

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Western New York Youth Climate Council, Coalition
for Economic Justice, and Citizens for Regional
Transit,

Petitioners,

v.

VERIFIED ANSWER

New York State Department of Transportation, Marie
Therese Dominguez, in her Official Capacity as the
Commissioner of the New York State Department of
Transportation, and Stephanie Winkelhake, P.E., in
her Official Capacity as the New York State
Department of Transportation Chief Engineer,

Index No. 808662/2024

Respondents.

Respondents, New York State Department of Transportation, Marie Therese Dominguez, in her Official Capacity as the Commissioner of the New York State Department of Transportation, and Stephanie Winkelhake, P.E., in her Official Capacity as the New York State Department of Transportation Chief Engineer (together, DOT or the Department), by their attorney, Letitia James, Attorney General for the State of New York, respond to the Verified Petition dated June 14, 2024, by petitioners Western New York Youth Climate Council, Coalition for Economic Justice, and Citizens for Regional Transit, as follows:

OBJECTIONS IN POINT OF LAW:

a. To the extent that petitioners assert claims under the State Environmental Quality Review Act (SEQRA) (Environmental Conservation Law [ECL] Article 8) alleging only economic harm, such harm does not give rise to a cause of action under SEQRA and those petitioners' claims should be dismissed; and

b. Petitioners' fourth cause of action, seeking relief under article I, section 19, of the New York State Constitution, also known as the Green Amendment, should be dismissed for failure to state a cause of action.

Without waiving the foregoing objections in point of law, the Department answers the petition as follows:

1. The allegations in ¶ 1 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department denies the allegations and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

2. The allegations in ¶ 2 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department denies the allegations and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

3. Admits that the article cited by petitioners speaks for itself and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 3 and so denies the same.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 4 and so denies the same.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 5 and so denies the same.

6. Denies the allegations in ¶ 6.

7. Denies the allegations in ¶ 7.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 8 and so denies the same.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 9 and so denies the same.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 10 and so denies the same.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 11 and so denies the same.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 12 and so denies the same.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 13 and so denies the same.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 14 and so denies the same.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 15 and so denies the same.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 16 and so denies the same.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 17 and so denies the same.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 18 and so denies the same.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 19 and so denies the same.

20. Denies the allegations in ¶ 20.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 21 and so denies the same.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 22 and so denies the same.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 23 and so denies the same.

24. Admits that the New York Constitution article I, section 19 states that “[e]ach person shall have a right to clean air and water, and a healthful environment[,]” refers to article I, section 19, of the New York Constitution for its complete text, context, meaning, and legal effect, and denies any remaining allegations in ¶ 24.

25. Denies the allegations in ¶ 25.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 26 and so denies the same.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 27 and so denies the same.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 28 and so denies the same.

29. Denies knowledge or information sufficient to form a belief as to the

truth of the allegations in ¶ 29 and so denies the same.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 30 and so denies the same.

31. Admits the allegations in ¶ 31 with the exception of ECL § 75-0115 which became effective October 1, 2022.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 32 and so denies the same and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 33 and so denies the same.

34. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 34, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

35. Denies the allegations in ¶ 35.

36. Denies the allegations in ¶ 36.

37. Admits that the court's decision in *Danskammer Energy, LLC v New York State Dept. of Env'tl. Conservation*, 76 Misc. 3d 196, 232 (Sup. Ct. 2022) speaks for itself, denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶ 37 and so denies the same.

38. Denies the allegations in ¶ 38.

39. Denies the allegations in ¶ 39.

40. Admits that ECL article 75 speaks for itself, denies the remaining

allegations in ¶ 40, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

41. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 41, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

42. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 42, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

43. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 43, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

44. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 44, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

45. Admit that the Climate Justice Working Group finalized disadvantaged communities criteria in March 2023 and a map identifying communities meeting the criteria is available online at <https://www.nyserda.ny.gov/ny/Disadvantaged-Communities>. The Department refers to such map for its complete text, context, meaning, and legal effect and denies any remaining material allegations in ¶ 45.

46. Admits that the Project area is within the disadvantaged communities identified by the Climate Justice Working Group, denies knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in ¶ 46 and so denies the same.

47. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 47, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

48. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 48, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

49. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 49, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

50. Admits that ECL article 75 speaks for itself, denies the remaining allegations in ¶ 50, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

51. Admits that the Climate Action Council issued a “Final Scoping Plan” in December 2022, and refers to such Final Scoping Plan as the best evidence of its contents.

52. Denies the allegations in ¶ 52 and refers to such Final Scoping Plan as the best evidence of its contents.

53. Denies the allegations in ¶ 53.

54. Admits that Governor Hochul said the quoted language in ¶ 54, and denies knowledge or information sufficient to form a belief as to the truth of any

remaining allegations in ¶ 54 and so denies the same.

55. Admits the allegations in ¶ 55.

56. Admits that the Final Scoping Plan speaks for its, refers to such Final Scoping Plan as the best evidence of its contents, and denies any remaining allegations in ¶ 56.

57. Admits that the Final Scoping Plan speaks for its, refers to such Final Scoping Plan as the best evidence of its contents, and denies any remaining allegations in ¶ 57.

58. Admits that the Final Scoping Plan speaks for its, refers to such Final Scoping Plan as the best evidence of its contents, and denies any remaining allegations in ¶ 58.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 59 and so denies the same.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 60 and so denies the same.

61. The allegations in ¶ 61 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department denies the allegations and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

62. Admits that the Final Scoping Plan speaks for its, refers to such Final Scoping Plan as the best evidence of its contents, and denies any remaining allegations in ¶ 62.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 63 and so denies the same.

64. Denies the allegations in ¶ 64.

65. Admits that the Department’s Determination of No Significant Effect – Negative Declaration (DONSE) asserts that, “Build Alternative will result in a net benefit with respect to greenhouse gas emissions on an annual basis. No adverse effects in regard to energy and greenhouse gas emissions. As documented in Section 4.10.5 of the FDR/EA, the Project would be consistent with the Climate Leadership and Community Protection Act[,]” denies the remaining allegations in ¶ 65, affirmatively states that the Department complied with its SEQRA regulations, refers to 17 NYCRR part 15 for its complete text, context, meaning, and legal effect, and refers to the Department’s DONSE and Final Design Report/Environmental Assessment (FDR/EA) as the best evidence of their contents.

66. Denies the allegations in ¶ 66 and refers to the FDR/EA as the best evidence of its contents.

67. Denies the allegations in ¶ 67 and refers to the Department’s DONSE and FDR/EA as the best evidence of their contents.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 68 and so denies the same.

69. Denies the allegations in ¶ 69, affirmatively states that the Department complied with its SEQRA regulations and the Climate Leadership and Community Protection Act (CLCPA), refers to ECL article 75 for its complete text,

context, meaning, and legal effect.

70. Admits that the FDR/EA speaks for itself, denies the remaining allegations in ¶ 70, and refers to the FDR/EA as the best evidence of its contents.

71. Denies the allegations in ¶ 71.

72. Admits that the FDR/EA includes the quoted language, denies any remaining allegations in ¶ 72, and refers to the FDR/EA as the best evidence of its contents.

73. Admits that the FDR/EA includes the quoted language, denies any remaining allegations in ¶ 73, refers to the FDR/EA as the best evidence of its contents, affirmatively states that the Department complied with the CLCPA, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

74. Admits that the FDR/EA includes the quoted language, denies any remaining allegations in ¶ 74, and refers to the FDR/EA as the best evidence of its contents.

75. Denies the allegations in ¶ 75.

76. Denies the allegations in ¶ 76.

77. Denies the allegations in ¶ 77.

78. Denies the allegations in ¶ 78.

79. Denies the allegations in ¶ 79.

80. Admits that the FDR/EA speaks for itself, denies the remaining allegations in ¶ 80, and refers to the FDR/EA as the best evidence of its contents.

81. Admits that the FDR/EA speaks for itself, denies the remaining

allegations in ¶ 81, and refers to the FDR/EA as the best evidence of its contents.

82. Denies the allegations in ¶ 82.

83. Denies the allegations in ¶ 83.

84. Denies the allegations in ¶ 84.

85. Denies the allegations in ¶ 85, affirmatively states that the Department complied with its SEQRA regulations and CLCPA, refers to 17 NYCRR part 15 and ECL article 75 for their complete texts, contexts, meanings, and legal effects.

86. Admits that the FDR/EA speaks for itself, denies the remaining allegations in ¶ 86, and refers to the FDR/EA as the best evidence of its contents.

87. Denies the allegations in ¶ 87, affirmatively states that the Department complied with the CLCPA, and refers ECL article 75 for its complete text, context, meaning, and legal effect and to the FDR/EA and Final Scoping Plan as the best evidence of their contents.

88. Denies the allegations in ¶ 88.

89. Denies the allegations in ¶ 89, affirmatively states that the Department complied with the CLCPA, and refers ECL article 75 for its complete text, context, meaning, and legal effect and to the FDR/EA and Final Scoping Plan as the best evidence of their contents.

90. Denies the allegations in ¶ 90.

91. Denies the allegations in ¶ 91.

92. The allegations in ¶ 92 contain legal conclusions to which no response

is necessary and to the extent a response is required, the Department admits that the CLCPA and its legislative history speak for themselves, denies the remaining allegations in ¶ 92 and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

93. The allegations in ¶ 93 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department admits that the CLCPA speaks for itself, denies the remaining allegations, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

94. Denies the allegations in ¶ 94.

95. Denies the allegations in ¶ 95, affirmatively states that the Department complied with its CLCPA obligations, refers to ECL article 75 for its complete text, context, meaning, and legal effect.

96. Denies the allegations in ¶ 96, affirmatively states that the Department complied with its CLCPA obligations, refers to ECL article 75 for its complete text, context, meaning, and legal effect.

97. Denies the allegations in ¶ 97, affirmatively states that the Department complied with its CLCPA obligations, refers to ECL article 75 for its complete text, context, meaning, and legal effect.

98. The Department reasserts its responses to ¶¶ 1 through 97 as if fully set forth herein.

99. Denies the allegations in ¶ 99 and refers to the DONSE as the best evidence of its contents.

100. Denies the allegations in ¶ 100.

101. Denies the allegations in ¶ 101.

102. Denies the allegations in ¶ 102.

103. Denies the allegations in ¶ 103.

104. The Department reasserts its responses to ¶¶ 1 through 103 as if fully set forth herein.

105. The allegations in ¶ 105 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department admits that the CLCPA speaks for itself, denies the remaining allegations, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

106. The allegations in ¶ 106 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department admits that the CLCPA speaks for itself, denies the remaining allegations, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

107. Denies the allegations in ¶ 107.

108. The allegations in ¶ 108 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department admits that the CLCPA speaks for itself, denies the remaining allegations, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

109. Denies the allegations in ¶ 109, affirmatively states that the Department complied with CLCPA, refers to ECL article 75 for its complete text, context, meaning, and legal effect and to the Final Scoping Plan as the best

evidence of its contents.

110. Denies the allegations in ¶ 110, affirmatively states that the Department complied with CLCPA, refers to ECL article 75 for its complete text, context, meaning, and legal effect and to the Final Scoping Plan as the best evidence of its contents.

111. The Department reasserts its responses to ¶¶ 1 through 110 as if fully set forth herein.

112. The allegations in ¶ 112 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department admits that the CLCPA speaks for itself, denies the remaining allegations, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

113. The allegations in ¶ 113 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department admits that the CLCPA speaks for itself, denies the remaining allegations, and refers to ECL article 75 for its complete text, context, meaning, and legal effect.

114. Admits the allegations in ¶ 114.

115. Denies the allegations in ¶ 115.

116. Denies the allegations in ¶ 116, affirmatively states that the Department complied with CLCPA, refers to ECL article 75 for its complete text, context, meaning, and legal effect and to the Final Scoping Plan as the best evidence of its contents.

117. The Department reasserts its responses to ¶¶ 1 through 116 as if fully

set forth herein.

118. The allegations in ¶ 118 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department denies the allegations and refers to article I, section 19, of the New York Constitution for its complete text, context, meaning, and legal effect.

119. The allegations in ¶ 119 contain legal conclusions to which no response is necessary and to the extent a response is required, the Department denies knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 119 and so denies the same and refers to article I, section 19, of the New York Constitution for its complete text, context, meaning, and legal effect.

120. Denies the allegations in ¶ 120, affirmatively states that the Department complied with CLCPA and the New York Constitution, refers to ECL article 75 and to article I, section 19, of the New York Constitution for their complete texts, contexts, meanings, and legal effects and to the Final Scoping Plan as the best evidence of its contents.

121. Denies the allegations in ¶ 121, affirmatively states that the Department complied with CLCPA and the New York Constitution, refers to ECL article 75 and to article I, section 19, of the New York Constitution for their complete texts, contexts, meanings, and legal effects.

WHEREFORE, the Department requests an order and judgment:

- A. Dismissing the petition in its entirety; and
- B. Granting the Department such further relief as the Court deems just

and equitable, together with costs and disbursements.

Dated: September 4, 2024
Buffalo, New York

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondents

By: /s/ Patrick B. Omilian
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VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ALBANY) ss. :

Catherine S. Leslie, being duly sworn, deposes and says:

I am employed as Director of the Environmental Impact Statements & Special Projects Bureau in the New York State Department of Transportation's Office of Environment. I am fully familiar with the facts of this proceeding. The source of my information is my own personal knowledge, the records and documents contained in the files of the Department, and my discussions with Department staff and others with knowledge and information regarding this matter.

I have read the foregoing Verified Answer and know the content to be true to the best of my knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

This verification is made pursuant to the provisions of CPLR §§ 7804(d) and 3020(d)(2).

Catherine S. Leslie
Catherine S. Leslie

Sworn to before me this 4/44 day of September 2024

Kathleen M. Khemili
Notary Public

Kathleen M Khemili
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01KH6374444
Qualified in Albany County
Commission Expires 04/30/2026