hike and settlement, DPS has allowed the pipeline to pose serious, unchecked risks to the disproportionately Black and Latinx residents surrounding the pipeline. By unlawfully limiting its analysis to the LNG facility, located in a predominantly white area, DPS has violated Title VI by using "criteria and methods that have the effect of discriminating on the basis of race" and treated communities of color differently than white communities.<sup>85</sup>

DPS's failure to ensure the pipeline met legal and regulatory requirements and violation of CLCPA also violated Title VI because it had an adverse, disparate impact on the Brownsville, Ocean Hill, Bushwick, and East Williamsburg communities based on the race, color, or national origin of the residents of these communities.



By failing to ensure these checks before approving the pipeline, the pipeline is essentially posing an unregulated danger that disproportionately impacts the communities of color living around the pipeline. Had National Grid properly submitted the pipeline for review, and DPS mandated a full environmental review as required by SEQRA, it may very well have found the project impermissible.<sup>21</sup>

Similarly, the failure of DPS to ensure that National Grid met pipeline safety requirements before approving it creates a disproportionate risk of explosion, often caused by leaks. The notification and mapping systems that National Grid ignored, and DPS implicitly authorized, are designed to mitigate harm related to leaks. Between 2010 and 2021, there have been 2,600 pipeline incidents reported in the United States that have killed 122 people and injured more than 600.<sup>22</sup> These incidents resulted in the leakage of 26.6 billion cubic feet of gas.<sup>23</sup> For example, in 2010, a natural gas pipeline exploded in a residential neighborhood in San Bruno, California, killing eight people, injuring dozens more, and destroying 38 homes.<sup>24</sup>

The potential for damage from leaks from National Grid's pipeline is serious, given National Grid's poor safety record and the thousands of leaks on its New York pipeline system each year, including very recently upgraded pipelines. National Grid-NYC has continued to have the highest rates excavation damage and unremedied leaks in the state, which increases the chances of accidents.<sup>25</sup> According to DPS "[d]amage to underground natural gas facilities due to excavation activity is one of the leading causes of natural gas pipeline failures and accidents, both statewide and nationally."<sup>26</sup> As described above, regulators recently found 1,616 violations on a new pipeline National Grid had just constructed, and fined National Grid \$6 million on a separate pipeline for unremedied valves that were leaking methane. National Grid recently experienced two significant safety incidents in its Brooklyn system, including an explosion resulting from excavation damage to a 12-inch leaking main that National

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<sup>21</sup> The pipeline itself is a Type 1 action subject to SEQRA review: the seven-mile massive high-pressure pipeline is a physical alteration of 4,480 feet of land, well over the 10 feet listed in the definition for a Type I action. 6 NYCRR § 617.4(b)(2). In addition, according to the DEC's own Environmental Assessment tool, the pipeline route is within 2000 feet of 28 DEC Environmental Remediation sites and in close proximity to a major water source. Further, the pipeline is substantially contiguous to 26 different National or State Register of Historic Places or State Eligible Sites, which also triggers a full environmental review. *See* Draft DEC EAF North Brooklyn Pipeline, Ex. N; NYCRR § 617.7. *See, e.g., Sun Co., Inc. (R & M) v City of Syracuse Indus. Dev. Agency*, 209 A.D.2d 34 (4th Dept 1995); *Green Earth Farms Rockland, L.L.C. v Town of Haverstraw Planning Bd.*, 153 A.D.3d 823 (2d Dept 2017); *County of Orange v Vill. of Kiryas Joel*, 11 Misc. 3d 1056(A) (2d Dept. 2007); *Fleck v. Town of Colden*, 792 N.Y.S.2d 281 (4th Dept. 2005); *Chenango Valley Cent. Sch. Dist. v. Town of Fenton Planning Bd.*, No. 31820(U) (N.Y. Sup. Ct. 2017); *Cty. of Orange v. Vill. of Kiryas Joel*, 44 A.D.3d 765 (2nd Dept. 2007). Contrary to National Grid's assertion, it would not have been exempted from review. *Town of Goshen v Serdarevic*, 17 AD3d 576, 579 (2d Dept 2005) (addition of drainage pipe, replacement of another pipe with a larger one, and extension of ditches were not matters of routine maintenance and subject to SEQRA review). In addition, contrary to National Grid's misrepresentation, it had to apply for multiple discretionary permits that should have triggered SEQRA review.

<sup>22</sup> Public Interest Research Group, Damaging methane gas pipeline leaks happen every 40 hours in the U.S. (June 24, 2022), <https://environmentamerica.org/center/media-center/report-damaging-methane-gas-pipeline-leaks-happen-every-40-hours-us/>

<sup>23</sup> *Id.*

<sup>24</sup> *San Bruno Residents Remember Those Killed In Pipeline Explosion*, ABC 7 NEWS (Sept. 9, 2014), <https://abc7news.com/san-bruno-natural-gas-explosion-anniversary-pge-pipeline-4-years/302058/>.

<sup>25</sup> PHMSA FOIL Response, National Grid Annual Distribution System Reports (2018-2020). NEW YORK STATE DEP'T OF PUB. SERV., *2020 Pipeline Safety Performance Measures Report*, at 18, 30-31 (2021), <https://www3.dps.ny.gov/W/PSCWeb.nsf/All/9DBA66C148A1310985257B2600750639?OpenDocument>.

<sup>26</sup> *Id.* at 12.



Grid had failed to adequately mark. The explosion injured four people, one of whom had to be hospitalized, caused \$53,000 in damage, and released 1,158 thousand standard cubic feet of gas.<sup>27</sup>

Approximately 159,000 New Yorkers, who are predominantly and disproportionately Black and Latinx, live within the 1,275-foot blast evacuation radius of the North Brooklyn Pipeline.<sup>28</sup> Overall, approximately 70 percent of the community surrounding the pipeline is non-white, and 30 percent is white.<sup>29</sup> The population of the surrounding communities in the 1,275 square foot blast zone of the pipeline in Brownsville is 78 percent Black, and 44 percent Black for the entire pipeline route.<sup>30</sup> In stark contrast, the population of New York City is only 30 percent Black. Similarly, the population of the 1,275 blast-zone in Bushwick is 65% Latinx, and approximately 39.3 percent of all residents on the pipeline route Latinx, while Latinx residents only comprise 29.8 percent of the population in New York City.<sup>31</sup>

This area also contains 81 daycare facilities, 55 public schools, 22 public housing complexes, nine health care centers, eight private schools, three nursing homes, three EMS stations, and a medical center.<sup>32</sup> And the risk to the surrounding community is amplified because, as discussed above, National Grid failed to pressure test the pipeline prior to operation.

**Approval of Phase 5 will cause more fracked gas to flow through these communities.** Part of Phase 5 includes completing a much larger transmission pipeline and connecting it to the Greenpoint LNG facility, increasing the amount of gas that can be brought to the LNG facility for processing, and from the LNG facility for distribution and sale.<sup>33</sup>

DPS/PSC's approval of the rate hike despite National Grid's violation of basic regulatory standards creates a serious disproportionate impact on the safety of Black and Latinx communities in violation of Title VI. This is in direct contrast to the rigorous enforcement actions the DPS/PSC has taken which mandate National Grid to fix pipeline construction and integrity issues in predominantly white communities.

**Now, DPS is poised to violate Title VI again, by approving Phase 5 without analyzing of the pipeline's environmental and public health impact on the communities surrounding Phases 1-4.** While National Grid calls the LNG facility upgrade a "non-pipeline solution," National Grid has repeatedly made clear that the new North Brooklyn pipeline is essential to the project – and that in Phase

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<sup>27</sup> PHMSA Foil Response, National Grid 2020 PHSMA Incident Report, Ex. .

<sup>28</sup> Kim Fraczek and Karen Edelstein, *New Yorkers mount resistance against North Brooklyn Pipeline*, FRACTRACKER ALLIANCE, (May 18, 2020), <https://www.fractracker.org/2020/05/new-yorkers-resistance-against-north-brooklyn-pipeline/>.

<sup>29</sup> Audrey Carleton, 'They're Liars': Activists Say Brooklyn Residents Were Not Informed Of Fracked Gas Pipeline, GUARDIAN (Dec. 21, 2020), <https://www.theguardian.com/environment/2020/dec/21/brooklyn-natural-gas-pipeline-fracking-bushwick>.; Fractracker Alliance analysis for National Center of Law and Economic Justice (on file with authors).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*; United States Census Bureau, Quick Facts for New York City, New York: Population Estimates (July 1, 2019), <https://www.census.gov/quickfacts/newyorkcitynewyork>

<sup>32</sup> *Id.*

<sup>33</sup> See, e.g., NYSDPS, Matter Master: 19-01092/19-G-0309, Dkt. No 131, Exhibit 735, National Grid Response to Request No. DPS-1091 (April 17, 2020), <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-G-0309&submit=Search>. ("Once MRI is in service, the new flow path will allow gas to flow south from Greenpoint into the heart of KEDNY's system without reducing the flow from Con Edison, thereby enhancing the effectiveness of the additional LNG vaporization output or CNG injections in supporting KEDNY customer additions.")

5, it will replace the 16 inch existing one directional pipe, with the 30 inch North Brooklyn Pipeline; that is why the LNG expansion is referred to as “Phase 5” of the MRI Project, and the other components of the Pipeline is referred to as Phases 1-4.<sup>34</sup>

Our clients call on DOT and EPA to ensure that New York State conducts a full environmental and public health analysis of the entire pipeline route—an analysis that is required by law and has never been performed to this day—before making any decision on Phase 5, including the LNG expansion. This review has not been done, and must be undertaken immediately – and phases 1-4 of the pipeline must be turned off until this is complete.

Sincerely,

*/s/ Anjana Malhotra*

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<sup>34</sup> *Id.*