

GAS TRANSMISSION FACILITIES: THE LIMITS ON HOME RULE

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I. INTRODUCTION

High volume hydraulic fracturing (HVHF) is currently at the forefront of many New Yorkers' minds. The battle over the practice is proceeding on multiple fronts. In 1992, in accordance with the New York State Environmental Quality Review Act (SEQRA), the Department of Environmental Conservation (DEC) completed a Final Generic Environmental Impact Statement (FGEIS) for oil and gas wells, and determined that oil and gas wells do not have a significant adverse impact on the environment.¹ In 2009, the DEC issued a draft supplement to the FGEIS to consider environmental impacts relating to HVHF, as it was determined that HVHF and HVHF-related technologies were outside the scope of the FGEIS.²

In 2011, in response to an executive order by then-Governor Patterson, the DEC issued a Draft Supplemental Generic Environmental Impact Statement (DSGEIS) and proposed HVHF regulations, as well as amendments to the Environmental Conservation Law (ECL) for HVHF.³ More than eighty thousand

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¹ See N.Y. STATE DEP'T OF ENVTL. CONSERVATION, FINDINGS STATEMENT (Sept. 1, 1992), http://www.dec.ny.gov/docs/materials_minerals_pdf/geisfindorig.pdf (noting the purpose of the report in the findings statement was providing a "groundwork for revisions" for regulation of oil, gas, and solution mining); see also N.Y. COMP. CODES R. & REGS. tit. 6, § 617.1 (2013) ("This Part is intended to provide a statewide regulatory framework for the implementation of [SEQRA] by all state and local agencies.").

² See N.Y. STATE DEP'T OF ENVTL. CONSERVATION, DRAFT SGEIS ON THE OIL, GAS AND SOLUTION MINING REGULATORY PROGRAM 2-1-2-2 (2009), http://www.dec.ny.gov/docs/materials_minerals_pdf/ogdsgeischap2.pdf.

³ See N.Y. STATE DEP'T OF ENVTL. CONSERVATION, REVISED DRAFT: SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT ON THE OIL, GAS AND SOLUTION MINING REGULATORY PROGRAM 2, 19-26 (Sept. 7, 2011), http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisexecsum0911.pdf.

comments were received.⁴ Currently, no timetable is set for the completion of the SEQRA review.⁵ At the same time, numerous local governments have taken it upon themselves to ban HVHF within their borders.⁶ The best known of these are the towns of Dryden and Middlefield.⁷ These towns, along with many others, passed local zoning ordinances with broad prohibitions against many kinds of gas extraction activities, including HVHF.⁸ However, most of these ordinances also prohibit activities secondary to actual gas extraction, including the construction of gas gathering lines and compressor facilities.⁹

Both the Dryden and Middlefield ordinances were challenged in court.¹⁰ Landowners and gas developers challenged the legality of the ordinances, arguing that they were preempted by state law to the extent that they prohibited natural gas extraction.¹¹ The challenges failed at the supreme court level, with two judges deciding that the ECL only preempted municipalities from regulating the manner of gas exploration.¹² However, the courts held that the municipalities retained their broader power to regulate land use within their borders.¹³ Basically, according to the supreme court judges, localities are forbidden from prescribing how gas is extracted, yet are free to prohibit gas extraction *in toto*.¹⁴

⁴ Press Release, Joseph Martens, Comm'r, N.Y. State Dep't of Envtl. Conservation, Commissioner Martens Rejects Call for "Independent" Health Study of High Volume Hydraulic Fracturing (Sept. 20, 2012), available at <http://www.dec.ny.gov/press/85071.html>.

⁵ See *SGEIS on the Oil, Gas and Solution Mining Regulatory Program*, N.Y. STATE DEP'T OF ENVTL. CONSERVATION, <http://www.dec.ny.gov/energy/47554.html> (last visited Apr. 6, 2014).

⁶ *Current High Volume Horizontal Hydraulic Fracturing Drilling Bans and Moratoria in NY State*, FRACTRACKER, <http://www.fractracker.org/maps/ny-moratoria/> (last updated Apr. 6, 2014) (showing map and listing the municipalities that have banned or placed moratoria on HVHF or have movements favoring prohibitions).

⁷ See Glenn Coin, *Court: Towns Can Ban Fracking*, POST-STANDARD, May 3, 2013, at A1; *Another Ban on Gas Drilling by a New York Town is Upheld*, N.Y. TIMES, Feb. 25, 2012, at A16.

⁸ See discussion *infra* Part V.

⁹ See discussion *infra* Part V.

¹⁰ See *Cooperstown Holstein Corp. v. Town of Middlefield*, 943 N.Y.S.2d 722, 722 (Sup. Ct. Otsego County 2012), *aff'd*, 964 N.Y.S.2d 431 (App. Div. 3d Dep't 2013), *leave to appeal granted*, 995 N.E.2d 851 (N.Y. 2013); *Anschutz Exploration Corp. v. Town of Dryden*, 940 N.Y.S.2d 458, 461 (Sup. Ct. Tompkins County 2012), *aff'd sub nom. Norse Energy Corp. USA v. Town of Dryden*, 964 N.Y.S.2d 714 (App. Div. 3d Dep't 2013), *leave to appeal granted*, 995 N.E.2d 851 (N.Y. 2013).

¹¹ *Anschutz*, 940 N.Y.S.2d at 465; *Cooperstown*, 943 N.Y.S.2d at 723–24.

¹² *Anschutz*, 940 N.Y.S.2d at 467; *Cooperstown*, 943 N.Y.S.2d at 728–29.

¹³ *Anschutz*, 940 N.Y.S.2d at 471–72; *Cooperstown*, 943 N.Y.S.2d at 728–29.

¹⁴ See *Anschutz*, 940 N.Y.S.2d at 471–72; *Cooperstown*, 943 N.Y.S.2d at 728–29.

Numerous articles and commentaries have been written on both the logic and legal validity of these decisions.¹⁵ Nevertheless, both decisions were affirmed by the appellate division.¹⁶ Last August, the Court of Appeals agreed to hear the two cases.¹⁷ No matter how the Court of Appeals rules, one thing is certain. Both the Dryden and Middlefield zoning laws are excessively broad, in that in their zeal to ban all things “fracking,” both towns undertook to ban gas gathering lines and compressor stations from within their borders, along with wells and other gas-extraction activities. Under Article VII of the New York Public Service Law (PSL), both laws will be ineffective in preventing the construction of gas gathering lines and compressor stations.¹⁸

As explained in more detail below, gas transmission is at least as vital to increased natural gas use as increased local production. Even if HVHF is never permitted in New York, the state nevertheless has expressed a clear preference for increased natural gas use, whether it be natural gas extracted from conventional wells locally or using HVHF elsewhere.¹⁹ In order for natural gas to reach consumers, it will need to be gathered and transported, which will require the construction of new transmission lines.²⁰ Article VII of the PSL gives the New York Public Service Commission

¹⁵ Keith B. Hall, *When Do State Oil and Gas or Mining Statutes Preempt Local Regulations?*, 27 NAT. RESOURCES & ENV'T 13, 15 (2013) (noting that the trial courts in New York have reached different outcomes than anticipated by observers, evidenced by the court in *Cooperstown*); Peter J. Kiernan, *An Analysis of Hydrofracturing Gubernatorial Decision Making*, 5 ALB. GOV'T L. REV. 769, 782 (2012) (“Notwithstanding the ferment of the debate concerning hydrofracturing in cities and towns throughout the Southern Tier [of New York State], and in some cases the promulgation of bans by local ordinances, state law controls.”); Gregory R. Nearpass & Robert J. Brenner, *High Volume Hydraulic Fracturing and Home Rule: The Struggle for Control*, 76 ALB. L. REV. 167, 189–90 (2013) (arguing that both *Cooperstown* and *Anschutz* should be overruled); *but see* William Yukstas, Note, *Managing Fractions: The Role of Local Government in Regulating Unconventional Natural Gas Resources—Recommendations for New York*, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 563, 593 (2013) (noting that the courts in *Cooperstown* and *Anschutz* were following the “logic” of prior decisions made by the Court of Appeals, in which a similar statute, the Mined Land Reclamation Act, had been interpreted).

¹⁶ *Cooperstown Holstein Corp. v. Town of Middlefield*, 964 N.Y.S.2d 431, 432 (App. Div. 3d Dep't 2013), *leave to appeal granted*, 995 N.E.2d 851 (N.Y. 2013); *Norse Energy Corp. USA v. Town of Dryden*, 964 N.Y.S.2d 714, 724 (App. Div. 3d Dep't 2013), *leave to appeal granted*, 995 N.E.2d 851 (N.Y. 2013).

¹⁷ *Cooperstown Holstein Corp. v. Town of Middlefield*, 995 N.E.2d 851 (N.Y. 2013); *Norse Energy Corp. USA v. Town of Dryden*, 995 N.E.2d 851 (N.Y. 2013).

¹⁸ See N.Y. PUB. SERV. LAW § 126(1)(e)–(f) (McKinney 2013) (granting the Public Service Commission authority to both site transmission lines and refuse to apply local laws).

¹⁹ See Act of Aug. 1, 1985, ch. 792, § 1, 1985 N.Y. Laws 3134, 3134.

²⁰ *The Transportation of Natural Gas*, NATURAL GAS SUPPLY ASS'N, <http://naturalgas.org/naturalgas/transport/> (last visited Apr. 6, 2014).

(PSC) explicit authority to site gas transmission lines.²¹ Part of that authority allows the PSC to refuse to apply local laws, such as those passed and (at least for the moment) still operative in Dryden, Middlefield, and dozens of other localities in New York.²²

This article does not provide any commentary on the legality of the Dryden and Middlefield ordinances. Instead, it seeks to describe the futility of those and similar laws, at least in terms of their attempt to exclude gathering lines and compression facilities.

II. NEW YORK'S PREFERENCE FOR NATURAL GAS USE

The State of New York has expressed a long-standing and consistent preference for the increased use of natural gas, both for electricity generation and home heating.²³ Natural gas is cheaper than other available fossil fuels and provides environmental benefits in the form of reduced emissions.²⁴

As early as 1985, the state legislature codified a preference for natural gas in the PSL.²⁵ The legislature explicitly stated that “[d]evelopment and encouragement of indigenous natural gas production is in the best interest of the state of New York.”²⁶ The statute further stated that “[t]he indigenous natural gas of the state is a vital natural resource and to the extent practicable should be used to satisfy energy needs within the state and to promote the economic well-being of the people of the state.”²⁷ While that particular statute applies to indigenous New York natural gas,²⁸ the state has since encouraged both the development of local gas

²¹ PUB. SERV. § 126.

²² *Id.*; *Current High Volume Horizontal Hydraulic Fracturing Drilling Bans and Moratoria in NY State*, *supra* note 6 (providing that as of Dec. 20, 2013, there were seventy-one bans on hydrofracking throughout New York State).

²³ *See* § 1, 1985 N.Y. Laws at 3134; Memorandum from Stanley B. Klimberg, Gen. Counsel, New York State Energy Office, to Gerald C. Crotty, Counsel to the Governor (July 10, 1985) (Bill Jacket, L. 1982, ch. 792, at 16–17).

²⁴ U.S. ENERGY INFO. ADMIN., ANNUAL ENERGY OUTLOOK 2013 WITH PROJECTIONS TO 2040 77 (2013), [http://www.eia.gov/forecasts/aeo/pdf/0383\(2013\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2013).pdf) (discussing how oil is projected to be more expensive than natural gas through 2040); *Natural gas generation lower than last year because of differences in relative fuel prices*, U.S. ENERGY INFO. ADMIN. (Sept. 25, 2013), <http://www.eia.gov/todayinenergy/detail.cfm?id=13111>; *Natural Gas: Electricity from Natural Gas*, U.S. ENV'T PROT. AGENCY, <http://www.epa.gov/cleanenergy/energy-and-you/affect/natural-gas.html> (last updated Sept. 25, 2013) (stating that natural gas produces less emissions than oil and coal).

²⁵ § 1, 1985 N.Y. Laws at 3134.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

supplies and imports of gas from outside the state.²⁹

More recently, in 2012, at the direction of Governor Cuomo, the New York Energy Highway Task Force issued the *New York Energy Highway Blueprint (Blueprint)*.³⁰ The *Blueprint* contained thirteen recommended actions designed to advance the Governor's goal of modernizing New York's statewide energy system.³¹ One of those recommended actions was to "[a]ccelerate investments in natural gas distribution to reduce cost to customers and promote reliability, safety, and emission reductions."³² The *Blueprint* recommended that \$500 million be spent to upgrade the gas distribution system in the state by 2017.³³ To that end, the *Blueprint* charged the PSC with developing a natural gas expansion policy by the end of 2012, and subsequently promoting projects to replace existing, aging gas infrastructure as well as expand the distribution system to promote the conversion of heating customers from oil to natural gas.³⁴

In response to the *Blueprint's* mandate, the PSC initiated a proceeding to review existing regulations and policies that may reduce the availability of natural gas to customers in New York.³⁵ The PSC reiterated that "[n]atural gas is cleaner than other fossil fuels used for home heating and under current market conditions costs a third as much."³⁶ The PSC also noted that:

New York State is well-located geographically to take advantage of existing and newly developed natural gas supplies located outside our State but which, when competitively-priced, are available to supply customers within the State. New York's location relatively close to these new sources of supply could provide the State a competitive advantage in attracting and retaining employers concerned about costs of, and access to, a reliable source of

²⁹ N.Y. ENERGY LAW § 3-101 (McKinney 2013) (describing New York's energy policy to include the use of indigenous natural gas); Proceeding on Motion of Commission to Examine Policies Regarding the Expansion of Natural Gas Service, Case 12-G-0297, 2012 N.Y. PUC LEXIS 445, *1-2 (N.Y. Pub. Serv. Comm'n Nov. 30, 2012)[hereinafter Case 12-G-0297] (explaining the potential benefits of importing natural gas from nearby states).

³⁰ N.Y. ENERGY HIGHWAY TASK FORCE, NEW YORK ENERGY HIGHWAY BLUEPRINT 5 (2012), <http://www.nyenergyhighway.com/PDFs/BluePrint/EHBPPT/#?page=0>.

³¹ *Id.*

³² *Id.* at 57.

³³ *Id.*

³⁴ *See id.* at 58 ("[The Department of Public Service (DPS)] will issue a notice on natural gas expansion policies by the end of 2012.").

³⁵ *See* Case 12-G-0297, *supra* note 29, at *2-3, *7 (describing the purpose of the ordered proceeding and referencing the *Blueprint*).

³⁶ *Id.* at *1.

energy. In addition, consumers may enjoy significant savings in household fuel expenses which in turn could benefit the State's economy to the extent that households redeploy those savings.³⁷

The PSC also extolled the emissions benefits of natural gas, stating, *inter alia*, that natural gas use results in emission reductions in particulate matter, nitrous oxide, sulfur dioxide, and carbon dioxide.³⁸ In addition to emission benefits, the PSC stated that expansion of natural gas use would promote economic development in the state and enhance reliability of the state energy system.³⁹

The PSC has expressed similar concerns when permitting gathering lines in the state.⁴⁰ While authorizing construction of a gathering line and associated compressor station which brings natural gas produced in Susquehanna County, Pennsylvania, to the Millennium Pipeline in Broome County, New York, the PSC found that:

Transporting gas from Pennsylvania to the Millennium Pipeline would benefit the customers of certain New York State gas local distribution companies and gas marketers by offering access to Pennsylvania (and possibly future New York State) shale gas supplies. Purchasing such gas close to the market area, as compared to current procurement from the United States Gulf Coast and western Canada gas supply regions, offers a multitude of customer benefits. Such benefits would include reliability of supply, diversity of supply, lower commodity and upstream pipeline costs, and reduced cost volatility. In addition to those benefits to New York, installation of the pipeline produces local benefits to the landowners that Applicants have negotiated easements with and the Town of Windsor through tax revenues levied on the pipeline.⁴¹

The State's preference for the increased use of natural gas has been well established and recently reaffirmed. However, increased natural gas use can only be made possible if sufficient supplies of

³⁷ *Id.*

³⁸ *Id.* at *5.

³⁹ *Id.* at *6.

⁴⁰ See DMP N.Y., Inc., Case 10-T-0350, 2011 N.Y. PUC LEXIS 70, *100-101 (N.Y. Pub. Serv. Comm'n Feb. 22, 2011).

⁴¹ *Id.*

both foreign and domestic gas are available.⁴² Increased gas supplies require the construction of new transmission facilities, including gathering lines and compressor stations.⁴³ This is true regardless of whether HVHF is ever permitted in New York. Gathering lines are still needed to collect gas produced domestically from conventional wells and gas extracted from the Marcellus Shale in Pennsylvania using HVHF.⁴⁴

III. THE NATURAL GAS SUPPLY CHAIN

While this article focuses on regulation of gas transmission line siting, it is helpful to provide some basic background information on the anatomy of the gas transmission system used to bring natural gas from the well to the end user.

Natural gas travels from the wells to end consumers through a series of pipelines.⁴⁵ These pipelines, in order to get from well to home, are flowlines, gathering lines, transmission lines, distribution lines, and service lines.⁴⁶ Flowlines collect gas from a single well in a producing field and transport that gas to nearby storage tanks, compressor stations, processing plants, or gathering lines.⁴⁷ These lines are typically narrow, and carry raw gas at pressures of around 250 pounds per square inch (psi).⁴⁸ Next, “[g]athering lines collect gas from multiple flowlines and move it to centralized points, such as processing facilities.”⁴⁹ Gathering lines are generally larger than flowlines and normally operate at a pressure of approximately 715 psi.⁵⁰ After processing, natural gas is routed into transmission pipelines.⁵¹

Transmission pipelines carry natural gas across larger distances, including between states and across multiple states.⁵² Transmission lines carry unodorized gas at higher pressures,

⁴² See *supra* note 29.

⁴³ See discussion *infra* Part III.

⁴⁴ See discussion *infra* Part III.

⁴⁵ *The Transportation of Natural Gas*, *supra* note 20.

⁴⁶ See *id.* (categorizing these pipelines into three major types: the gathering system, the interstate pipeline system, and the distribution system).

⁴⁷ Wendy Lyons Sunshine, *5 Types of Natural Gas Pipelines*, ABOUT.COM ENERGY, <http://energy.about.com/od/drilling/a/5-Types-Of-Natural-Gas-Pipelines.htm> (last visited Apr. 6, 2014).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *The Transportation of Natural Gas*, *supra* note 20.

⁵² Sunshine, *supra* note 47.

typically between 200 to 1,200 psi.⁵³ Next, gas is transferred to distribution pipelines, which transport gas from larger transmission lines closer to end users, usually at lower pressures.⁵⁴ Finally, service pipelines connect an individual customer to a distribution line.⁵⁵

Compressor stations are another integral part of the natural gas distribution system.⁵⁶ Interstate pipelines have specific requirements for the quality of gas that they will accept for transport.⁵⁷ In order to achieve that quality, gas has to be purified and compressed.⁵⁸ Compressor stations, which typically include several compressor engines and associated equipment, are built along with gathering lines for that purpose.⁵⁹

Interstate transmission lines are subject to regulation by the Federal Energy Regulatory Commission.⁶⁰ Intrastate transmission lines and gas gathering lines are subject to siting jurisdiction by the PSC when they meet certain requirements.⁶¹ Specifically, all natural gas transmission lines that operate at a pressure of 125 psi or above and are at least one thousand feet long are classified as major transmission lines under the PSL.⁶² Their siting is governed by Article VII of the PSL.⁶³

IV. ARTICLE VII

While actual gas drilling is regulated under Article 23 of the Environmental Conservation Law, gas transmission line siting is controlled by Article VII of the PSL.⁶⁴ Adopted in 1970, Article VII vested the PSC with exclusive authority over a centralized, coordinated review process for major gas transmission facility siting decisions.⁶⁵

⁵³ *Id.*

⁵⁴ *See id.*

⁵⁵ *Id.*

⁵⁶ *See The Transportation of Natural Gas*, *supra* note 20.

⁵⁷ *The Market Under Regulation*, NATURAL GAS SUPPLY ASS'N, <http://naturalgas.org/regulation/market/> (last visited Apr. 6, 2014).

⁵⁸ *The Transportation of Natural Gas*, *supra* note 20.

⁵⁹ *Id.*

⁶⁰ *The Market Under Regulation*, *supra* note 57.

⁶¹ *Id.* §§ 120(2), 121-a(1).

⁶² *Id.* § 120(2).

⁶³ *See generally id.* at § 121-a (discussing the role of the PSC in the siting process).

⁶⁴ *Id.* §§ 120–130; Lewis Bart Stone, *Power Siting: A Challenge to the Legal Process*, 36 ALB. L. REV. 1, 11 (1971).

⁶⁵ Act of April 29, 1970, ch. 272, 1970 N.Y. Laws 1524, 1525; Stone, *supra* note 64, at 11.

A major utility transmission facility is defined as “a fuel gas transmission line extending a distance of one thousand feet or more to be used to transport fuel gas at pressures of one hundred twenty-five pounds per square inch or more, excluding appurtenant facilities.”⁶⁶ Appurtenant facilities, in turn, are defined as:

[I]nstallations (excluding gas compressors) which are merely auxiliary or appurtenant to a fuel gas transmission line such as: valves; drips; measuring and regulating equipment; yard and station piping; cathodic protection equipment; gas cleaning; cooling and dehydration equipment; residual refining equipment; water pumping; treatment and cooling equipment; electrical and communication equipment; and buildings.⁶⁷

Therefore, any gas transmission line, including a gathering line with an associated compressor station, is subject to Article VII as long as the line is at least one thousand feet long and is operated at 125 psi or more.⁶⁸

Article VII requires an issuance of a Certificate of Environmental Compatibility and Public Need (CECPN) before any such line is constructed.⁶⁹ In order for the PSC to issue the CECPN, it must make all of the required findings under PSL section 126.⁷⁰ Specifically, the PSC must: (1) determine that the proposed project is needed;⁷¹ (2) consider “the nature of the probable environmental impact” of the proposed project;⁷² (3) determine that the proposed project “represents the minimum adverse environmental impact” in light of available technology and considered alternatives;⁷³ (4) determine “that the location of the line will not pose an undue hazard to persons or property along the area traversed by the line;”⁷⁴ (5) find “that the facility will serve the public interest, convenience, and necessity”;⁷⁵ and (6) determine “that the location of the facility as proposed conforms to applicable state and local

⁶⁶ PUB. SERV. § 120(2).

⁶⁷ *Id.* § 120(4).

⁶⁸ *Id.* § 120(2).

⁶⁹ *Id.* § 121(1).

⁷⁰ *Id.* § 126.

⁷¹ *Id.* § 126(1)(a).

⁷² *Id.* § 126(1)(b).

⁷³ *Id.* § 126(1)(c).

⁷⁴ *Id.* § 126(1)(e).

⁷⁵ *Id.* § 126(1)(g).

laws.”⁷⁶

With respect to (6) above, the statute provides that all local laws and associated regulations are binding on the PSC.⁷⁷ Such local laws would include zoning ordinances of any local jurisdiction through which the proposed project would pass.⁷⁸ However, the PSC is given authority to:

[R]efuse to apply any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality.⁷⁹

In addition, Article VII explicitly strips municipalities’ ability to require any further approvals for projects for which a CECPN has been issued.⁸⁰ Specifically, section 130 states that “[n]otwithstanding any other provision of law, no . . . municipality . . . may require any approval, consent, permit, certificate or other condition for the construction or operation of a major facility with respect to which an application for a certificate hereunder has been issued,” with limited exceptions for employee protections.⁸¹

It has been held that the combination of these two sections make local substantive requirements applicable, unless unreasonably restrictive, and local procedural requirements inapplicable in all cases.⁸² For example, a developer must comply with the substantive requirements of local zoning laws or building codes (unless waived as unreasonably restrictive), but does not need to apply for a local building permit or site plan approval.⁸³

To be sure, local municipalities are not excluded from participation in the Article VII process.⁸⁴ Indeed, their participation

⁷⁶ *Id.* § 126(1)(f).

⁷⁷ *Id.*

⁷⁸ *See id.*

⁷⁹ *Id.*

⁸⁰ *Id.* § 130.

⁸¹ *Id.*

⁸² *See, e.g.*, Niagara Mohawk Power Corp., Cases 92-T-0114 & 92-T-0252, 1993 N.Y. PUC LEXIS 25, *14–15, *19 (N.Y. Pub. Serv. Comm’n Aug. 20, 1993).

⁸³ *See id.* at *19.

⁸⁴ PUB. SERV. §§ 124(1)(i), (4).

is encouraged.⁸⁵ Article VII was designed to include all interested parties in a single proceeding.⁸⁶ Statutory parties to an Article VII proceeding include the DEC, the Department of Commerce, the Secretary of State, the Department of Agriculture and Markets, the Office of Parks, Recreation and Historic Preservation, and all municipalities in which any portion of the proposed project is to be located.⁸⁷ In addition, any local resident has a right to participate.⁸⁸ Article VII is designed to bring all interested parties together in a single proceeding so that individual, local, and state interests may be considered and potential conflicts resolved. The goal of the legislature in establishing this framework was to:

[P]rovide a forum for the expeditious resolution of all matters concerning the location of electric and gas transmission facilities presently under the jurisdiction of multiple state and local agencies including the courts of the state, and all matters of state and local law, in a single proceeding to which access will be open to citizens, groups, municipalities and other public agencies to enable them to participate in these decisions.⁸⁹

However, the inclusion of section 126(1)(f) insures that broader state goals are not frustrated by unreasonably restrictive local laws.

V. DRYDEN, MIDDLEFIELD, AND OTHER LOCAL NEW YORK LAWS

This article focuses on the ordinances enacted in Dryden and Middlefield. While these two statutes are not the only ones to try to exclude all fracking-related activities, they are the most well-known, due to media coverage of the litigation surrounding these statutes and the plethora of legal scholarship addressing the statutes' legality.⁹⁰ Because both statutes have been upheld by the appellate division, other localities that seek to exclude HVHF may

⁸⁵ See *id.* (allowing the Commission to permit a municipality entitled to become a party which has failed to file proper notice to become a party and participate).

⁸⁶ Act of April 29, 1970, ch. 272, § 1, 1970 N.Y. Laws 1524, 1525.

⁸⁷ PUB. SERV. § 124(1)(b)–(h).

⁸⁸ *Id.* § 124(1)(j).

⁸⁹ § 1, 1970 N.Y. Laws at 1525.

⁹⁰ See, e.g., David Giller, Note, *Implied Preemption and its Effect on Local Hydrofracking Bans in New York*, 21 J.L. & POL'Y 631, 634–35 (2013) (examining the lawfulness of the Dryden and Middlefield zoning ordinances); Jeanine Prezioso & Edward McAllister, *New York State Court Upholds Town Zoning Laws to Ban Fracking*, REUTERS (May 2, 2013), <http://www.reuters.com/article/2013/05/02/fracking-new-york-idUSL2N0DJ24120130502> (noting the litigation involving both Dryden and Middlefield's zoning ordinances).

base their own statutes on those upheld in Dryden and Middlefield, perhaps mistakenly believing that they will be successful in excluding natural gas transmission from within their borders.⁹¹

A. Dryden

The Town of Dryden is located in Tompkins County, covers a total area of 94.3 square miles, and is home to 14,435 people.⁹² It is located approximately thirty miles north of the Pennsylvania border in Central New York.⁹³ On August 2, 2011, the town held a special town board meeting to adopt amendments to the town's zoning ordinance.⁹⁴ A resolution was unanimously adopted that purported to clarify the then-existing zoning ordinance.⁹⁵ According to the town board minutes, town board members unequivocally stated during the meeting that the resolution was not intended to make new law, but instead to clarify what had already been the law.⁹⁶ According to the town board, "[t]he town has not ever contemplated heavy industry and the extraction and exploration of gas is unquestionably a heavy industry, with the amount of truck traffic, heavy equipment, the emissions from that equipment, the compressors, [and] the amount of activity by people on the sites."⁹⁷ While it is apparent that the goal of the ordinance was to exclude all gas extraction activities specifically, and generally all heavy industrial uses, the ordinance was worded broadly, in such a way that it excluded gathering lines from within the town borders.⁹⁸

The ordinance added a new section 2104 to Article XXI titled "Prohibited Uses."⁹⁹ That section banned a wide range of activities associated with gas exploration.¹⁰⁰ Specifically, in addition to well drilling, gas treatment or waste disposal prohibition, subsection (4), titled "Prohibition against Natural Gas and/or Petroleum Support

⁹¹ See Prezioso & McAllister, *supra* note 90.

⁹² *Town of Dryden, New York*, ROADSIDETHOUGHTS, <http://www.roadsidethoughts.com/ny/dryden-tnnof-census.htm> (last modified Mar. 17, 2014).

⁹³ See *New York Map Collection*, GEOLOGY.COM, <http://geology.com/state-map/new-york.shtml> (last visited Apr. 6, 2014).

⁹⁴ TOWN OF DRYDEN, N.Y., MINUTES OF SPECIAL TOWN BOARD MEETING OF AUGUST 2, 2011, at 1 (2011), *available at* http://dryden.ny.us/Board_Meeting_Minutes/TB/2011/TB2011-08-02.pdf [hereinafter DRYDEN BOARD MEETING].

⁹⁵ *Id.* at 2, 15.

⁹⁶ *Id.* at 2.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 2, 6; *see id.* at 14.

⁹⁹ *Id.* at 14.

¹⁰⁰ *See id.*

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Activities,” states that “[n]o land in the [t]own shall be used for natural gas and/or petroleum support activities.”¹⁰¹ “Natural Gas and/or Petroleum Support Activities” are in turn broadly defined as:

[T]he construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a natural gas or petroleum storage facility, or a natural gas or petroleum gathering line, venting station, or compressor associated with the exploration or extraction of natural gas or petroleum.¹⁰²

By its wording, the ordinance prohibits the construction, use, or maintenance of a natural gas gathering line or compressor station within town borders.¹⁰³

B. Middlefield

The Town of Middlefield is located in Otsego County, New York, covers approximately 63.7 square miles,¹⁰⁴ and is home to just over 2000 residents as of the 2010 census.¹⁰⁵ Middlefield passed its zoning ordinance on June 14, 2011.¹⁰⁶ Like the Dryden ordinance, the Middlefield ordinance bans a wide variety of gas exploration activities.¹⁰⁷ Article V specifically states that “[h]eavy industry and all oil, gas or solution mining and drilling are prohibited uses.”¹⁰⁸ “Gas, Oil, or Solution Drilling or Mining” is in turn defined as:

The process of exploration and drilling through wells or subsurface excavations for oil or gas, and extraction,

¹⁰¹ *Id.* For the language as it appears in the actual zoning ordinance, see DRYDEN, N.Y., ZONING LAW art. V, § 502(D) (Aug. 6, 2012), available at http://dryden.ny.us/Planning-Department/ZoningLaw/Zoning_Ordinance_Amendments_adopted_7_19_2012.pdf [hereinafter DRYDEN ZONING LAW].

¹⁰² DRYDEN BOARD MEETING, *supra* note 94, at 14. For the language as it appears in the actual zoning ordinance, see DRYDEN ZONING LAW, *supra* note 101, at art. III.

¹⁰³ DRYDEN ZONING LAW, *supra* note 101, at art. III.

¹⁰⁴ See *Geographic Identifiers*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/10_SF1/G001/0600000US3607746910 (last visited Apr. 6, 2014). This information was calculated using information from the most recent census and the formula recommended from the U.S. Census Bureau. See *Land Area and Person per Square Mile*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/meta/long_LND110210.htm (last visited Apr. 6, 2014).

¹⁰⁵ *Profile of General Population and Housing Characteristics: 2010*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/10_SF1/SF1DP1/0600000US3607746910 (last visited Apr. 7, 2014).

¹⁰⁶ MIDDLEFIELD, N.Y., LOC. LAW NO. 1, § 1 (2011), available at http://www.middlefieldny.com/uploads/1/2/6/8/12682437/zoning_law_061411_2011_final.pdf.

¹⁰⁷ See *id.* at art. V(A).

¹⁰⁸ *Id.*

production, transportation, purchase, processing, and storage of oil or gas, including, but not limited to the following:

- i. A new well and the surrounding well site, built and operated to produce oil or gas, including auxiliary equipment required for production (separators, dehydrators, pumping units, tank batteries, tanks, metering stations, and other related equipment;
- ii. Any equipment involved in the re-working of an existing well;
- iii. A water or fluid injection station(s) including associated facilities;
- iv. A storage or construction staging yard associated with an oil or gas facility;
- v. *Gas pipes, water lines, or other gathering systems and components* including but not limited to drip station, vent station, chemical injection station, valve boxes.¹⁰⁹

Just like the Dryden ordinance, the Middlefield law specifically bans gathering lines from the town.¹¹⁰ While it is clear that both statutes were intended to exclude as broad a range of fracking-related activities as possible, both overreached by banning gathering lines. Neither town will be able to exclude gathering lines from its borders should the PSC approve the lines' siting.

C. Other Local Laws

While Dryden and Middlefield were among the first New York municipalities to ban gas exploration in some form, they were certainly not the last. Currently, 177 local statutes have been passed attempting to restrict HVHF.¹¹¹ Of these, seventy one are complete bans and 106 are moratoria.¹¹² Out of the seventy-one localities that have banned HVHF, at least fifteen included gathering lines as a prohibited land use within the local borders and many more specifically ban compressor stations. These localities include:

The Town of Niles, N.Y., in Cayuga County, covering 43.4

¹⁰⁹ *Id.* at art. II(B)(7) (emphasis added).

¹¹⁰ *Id.* at art. II(B)(7)(v), V(A).

¹¹¹ *Current High Volume Horizontal Hydraulic Fracturing Drilling Bans and Moratoria in NY State*, *supra* note 6.

¹¹² *Id.*

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square miles.¹¹³

Oxford Village, N.Y., in Chenango County, covering 1.77 square miles.¹¹⁴

Red Hook, N.Y., in Dutchess County, covering 39.73 square miles.¹¹⁵

Utica, N.Y., in Oneida County, covering 16.53 square miles.¹¹⁶

Warwick, N.Y., in Orange County covering 105.16 square miles.¹¹⁷

Cherry Valley, N.Y., in Otsego County, covering 40.68 square miles.¹¹⁸

New Lisbon, N.Y., in Otsego County, covering 44.73 square miles.¹¹⁹

Roseboom, N.Y., in Otsego County, covering 33 square miles.¹²⁰

Springfield, N.Y., in Otsego County, covering 45.18 square miles.¹²¹

Danby, N.Y., in Tompkins County, covering 53.81 square miles.¹²²

¹¹³ NILES, N.Y., LOC. LAW NO. 1 sec. 4, §§ 138-4, 138-5(A)(4) (2013), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_NilesTownNY.pdf.

¹¹⁴ OXFORD, N.Y., LOC. LAW NO. 1 sec. 2.2, § 293-4, sec. 2.5(B), §293-19A (2013), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_OxfordVillageNY.pdf. This ordinance bans “compression facilit[ies],” which are defined as “[t]hose facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.” *Id.* at sec 2.2, § 293-4. This includes gathering lines. *Id.*

¹¹⁵ RED HOOK, N.Y., LOC. LAW NO. 3 sec. 4, § 140-4(C), sec. 5, § 143-11 (2013), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_RedHookNY.pdf.

¹¹⁶ UTICA, N.Y., CODE art. XII § 2-29-609(t)(5), (u) (2013), *available at* <http://ecode360.com/14017100>.

¹¹⁷ WARWICK, N.Y., LOC. LAW NO. 3 §§ 3, 5 (2013), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_WarwickNY.pdf.

¹¹⁸ CHERRY VALLEY, N.Y., LOC. LAW NO. 3 art. 2, § 2.02, art. 4, § 4.02 (2011), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_CherryValleyNY.pdf.

¹¹⁹ NEW LISBON, N.Y., PROTECTION OF RURAL ENVIRONMENT LOCAL LAW OF THE TOWN OF NEW LISBON §§ IV, V(A) (2011), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_NewLisbonNY.pdf.

¹²⁰ ROSEBOOM, N.Y., PROTECTION OF RURAL ENVIRONMENT LOCAL LAW OF THE TOWN OF ROSEBOOM §§ IV, V(A) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_RoseboomNY.pdf.

¹²¹ SPRINGFIELD, N.Y., PROTECTION OF ENVIRONMENT LOCAL LAW OF THE TOWN OF SPRINGFIELD §§ IV, V(A) (2011), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_SpringfieldNY.pdf.

¹²² DANBY, N.Y., LOC. LAW NO. 3 §§ 3(A), 5(A) (2011), *available at*

Ulysses, N.Y., in Tompkins County, covering 36.88 square miles.¹²³

New Paltz, N.Y., in Ulster County, covering 34.59 square miles.¹²⁴

Town of Rochester, N.Y., in Ulster County, covering 89.23 square miles.¹²⁵

Rosendale, N.Y., in Ulster County, covering 20.73 square miles.¹²⁶

Wawarsing, N.Y., in Ulster County, covering 134.16 square miles.¹²⁷

On the other hand, the following localities specifically exempted gathering lines subject to PSL Article VII or FERC jurisdiction from the general ban on gathering lines:

Summerhill, N.Y.¹²⁸

Perinton, N.Y.¹²⁹

DeWitt, N.Y.¹³⁰

Spafford, N.Y.¹³¹

Skaneateles, N.Y.¹³²

Bethel, N.Y.¹³³

Forestburgh, N.Y.¹³⁴

http://documents.foodandwaterwatch.org/doc/Frack_Actions_DanbyNY.pdf.

¹²³ ULYSSES, N.Y., LOC. LAW NO. 2 §§ 2, 3 (2011), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_UlyssesNY.pdf.

¹²⁴ NEW PALTZ, N.Y., LOC. LAW NO. 2 §§ 4, 5 (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_NewPaltzTownNY.pdf.

¹²⁵ TOWN OF ROCHESTER, N.Y., LOC. LAW NO. 2 §§ IV, V(D) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_RochesterTownNY.pdf.

¹²⁶ ROSENDALE, N.Y., LOC. LAW NO. 1 sec. 3, § 75-9, sec. 4, § 75-56 (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_RosendaleNY.pdf.

¹²⁷ WAWARSING, N.Y., LOC. LAW NO. 10 sec. 3, § 112-4, sec. 4, § 112-14 (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_WawarsingNY.pdf.

¹²⁸ SUMMERHILL, N.Y., LOC. LAW NO. 1 art. II, §§ 2.1, 2.2(B) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_SummerhillNY.pdf.

¹²⁹ PERINTON, N.Y., CODE §§ 205-3—205-5 (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_PerintonNY.pdf.

¹³⁰ DEWITT, N.Y., LOC. LAW NO. 2 § 114-4 (2013), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_DeWittNY.pdf.

¹³¹ SPAFFORD, N.Y., LOC. LAW NO. 2 § 7-24(b) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_SpaffordNY.pdf.

¹³² SKANEATELES, N.Y., LOC. LAW NO. 2 § 148-47(C) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_SkaneatelesNY.pdf.

¹³³ BETHEL, N.Y. LOC., LAW NO. 1 § 345-38(2) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_BethelNY.pdf.

¹³⁴ FORESTBURGH, N.Y., CODE § Prohibited Uses(A)(7), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_ForestburghNY.pdf.

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Highland, N.Y.¹³⁵Lumberland, N.Y.¹³⁶Tusten, N.Y.¹³⁷Caroline, N.Y.¹³⁸Enfield, N.Y.¹³⁹

Presumably, these municipalities realize that a broad ban on all gathering lines and compression facilities would be ineffective. These statutes would only apply to flowlines or gathering lines that are either too short to trigger Article VII jurisdiction or are operated at pressures below 125 psi.¹⁴⁰

The result of these statutes, should they be effective, is that a developer building a natural gas gathering system would be forced to navigate a virtual minefield of bans across the state. However, the very nature of gas gathering is such that lines must be connected to wells, which must be drilled where gas is located. Therefore, a developer may have little flexibility over gathering line location. In addition, having to zigzag around local bans is sure to increase the costs of construction, consequently raising natural gas prices for consumers.

VI. THE PSC CAN AND SHOULD REFUSE TO APPLY LOCAL BANS ON GAS GATHERING LINES AND COMPRESSOR STATIONS

PSC can refuse to apply any of the local laws purporting to ban gathering lines and compressor stations, if an applicant makes a showing that the local laws are unreasonably restrictive.¹⁴¹ While these waivers are certainly not automatically granted, the required threshold is certainly attainable. Given the state's explicitly stated preference for expanded use of natural gas, an applicant should be able to demonstrate that a proposed project addresses consumer

¹³⁵ HIGHLAND, N.Y., LOC. LAW NO. 3 § 2.3(C) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_HighlandNY.pdf.

¹³⁶ LUMBERLAND, N.Y., ZONING LAW § 10.4(m) (2010), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_LumberlandNY.pdf.

¹³⁷ TUSTEN, N.Y., ZONING LAW § 14.5(k) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_TustenNY.pdf.

¹³⁸ CAROLINE, N.Y., LOC. LAW NO. 1 § 4(B) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_CarolineNY.pdf.

¹³⁹ ENFIELD, N.Y., LOC. LAW NO. 1 § 4(B) (2012), *available at* http://documents.foodandwaterwatch.org/doc/Frack_Actions_EnfieldNY.pdf.

¹⁴⁰ *See* N.Y. PUB. SERV. LAW § 120(2) (McKinney 2013).

¹⁴¹ *See id.* § 126(1)(f).

needs.¹⁴² In fact, before this step is ever reached, the applicant would have demonstrated to the PSC's satisfaction that the proposed project is needed under section 126(1)(a).¹⁴³ Such a need is readily established by a demonstration that natural gas, produced either from local wells or wells located over the border in Pennsylvania, can diversify supply and help lower prices by introducing additional price competition.

Similarly, an applicant can request that a local zoning ordinance be waived by demonstrating that a zoning prohibition against a gathering line or a compressor station is unreasonably restrictive when costs and economics are considered.¹⁴⁴ For example, it may be significantly cheaper to locate a gathering line through an area where such a use is banned. If an applicant makes such a showing, the PSC would be fully within its statutory authority to refuse to apply the local law on those grounds.¹⁴⁵

Unlike the drilling bans at issue in Dryden and Middlefield, New York courts have upheld the PSC's authority to refuse to apply local laws found to be unreasonably restrictive against a home rule challenge.¹⁴⁶ The Second Department held that:

[T]here is no merit in the . . . contention that [Article VII] contravenes the home rule provisions in article IX of the State Constitution insofar as it authorizes the PSC to override local laws and regulations which it finds "unreasonably restrictive" with respect to the location of major transmission facilities. The short answer to that contention is that (a) both article IX of the State Constitution and section 11 of the Statute of Local Governments have reserved to the State Legislature the power to enact general laws relating to matters of substantial State concern, even though they may be intermingled with matters of local concern, and (b) article 7 of the Public Service Law clearly is a general law relating to matters of substantial state concern.¹⁴⁷

The PSC itself has also reaffirmed its authority, holding that:

¹⁴² *See id.* § 126(1)(g).

¹⁴³ *See id.* § 126(1)(a).

¹⁴⁴ *See id.* § 126(1)(f).

¹⁴⁵ *See id.*

¹⁴⁶ *See, e.g., County of Orange v. N.Y. Pub. Serv. Comm'n*, 334 N.Y.S.2d 434, 440 (App. Div. 2d Dep't 1972).

¹⁴⁷ *Id.* (citing PUB. SERV. § 126(1)(f)).

The Legislature, in PSL § 130, has expressed its intent to preempt local governments in the matter of review for major transmission facility sitings. Moreover, we may waive local ordinances that are unreasonably restrictive through PSL § 126(1)(f). Clarkstown's reading of PSL § 126(1)(f) is too narrow: the utility need not prove the entire project would be "physically impossible or economically unviable" or that extraordinary circumstances exist before a waiver can be imposed. While waivers are not granted lightly, nonetheless, they are granted where appropriate to prevent delay, restrictions or obstacles to construction of needed transmission facilities.¹⁴⁸

The PSC has exercised its authority on numerous occasions. In various Article VII proceedings, the PSC has waived local ordinances dealing with everything from building height restrictions to zoning and sound ordinances.¹⁴⁹ It should continue to do so now. If an applicant succeeds in showing that a local ban is unreasonably restrictive, the PSC should refuse to apply it. In doing so, the PSC would protect consumer interests by facilitating increased production and use of natural gas, thereby promoting economic development, reduced emissions, and lower energy costs.

VII. CONCLUSION

Based on the foregoing, the Dryden and Middlefield statutes, and others like them, are overly broad. The statutes may not be successful in excluding gas gathering lines or compressor stations in light of the PSC's authority and demonstrated willingness to refuse to apply them. Nor should these statutes be successful. Gas

¹⁴⁸ *In re* Columbia Gas Transmission Corp., Op. No. 89-23, 1989 N.Y. PUC LEXIS 34, *39 (N.Y. Pub. Serv. Comm'n July 20, 1989).

¹⁴⁹ *See, e.g.*, Fortuna Energy, Inc., Case 01-T-1363, 2003 N.Y. PUC LEXIS 609, *9 (N.Y. Pub. Serv. Comm'n Oct. 28, 2003); Niagara Mohawk Power Corp., Op. No. 93-17, Cases 92-T-0114 and 92-T-0252, 1993 N.Y. PUC LEXIS 22, *25-27 (N.Y. Pub. Serv. Comm'n Aug. 20, 1993); Long Island Power Authority, Case 04-T-1687, 2005 N.Y. LEXIS 466, *102 (N.Y. Pub. Serv. Comm'n Nov. 23, 2005); Application of Flat Rock Wind Power for a Certificate of Environmental Compatibility and Public Need, Case 03-T-0515, at 17 (N.Y. Pub. Serv. Comm'n April 12, 2004), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7534C3B5-5448-45ED-B185-831DDADDAE32}>; Consolidated Edison Co. of N.Y., Inc., Case 05-T-1369, 2006 N.Y. PUC LEXIS 157, *16-17 (N.Y. Pub. Serv. Comm'n May 17, 2006); Besicorp-Empire Dev. Co., LLC, Case 00-F-2057, 2004 N.Y. PUC LEXIS 387, *39 (N.Y. State Bd. on Elec. Generation Siting and Env. Sep. 24, 2004); Hudson Valley Gas Corp., Case 99-T-1814, 2001 N.Y. PUC LEXIS 630, *26-28 (N.Y. Pub. Serv. Comm'n March 29, 2001).

gathering and compression are integral parts of the gas distribution network and are vital to insuring that abundant quantities of natural gas are available to consumers. Therefore, local municipalities should not be able to prevent the construction of these facilities, frustrating broad statewide goals of increased natural gas use.