

By email only:

April 21, 2020

The Honorable John Rhodes, Chair,  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, New York 12223-1350

Re: Public Service Commission Notifications to the Pipeline Hazardous Materials Safety Administration

Dear Chairman Rhodes,

New York State entered into an Agreement with the U.S. Department of Transportation (DOT) and its Pipeline and Hazardous Materials Safety Administration (PHMSA) under 49 U.S.C. 60105. Although 49 U.S.C. 60106(b)(1) might prohibit the direct enforcement of interstate pipeline safety standards, 49 U.S.C. 60106(c) provides for a Notification process to make sure that safety requirements for those pipelines are followed within the State.

The Office of the Inspector General (OIG) of the U.S. Nuclear Regulatory Commission (NRC) recently issued a report, ***Concerns Pertaining to Gas Transmission Lines at the Indian Point Nuclear Power Plant Case No. 16-024***, that calls into question the safety of the recently installed 42-inch diameter, high-pressure Algonquin Incremental Market (AIM) pipeline that traverses 2,159 feet of the Indian Point nuclear facility property and the two old Algonquin pipelines located on the site. The serious flaws, falsehoods and egregious errors in the so called “risk analyses” performed by the NRC and Entergy misrepresented the actual catastrophic risk posed by the AIM pipeline and the two old Algonquin pipelines at Indian Point, yet served as the basis for the approval of the AIM pipeline by the Federal Energy Regulatory Commission (FERC). Indeed, the OIG report stated that the analyses “used backward engineering for a desired result.” Taken together, the experts, federal, state, and local officials, emergency responders as well as the public remain gravely concerned about a pipeline explosion damaging critical infrastructure and triggering a spent fuel fire resulting in massive radioactive releases that would affect the Eastern Seaboard.

Importantly, the NRC investigative team, at the direction of NRC Chairman Svinicki, issued a report <sup>1</sup> on April 15, 2020. The findings by the Sandia National Laboratories, which is under

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<sup>1</sup> ML20100F635

<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20100F635>

contract to the NRC in this study, confirm the catastrophic risk of a potential pipeline rupture at Indian Point:

Sandia National Laboratories' evaluation <sup>2</sup> concluded:

***"The vapor cloud will be heavier than air which will cause it to disperse near the ground and will persist after the pipe has been closed.***

*The dense-gas vapor cloud will propagate through the vegetation and congested areas which increases the likelihood of a deflagration to detonation transition. Simulation results indicate that at approximately 6 to 7 minutes after release the flammability region of the vapor cloud will be either near or begin to engulf the SOCA and at 8 minutes the flammability region would surround the SOCA. Thus, if the cloud is ignited within the flammability region, the explosion would have a high likelihood of exceeding an overpressure of 1 psi at the SOCA.*

*The NRC analysis also considered a 60-minute release using ALOHA to calculate the maximum average sustained flow rate of 311,000 lbs/min. The mass released over the first minute was considered and not the total mass released over 60 minutes. The NRC analysis assumes that since the cloud will be buoyant it will disperse within 1 minute and thus an explosion will occur during the first minute independent of release duration and thus uses a mass of 311,000 lbs for the TNT equivalency calculation. **If the cloud is not immediately buoyant, then for a 60-minute release using the total mass calculated by ALOHA the result in 8872 ft or 1.7 miles.***

The NRC evaluation team's determination conflicts with the Sandia National Laboratories' evaluation and conclusions. The NRC failed to discuss the reasons for this inconsistency in their report. Below is the Sandia's Summary of Review:

*Summary of review*

*"The following are the key findings from this review:*

1. *Evaluation of models used:*
  - *Correct heat of detonation value was used;*
  - *ALOHA does not model supercritical flow and topography which is applicable to this release scenario.*
  - *TNT equivalency model is inadequate for the release scenario.*
2. *The major assumptions of the NRC analysis that results in an underprediction of distances to an overpressure of 1 psi are:*
  - *The cloud will become immediately buoyant and disperse below the flammability limits within 1 minute regardless of when the pipeline can be closed. Thus, only the mass released over 1 minute is considered in the TNT equivalency calculations.*
  - *The cloud will not propagate through vegetation and congested areas since its density will be less than air.*

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<sup>2</sup> IBID (1)

3. *The major findings from the preliminary SNL analysis are:*

- *The vapor cloud will be heavier than air which will cause it to disperse near the ground and will persist after the pipe has been closed.*
- *The dense-gas vapor cloud will propagate through the vegetation and congested areas which increases the likelihood of a deflagration to detonation transition.*
- *Simulation results indicate that at approximately 6 to 7 minutes after release the flammability region of the vapor cloud will be either near or begin to engulf the SOCA and at 8 minutes the flammability region would surround the SOCA. Thus, if the cloud is ignited within the flammability region, the explosion would have a high likelihood of exceeding an overpressure of 1 psi at the SOCA.”*

The Algonquin pipelines are within the jurisdiction of PHMSA and are regulated by the provisions of 49 CFR 192 and 49 U.S.C. 60101 et seq. The Algonquin Incremental Market Project Final Environmental Impact Statement (FEIS) Algonquin Gas Transmission, LLC Docket No. CP14-96-000 FERC/EIS- 0254F Volume I implies compliance with 49 CFR 192 and 49 U.S.C. Chapter 601. Full compliance with these federal regulations is clearly mandated and is a prerequisite to any approvals as stated in Section 1.2.4 below:

*“PHMSA is the federal agency responsible for administering the national regulatory program to ensure the safe transportation of natural gas, petroleum, and other hazardous materials by pipeline under 49 USC Chapter 601. PHMSA’s Office of Pipeline Safety (OPS) develops regulations and other approaches to risk management to ensure safety in design, construction, testing, operation, maintenance, and emergency response of pipeline facilities. The OPS is responsible for ensuring that Algonquin’s proposed facilities are designed, constructed, and operated in compliance with the safety standards that the agency has established for natural gas pipeline facilities.”*

And

*“Additionally, as discussed further in section 4.12.1, PHMSA is mandated to provide pipeline safety under 49 USC 601.<sup>3</sup> PHMSA administers the national regulatory program to ensure the safe transportation of natural gas and other hazardous materials by pipeline. PHMSA develops safety regulations and other approaches to risk*

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<sup>3</sup> 49 U.S.C. Code § 60109

1) Requirement. —

Each operator of a gas pipeline facility shall conduct an analysis of the risks to each facility of the operator located in an area identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, and shall adopt and implement a written integrity management program for such facility to reduce the risks.

And

(9) Review of integrity management programs.—

(A) Review of programs. —

(i) In general. —

The Secretary shall review a risk analysis and integrity management program under paragraph (1) and record the results of that review for use in the next review of an operator’s program.

*management that ensure safety in the design, construction, testing, operation, maintenance, and emergency response of pipeline facilities. Many of the regulations are written as performance standards that set the level of safety to be attained and allow the pipeline operator to use various technologies to achieve safety.”*

There are nine additional references to compliance with 49 CFR 192, however, no exceptions to the safety requirements to 49 CFR 192 are discussed within the FEIS.

It appears that PHMSA is avoiding addressing the risk assessments and the “Public Awareness” regulation 49 CFR 192.616 resulting in an increased risk to residents. PHMSA fails to assess or comply with the Public Awareness requirements associated with the extensive radioactive damage that would result from a potential pipeline rupture at Indian Point. Furthermore, PHMSA failed to make the “risk assessment” available to New York State, as required by law, and to local elected officials, the general public, the NRC and Entergy.

49 U.S.C. 60109(c)(9)(C) and (10) clearly designates a safety role for the State of New York by plainly stating:

*“(C)Transmittal of programs to state authorities. —  
The Secretary shall provide a copy of each risk analysis and integrity management program reviewed by the Secretary under this paragraph to any appropriate State authority with which the Secretary has entered into an agreement under section 60106.*

*(10)STATE REVIEW OF INTEGRITY MANAGEMENT  
PLANS.*

*A State authority that enters into an agreement pursuant to section 60106, permitting the State authority to review the risk analysis and integrity management program pursuant to paragraph (9), may provide the Secretary with a written assessment of the risk analysis and integrity management program, make recommendations, as appropriate, to address safety concerns not adequately addressed by the operator’s risk analysis or integrity management program, and submit documentation explaining the State-proposed revisions. The Secretary shall consider carefully the State’s proposals and work in consultation with the States and operators to address safety concerns.”*

It is mandated that PHMSA and industry conduct a valid risk assessment as described in 49 CFR 192.917 and 934 prior to allowing gas to flow or continue to flow in the pipelines at Indian Point. These federal regulations were developed by both PHMSA and the industry and incorporated into 49 CFR 192 after formal rulemaking and comment resolution.

The catastrophic danger combined with the lack of compliance with required 49 CFR 192 and 49 U.S.C. 601 demands immediate action by PHMSA to stop the flow of gas in the pipelines at Indian Point until it conducts this mandated risk assessment adhering to all regulations, informs all potentially impacted persons of the risk and determines if this threat is acceptable.

The inadequate evaluation of risk detailed in the NRC OIG report and the lack of the federally required risk assessment have led us to conclude that the current operation of the AIM pipeline and the old Algonquin pipelines at Indian Point nuclear facility entail “a violation or probable violation of an applicable safety standard” and that it is incumbent upon the New York State Public Service Commission (PSC) to submit a Notification of that situation to PHMSA under 49 U.S.C. 60106(c).

Furthermore, consistent with this Notification, it is incumbent upon the PSC to request an immediate issuance of a Corrective Action Order <sup>4</sup> by PHMSA as mandated pursuant to 49 U.S.C. 60112, “to protect the public, property, and the environment from potential hazards.” This warrants the shutdown and purge of the pipelines until these corrective actions are fully addressed and rectified. The continued operation of the Algonquin pipelines at the Indian Point facility without immediate corrective measures may “likely result in serious harm to life, property and the environment.” <sup>5</sup>

Your prompt reply to this letter and the following questions is requested by May 1, 2020 in view of the extreme urgency of this matter:

1. Please provide the PSC’s action plan and timeline for Notification to PHMSA.
2. Please describe timeline and other specific details regarding request for immediate issuance of a Corrective Action Order that includes shutdown and purge of the pipelines at the Indian Point nuclear facility until these corrective actions are fully addressed and rectified.
3. New York State has the explicit authority to seek an emergency injunction to halt the operation of the Algonquin pipelines at the Indian Point nuclear facility until corrective actions are fully addressed and rectified. Such an application for this injunctive relief qualifies as an “essential matter” pursuant to the order of Chief Administrative Judge Lawrence K. Marks. <sup>6</sup> Please provide timeline and other specific details of this time sensitive process.

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<sup>4</sup> (a) General Authority. — After notice and an opportunity for a hearing, the Secretary of Transportation may decide that a pipeline facility is hazardous if the Secretary decides that —  
(1) operation of the facility is or would be hazardous to life, property, or the environment;  
or the facility is or would be constructed or operated, or a component of the facility is or would be constructed or operated, with equipment, material, or a technique that the [Secretary](#) decides is hazardous to life, property, or the environment

<sup>5</sup> Section 60112 provides for the issuance of a Corrective Action Order without prior opportunity for notice and hearing upon a finding that failure to issue the Order expeditiously will likely result in serious harm to life, property or the environment. In such cases, an opportunity for a hearing will be provided as soon as practicable after the issuance of the Order.

<sup>6</sup> On March 22, 2020, Chief Administrative Judge Lawrence Marks issued administrative order [AO/78/20](#)  
<https://www.nycourts.gov/whatsnew/pdf/AO-85-20.pdf>

Thank you for taking these critical steps to protect all New Yorkers and residents across the Eastern Seaboard.

Sincerely,

Tina Bongar  
United for Clean Energy  
Resist Spectra

Amy Rosmarin  
Stop the Algonquin Pipeline Expansion (SAPE)

Ellen Weininger  
Grassroots Environmental Education

Courtney Williams  
Safe Energy Rights Group

CC:

Governor Andrew Cuomo  
Mr. Tom Congdon  
Mr. John Sipos  
Mr. Thomas DiNapoli  
Mr. Lemuel Srolovic  
Mr. Jeremy Magliaro  
Senator Charles Schumer  
Senator Kirsten Gillibrand  
Congresswoman Nita Lowey  
Congressman Elliot Engel  
Congressman Patrick Maloney  
State Senator Andrea Stewart-Cousins  
State Senator Peter Harckham  
State Senator Shelley Mayer  
State Senator Leroy Comrie  
Assemblyman David Buchwald  
Assemblywoman Amy Paulin  
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