

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
Feb. 24, 2009

Committee Members Present: Roeder, Shafer, Richardson, Bowers, Fluhr, Keesler, Peckham
Cooperating Partner: Martinez-NPS
Staff: Douglass, Soete, Coney, Ramie
Guests: None

The committee chairperson Harold Roeder Jr. called the meeting to order at 7:46 p.m. A motion by Fluhr seconded by Bowers to approve the Jan. 27 meeting minutes was carried. There was no public comment on the agenda.

Discussion Items Report The committee reviewed the Discussion Items Report; some highlights:

Town of Highland – Barnes Landfill: On Feb. 24, Soete sent an email to Bill Rudge, Natural Resources Supervisor of NYS DEC Region 3, a member of the UDC, requesting an update on the status of the monitoring and/or pumping at the Barnes Landfill. The DEC had previously indicated that the escrow account to cover remediation at the Landfill was depleted.

Corridor-wide and beyond – New York Regional Interconnection power line project update: CARI (Communities Against Regional Interconnect) issued a Letter to the Editor that appeared in the Feb. 5 edition of the *River Reporter*. The letter stated in part, "...CARI coalition ...is completely opposed to the NYRI project in any form. In November 2008, CARI was required to present NYRI route alternatives before the Public Service Commission. CARI proposed two buried underground route alternatives, one to be placed along the centerline of the existing Marcy-South Line and the second alternative to run along the side of the New York State Thruway."

On Feb. 7, an article on the Radio Free Hamilton website states, "WIBX radio is reporting that Democrat Assemblywoman from Rome RoAnn Destito met with a lobbyist for New York Regional Interconnect. The lobbyist reportedly said the original route 190 miles along a railroad right of way through much of Upstate New York was a mistake."

A Feb. 10 Environmental News Network news release states, "An assessment of the 'electric productivity' of the 50 states indicates that shoring up performance gaps through energy efficiency could not only cut consumption by 30 percent, but also eliminate the need for more than 60 percent of coal-fired generation, according to a new study by the Rocky Mountain Institute."

A copy of the CARI news release, "CARI Victory in Landmark States' Rights Case; PSC Faces August 2009 Deadline" was included in the Discussion Items Report for the committee's information. The news release stated in part, "...the 4th U.S. Circuit Court of Appeals ruled 2-1 that the Federal Energy Regulatory Commission (FERC) cannot override a State's decision to deny a transmission project if the state has reasonable grounds to deny the application. CARI along with the Piedmont Environmental Council, The Minnesota Public Utilities Commission and the New York Public Service Commission presented arguments in November of 2008 challenging FERC's rulemaking in connection with a new section of the Federal Power Act. CARI argued that FERC had overstepped its Congressional authority when it declared that any denial of a transmission project was sufficient grounds for a FERC override. CARI also challenged FERC's refusal to conduct an environmental impact study on the overall and cumulative impacts of siting transmission lines within a National Interest Electric Transmission Corridor...In its decision, the Court of Appeals also vacated FERC's National Environmental Policy Act regulations and required FERC to consult with the Council on Environmental Quality before issuing new regulations. CARI Chairperson states...this is a victory for states' rights and a victory in the fight against NYRI."

"As a result of this decision, states can confidently evaluate transmission projects using well-developed regulatory tools, with the knowledge that if they reject an application for sound reasons, FERC will not be able to overturn their decision."

In a Feb. 19 news release (copy handed out to the committee), Congressman Maurice Hinchey lauded the decision by the U.S. Court of Appeals for the 4th Circuit that overruled the interpretation by the

FERC of federal regulations that would have potentially allowed the agency to override state objections and permit the construction of power lines.

An article in the Feb. 20 edition of the *Syracuse Post-Standard* states that NYRI balked at the Court decision. NYRI general counsel Len Singer released a statement claiming that since the project filed an application with FERC on Feb. 20, 2008, any denial by the NYS Public Service Commission would be subject to federal jurisdiction.

The NYS Public Service Commission will begin formal hearings regarding NYRI on March 16, 2009 in Albany, NY.

Peckham commented that the New York Power Authority is dead-set against the power line going down the Marcy-South alternative route.

PPL Susquehanna-Roseland transmission line: PPL has hired an engineering firm to do work on the Susquehanna-Roseland power line project. This line will go through the Delaware Water Gap and is a controversial project. Peckham mentioned that there is a federal mandate that power line companies have to clear vegetation around power lines and they will be fined if they do not do this.

Natural Gas Leasing/Drilling in the region update: An article in the Feb. 23 issue of *The Intelligencer* states, "Pennsylvania's Supreme Court has ruled on two cases that will frame how the gas drilling debate is played out in Nockamixon. Nockamixon's sprint to maintain local control over gas drillers just took another turn. The state Supreme Court has ruled on two cases in western Pennsylvania that will surely echo across county lines. In written decisions Thursday, Pennsylvania Supreme Court Justices sided with the state's authority to control gas drilling, deeming that local laws cannot be in conflict with state regulations already in place. But the Court also confirmed that local officials do have the right to zone where in the municipality drilling can occur. Justice Saylor explained that the state's oil and gas act totally preempts any local drilling regulations, except in dealing with floodplain management. But the justices noted one important power local officials do hold: zoning. 'We concluded that the act's preemptive scope is not total in the sense that it does not prohibit municipalities from enacting traditional zoning regulations that identify which uses are permitted in different areas of the locality, even if such regulations preclude oil and gas drilling in certain zones'."

Pond Eddy Bridge update: The committee was provided with copy of Issue 2 of the PennDOT fact sheet "Project Update - February 2009" regarding the Pond Eddy Bridge that was received via email. PennDOT has determined that the replacement option is the only viable option to provide a river crossing connecting the communities of Lumberland and Pond Eddy. A Project Development Report is to include the different engineering, environmental and cultural studies completed to date and provide the justification towards making a final decision in one consolidated source for information. It is PennDOT's intention to have the PDR available to the public in April 2009.

NPS Mongaup Welcome Center: NPS Superintendent Vidal Martinez met on Feb. 7 with representatives of Alliance Energy regarding the proposed sites for the welcome center in the Town of Lumberland. Alliance owns the old Tri-State Diesel site. Another meeting with Alliance has been scheduled for March.

Pike County Conservation District: On Feb. 24, UDC received a copy of a letter dated Feb. 11 from the Pike County Conservation District to the PA DEP voicing opposition to DEP's Streamside Improvement and Buffer Initiative for projects requiring NPDES Permits for Stormwater Discharges during Construction. The Conservation District believes that the proposal will negatively impact land and water resources, add to an already confusing and complex permitting system, increase the cost of land development, and create complicated enforcement scenarios that will be very difficult to manage. The permit-by-rule would allow a developer to completely bypass technical review and proceed with construction so long as certain standards are met. The Conservation District wants to retain their review of projects before construction takes place.

Town of Cochecton – Little Joseph Sand & Gravel Mine mining application: The Cochecton Planning Board approved the mining application for the Little Joseph Mine on Jan. 29. The planning board chairperson previously said that under current law, the board had no other choice than to approve the plan. The NYS DEC approved the mining permit with conditions. The UDC and Upper Delaware Scenic Byway will be monitoring the project.

Old Business None

New Business

River Reporter editorial Feb. 12 – local control vs. mining interests: The committee was provided with copy of a *River Reporter* Feb. 12 editorial, “Avoiding another dumb outcome” as a point of information. The editorial’s point of view concerned the approval of the Little Joseph Mine permit even though the mine will be across from the tourist attractions of the Upper Delaware Scenic Byway proposed visitors center site and the Cochecton Train Station historical building visitor site.

It was noted that in general, state law gives mining interests priority over local ordinances such as those regarding setbacks involved in the Cochecton case. The writer felt that “our little paradise will become increasingly disturbed by extractive industries of one sort or another in coming years...” He mentioned that there was a bill currently bottled up in the NYS Legislature’s Environmental Conservation Committee that would make this precedence of local control versus that of mining interests in areas like ours more explicit. The bill in question, S1258 (copy handed out), would change current law to read, “No agency of this state shall consider an application for a permit to mine as complete or process such application for a permit to mine pursuant to this title if local (zoning) laws or ordinances prohibit the proposed mining use or uses within the area proposed to be mined.” The editorial goes on to state that the bill has been bottled up in committee for 14 years and the reasons are unknown as to why this has happened, but it’s probably worth pushing along if we want to make sure the land we want to remain inviolate is protected.

Town of Hancock – road plan: Peckham mentioned that the Town of Hancock has a draft road plan that was published in the *Hancock Herald*. The proposal covers certain truck weight limits, road bonding, lot limits, among other items. A public hearing on the proposal will be held next Tuesday in Hancock. It was noted that the Town of Hancock just re-did its roads due to flooding damage and they do not want the roads damaged again by gas drilling activity or other heavy truck traffic. Richardson commented that the trucks per se are not the main problem; it’s the number of times they go over a road. Fluhr added that Shohola Township looked into posting and bonding its roads and you have to have an engineer’s study done. The Township will do two roads a year to prepare for the upcoming gas drilling/exploration that will take place in the area. Fluhr said the Township cannot afford to pay for roads damaged by truck traffic.

Richardson added that the Multi-Municipal Gas Drilling Task Force, that was awarded a UDC Technical Assistance Grant, hopes to come out with a generic program to identify what needs to be done before gas drilling. The group will be interviewing three or four consulting engineers for a roads assessment project. The Town of Cochecton will be paralleling this effort with their own engineer. Towns need to know what condition their roads are in before any gas drilling/exploration takes place and be ready to prove it if damage occurs. The comment was made that it appears Pennsylvania is hiring more inspectors for gas drilling oversight, but New York State is only issuing permits to coincide with the number of inspectors it has that can handle the job. New York State is cutting its State budget due to the large deficit.

Public Comment None

Adjourn A motion by Richardson seconded by Shafer to adjourn the meeting at 8:50 p.m. was carried.

Carol Coney, Office Manager