



October 2, 2018

Otsego County Industrial Development Agency  
Board of Directors  
189 Main Street, Suite 500  
Oneonta, NY 13820

Otsego County Board of Representatives  
197 Main Street  
Cooperstown, NY 13326

**RE: Demand for Withdrawal of CFA Application for Oneonta Gas Plant and Infrastructure Expansion**

Dear County Representatives and Members of the IDA Board of Directors:

On behalf of Otsego 2000, Inc., we write to request that you take immediate action to withdraw the Consolidated Funding Application for Natural Gas Infrastructure Expansion, dated July 26, 2018 ("CFA") submitted by the Otsego County Industrial Development Agency ("IDA") to the Empire State Development Corporation ("ESD"). As discussed below, the application is facially and legally flawed. In addition, its withdrawal is required to allow the County and interested stakeholders to commence energy and economic development planning before deciding whether to commit substantial financial resources to natural gas expansion in the region.

The cost of the project is estimated at \$17.5 million to supply gas through tractor-trailer deliveries of compressed natural gas ("CNG"). As proposed, this would involve building a decompressor station and related infrastructure, including 2 regulators and almost three miles of pipeline. According to the IDA, this is in addition to potentially \$100 million for eventual expansion of the DuRuyter pipeline. In addition are the costs of the Rail Yard development in the range of \$14.2 to \$20.5 million, to be fueled by the same gas infrastructure. These are staggering investments in gas infrastructure that further our dependence on fossil fuels and may commit us to higher energy costs if natural gas prices rise, as predicted. The impact on our business community, the environment, and the health and safety of residents will be felt long into the future. Such expenditures and risks deserve serious consideration and affect all of Otsego County and should not be decided by the IDA alone.

## FACTUAL ERRORS AND OMISSIONS

The CFA is not competently prepared. It has all of the hallmarks of a rush job, submitted without adequate thought or support. It omits required data, misstates key facts, and fails to comply with multiple requirements of the grant application process. Among the most blatant omissions and misstatements are: the application is confused regarding who the “applicant” is (the application explicitly identifies the IDA as the applicant, but in providing the applicant’s history implies that NYSEG is actually the applicant (Compare CFA Q 549, p. 5, with Q 5590, p. 12); the application fails to provide basic information such as the project location, which potentially spans two counties and seven locations (Id. Q 575, p. 9; and Q 972, p. 3); it states that the regional jobs that will be created are “0” (Id. Q 7506, p. 17); it does not provide a funding source for the 10% cash equity of \$1.75 million the IDA has committed to make (Id. Q 3118, p. 1); and it fails to acknowledge that the proposed project violates existing zoning laws in the Town of Oneonta, among other significant problems. The defects in the CFA are more fully set forth in documents, attached herewith.

Further, Mr. Zakrevsky, as Chief Executive Officer of the IDA, certified that all of the supporting data and documentation in the CFA “are true, correct and complete” (Id. Q 1038, p. 21). However, remarkably, Mr. Zakrevsky admitted that the application is in fact misleading. In video-recorded remarks to the Town of Oneonta Council on August 8, 2018, Mr. Zakrevsky disclosed that the cost estimates of \$17.5 million was submitted by NYSEG and is in his view “ridiculous” (Video of 8/8/18 Town of Oneonta meeting, min. 13:20, link provided below). He stated he used the unjustified and unreliable numbers simply to get the application in on time (Id.).

Mr. Zakrevsky also stated that the funds will not be distributed to sub-recipients (CFA Q 6702, p. 1). However, elsewhere in the CFA he states that NYSEG, is requiring the IDA to apply for the grant and contribute the funds to NYSEG: “NYSEG is requiring Otsego Now to contribute \$3.5 million toward the project. Without the full 20% of project costs, this project cannot proceed” (Id. Q 3175, p. 12). Thus, the application appears to be submitted for improper purposes, as a vehicle to secure funding for the benefit of NYSEG, masquerading as a grant to the IDA.

Compounding the defects discussed above, the application fails to make any convincing argument of need. NYSEG has reported that interruptible customers use fuel oil for less than five days each year. (See NYSEG Winter Supply Plans for 2016-2017, p. 46, 2017-2018, p. 58, and 2018-2019, p. 69; links attached below). This does not constitute a crisis. Mr. Zakrevsky has also stated that the DeRuyter pipeline operates at only 60% capacity on average (Town Council of Oneonta 8/8/18, min. 19:36, link attached below). Thus, it may be possible to optimize gas availability without increasing capacity, using local storage or other technology. With respect to economic growth, there are certainly alternatives to gas-intensive heavy industrial development advocated by the IDA. There are also other sites in Otsego County where excess gas capacity for industrial growth already exists, such as Richfield Springs, which is served by a different pipeline. Consistent with State energy goals, demand reduction and alternative sources of energy

can and must be considered as mitigation measures if or when these plans are reviewed under SEQR.

## LEGAL DEFECTS

### 1. Failure to Conduct SEQR Review.

An application by an IDA for funding cannot be submitted and funds may not be awarded until SEQR review of the environmental impacts of the project is completed. The decision by the IDA to financially support this project through a commitment of equity in the amount of \$1.75 million (10% of project costs) and to request additional funding of 20% from ESD is clearly subject to SEQR. The NYSDEC Handbook explains:

*Are actions of local or county Industrial Development Agencies (IDA's) subject to review under SEQR?*

Yes. The approval to guarantee funds or loans is subject to SEQR, even when no other approvals are required (DEC SEQR Handbook, Section E).

The IDA has failed to complete or even commence SEQR review with respect to the CFA.<sup>1</sup> Mr. Zakrevsky appears to have entirely forgotten to consider this requirement. The application specifically asks whether SEQR has been completed. Tellingly, the Mr. Zakrevsky left the answer blank (CFA Q 2364, p. 11). This is particularly troubling because the application also states that the project “will proceed as soon as the award is made. NYSEG is in the process of bidding out construction documents. ... It is anticipated that construction will be completed within 18 months of grant award” (Id. Q 975, p. 10). Mr. Zakrevsky fails to explain how the project could proceed as soon as the award is made if SEQR review has not been accomplished and zoning variances have not been secured. This is precisely why SEQR must be completed **before** a funding application is submitted.

The adverse environmental impacts of the proposed project are significant and require preparation of an Environmental Impact Statement (“EIS”) under SEQR. The project is described by the IDA as follows:

... A gas de-compressor station is being planned to be built in the Oneonta area. This will include the CNG de-compressing station, two regulator stations, and approximately 14,865 feet of gas transmission piping. A total of seven sites have been identified for the CNG facility. The preferred site is located in the Town of Oneonta. The system is being designed (sic.) Labella Associate Engineers under contract with NYSEG. By developing the CNG facility, the natural gas availability will increase by approximately 25% and allow for new industrial users to grow. In addition, NYSEG has agreed it will invest another \$100 million in replacing the DeRuyter Gas Transmission Line over the next 10-12 years which would allow some additional gas capacity and safety (Id. Q 575, p. 9).

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<sup>1</sup> On November 15, 2015, the Town of Oneonta Planning Board issued a Conditional Negative Declaration for a “conceptual site plan” to allow construction of up to three buildings at the Pony Farm site. However, no disclosure of any natural gas infrastructure expansion was disclosed and no zoning variance to allow such development was sought.

To proceed in the absence of SEQR review and a full EIS for a project of this scale and environmental impact is unconscionable.

## 2. Illegal Segmentation.

Segmentation is an additional legal defect in the CFA application. The CFA application clearly concerns two or more interrelated projects, yet they are being improperly considered as separate actions. As Mr. Zakrevsky explains in the CFA application:

This project involves the expansion of natural gas infrastructure to allow the development of **two business parks** in Oneonta. Currently there is no additional natural gas supply for businesses looking to expand or move into **either the Oneonta Rail Yard Industrial Park or the Pony Farm Industrial Park**. By providing natural gas to the region, additional businesses can expand..." (Id. Q 4201, p. 9; emphasis added).

Mr. Zakrevsky goes on to explain that the investment in the project will benefit **both industrial parks** proposed for Oneonta. He states: the CNG facility will serve "**Pony Farm Industrial Park and the newly planned Oneonta Rail Yard Industrial Park** (Id. Q 4160, p. 11; emphasis added). Lest there be any doubt, Mr. Zakrevsky adds that approval of the grant: "will allow Otsego Now to offer sites in **two industrial parks** already financed with the help of ESD: **the Oneonta Business Park and the Oneonta Rail Yard Park** (Id. Q 2219, p. 13; emphasis added). These statements confirm that the environmental impacts of both Pony Farm and the Rail Yard projects must be considered together to comply with SEQR. Yet this is not being done.

As discussed above, SEQR for the gas infrastructure expansion at Pony Farm described in the CFA was never undertaken let alone completed. At the same time, development of the Rail Yard project in Oneonta is currently being considered pursuant to a separate SEQR review by the City of Oneonta, without any reference to the Pony Farm Industrial Park or the proposed de-compressor gas plant. A Generic Environmental Impact Statement is being prepared for the Rail Yard; however, the draft scoping document for public review, dated March 7, 2018, and adopted as the Final Scope on May 15, 2018, made no mention of natural gas infrastructure expansion proposed by the IDA to serve both the Pony Farm and Rail Yard sites. These are serious omissions with respect to both developments.

SEQR requires that where one or more proposed projects are interrelated, the environmental impacts must be considered together. The SEQR regulations at 6 NYCRR Section 617.3(g) make clear:

Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it...Considering only a part or segment of an action is contrary to the intent of SEQR. ...Related actions should be identified and discussed to the fullest extent possible.

The NYSDEC SEQR Handbook at Sec. D further explains:

Reviewing the ‘whole action’ is an important principal in SEQR; **interrelated or phased decisions should not be made** without consideration of their consequences for the whole action, even if several agencies are involved in such decisions. Each agency should consider the environmental impacts of the entire action before approving, funding or undertaking any specific element of the action (Id; emphasis added).

NYSDEC has listed several factors which must be considered when trying to determine if segmentation is occurring. If the answer to one or more of these questions is yes, an agency should be concerned that segmentation is taking place. These factors are:

- Purpose: Is there a common purpose or goal for each segment?
  - Time: Is there a common reason for each segment being completed at or about the same time?
  - Location: Is there a common geographic location involved?
  - Impacts: Do any of the activities being considered for segmentation share a common impact that may, if the activities are reviewed as one project, result in a potentially significant adverse impact, even if the impacts of single activities are not necessarily significant by themselves.
  - Ownership: Are the different segments under the same or common ownership or control?
  - Common Plan: Is a given segment a component of an identifiable overall plan? Will the initial phase direct the development of subsequent phases or will it preclude or limit the consideration of alternatives in subsequent phases?
  - Utility: Can any of the interrelated phases of various projects be considered functionally dependent on each other?
  - Inducement: Does the approval of one phase or segment commit the agency to approve other phases?
- (DEC SEQR Handbook, Sec. D).

Significantly, the Pony Farm and Rail Yard projects meet every single one of these factors, though only one would indicate improper segmentation. To avoid improper segmentation, the proposed de-compressor station and related infrastructure, both industrial park developments, and potential expansion of the DeRuyter pipeline should be evaluated together. This requires a coordinated SEQR process with preparation of a comprehensive EIS that includes all component projects, rather than segmenting the review of clearly interrelated projects. Moreover, that review must occur **before** a CFA grant application is submitted.

## 2. Failure to Consider Cumulative Impacts.

In making a determination of significance under SEQR, a lead agency must make a positive declaration when presented with two or more related actions that are undertaken, funded, or approved which together would meet one of the above criteria. Such impacts are defined to include:

**...other simultaneous or subsequent actions which are: (i) included in any long-range plan of which the action under consideration is a part; (ii) likely to be undertaken as a result thereof, or (iii) dependent thereon (6 NYCRR, Sec. 617.7; emphasis added).**

There can be no doubt that the environmental impacts of the proposed de-compressor station and related gas infrastructure, two industrial park developments, and potential expansion of the DuRuyter pipeline are cumulative and therefore must be reviewed together. The CFA grant application confirms that these projects would share extensive gas infrastructure, including gas delivered by CNG tractor trailers, a CNG de-compressor station, 2 regulators, and almost 3 miles of pipeline (as well as 25 miles of pipeline replacement if the DeRuyter line is expanded). As discussed above, the impacts of such development must be the subject of coordinated SEQR review and a comprehensive EIS considering all components of the SEQR “action” **before** a CFA grant application is submitted.

## CONCLUSION

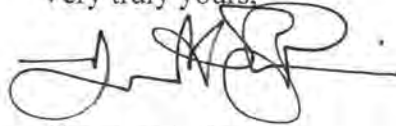
The defects in the CFA discussed above show a lack of understanding of well-settled law and basic grant application practice. If the flawed application is not withdrawn, it may in fact prejudice those agencies who have submitted applications to ESD in good faith and in compliance with legal requirements. Indeed, if the CFA is not withdrawn, the County and IDA may expect judicial review of this decision.

There are other compelling reasons for withdrawal of the CFA. If the CFA is awarded and interrelated projects proposed by the IDA commence without coordinated environmental review, necessary efforts toward regional planning will be thwarted, adopted goals for greenhouse gas reductions will be undermined, and existing local plans for protection of the region’s environmental assets and the safety of its residents will be significantly delayed. A hastily prepared CFA submitted by a single agency without robust public participation and required environmental impact review is unacceptable. The IDA should not be allowed to make decisions of such importance for the entire region in violation of well accepted legal requirements.

For all of these reasons, we respectfully request that you, as the Board Members of the IDA and the County Board of Representatives which supervises the IDA, instruct the Chief Executive Officer of the IDA to withdraw the flawed CFA application. We expect that if and/or when the IDA is serious about pursuing such a grant, it will comply with applicable New York law.

Thank you for your careful consideration of this important matter.

Very truly yours,



Douglas H. Zamelis

cc:

Town of Oneonta Supervisor and Town Board Members  
City of Oneonta Mayor and Common Council Members  
Otsego 2000, Inc.

Attachments:

Otsego Now CFA Grant Application for Natural Gas Infrastructure Expansion

Draft Scoping Document for Redevelopment of the Oneonta Rail Yards

Critique of the CFA Application by Claudia K. Braymer, Esq.

Comments on the CFA Application by Nicole A. Dillingham, Esq.

Comments to Oneonta Town Board on 8/8/2018

<https://www.youtube.com/watch?v=vJzLW0B2wgM>

NYSEG Winter Supply Plans

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B050C9AE2-AD0A-40E4-B847-DDABE985EF17%7D;>

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B4C9CE662-53FC-4242-B1E0-9A03D07B91DA%7D;>

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B312C2D92-BCAA-484A-8E93-58A463A356EC%7D>