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March 4, 2024

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Attention: Kyle W. Barnett, Esq. *(via e-mail KBarnett@vandewaterlaw.com)*

Re: Application of Downey Energy

Dear Attorney Barnett:

It is my understanding that you are the new Planning Board ("Board") Attorney for the Town of Wappinger ("Town"). In that regard once I received that information, I called your Office but your Secretary said you were not available to speak with me and would have you call me back. I did not receive any call back from you, but did I did received on March 1, 2024 late in the day (with just one hour and fifty minutes left in that business day) the Town Planner's Memorandum comments on the above-captioned pending Application. In summary, the Town Planner noted that "the DEIS is not complete with regard to addressing issues identified in the Final Scoping Document". It is my understanding that based upon the Town Planner comments, the Board will not tonight vote to set a Public Hearing for consideration of public comment on the proposed DEIS. If the Board will so vote tonight to set this matter down for a Public Hearing and public comment, please advise by return e-mail immediately.

As the record will reflect, this Project has returned to the Board by Order of Supreme Court Judge Maria G. Rosa, JSC dated February 5, 2024. In that Order and Decision, the Court found that the Town was in Contempt of Court for its actions regarding this Project. I hereby place the Town and Board on notice that the Board and Town remain in Contempt for not providing necessary SEQRA information sooner than late March 1, 2024 (the business day before the March 4, 2024 Board Meeting) so the Applicant could have timely addressed any issues in order for the Board to vote tonight to set this matter down for a Public Hearing on issues in the DEIS.

The Board and its Planning Consultants have had our draft of the DEIS in their hands since September 25, 2023. That is nearly one-half of a year ago for Board review. Additionally, periodic communications have been sent to the Town Planning Consultant asking for updates and to engage in an appropriate process to review SEQRA issues before the next Board Meeting. The Town Planner has refused to engage our Planning Consultant at all since September 25, 2023. For the Board to permit its Town Planning Consultant to delay sending us this critical SEQRA responsive material until the business day before the Board Meeting tonight on our Application is evidence of further Contempt of Court and a violation of our civil rights.

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Still more troubling, however, is that even now the Town Planner notes in his Memorandum that a Section of the DEIS "is being reviewed for completeness by the Town Engineer and the review is ongoing". Otherwise stated, the Board and its Consultants have had our DEIS for nearly half a year to review the completeness of this DEIS for public comment and a Public Hearing, but the complete Board review has still not taken place. Thus, not all the Board Consultants' comments have been received even as of now for my Client and its Consultants to review. All the foregoing directly contradicts the Court's Order and Decision in this matter.

Accordingly, unless the Board votes tonight to set this matter down for public comment and a Public Hearing on the draft DEIS, my Client has no choice but to await all comments by the Board's professionals (including the Town Engineer as referenced in the Town Planner's Memorandum). At that time, my Client can respond appropriately to those comments. This is the status that the Board and the Town have placed my Client in now without our consent to the same by my Office or my Client. As such, my Client reserves all rights and remedies including but not limited to further application to the Court for relief. Be guided accordingly.

Very truly yours,


Dennis E. A. Lynch

DEAL/sef

Cc: Downey Energy

Planning Board (*via e-mail Bogunti@townofwappinger.gov*)

Alfred A. Cappelli, Jr. (*via e-mail acappe2102@aol.com*)