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January 6, 2023

Wallace and Wallace
85 Civic Center Plaza, Suite LL3
Poughkeepsie, New York 12601
Attention: James P. Horan, Esq

Re: Downey Energy v. Town of Wappinger, et al

Dear Attorney Horan:

Receipt of the Draft Scope of Issues (the "Scope") this past Friday is acknowledged. Permit this letter to serve as the comments of the Applicant regarding the same.

First, the Scope relates to issues primarily that are not part of the current Application of our Client. As you know, to better respond to the Town Planning Board's issues, the Plan of our Client changed from an above-ground storage tank configuration to a below ground storage tank configuration. As such, the issues in the Scope are primarily unrelated to the current Application. Second, the Scope seems to have adopted the issues raised by Mr. Silverstri which issues again relate to the prior Application, not the current Application. There is no reason my Client should respond to issues regarding the former Application. Third, the Town has been requested for over a year to have a qualified professional in the field of propane storage review this Application. I believe that any such professional will confirm that most of the issues raised in the Scope have no relevance to the current below ground tank storage Application. The refusal by the Town to retain such a professional at the Applicant's reasonable expense adumbrates continued well documented needless, illegal and harassing demands by the Town with regard to the Scope and my Client's current Application.

Furthermore, our Planner has raised the following issues concerning this Scope as follows:

1. Final Scoping Document Section 11 -Traffic and Transportation
 - a. The Final Scoping Document dated February 3, 2023 includes a requirement for a full traffic study to include roadway inventory, traffic volume counts, a speed study, modeling for no build and future build conditions and site distance evaluation. The Planning Board has not previously requested a full traffic study. Further, a letter dated December 21, 2022 from Cassandra Bibbo, EIT, from the NYS Department of Transportation (NYSDOT) specifically states that NYSDOT has no further questions or comments about the proposed project and a full traffic impact study is not required.
2. Final Scoping Document Section 12 – Alternatives
 - a. Section 12.3 – Multiple Access Points
 - i. The applicant can evaluate the potential for multiple access points from Old Route 9 and address emergency access (which will be evaluated in Final Scoping Document Section 11.7 Regulations and Emergency Response). However, to include a requirement in the Scoping Document for an evaluation of additional access from a separate road is improper.

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3. General format and organization: There are several elements that have been removed from the Draft Scoping Document and not carried forward into the Final Scoping Document dated February 3, 2023 including that would serve to establish a more user-friendly and easier to understand Scoping Document:

a. The Final Scoping Document dated February 3, 2023 does not include a cover page identifying the name of the project/action, project location, project sponsor, lead agency or any contact information.

b. The Final Scoping Document dated February 3, 2023 does not include a table of contents.

c. The Final Scoping Document dated February 3, 2023 does not include a clear identification of procedural history related to the proposed project.

d. The Final Scoping Document dated February 3, 2023 does not include a description of input obtained and considered in its preparation which should identify the January 18, 2023 public scoping session and other input received.

Finally, we respectfully submit that these issues need to be addressed before the Planning Board takes further action with regard to our Client's Application. Kindly share this Letter with the Planning Board and the Town Planner. I will be present at tonight's Planning Board Meeting to address any questions you or the Planning Board may have regarding this Application.

Very truly yours,


Dennis E. A. Lynch

DEAL.sef
Cc: Cary Downey
Al Cappelli
Jackie Hakes