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January 27, 2014

VIA ELECTRONIC AND FIRST CLASS MAIL

Hon. James T. McClymonds
Chief Administrative Law Judge
New York State Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway, 1st Floor
Albany, NY 12233-1550
james.mcclymonds@dec.ny.gov

RECEIVED

JAN 29 2015

OFFICE OF HEARINGS AND MEDIATION SERVICES

Re: *Matter of Finger Lakes LPG Storage, LLC*,
DEC Application No. 8-4432-00085: Filing of Public Petition for Party Status

Dear Chief Administrative Law Judge McClymonds:

On January 23, 2015, you granted our request for an extension of time until today to file the public (redacted) version of the party status petition of Seneca Lake Pure Waters. We requested the additional time to seek guidance from Kevin Bernstein, counsel for Applicant Finger Lakes Storage as to how narrowly or broadly the Applicant interprets the scope of the Confidentiality Agreement (which Mr. Bernstein drafted) for purposes of referring to application materials claimed as protected in publicly available documents such as party status petitions. Seneca Lakes Pure Waters was not involved in the drafting of the Agreement so we do not know how the Agreement is intended to apply in such a situation.

In particular, we wanted to know how Mr. Bernstein and his client interpret the term “information” as that term is used in the definition of “protected materials and to what extent “information”, inferences from “information” and conclusions based on “information” are protected under the Agreement.

Later on January 23, we spoke with Mr. Bernstein, and inquired whether in his view, as the author of the Agreement, he would deem the Agreement to be breached if the public version of our party status petition were to contain conclusions and inferences drawn by our experts from the application materials claimed as protected. He indicated he would.

Because Seneca Lake Pure Waters’ petition for party status and the reports prepared by our experts Dr. Raymond Vaughan and Dr. Alberto Nieto principally focus on the deficiencies, oversights and inaccurate statements contained in the Applicant’s application materials purporting to show the suitability of its caverns for storage of LPG, and because the Applicant has claimed confidentiality for these application materials, the issue as to how information contained in these materials may be referred to in a publicly available document is of concern to us.

Yesterday, Finger Lakes Storage filed its motion to affirm the confidential status of its application materials pertaining to cavern integrity. The outcome of this motion, which will remove or affirm the confidential status of these application materials may provide clarity as to how the term "information" should be interpreted for purposes of the Agreement.

For this reason, Seneca Lake Pure Waters respectfully requests permission wait to file the public version of its party status petition including the attached expert reports until after the motion has been decided.

In addition, we request that this letter be filed on the DEC website in lieu our party petition until such time as we file a public version of our petition.

Thank you very much for your consideration of this request.

Pursuant to your order, the electronic version of this letter is being sent by e-mail to you and all counsel on the official Service List. Hard copies of the letter are being mailed to you and counsel for the Department and the Applicant.

Respectfully submitted,



Rachel Treichler

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