



August 22, 2016

**VIA E-MAIL (james.mcclymonds@dec.ny.gov)**

**AND FIRST CLASS MAIL**

James T. McClymonds

Chief Administrative Law Judge

New York State Department of Environmental Conservation

Office of Hearings and Mediation Services

625 Broadway, 1<sup>st</sup> Floor

Albany, NY 12233-1550

Re: Finger Lakes LPG Storage, LLC, Application No. 8-4432-00085

Dear Chief Administrative Law Judge McClymonds:

On behalf of Gas Free Seneca (“GFS”), we are responding to the letter submitted by Finger Lakes LPG Storage, LLC (“FLLPG”) on August 8, 2016 (hereinafter cited as “August 8 Letter”). FLLPG’s letter described a series of changes to its proposal to store liquid petroleum gas (“LPG”) in underground salt caverns along the Seneca Lake shoreline (the “Project”). GFS is delighted to hear that, after seven years of denigrating the serious and widespread community concerns about the Project’s noise, visual blight, threats to Watkins Glen State Park and Seneca Lake, risks to public safety, and damage to the character and brand of the Finger Lakes region, FLLPG finally “is committed” to making the changes announced in its letter. August 8 Letter at 1. As we explain below, however, we are in no position to evaluate how the ostensible Project changes affect the issues raised in our petition for party status, until the vague assurances offered in the letter are converted into concrete, legally binding, and enforceable terms in revised Project documents.

FLLPG outlines the following Project modifications in its letter:

1. Elimination of truck transport of LPG and the originally proposed truck loading and unloading facilities;
2. Elimination of rail transport of LPG and the originally proposed rail loading and unloading facilities;
3. Elimination of butane storage;
4. Elimination of the brine pond and flare stack on the east side of Route 14; and
5. Delivery of financial and technical resources to support community initiatives preserving and improving water quality in the area.

*See id.* at 2–3. The proposal raises many questions that belie FLLPG’s claim that the changes “can be readily compared” to the original Project. *Id.* at 4.

For example, FLLPG states that it will eliminate all truck and rail transport of LPG as well as the associated loading and unloading facilities. The letter does not clearly specify, but does imply, that the facilities to be eliminated include all of the structures and equipment listed on page 8 of the Draft Supplemental Environmental Impact Statement (“DSEIS”)—the five 30,000-gallon bullet tanks, the six compressor units, the three pumps, multiple buildings, and perimeter fencing. The letter also gives no information about the implications of relying exclusively on pipelines for propane transport. That question is important in light of the statement of New York State Department of Environmental Conservation (“DEC”) that “the pipeline infrastructure bringing propane to the region is old and requires updating.” DSEIS at 18 (reporting a 2010 pipeline failure). Will pipelines used for propane delivery *to* the Project require upgrading, expansion, or replacement to accommodate LPG that otherwise would have been delivered by rail? Will pipelines used for propane transport *from* the Project require upgrading, expansion, or replacement to accommodate LPG that otherwise would have been transported by truck or rail? Will new pipelines be required for delivery to or from the Project? Will additional compressors be needed to move the greater volumes of LPG through pipelines? Will any other structures or equipment be needed to accommodate those increased volumes? All of those questions remain unanswered.

FLLPG also proposes to eliminate all 600,000 barrels of butane storage that was to be located in Well 58 (also known as Gallery 2). *See* DSEIS at 6 (“One gallery or cavern [Gallery 1] will store 1.5 million barrels of propane and the other cavern or gallery [Gallery 2] will store 600,000 barrels of butane.”); *id.* at 56 (“[FLLPG] has requested authorization to store up to 600,000 barrels of LPG in Gallery 2 (well 58)”). The expert geologist retained by GFS contends that no storage should be permitted in Well 58, because its sagging roof presents an unacceptable risk of collapse. *See* Petition for Full Party Status of GFS, Ex. 1 (“Clark Report”) at 19–21. But FLLPG does not plan to relinquish use of Well 58, as is evident from the Site Operations Plan (rev. July 29, 2016) attached as Appendix 1 to the August 8 Letter. The revised Site Operations Plan describes Well 58 as a “backup well” and continues to show pipelines for both LPG and brine connecting to that well. August 8 Letter, App. 1.

The plan thus presents several questions about FLLPG’s actual intent. Why is the “backup well” needed now, when there was no “backup well” in the original application? Does FLLPG now acknowledge that Gallery 1 cannot safely contain all 1.5 million barrels of propane and expect to shift some product to Gallery 2?<sup>1</sup> Does FLLPG plan to increase the volume of propane storage in the future, after promising to limit it to 1.5 million barrels? None of those questions can be answered by reference to existing documents in the record. More importantly, nothing in the existing documents precludes FLLPG from shifting the location or reinstating the original volume of LPG storage. Indeed, FLLPG will be free to retract the commitments appearing in the August 8 letter, unless they are formalized in clear and enforceable permit conditions.

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<sup>1</sup> GFS maintains that neither of the Galleries is suitable for LPG storage. *See* Clark Report.

The elimination of the brine pond and flare stack on the east side of Route 14 also raises questions that cannot be answered at this time. How do the technical specifications (including dimensions and capacity) and location of the proposed West Brine Pond compare to those previously proposed? Is the proposed West Brine Pond expected to serve both Galleries or only Gallery 1? Will the technical specifications for or location of the existing pumps or brine booster pump be changed? Will the technical specifications for the flare stack for the currently proposed West Brine Pond differ from those previously proposed for the East Brine Pond? Have the proposed locations of the brine pipelines changed? What are the potential environmental impacts of the proposed West Brine Pond, flare stack, pumps, pipelines, and any other proposed facilities or equipment required to accommodate the elimination of the East Brine Pond and flare stack, including impacts of possible dam failure? After all, FLPPG previously responded to concerns about brine releases from a single pond by proposing the construction of two smaller ponds; the reversion to a single pond—at a higher elevation on a steep slope—raises the question whether the latest proposal simply reintroduces the original threat. All of these questions should be answered formally in a revised application and revised DSEIS, and all changes should be memorialized in revised draft permit conditions.

In addition, the offer of financial and technical assistance for community-driven initiatives seeking to preserve and to improve the water quality of Seneca Lake and its tributaries is extremely vague and unenforceable. There is no specification of the amount of proposed financial assistance, the identity of regional organizations or other candidates to receive assistance, the timeline for the initiatives, or any other details of the proffered support. It is therefore unclear whether the proposal addresses any of the water quality concerns raised by the petitioners.

In sum, at this time, FLLPG's August 8 letter has no effect on the issues raised in the petitions for party status and at the issues conference in this matter. Currently, all we have is FLLPG's word that it "is committed" to making a number of voluntary Project modifications. There is nothing to prevent FLLPG from changing its mind; indeed, the draft permit conditions released by DEC staff in connection with the issues conference would give FLLPG the discretion to implement the Project as originally proposed, regardless of the promises in the August 8 letter.

If FLLPG is serious about responding to community concerns, it should revise its application for an underground storage permit, answering all of the foregoing questions and allowing the public (and the petitioners' experts) to understand exactly what modifications to expect. Announcing Project changes negotiated with un-named third parties behind closed doors, without formally revising the permit application, does not produce the "collaborative result" that FLLPG now touts.<sup>2</sup> FLLPG Letter at 4. Once the revised application is filed, DEC should

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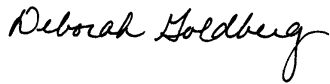
<sup>2</sup> FLLPG states that "certain stakeholders opposed to the Project have chosen not to engage" in the purportedly collaborative process that produced the proposed changes. August 8 Letter at 1. FLLPG never invited either GFS or its counsel to any of the many meetings that FLLPG claims to have held.

post it in its entirety on DEC's website and revise the DSEIS, analyzing the environmental impacts of the Project, as described in the revised application and as required by the State Environmental Quality Review Act.<sup>3</sup> The large number of unanswered questions about the proposed modifications makes it by no means certain that the changes will eliminate all significant adverse environmental impacts of the Project. On the other hand, it is clear that the changes will reduce the supposed economic advantages of the Project—for example, fewer jobs will be created, and local consumers will reap no benefit from propane shipped out of the Finger Lakes region—which also should be disclosed in the revised DSEIS.

The revised application and revised DSEIS will enable DEC to revise the draft permit conditions, to ensure that FLLPG's trumpeted changes are formalized in clear, binding, and enforceable requirements. Only at that point will GFS and other community members be able to ascertain what mandatory and permanent changes are being made to the Project and what those changes mean for the issues they have raised in their petitions for party status and at the issues conference.<sup>4</sup> We hope that swift revisions of the application, DSEIS, and draft permit conditions will enable us to provide the analysis you seek in the near future.

Thank you for the opportunity to respond to the August 8 letter.

Respectfully,



Deborah Goldberg  
*Counsel for Proposed Party Gas Free Seneca*

cc: Governor Andrew Cuomo (hard copy only)  
All counsel (via e-mail; hard copy to FLLPG and DEC)

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<sup>3</sup> It would be helpful if the parties' dispute regarding the confidentiality of certain Project documents, pending since February 2015 and unaffected by the current proposal, were resolved before posting.

<sup>4</sup> The issue whether the Project was approved in 2013 by an authorized State Geologist will require resolution, even if other adjudicable issues are eliminated by revised draft permit conditions.